

# Law Bulletin

*Law you need to know from OSU Extension's Farm Office*

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## Selling Farm-based Foods at the Farm: Do You Need a License?

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Selling produce, meats, and baked goods directly to customers who visit the farm is a popular food business model today. A question we often hear from Ohio farmers thinking about farm-based food sales is, “do I need to have a license or inspection?” The answer to this question depends upon the type of food offered for sale. Under Ohio law, some farm food product sales do not require a license while others require either a retail food establishment (RFE) license from the local health department or a farm market registration with the Ohio Department of Agriculture (ODA), both of which involve inspections.

It is important for a producer to carefully assess the food sales situation and comply with appropriate licensing or registration requirements. The following explains how Ohio law establishes these requirements based upon the number of different food products and the level of food safety risk for each product sold at the farm.

### **If you're selling a single low risk food: the “roadside stand” designation**

Many producers sell a food product that presents low food safety risk, such as eggs, maple syrup or fresh vegetables. Selling only one low risk type

of food typically defines the producer as a “roadside stand” under Ohio law. Food sales at a roadside stand do not require either farm market registration or an RFE license. As long as a producer is selling only one type of low risk food, the producer is not subject to RFE licensing or farm market registration requirements.

The following are “low risk” food items:

- Fresh, unprocessed fruits and vegetables.
- “Cottage foods” that are properly labeled. Cottage foods include non-potentially hazardous bakery products, jams, jellies, certain candies, certain flavored honeys, fruit chutneys, fruit butters, granola, granola bars, certain maple sugar, popcorn, unfilled baked donuts, waffle cones, pizzelles, seasoned dry cereal and nut snack mixes, roasted coffee, dry baking or cookie mixes, dry herbs or herb blends, certain dry soup mixes, dry seasoning blends, and dry tea blends.
- Maple syrup, sorghum, or honey products, if the producer used at least 75% of his or her own sap, sorghum juice, or honey in the final product and sells directly from the processing site.
- Eggs, if sold directly from the location where the hens are raised and the producer annually maintains 500 or fewer birds.
- Dressed chickens, if offered directly to the consumer from the location where the chickens are raised and slaughtered and the producer annually raises 1,000 or fewer chickens.

- Non-amenable meats such as bison, domestic rabbits, captive deer, pheasant, quail, and captive wild turkey, if offered directly to the consumer from the location where the meat is processed.

### **If you're selling multiple low risk foods: the "farm market" registration**

Selling more than one type of low risk food removes a producer from the roadside stand designation. A producer who sells multiple types of low risk foods must obtain an RFE license unless the producer instead registers as a "farm market" with the ODA. The farm market registration is voluntary but registering as a farm market exempts the producer from the mandatory RFE license. But Ohio law only allows farm market registration for a producer selling only the foods in the list below. A producer who sells foods in addition to the following products can register as a farm market but is not exempt from the RFE license requirement. Note that a farm market differs from a "farmers market," which is a location where several producers congregate to offer food items for sale.

A producer selling two or more of the following low risk foods may voluntarily register with ODA as a farm market or, if not registered as a farm market, must obtain an RFE license:

- Fresh unprocessed fruits or vegetables.
- Cottage foods (described earlier).
- Maple syrup, sorghum, or honey from a processor who used at least 75% of his or her own sap, sorghum juice, or honey in the final product.
- Commercially prepackaged foods that are not "potentially hazardous," (i.e., below 4.6 pH level, water activity value less than 0.85 and do not require temperature control) as

long as the food display is less than 100 cubic feet.

- Cider and other juices manufactured on site at the farm market.
- Eggs produced at the market location, as long as the producer annually maintains 500 or fewer birds.
- Dressed poultry raised and slaughtered at the farm market location, as long as the producer raises and slaughters less than 1,000 birds per year.
- Raw non-amenable meat (described earlier), as long as it is processed at the farm market location.

### **What does farm market registration require?**

The producer must submit an annual application to ODA, available on [ODA's website](#). There is no fee for the registration. The Food Safety Division of ODA will conduct an inspection of the farm market, but a completed inspection is not necessary prior to conducting food sales. The ODA will ensure that the farm market meets the following food safety standards required by the [Ohio Administrative Code](#):

- Food must be obtained from sources that comply with law.
- Food must be labeled as specified in law and shall be honestly presented in a way that does not mislead or misinform the consumer.
- Eggs must be clean and sound.
- Ice used as a cooling medium must be made from water that complies with rule [901:3-6-06](#) of the Administrative Code (from a municipal water supply or if from another source, tested annually for coliform).
- All food products must be safe, unadulterated, and honestly presented. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- Food must be protected from contamination.

- Eggs shall be maintained at an ambient air temperature of 45 degrees Fahrenheit or less.
- Poultry and non-amenable meats must be maintained frozen or at an internal temperature of 41 degrees Fahrenheit or less.
- Food that is unsafe, adulterated, or not honestly presented must be discarded.
- Except for whole and intact raw agricultural products, foods must not be displayed or stored on the ground.
- Cider and other juices manufactured on site of a farm market must be processed in accordance with the good manufacturing practices established in Chapter 901:3-1 of the Administrative Code.

For additional information, see [ODA's farm markets page](#).

### **If you're selling higher risk baked goods that require refrigeration: the "home bakery" registration**

While low risk baked goods like cookies fall under the "cottage food" category noted above, and explained further in our [Ohio Cottage Food Law](#) bulletin, baked goods that present a higher food safety risk are designated as "potentially hazardous." These baked goods require temperature controls such as refrigeration to ensure that they do not create a food safety risk. "Potentially hazardous" baked goods include cheesecakes, cream pies, cream filled donuts, custard pies and pumpkin pies. Ohio law requires a "home bakery" registration to produce and sell these higher risk home-baked goods.

Obtaining a home bakery license involves submitting an [application](#) and a \$10 fee to ODA.

Applicants must pass an inspection by ODA, which requires the following:

- The home has only one single or double non-commercial oven operating in an ordinary kitchen occupied by the bakery owner.
- Walls, ceilings and floors are clean, easily cleanable and in good repair.
- Kitchen does not have carpeted floors.
- There are no pets or pests in the home.
- Kitchen, equipment and utensils are maintained in a sanitary condition.
- Kitchen has a mechanical refrigerator capable of maintaining 45 degrees and equipped with a thermometer.
- If the home has a private well, a negative test result for coliform bacteria from a well test completed within the past year.
- Food product labels for the baked goods comply with food labeling requirements.

Learn more in our law bulletin about the [Home Bakery Registration Law in Ohio](#).

### **If you're selling meats, dairy and other higher risk foods: the "retail food establishment" license**

Due to food safety concerns, a producer selling certain higher risk foods must have an RFE license from the local health department. The RFE license requirement also applies if an operator meets the definition of a farm market but fails to register as a farm market with the ODA, explained earlier.

Foods that are "higher risk" that require an RFE license include:

- Eggs from a producer with more than 500 birds or eggs that are not sold directly from the farm where the hens are raised.

- Dressed poultry from a producer with more than 1,000 birds or not sold directly where the birds are raised and slaughtered.
- Properly processed meat from cattle, sheep, swine, goats and other animals not listed as “non-amenable” (described earlier).
- Prepared foods not listed as [cottage foods](#).
- Dairy products.
- Potentially hazardous baked goods not produced under a home bakery or bakery license that are sold directly to consumers.
- **Eggs.** See [our fact sheet](#) and ODA’s [small egg production page](#).
- **Ciders and juices.** See [ODA’s apple cider and juices page](#).
- **Meats.** See [our law bulletin](#) and [ODA’s meat questions page](#).
- **Non-amenable meats.** See [ODA’s voluntary state inspection page](#).
- **Produce.** The federal Food Safety Modernization Act’s (FSMA) Produce Safety Rule could apply to the growing, harvesting, packing and holding of larger quantities of fresh produce. Learn about who is subject to [FSMA](#) on the website of the [U.S. Food and Drug Administration](#). Many small produce growers selling directly to consumers are exempt from FSMA but should still utilize the good agricultural practices contained in FSMA for risk management purposes.

**What does the RFE license require?** A producer must obtain the RFE license from the local health department prior to selling higher risk foods, a requirement intended to reduce the transmission of foodborne illnesses. Each health department determines its fee for an RFE license and inspects the operation for compliance with Ohio’s [Uniform Food Safety Code](#). A producer should work closely with the local health department to prepare for the RFE inspection, as many departments provide checklists and other resources to help the producer understand and follow the standards required by the Uniform Food Safety Code.

## Other laws might also apply to farm-based food sales

**Food safety laws.** Note that specific laws apply to many of the farm-based food products listed above. See these other resources for additional requirements that might apply to your specific farm food product:

- **Cottage Foods.** See [our law bulletin](#) and [ODA’s cottage food page](#).
- **Maple syrup.** See [ODA’s maple syrup page](#).
- **Honey.** See [ODA’s honey page](#).

**Zoning regulations.** While most agricultural land uses in Ohio are exempt from local zoning regulation, a handful of food sale situations could require compliance with zoning requirements. Examples include if selling food products within an incorporated area or from a “farm market” where more than 50% of your retail sales are not derived from the sales of your own produce. If you’re in one of these situations, check local zoning to determine whether there are zoning regulations that apply to your on-farm food sales.

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### FOR MORE INFORMATION FROM OSU EXTENSION’S AGRICULTURAL & RESOURCE LAW PROGRAM:

- Find our resources in the Law Library on the Farm Office website, <http://farmoffice.osu.edu>.
- Sign up to receive the Ohio Ag Law Blog by e-mail at <http://farmoffice.osu.edu/blog>.
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