

REGULATORY ROADMAPS

for farm sales and food processing in Alabama



A starter guide for small farmers and ranchers selling directly to the public and adding value to farm products.

REGULATIONS AND GUIDELINES FOR DIRECT SALES OF FARM PRODUCTS AND VALUE-ADDED FOODS

As more farmers and food producers market directly to customers through farmers' markets, community supported agriculture (CSAs), and other retail outlets, questions arise. This guide is intended to get you started in understanding the regulations that apply to farms and business owners involved in direct retail sales and value-added processing.

The first section of this guide is geared toward farmers who want to market minimally-processed farm products directly to the public. The second section has guidelines for farmers and other producers of value-added food products. Please refer to publications listed in the References section below for more detailed answers to business- or product-specific questions.

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DIRECT MARKETING YOUR OWN FARM PRODUCTS

TYPES OF DIRECT SALES

There are various ways farmers can sell directly to consumers. Factors affecting which is best include budget, expertise, what products being sold, the business structure of the farm, available equipment, and various logistical issues. Below are some examples of ways to market directly to buyers.

On-farm – In most instances, farming activities and sales must take place on property with the appropriate zoning designation. Ask your local municipality about zoning as each city and county are different.

Farmers' market – Each market has different rules regarding what is allowed to be sold. The Alabama Farmers Market Authority maintains a map of Alabama farmers' markets by county, which is updated annually. Visit fma.alabama.gov/FMCounty.aspx and click on the county name to view farmers' market information.

Community Supported Agriculture (CSA) – CSAs are organizations consumers become members and pay for "shares" in advance of the growing season in order to minimize production and marketing risks for the farmer. A list of CSAs registered with Alabama Farmers Market Authority can be found at <http://fma.alabama.gov/CSA.aspx>.

Online Sales – There is a growing opportunity to market to customers online. A number of websites are available to help make that easier, including www.locallygrown.net, al.foodmarketmaker.com, and www.localharvest.org. Shipping products to another state may subject your business to additional federal laws (NALC), and many other considerations should be addressed to ensure safe handling of the product.

Accepting EBT and Farmers Market Vouchers

Direct-marketing farms may accept vouchers through programs for seniors and the Women, Infant, and Children (WIC) program. These vouchers are only redeemable for certain food products that were produced by the grower. The program is administered by the Alabama Farmers Market Authority as funds are available. <http://fma.alabama.gov>

Farmers may also accept EBT payments. This program is administered by the Department of Health and Human Services and includes a much broader range of farm products as well as food products purchased and sold by the farmer.

SALES BY PRODUCT TYPE

MEAT (NON-POULTRY)– sheep, goat, pork, beef

All processed meat sold in the state of Alabama must be processed by a USDA certified processor. USDA inspection is required for all non-poultry meat sales. Meats must be held at proper temperature during storage, transport and sale. Producers may sell a whole, half, or quarter animal live and deliver it to a custom processor. A list of meat processors in Alabama is available from Auburn University: <http://www.aaes.auburn.edu/comm/pubs/agecon/ae44directory.pdf>.

POULTRY (INCLUDES RABBIT)

Exemptions to on-site inspection by the U.S. Food Safety and Inspection Service (FSIS) apply to processing of less than 1,000 and 20,000 birds per year. Processing for both exemptions require that the poultry is healthy when slaughtered, the slaughter and processing are conducted under sanitary standards, the final product is identified as exempt product and labeled, and products do not move in inter-state commerce. With the 20,000 bird exemption, the facility used to slaughter or process poultry cannot be used to slaughter or process another person's poultry unless the administrator of FSIS grants an exemption. FSIS expects the poultry sold in commerce to bear safe handling instructions.

FISH AND OTHER AQUATIC FOODS

Fish and other aquatic foods must come from ADPH approved facilities. Interstate sales would require a HACCP plan.

DAIRY

All dairy products including, but not limited to, milk, cheese, butter, and yogurt, must be processed, packaged, and labeled at a facility permitted and inspected by the Alabama Department of Public Health's Milk and Food Processing Branch. Note that it is illegal to sell unpasteurized milk in Alabama through any means. The State of Alabama does not currently regulate herd shares. You may currently sell dairy products as pet food. A pet food license is available through the Alabama Department of Agriculture and Industries (ADAI).

EGGS

Egg sales that take place on the farm are not subject to the Alabama Shell Egg Law. At the federal level, egg sales are overseen by the USDA through the Agricultural Marketing Service (AMS) and the Food and Drug Administration (FDA); the Food Safety and Inspection Service (FSIS) regulates egg processing facilities. For sales of eggs at farmers' markets, producers must follow the guidelines set out in the Alabama Shell Egg Law. They need to clearly print the name and address of the packer of the eggs, the grade and weight class, and the date on which the eggs were graded. The Alabama Shell Egg Law requires farmers to meet USDA grading and weight classes and can be found at http://fma.alabama.gov/PDFs_NEW/Shell_Eggs.pdf.

HONEY

All beehives need to be registered with the ADAI. Products sold in Alabama as "honey" or using the word "honey" must be pure honey. The word "imitation" may not be used in the name of a product that resembles honey, regardless of whether it actually contains any honey.

SEED

The state of Alabama regulates seed sales. You can register as a seed dealer with the ADAI.

FOOD SAFETY

The Food Safety Modernization Act is currently under review, and will affect many produce growers with specific standards on production and handling. The FDA just released the final rules this fall—check back for updates..

ORGANICS

The USDA National Organic Program oversees the regulation and implementation of the National Organic Standards. Growers may not use the term "organic" to label their products without meeting a specific set of criteria. More information is at <http://www.ams.usda.gov>

FAQs ABOUT DIRECT MARKETING OF FARM PRODUCTS

Do I need a license or permit to start my farm?

Alabama law states that a municipality cannot charge farmers any license or fee for the sale of products produced by them at any place. But, like any other business, there are some basic tasks you need to complete prior to starting operations. You'll need to decide on a business structure and familiarize yourself with corresponding business and tax requirements. There are many resources available to help you navigate those decisions, including publications listed in the references below.

You may be required to obtain a business license if your market sells additional products, including farm products grown by another farmer.

Do I need to collect sales tax?

Sales tax is not charged for unprocessed farm products. Products produced on the farm that are processed in some way may have sales taxes collected per local municipality requirements. Producers selling value-added products—including value-added farm products—are required to collect and submit sales taxes to the respective tax agencies (state, county and city).

If you are buying a non-taxable farm product from another farm to resell, you will need to collect sales tax on those sales. Keeping accurate records of these transactions is important. A cash register that can itemize each product or group of products, can be used to keep sales totals of what the farmer has produced (tax exempt) from what was resold (taxable).

Do I need a grower's permit?

A grower's permit verifies that the seller is also the producer; this is often used to demonstrate that a farm is exempt from sales tax. Alabama growers can receive a grower's permit at no charge from their local County Extension Offices (www.aces.edu).

What is HACCP?

HACCP stands for Hazard Analysis and Critical Control Points. A HACCP ("hasip") plan details hazards and the potential for contamination at each point throughout the processing chain, and planned measures to prevent contamination and mitigate risk of foodborne illness.

An Important Note about Available Resources

Along with the publications and websites listed in the References section below, two guides are especially useful to farmers beginning business operations.

The *Alabama Direct Farm Business Guide* (Tarr et al. 2013) covers the legal issues associated with business structure and set-up, managing and marketing, taxation, labor and employment as well as regulations by product.

Ag Law and You (Alabama Farmers Federation 2013) covers agricultural labor, animal liability, environmental law, estate planning, licenses and sales taxes for farm products, operation of vehicles and equipment, property, and hunting and wildlife.

SELLING VALUE-ADDED PRODUCTS

FARMERS' MARKET SALES

Some foods processed in a home kitchen may be sold at state-sanctioned farmers' markets. This applies only to food that is not potentially hazardous (i.e. time or temperature control is not required for safety) *and* if the consumer is informed by a label, tag, or placard that the food is prepared in a kitchen that is not inspected by a regulatory agency. This means farmers' markets are excluded from the regulatory requirements of the ADPH regarding non-potentially hazardous home processed foods. Certain home processed foods, for example cookies, fudge, jams, jellies, candies, herbs, and snack items, may be sold at farmers' markets with appropriate labeling. This exclusion does not include home-canned vegetables. The Home Processed Rule is not the same as the Cottage Food Law. It applies strictly to farmers' market sales and other bake sale-type events and does not have a sales cap.

As of August, 2015, the Alabama Farmers Market Authority is reviewing the regulations for sales of value-added products at farmers market. Revisions are expected before the end of the year. Check back for updates.

COTTAGE FOOD LAW

Many value-added products sold directly to the public in Alabama fall under the Cottage Food Law, which went into effect in June 2014. These are foods that are sold from home or at local farmers' markets. They include candies, dried herbs, jams and jellies, and baked goods (e.g. breads, pastries, cookies) that do not include any ingredients that require refrigeration (such as cream filling or whipped topping). Foods that cannot be sold directly to the consumer under the Cottage Food Law include meats, juices, milk products, cheeses, barbecue sauces, pickles, low-acid or acidified foods, and heat-processed canned foods.

Food businesses operating under the Cottage Food Law are also required to attend and pass a food safety course. The Alabama Cooperative Extension System offers a course tailored for cottage food entrepreneurs. Participants are taught food safety, with particular focus on foods prepared at home, and receive a certificate upon completion that ensures individuals are in compliance with the Cottage Food Law.

Labels on food sold under the Cottage Food Law must include the product name, the name and address of the individual or business, as well as the statement: THIS FOOD IS NOT INSPECTED BY THE DEPARTMENT OF PUBLIC HEALTH. Labels may need to be submitted to the local health department for approval prior to selling.

Food sales under the Cottage Food Law cannot exceed \$20,000 per year and are subject to state, county, and city sales taxes. Businesses are also responsible for paying state and federal taxes on income earned through food sales.

<http://www.aces.edu/pubs/docs/F/FCS-2058/FCS-2058-low.pdf>

<http://www.aces.edu/pubs/docs/F/FCS-2059/FCS-2059-low.pdf>

FOOD SERVICE ESTABLISHMENTS

Food sellers that do not fall under the Cottage Food Law must be issued a Food Service Establishment permit by the Department of Health. Permit types are determined after the permit applicant has submitted an appli-

cation and based on criteria such as menu items and food preparation tasks. It is acceptable to open at a higher category (e.g. Category 3), then operate at a lower category (e.g. Category 2), but not vice versa. Below is a table showing Food Service Establishment permit types by category number and some of the distinctions between permit types in terms of regulations.

Permit Type	Heat Food	Re-Heat Food	Washing Sink	ServSafe Cert	Frequency of in-	Examples
Category	No	No	None	None re-	Annually	Pharmacies that
Category	Yes, on a	No	2-bay	None re-	Every 6	Sandwich shop
Category	Yes	Yes	3-bay	Yes, at least	3 times	Selling hot soup
Category	Yes	Yes	3-bay	Yes, at least	4 times	Establishments

¹Inspection frequencies may vary; for instance, if a food establishment earns a sanitation score of less than 85, it may be inspected again within 60 days.

²Category 4 establishments meet the definition of a Category 2 or Category 3 establishment AND perform operations requiring a Hazard Analysis and Critical Control Points (HAPPC) plan.

Permits are good for one year. If changes have occurred regarding requirements since getting your last permit, you will not be accountable for those changes until it is time to renew your permit. However, it's a good idea to communicate frequently with your health inspector to see if any changes have been made. The name and telephone number of your health inspector should appear at the bottom of your inspection—don't hesitate to ask questions!

Food trucks are expected to meet the same requirements as a permanent facility. In addition, operators must acquire a permit for their "commissary", or facility that serves as a base of operations (e.g. where ingredients are kept or waste is discharged). Permits may be the same category or they may differ, depending on the tasks (e.g. re-heating foods) that take place at each location.

CERTIFICATIONS

ServSafe Certification – Verifies that employees have completed a course about food safety and know what to expect from a Health Department inspection. Certifications must be renewed every 5 years. ServSafe Certification can be used to ensure businesses operating under the Cottage Food Law are in compliance.

Alabama Cooperative Extension offers Servsafe classes. Check the calendar at <http://www.aces.edu/fcs/fspp/servsafecourses.php>

Food Handlers Certification – Ensures the trainee has completed a course (often online) about foodborne illness and ways to prevent it. Certifications are good for 3 years. Food and Beverage Handler certifications by multiple certifiers.

Beverage Handlers Certifications – Employees of restaurants may be expected to hold this certification in addition to the Food Handlers Certification.

DEPARTMENTS OR AGENCIES TO CONSULT PRIOR TO OPENING A FOOD BUSINESS

Various organizations and agencies, such as the Small Business Advocacy (Alabama Department of Commerce), Alabama Department of Economic and Community Affairs, Small Business Development Centers, and the Alabama Department of Agriculture can help guide you as you start a small business. You may need to consult other departments or agencies listed below depending on your business or operations.

County Health Department – Aside from issuing permits, the County Health Department fulfills a wide range of duties. For example, if you're planning to build or remodel a facility for your food business, you'll need to get the Health Department to approve construction blueprints.

Fire Department or Fire Marshal – Inspects and approves ventilation structures and installations.

City and/or County Building and Plumbing Inspector – Checks plumbing and septic systems and ensures standards (such as codes regarding water supply and capacity, and sewage disposal systems and grease trap sizes) are met. An application for a septic systems or grease trap can be found on the state Department of Health website.

Zoning Board – Provides information on local zoning ordinances and whether food businesses can be operated in a given location or facility. The Zoning Board may also issue approval for variances for home-based businesses.

Business License Department – Issues business licenses that may be necessary before beginning operations.

Department of Environmental Management – Provides guidelines for disposal or handling of waste, e.g. if your business produces waste that is to be sold to another processor or producer.

Your insurance company – Helps protect your business from losses associated with accidents, injury, or other hazards. A commercial policy may be needed for, among other things, disability, product liability, and workers' compensation. Keep in mind that business insurance needs may change as your business grows.

FAQs ABOUT SELLING VALUE-ADDED FOOD PRODUCTS

When am I required to obtain a Temporary Permit?

Any time food is to be sold, removed from packaging, and served at a public event lasting no more than 14 days. Exception clauses may be granted for certain events lasting no more than three days as outlined in Section 420-3-22-.12 (2) of the ADPH Food Establishment Sanitation rules. Event sponsors must request an exemption at least five days prior to the event. It's recommended that concessionaires apply for a Temporary Permit from the county Health Department at least three weeks before the event. Any kitchen facility, booth, or mobile unit used to prepare food must be permitted by the Health Department.

When am I required to have a Food Processing Permit?

Food Processing Permits are required by those businesses that sell to more than two establishments (e.g. selling business-to-business in a wholesale or retail capacity). Food Processing Permits are acquired in addition to regular permits. In addition to following local and state Health Department guidelines, food processors must also follow rules set forth by the U.S. Food and Drug Administration in the Code of Federal Regulations. Food Processing Permit inspections occur every 90 days.

When am I required to use a commercial kitchen?

A commercial kitchen is required for any foods that are to be sold to the public that do not fall under the Cottage Law or Farmers Market exemption. A commercial kitchen is usually in a fixed location, but can also be a mobile unit, such as a food truck. Kitchens located in homes that are used primarily as residential kitchens cannot be permitted.

When am I required to use a federally-regulated facility?

The Food and Drug Administration regulates low-acid and acidified canned foods. All heat-processed canned foods must be prepared in a commercial facility approved and regulated by the FDA.

Do I need my own food permit if I'm using a facility or kitchen that has already been issued a permit?

Yes. While facilities or kitchens can be shared by multiple businesses, each business must have its own permit. If you are going to be sharing or renting space in a commercial kitchen, be sure to check with the Health Department prior to such agreements or signing a lease so you can be certain of responsibilities and liabilities of sharing space. Commercial kitchens may have their own requirements before you can use them. For instance, they may require workers' compensation or liability insurance.

Can I sell soaps and creams?

Soap is regulated by the Consumer Product Safety Commission; the FDA gets involved when it becomes a cosmetic or a drug. Definitions of each product can be found at

<http://www.fda.gov/Cosmetics/ProductsIngredients/Products/ucm115449.htm>.

An Important Note about Temperatures

Because foodborne illnesses are often the result of inadequate temperature, proper temperature control is a key component of passing inspections. Keep on hand a metal-stem thermometer that is able to measure from 0 to 220°F, and monitor foods regularly to avoid a critical violation of requirements. Requirements for food temperatures vary depending on the food types and what stage in the process the food is at (e.g. cold holding, preparation, cooking, hot holding, reheating). See your county Health Department or visit the website (www.ADPH.org) for more details.

REFERENCES

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