

Keeping It Legal: Regulations and Licenses for Growing and Selling Food in Oregon



Adapted from Growing Farms Online, a comprehensive training program for beginning farmers, from the OSU Small Farms Program.

Authors

The information in this handout was adapted from Growing Farms Online, a comprehensive training program for beginning farmers, developed and offered by the OSU Small Farms Program. It was reviewed by the Oregon Department of Agriculture Food Safety Program.

Version date: May 2014

Prepared by Lauren Gwin, OSU Extension Small Farms Program

Oregon State University Extension Service offers educational programs, activities, and materials without discrimination based on race, color, religion, sex, sexual orientation, national origin, age, marital status, disability, and disabled veteran or Vietnam-era veteran status. Oregon State University Extension Service is an Equal Opportunity Employer.

Photo Credit:

Cover: Melissa Fery, Senior Instructor, Oregon State University Small Farms Program

Introduction

As a farmer who grows and sells food, you need to comply with pertinent laws and regulations. Some of these laws require you to obtain permits and licenses for certain parts of your business. This handout provides an overview of the common regulations and licenses that apply to farm businesses, focusing on Oregon. It also points you to resources where you can get more details and decide what steps you need to take.

We wrote this handout for small-scale farmers who want to sell direct, probably in a variety of ways: to household consumers at farmers' markets, farm stands, or through a CSA; to restaurants; and to local retail grocers, like a food co-op. If you are aiming for larger, wholesale markets, additional regulations may apply that we don't cover here.

Four points to keep in mind as you read:

1. Regulatory compliance can be complicated, confusing, even boring or frustrating. However, it's an important part of your job as a farmer and food seller. Ignoring regulations can lead to significant, possibly expensive problems down the road.
2. The information presented here is accurate and based on the best information available, but you should always check with the relevant regulatory agency for exact regulatory and license requirements. Also laws and regulations can change. Part of staying legal is staying up to date.
3. In Oregon, the agencies do a good job of explaining the requirements, often on their websites. However, do not hesitate to pick up the phone and call them if you need help understanding the rules. Sometimes they can even offer guidance specific to your farm.
4. If we don't talk about it here, that doesn't mean it doesn't exist – cover your bases. A good way to do that is talking to other farmers doing similar things.

Getting Started

You are a farmer (or planning to farm). You want to grow food and sell it. Sometimes you need to process what you grow before you sell it. The production, processing, and sale of most farm-direct products are regulated by the state. State agencies implement and enforce laws, issue licenses and permits, conduct inspections, and handle violations. In Oregon, the main agency to know is the Oregon Department of Agriculture (ODA), especially Natural Resources, mostly related to on-farm production, and Food Safety, mostly related to processing and selling.

You may also need to work with your county health inspector, who has jurisdiction over restaurants and food service. For some foods, federal agencies are more directly involved – for example, meat and poultry – but states still play a role (more on this later). Also, be aware that new federal food safety regulations for produce farmers, packers, and handlers will be finalized and implemented over the next few years. New regulations in the Food Safety Modernization Act are

designed to prevent food-borne illness related to fresh produce. The rules will affect farms, packers, processors, and handlers. Most small farms will be at least partially exempt, but they can lose their exemptions if linked to a food safety problem. See our FSMA page at <http://smallfarms.oregonstate.edu/fsma> for more information.

We've organized this handout into three sections, covering three different parts of your farming and food business: "*Growing It*," "*Processing It*," and "*Selling It*." Each gives an overview of applicable regulations and licenses and points you toward more details and next steps.

I. Growing It

As a farmer or rancher, one of your primary responsibilities is to be a good steward of the land. In support of that role, the ODA enforces a number of environmental regulations that may be relevant to your farming practices.

Each subregion of Oregon has its own agricultural water quality management plan. Farmers must comply with their area rules, but those rules do not prescribe a particular set of practices. It's up to farmers *how* they comply. If you are involved in any of the three practices outlined below, then you should contact ODA to confirm whether or not you are required to get a permit.

- **Land application of waste water:** Applying any waste water directly to the surface of the land – by hose, bucket, or other means – may require a permit from ODA Natural Resources (NR). Contact NR *before* you land-apply any liquid wastes for more info and specific permit requirements: (503) 986 4700. What counts as waste water? One example is water used during poultry processing, to rinse carcasses and clean equipment.
- **Composting:** if you want to compost more than 100 tons of material (excluding animal carcasses or meat waste) or more than 20 tons of animal carcasses/meat waste, you will need a permit from the Oregon Department of Environmental Quality. But before you call, consider those numbers. That's a lot of compost.
- **CAFO:** If you have livestock and use a liquid manure system, you may need a Confined Animal Feeding Operation (CAFO) permit from ODA, even if you have only one animal. You may also need a CAFO permit if you process meat or poultry and want to land apply your waste water.

All farms are different, and conditions vary across the state, it's not always clear what regulations will affect you. In Oregon, ODA-NR works directly with farmers to figure out what's necessary on their specific farms. If your farm is unlikely to cause water pollution – for example, summer-time application, not near waterways – you may not have to get a permit. Even if you don't need a permit, you still are not allowed to pollute ground or surface water.

County-level zoning and state land use laws may affect whether you can farm and what farming activities can take place on your farm, including agri-tourism. Check with your county or state land use department for more detail on what you want to do.

II. Processing It

In most cases, if you process what you grow into a saleable product, you will need a license from ODA Food Safety. From ODA's standpoint, "processing" has a broad definition encompassing such actions as: cooking, baking, heating, drying, freezing, canning, pickling, mixing, grinding, churning, separating, cutting, and extracting.

Food Safety provides detailed information on regulations and licensing for food businesses of all types. The following links will help you decide if your farm business needs an ODA license:

- ODA Food Safety Program:
<http://www.oregon.gov/oda/programs/FoodSafety/Pages/AboutFoodSafety.aspx>
- Food Program:
<http://www.oregon.gov/ODA/programs/FoodSafety/FSLicensing/Pages/ProcessingWarehouse.aspx>
- Dairy Program:
<http://www.oregon.gov/ODA/programs/FoodSafety/FSLicensing/Pages/Dairy.aspx>
- Licensing and Inspection:
<http://www.oregon.gov/ODA/programs/FoodSafety/FSLicensing/Pages/AboutLicenses.aspx>

For some foods – e.g., meat or poultry – processing and selling require two separate licenses. For example, if you want to raise pigs and sell pork at a farmers' market, your processor will be state-licensed (and in this case, USDA-inspected – see below), but you must also have your own meat seller's license. For other foods, you only need one license to process and sell the food. Examples are cheese, baked goods, eggs, and apple cider.

IMPORTANT: As you read through the ODA Food Safety webpages, note the links for specific, detailed information on the different licenses for each food or processing category (available as PDF downloads). For example, specific details on selling eggs in Oregon can be found here: <http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/ShellEggRetailerRulesRegs.pdf>

A few additional licensing notes:

- What is your water source for processing? If you have a private well and use that water to process food you're going to sell, you must test it annually for coliforms.
- ODA licenses commercial and domestic kitchens, where you may be preparing food for sale. A domestic kitchen is your home kitchen, used between regular meal preparation for your family, where you make only a limited amount of certain kinds of products for sale, including jams, jellies, baked goods, salsa, salad dressings, and candies. Prohibited are low acid food canning, dairy processing (including homemade ice cream), or meat cutting and processing.

- There are actually two domestic licenses: “domestic bakery” and “domestic food processor” (everything else). What counts as a bakery product? “Breads, cakes, rolls, pies, donuts, cookies, and all similar goods”, according to the regulations. The requirements are the same for both licenses.
- However, if you have any pets that ever come inside the house – not just dogs and cats but birds and reptiles too – you can’t get a domestic license and will need a commercial license instead. The requirements are similar, but your kitchen must be in a separate building. This is pretty common for farmers, who often have a pet or two around.

Meat and Poultry: The Basics

Meat and poultry are a bit more complicated than other foods. In this section, we highlight the basic rules. For more details, read, “Meat and Poultry Processing Regulations in Oregon: A Short Guide,” posted here: <http://smallfarms.oregonstate.edu/oregon-small-farms-technical-reports>.

Most red meat (beef, pork, lamb, goat, domestic elk, ostrich/emu)

- If you want to sell meat, the livestock must be slaughtered and processed at a facility that is “USDA inspected.” This means that inspectors from the U.S. Department of Agriculture’s Food Safety and Inspection Service are in the plant every day and examine every animal before and after slaughter. (In states with “equal to USDA” inspection programs, farmers can sell meats processed under state inspection, but Oregon is not one of those states.)
- If you sell a live animal or shares in it (typically quarters or halves) before slaughter, directly to household consumers, you can have it slaughtered and processed by a custom-exempt, state-licensed processor. To learn how to do this legally, read, “FAQs About Using Custom-exempt Slaughter and Processing Facilities in Oregon,” also posted on our technical reports page (see link above).
- The “retail exemption” allows butcher shops and other retail meat sellers to do some in-house processing (cutting up larger pieces and making some value-added products like sausage and jerky) and sell the meat. They can only do this with USDA-inspected carcasses or boxed meats. Learn more about this exemption, and other basic requirements for meat inspection, on this page: <http://www.extension.org/pages/15944/meat-inspection>.

Bison, rabbit, domesticated deer

These species may be processed in a custom-exempt, state licensed facility. USDA inspection is not legally required, though some of your buyers (for example, a restaurant or retail grocery store) may require it. All state-licensed poultry processors may legally handle rabbit as well.

Poultry (chickens, turkeys, ducks, geese, or guinea fowl)

- Unless you qualify for the 1000 bird exemption (see below), you must have your poultry slaughtered in a state-licensed facility.

- If you take your birds to a state-licensed processor (rather than build your own), you must sell them the birds before slaughter and buy them back afterwards. (We know it sounds strange, but that’s how the federal regulations were written: see the processing handout for more details).
- If you want to process and sell more than 20,000 birds per year, or sell any amount of poultry across state lines, you must have the poultry slaughtered and processed under USDA inspection.
- Under Oregon’s 1000 bird exemption, you can process up to 1000 birds per year, on your farm, for direct sale to household consumers. You have to raise the birds yourself, customers have to come to the farm to pick up the birds (no CSA deliveries or farmers’ market sales), and you can only sell whole birds, not parts. If you meet these conditions (and a few others), you do not have to be licensed as a poultry processor, which means you can slaughter in open-air conditions. Also, processing poultry under this exemption is an “outright permitted nonfarm use” and does not require a conditional use permit.

Learn more on these pages:

- ODA Poultry Bill FAQ:
<http://library.state.or.us/repository/2012/201202210908352/index.pdf>
- Best Practices for Open Air Poultry Slaughter:
http://smallfarms.oregonstate.edu/sites/default/files/small-farms-tech-report/bestprxopenairpoultryslaughter_september_2012.pdf
- Labeling Requirements Under Oregon’s 1000 Bird Exemption:
http://smallfarms.oregonstate.edu/sites/default/files/small-farms-tech-report/1000_bird_labeling_rules_sept_2012.pdf
- ODA Poultry Slaughter General Information:
<http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/PoultryBillGuidance.pdf>

Pickles and Preserves

Most fruit and vegetable processors have to be licensed and comply with extensive food safety regulations. If you want to sell value-added foods made of fruits and vegetables to stores, restaurants, or institutions, you must be a licensed food processor or co-pack with a licensed processor.

If you only want to sell those products direct (and can keep it under \$20,000 in annual sales), you have another option. Oregon farmers may make and sell certain “value-added, shelf-stable products” for direct sale to consumers without being licensed as a food processor. The list includes syrups, jams, preserves, jellies, canned fruit, pickles, chutneys, relishes, sauerkraut, and some salsas. More details, including the definition of “acidic” and labeling rules, are explained in ODA’s Farm Direct FAQ: <http://oregonfarmersmarkets.org/mktnmgr/docs/Farm%20Direct%20FAQ.FINAL.pdf>

Raw Milk

Oregon is one of several states that allow the sale of raw milk under certain

conditions. You may have no more than two producing dairy cows (and no more than three cows total), nine producing sheep, or nine producing goats on the premises where the milk is produced. Sales can occur at the farm only, and you may not advertise. A license is not required.

III. Selling It

As we explained above, nearly all “processing” licenses also allow you to sell. The main exception is, again, meat and poultry: to sell these, you must have a meat seller’s license from ODA. However, this license is not required for the “on the hoof” sales we described earlier. A pre-packaged meat seller’s license is required for selling meat, unless you are *already* licensed as a meat or poultry processor. For produce and other bulk products, if you want to price and sell your product by weight – for example, \$5/lb for tomatoes – you will need a licensed scale. If you price your product by volume or container size – for example, \$5 per pint of blueberries – a licensed scale is not required. However, most diversified farms that sell direct are going to have at least a few products they sell by weight, so plan on getting a good scale and the license to go with it.

Selling plants or flowers? If you sell more than \$250 worth of plants per year, you will need a Nursery License (<http://www.oregon.gov/ODA/programs/NurseryChristmasTree/Pages/NurseryLicensing.aspx>) from the ODA Plant Program. You do not need a license to sell cut flowers.

A Final Note

- If you want to grow and sell food, you need to comply with regulations around growing, processing, and selling and get the relevant licenses. We understand that this part of farming is not very fun and can be frustrating sometimes. But it’s an essential part of running your farm business successfully and for the long term.
- Go to the source: *always* check with the relevant regulatory agency for exact regulatory and license requirements before you get started. Ask them for help understanding their rules.
- Laws and regulations can change. Part of staying legal is staying up to date.
- If we didn’t talk about it here, that doesn’t mean it doesn’t exist – cover your bases. Talk to other farmers, farmers’ market managers, local extension agents, and others who can help.

The information in this handout was adapted from Growing Farms Online, a comprehensive training program for beginning farmers, developed and offered by the OSU Small Farms Program. It was reviewed by the Oregon Department of Agriculture Food Safety Program.