pennsylvania
DEPARTMENT OF AGRICULTURE

Farmers Markets

Frequently Asked Questions

Law and its Requirements

● What is Act 106 of 2010 and Chapter 57?

Act 106 was signed into law Nov. 23, 2010 and enacted Jan. 22, 2011, establishing Chapter 57, Food Protection, in Title 3 of the Consolidated Statutes, and setting statewide standards for retail and all other food safety inspections through two Laws - The Retail Food Facility Safety Act and The Food Safety Act.

3 Pa.C.S.A. §§ 5701 - 5714, are the sections of Chapter 57 containing The Retail Food Facility Safety Act, a Law designed to clarify and strengthen oversight of food safety inspections for all retail food facilities in Pennsylvania. A retail food facility is any place that sells food, directly or indirectly, to the public. This Law also establishes the PA Department of Agriculture as a central repository for retail food facility inspection reports and information.

3 Pa.C.S.A. §§ 5721 – 5737, are the sections of Chapter 57 containing the Food Safety Act, a Law designed to clarify and strengthen oversight for all food establishments in Pennsylvania. Food establishments are places (not retail) which process, manufacture, store, or distribute foods.

Chapter 57 was an important step forward for food safety in Pennsylvania, as over the years, numbers of retail food facilities have increased – from cafes in book stores and grocery stores to made-to-order operations in gas stations and convenience stores. This explosion of places to purchase and consume food has increased demands on state and local food safety inspectors and challenged existing laws that needed to be updated to better reflect the modern food system.

● What does the Retail Food Facility Safety Act cover?

The Retail Food Facility Safety Act or Law covers a wide variety of retail food industry partners, including mobile food cart vendors, restaurants, organizations serving more than three public meals per year, grocery stores, and farmers markets. The PA Department of Agriculture alone inspects more than 30,000 retail food facilities each year, and county/local health departments complete more than 50,000 food safety inspections. The Law also clarifies other food safety requirements that existed but were not clear to regulated individuals and operations – including an updated

definition specific to farmers market vendors. With the Retail Food Facility Safety Act individual farmers market vendor stands rather than the farm market as a whole are defined as retail food facilities and, as such, must have individual licenses (when/if applicable) to sell food products. Vendors selling raw agricultural products and/or pre-packaged non-potentially hazardous products are exempt from licensing fees but must comply with food safety requirements.

● What does the Food Safety Act cover?

The Food Safety Act or Law covers a multitude of food establishments where the food is processed, manufactured, stored or distributed. Food establishments do not include retail locations. A food establishment may include a food manufacturer, such as a bakery or candy manufacturer, that sells to other restaurants, or distributes to other retail locations; a home food processor; or a warehouse. Farmers market vendors may be required to register as a food establishment, if they are using their home location to process or store any of their foods that they sell at their farmers market stand.

● Do farmers market vendors have to have their own retail food facility license?

To ensure that all vendors would not be negatively impacted by the actions of non-compliant neighbors, The Retail Food Facility Safety Act recognizes each individual stand as its own unique entity with its own responsibilities for assuring safe food for the consumer.

• What is the Regulation that governs Farmers Market Vendors?

Farmers Markets are considered Retail Food Facilities and therefore are regulated by 7 Pa Code, Chapter 46, Food Code. In the interest of uniformity and keeping up with the most recent food safety science, Chapter 46, has adopted by reference the FDA Model Food Code and any subsequent updates. The FDA Model Food Code is being used by all 50 states as the basis for retail food safety regulations, and will be the standard used by all local and county health departments within the Commonwealth.

Types of Vendors/Stands at Farmers Markets

● Is there a difference between an on-farm store (Farm Market) and a Farmers Market?

Yes. For the purposes of licensing by the Department, an on-farm store is a SINGLE retail facility featuring the products produced or secured by the host farm. A Farmers Market features multiple farmer vendors and possibly related non-producer vendors.

● What types of stands exist at farmers markets?

There are generally six (6) types of products that may be sold at farmers markets. Below the six types of products are defined along with their required applications/licenses.

Type of Product	**Definition**	**Requirements**
Raw Agricultural Products	Fruits and vegetables from the farm that have not been Processed. Are NOT ready-to-eat.	Exempt from licensing fees and applications*
Pre-Packaged, Non-Potentially Hazardous Foods	May include baked goods, jams, candy, canned pickled products, , apple cider, honey products, maple syrup, etc.**	Exempt from licensing fees; a Retail Plan Review application must be submitted to PDA and *may* be required by a Local Health Dept.
Unpackaged, Non-Potentially Hazardous Foods	May include baked goods that are sold loose/unwrapped (cake, cookies, bread, bulk candy, etc.)**	A Retail Food Facility license is required by PDA and/or Local Health Dept; other requirements below
Pre-Packaged, Potentially Hazardous Foods	Includes foods that are temperature sensitive, such as meats, milk, cheese and eggs	A Retail Food Facility License is required by PDA and/or Local Health Dept; other requirements below
Unpackaged, Potentially Hazardous Foods	Typically covers areas such as deli or meat counters where foods are portioned to a consumer's request	A Retail Food Facility License is required by PDA and/or Local Health Dept; other requirements below
Ready-To-Eat Foods	Food sold for immediate consumption, including food carts, cafés and restaurants	A Retail Food Facility License is required by PDA and/or Local Health Dept; other requirements below

* - Stands selling raw agricultural products may still be inspected to ensure that they are selling only those products that are exempt from licensing requirements and that all products sold meet state food code standards.

** Items must be made in a kitchen/facility that is registered and inspected by PDA.

Licensing and Inspections

● What licenses might be required if I want to sell at a farmers market?

The table above indicates when a license or application is required. A complete checklist of requirements for farmers market vendors can be found on www.EatSafePA.com

● What licenses might be needed if I operate a retail farm operation at my home/farm?

If you are selling raw agricultural products you are exempt from a Retail Food Facility license fee. If you are selling pre-packaged, non-potentially hazardous items from an approved kitchen/facility, you are exempt from a Retail Food Facility license fee as well, but must complete an application and will be inspected. If you are selling packaged or unpackaged potentially hazardous foods, you are required to complete an application and obtain a retail food facility license.

● What is the definition of a potentially hazardous food (PHF) (newly termed 'TCS' or Time/Temperature Controlled for Safety Food)?

TThe definition comes from the U.S. Food and Drug Administration, and includes very specific parameters for pH (acid levels) and Aw levels (available water). For purposes of farmers markets, paragraph (1) of the FDA definition notes "Potentially hazardous food (or TCS food) means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation." This also includes raw seed sprouts, cut melons, cut tomatoes, cut leafy greens and other items. In short, foods that must be kept cold or hot to prevent food safety issues/outbreaks are a PHF or TCS food. TCS is now the only term used in the FDA Food Code.

● What is a Retail Plan Review application and when does this need to be completed?

A Retail Plan Review application is a document that provides insight on your operation and the products being sold. This application is required if you are selling anything other than raw agricultural products at your stand. The application must be completed and filed with the PA Department of Agriculture (where the Department is the licensing/inspection authority) prior to your facility opening. This application is required one time only, unless you significantly alter your physical farm market stand, what products are being sold, or the stand changes ownership.

A consolidated version of the Retail Plan Review application has been created

specifically for farmers market vendors and can be found on www.EatSafePA.com under the "Farmers Markets".

● If I sell 'cut leafy greens' at my farmers market stand, what am I required to do?

Cut Leafy Greens are defined as: fresh leafy green whose leave have been cut, shredded, sliced, chopped, or torn. The term "leafy green" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce, escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term leafy green does not include herbs such as cilantro or parsley. Cut leafy greens are considered a PHF food and must be maintained at 41°F ambient air temperature to control the growth of pathogens. Example: a head of lettuce still intact on the root base is a raw agricultural commodity. If you tear the leave from the stalk, it is now a cut leafy green.

● If I have a Warehouse registration, do I also need the Retail Food Facility license?

Yes. The Warehouse registration is specific to the facility where you are storing food products for further distribution. If your facility is registered as a Limited Food Establishment because you are a food processor you do not need an additional warehouse registration for that same facility. The registration is not tied to the Retail Food Facility license; the Warehouse registration covers storage facilities not located at the point of sale.

● I process and package chickens on my farm and sell them at local farmers markets. What do I need to do?

If poultry processing takes place on-farm not licensed and inspected by the U.S. Department of Agriculture (USDA) (i.e. less than 1000 birds), the PA Department of Agriculture (PDA) must register and inspect the on-farm processing and the warehousing facility. If the products are being processed off-the-farm, but subsequently stored on the farm, the off-farm processing facility must be inspected by USDA or PDA, and the on-farm storage is required to have a Warehouse registration by PDA. This registration and the related inspection will ensure the product is properly stored in a clean, temperature-appropriate facility.

To sell the products at a farmers market, a Retail Food Facility license is required and the stand must meet all of the standards to sell pre-packaged, potentially hazardous food.

● What do I need to sell dried herbs?

The Department will register processors of dried herbs. Dried herb processors can qualify to register as Limited Food Establishments. A Retail Food Facility license fee will not be required for retail of packaged dried herbs to the consumer because this would be a pre-packaged non-potentially hazardous food.

● If I am selling pre-made, wrapped sandwiches from my own bakery/café at a farmers market, do I need a Retail Food Facility license?

Depending on what is in the sandwich (meat, cheese, certain condiments and garnishes); it is most likely a pre-packaged, potentially hazardous food, in which case a Retail Food Facility license is required.

● I want to sell cut melons and cantaloupes at an outdoor farmers' market. What do I need to do?

If the melons are sliced/processed and packaged in a licensed/registered and inspected kitchen or facility, you must have a Retail Food Facility license to sell at the farmers markets and be able to control the temperature of the packaged melon slices while at the market (ice/coolers are acceptable). If the melon slices are not pre-packaged, the products will be considered unpackaged potentially hazardous or ready-to-eat foods and must meet all related requirements.

● What if you sell meat and vegetables together at a farmers market stand?

Meats are considered potentially hazardous products, so a Retail Food Facility license is required. Depending on whether or not the meat is packaged, you will have to meet the criteria for either Pre-Packaged, Potentially Hazardous Food or Unpackaged, Potentially Hazardous Food.

● What do I need to do if I am selling meat products processed at a USDA-inspected facility?

If you are selling these items at the farmers market, you will need a Retail Food Facility license as they are potentially hazardous products. If you pick the products up from the processing facility and store them somewhere, you will also need a Food Establishment Warehouse registration and inspection. If you pick the items up from the USDA-inspected facility and take them directly to the farmers market for sale, no Food Establishment Warehouse registration is required. If the left over product is taken to a storage location after market is over, the storage facility must be registered and inspected.

● What do we need if we are selling meat and eggs off the farm?

Meat and eggs are both potentially hazardous food products. A Retail Food Facility licensed is required to sell them at markets; the packaging of the meat (pre-packaged or unpackaged) will determine the equipment necessary to operate the stand.

● What is required if I want to sell eggs?

Eggs are considered a potentially hazardous food product, and a farm market vendor selling eggs will be required to complete an application and obtain a Retail

Food Facility License.

Egg Processing is governed by the PA Egg Refrigeration Law. Under this law, egg processors with fewer than 3000 laying hens may be exempt from an Egg processing License and can sell eggs under the following criteria; must be sold within five (5) days from the date of the lay; must be sold predominately within a 100 mile radius of the production or processing facility; must be maintained at 45 degrees Fahrenheit or less from the time of gathering to the time of sale – including the period of time when the eggs are at the farmers market (ice/cooler is an acceptable way to maintain temperature); each carton, flat or container of eggs must be appropriately labeled with the following:

- Name and address of producer
- Date of lay
- Statement of identity (Eggs)
- Net contents (in letters at least 3/16 of an inch high)
- The words "Keep Refrigerated"
- Egg handling instructions

If you do not weigh the eggs or if they are mixed sizes and you do not wish to assign a grade, the carton, flat or container must be labeled as "Unclassified." In addition, all dirty, leaking and cracked eggs must be removed prior to sale.

● What do I need if I am processing and selling chicken on the farm and not at a market?

Farmers processing and selling fewer than 1,000 chickens per year are exempt from USDA licensing and review, however the farm will then require registration and inspection by the PA Department of Agriculture (PDA). Farms over 1,000 chickens should contact their local USDA office for review.

If you are selling the processed chickens on the farm, but do not have a 'storefront' or formal retail facility with food products on display, but simply sell by order, or from a 'warehouse facility,' you may only require a Food Establishment registration and will not require a Retail Food Facility license. If you have a storefront, retail display of food products, on the farm, and do not sell products off-the farm, you may only require a Retail Food Facility license. Processing poultry is a unique agricultural food processing activity, and your specific circumstances should be discussed with your local PDA Food Sanitarian to determine the appropriate licensing and registration requirements.

● What do you need if you are selling meat products outside of Pennsylvania?

Most meat and poultry products slaughtered and processed within Pennsylvania, but sold outside of Pennsylvania (interstate commerce), must be slaughtered and processed under USDA inspection and bear the USDA mark of inspection. If the processing is done by a USDA-inspected facility, the Department does not play a role in the processing component. If you are storing the meat somewhere after processing and before sale, you are required to have a Food Establishment Warehouse registration from the Department.

● Is an agricultural cooperative that sells products from multiple farms considered a vendor?

If a group of producers comes together to form a cooperative, that cooperative will be recognized as one vendor for the purposes of issuing a retail food facility license. Similar to all other retail food facilities, the types of products being sold will determine if the facility is exempt from licensing fees, and if not exempt what criteria must be met for the required licensing.

● If I have a Cheese Manufacturing Milk permit from the Department, do I need a Warehousing license?

No. Storage of the final product is a part of the licensing and inspection process for the Cheese Manufacturing Milk permit.

● Are CSA's considered Farmers Markets?

Because Community Supported Agriculture (CSA) operations work based on members paying shares and picking up **raw agricultural products** at the farm, they are not considered a farmers market and no license is required. Consumers have the opportunity to review the prevailing conditions on the farm and make their own decision on whether or not to join the CSA. If CSAs are producing value-added products, or further processed products, the individual processors of these products should be registered with the Department to manufacture food products before providing them to consumers, including members of the CSA.

● What if CSA members want to pick up shares/product at a farmers market stand location?

Depending on the type of product, the stand may then need a Retail Food Facility license. If the only items being sold/distributed are raw agricultural products, the stand remains exempt from licensing fees.

● What are the penalties for non-compliance?

Retail Food Facilities under the jurisdiction of the Department could have the following penalties imposed: filing of a prosecution with the local District Justice which may result in a summary offense for the first or second offense and a fine of not less than $100 or more than $300 and if a third offense within two years a misdemeanor for the third degree. The Department also has legal ability to assess a civil penalty not to exceed $10,000 per offense against a non-compliant business or individual.

Selling in Multiple Locations and Jurisdictions (Licensing and Inspection)

● Why can’t I get multiple licenses with my Retail Plan Review application?

The law is very clear that a license is required for each physical retail location,

unless you can be licensed as a mobile unit (in which case you are still required to have the actual license present with you when operating).

Vendors who operate at more than one farmers market and require a retail food facility license may utilize the "mobile unit" option offered by the department. If licensed as a "mobile unit," vendors must set-up and tear-down at each farmers market site, removing all food products from the stand. As the actual license is required with the stand, the "mobile unit" option does not allow vendors to operate multiple farmers market stands on the same day.

● Is there a price discount for multiple licenses?

Unfortunately there is no way to provide discounts for multiple licenses. The license requirements are established by law.

● How do I find out who handles licensing and inspections for the farmers markets I participate in?

On www.EatSafePA.com there will be a link to a list of counties and municipalities that provide their own food safety inspection services (Local Health Departments). The Department has jurisdiction for all other areas.

● If I sell in different counties, will the requirements change in each area?

One of the main objectives behind The Retail Food Facility Safety Act was to institute uniform food safety standards across the state – the PA Food Code. There is the possibility that you may attend farmers markets that fall in different jurisdictions (with the Department inspecting in some and county/local health departments inspecting in others). Under the Law, the food safety standards used to conduct inspections are to be the same across the state; however, county/local health departments have the ability to charge different prices for any licenses they require.

In addition, there may be instances where county/local health departments have a different viewpoint on the distribution of samples or the licensing of a mobile vendor. While the Department cannot always dictate local viewpoints on some issues, where there is inconsistency in applying the PA Food Code, the Department can attempt to ensure the uniform code is being utilized.

● Will the Department share licensing information with other inspection entities (county/local health departments)?

The Department will provide information on licensees to any county/local health department that requests it. If you are selling products, they must be from an approved source (such as baked goods from a registered home), and you should have easily-accessible proof that you are in compliance with this requirement. This is especially important when selling items from an approved source in a different jurisdiction.

Guidelines for Product Samples

● I want to offer samples of my products for customers to try. Is that allowed under the new law?

The Department has chosen to not determine licensing needs based solely on offering samples to consumers; however, county/local health departments may view offering food samples to consumers differently. During the inspection of your market stand, the Department will review your handling of samples to assure that it is accomplished in a safe manner. If your samples are of single servings of non-potentially hazardous foods, this is a much lower risk than samples of potentially hazardous food products. Samples should be maintained under temperature control if the nature of the food requires this. If samples are prepared at the market, the vendor should have access to appropriate handwashing facilities, and either have adequate utensils and equipment for preparation, or access to warewashing. An alternative to preparing samples on sight at the market is to prepare them in your approved, inspected facility, and bring them to the market.

Necessary Equipment/Sinks/Etc.

● Can one three bay sink (not a bathroom sink) suffice for all the vendors at a market?

A farmers market may have a central equipment/warewashing area for multiple vendors to use. If vendors are utilizing a central warewashing facility, each vendor should have a minimal amount of equipment that needs to be washed, rinsed and sanitized on-site at the market.

Retail food facilities that serve ready-to-eat products or have equipment that requires continuous washing must have their own dedicated warewashing equipment.

Portable sinks, with available hot water, and water and sewage holding tanks are available for use with mobile stands, and can be used at open air markets.

As the products being sold and equipment being used on-site at the market will drive what equipment is necessary, vendors should have a conversation with their food sanitarian/inspector when planning to share a sink/washing area.

● If I sell wrapped frozen meat and packaged eggs, do I need a handwashing station?

If you are selling only wrapped frozen meats and cartoned eggs, hand wipes will suffice for handwashing. This is a low risk operation because of the minimal risk of cross contaminating these foods.

● The farmers market I participate in is held in a parking lot. How do I instill a handwashing station? Can vendors share handwashing sinks?

Handwashing sinks at a farmers market may be shared by multiple vendors as long as the sink is convenient and accessible to the vendors that are required to have access to a handwashing sink. (Your food sanitarian/inspector can provide insight on when an actual sink/handwashing station is required and when sanitizing hand wipes can be utilized.) A sink is not considered to be convenient and accessible if you must open a door, or touch anything in order to return to your food preparation areas after handwashing.

If an actual handwashing station is required, there are portable units that feature an internal water supply tank, small hot water heater and waste water holding tank; these can be set up and used at open air markets.

● I have a walk-in cooler to hold my vegetables and herbs for a few days. Do I need a permit for warehousing?

Raw un-processed vegetables and fresh herbs are considered raw agricultural commodities and are exempt from warehousing requirements. Temperature control for these foods impact product quality, but do not pose a formal food safety risk.

● I haven't heard anything about transporting meat. Are we still allowed to transport in coolers or do we need to invest in cooling systems?

Coolers and ice can be used under the following conditions: Capable of maintaining products at 41 degrees Fahrenheit or below, or frozen, if frozen meat; the foods are not submerged in the ice; the ice chest or cooler must be able to allow for water drainage; food products in the cooler cannot cross contaminate (for instance, refrigerated raw chicken and raw beef cannot be together); ice chests or coolers must be washable (no exposed Styrofoam) and kept clean.

Processing/Packaging of Food Products

● Do any new rules apply to registered/inspected Limited Food Establishments?

No new rules apply.

● Are cut greens such as spinach considered potentially hazardous foods?

Cut Leafy Greens are defined as: fresh leafy green whose leave have been cut, shredded, sliced, chopped, or torn. The term "leafy green" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce, escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term leafy green does not include herbs such as cilantro or parsley. Cut leafy greens are considered a PHF food and must be maintained at 41°F ambient air temperature to control the growth of pathogens. Example: a head of lettuce still intact on the root base is a

raw agricultural commodity. If you tear the leave from the stalk, it is now a cut leafy green.

● If I want to process foods at home, what do I need to do? (i.e. home food processor)

The Department's Limited Food Establishment Guidelines can be found at www.EatSafePA.com under "Limited Food Establishment".

Food Employee Certification

● If I sell potentially hazardous foods, do I need an employee on-site who is a certified food handler (has been ServSafe certified or similar)?

If you are selling pre-packaged potentially hazardous foods there is no food employee certification requirement.

If you have unpackaged potentially hazardous foods or are serving ready-to-eat products, you must have a certified person in charge on-site or readily available during all hours of operation.

● Are there any exemptions to the food employee certification requirements?

The following retail food facilities are exempt from the food employee certification:

- Retail Food Facilities selling only commercially pre-packaged foods
- Retail Food Facilities selling only non-potentially hazardous foods
- Certain non-profit organizations
- Certain groups operating in support of school-age youth extracurricular activities

Employee Health Policy

● What is an Employee Health Policy, and what are the requirements at a Farmers Market?

All retail food facilities need a verbal or written health policy. This means each facility (i.e. farmers market vendor) has to make their employees aware that they must inform the operator that they are ill with any gastrointestinal symptoms, or fever. By law, operators of a retail food facility are not allowed to let sick employees work with exposed food.

Other Questions

● I want to open a new farmers market. What requirements do I have to meet as the market master?

To establish a new farmers market, you or the market master should contact the Department or the county/local health department that has jurisdiction for the planned location. If the market is in a permanent structure, the market master may need to work with vendors on water/sewage requirements and hand-washing or warewashing stations. Under Chapter 57, the market master does not have any formal requirements with the Department. It is recommended, however, that the market master work with vendors to ensure they are aware of the requirements they must meet. Each vendor will need to apply for their own Retail Food License.

● What responsibility does the market master have with regard to vendor licensing?

None, other than with assistance in communicating requirements to vendors, and due diligence in assuring that vendors you allow in the Market are in compliance with licensing requirements.