



# Guide to Illinois Laws Governing Direct Farm Marketing

FOR FARMERS AND OTHER FOOD ENTREPRENEURS

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## Dedication

This guide is dedicated to my family [Rich Schell's] and all the people in Illinois who dream of starting food and farm businesses, and to the memory of my father who inspired me greatly when he said "he loved farming because he got to do something different every day."



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## Disclaimer

This guide was written to give the reader accurate and authoritative interpretation of laws and polices about selling farm products directly to consumers. Illinois Stewardship Alliance, however, is not engaged in giving legal advice. This guide is neither a substitute for the services of an attorney or other professional, nor does it form an attorney-client relationship. If you need legal or other expert advice, you should consult with an attorney.



# Introduction

For as long as there have been farmers and people who eat, farmers have been selling products directly to customers. This guide seeks to inform farmers and growers about what they need to know to legally sell farm products directly to consumers. Organized by topic, it contains a checklist of issues to consider before selling your farm products directly. The guide primarily focuses on sales that are made on the farm or at the farm gate to consumers because, in general, this option gives farmers the least restrictive mechanism of selling directly.

The growing interest in eating locally and in local food systems makes knowledge of these rules and issues particularly important to anyone who wishes to develop a direct marketing enterprise on their farm. The guide can also serve as a road map for those who are interested in selling farm products at a farmers market or processing locally grown foods. As with many legal and regulatory issues, especially when you are moving beyond on-farm sales to selling farm products at farmers markets or processing locally grown foods, you should check with your local county and city governments regarding any additional rules and regulations that may apply.

## General Overview

Selling farm products directly to consumers benefits both consumers and farmers. Direct farm sales let consumers purchase fresh local products ordinarily not available to them, while allowing growers and producers to capture more of the food dollar than they would by selling to distributors. Direct food marketing means selling food to the consumer who is going to eat the food or to a restaurant or retail food establishment that is located either in the same state as the person or business that sold the food, or not more than 275 miles from the person or business, and where the food is being purchased for sale directly to consumers at the restaurant or retail food establishment. Federal, state, and local government entities, however, regulate food sales from the perspective and focus of food safety and public health. All three levels of government have specific powers and areas of responsibility for enforcing health and public safety laws and regulations. So it pays to know the rules before developing your farm and food enterprises that rely on direct sales.

This guide is divided into four sections. The first section serves as an introduction and a general overview. The second section provides an overview of key regulatory points. The third section discusses regulations for specific products. The last section is a checklist of issues that farmers and growers should consider as they plan their activities, as well as a list of selected federal and state laws that control direct farm sales.

The biggest change in Illinois and U.S. food policy is the Food Safety Modernization Act (FSMA). The passage of this major food law should serve to caution Illinois food and agricultural entrepreneurs of all sizes that now is the time to reengage and reevaluate risk management planning — regardless of whether they are exempt or not. Direct food sellers in Illinois should have active risk management plans that address the possibility of food borne illness and that detail their ability to recall their food products and document the steps they take to produce safe food. They should know and practice in a way that insures the goals of Good Agricultural Practices (GAP), Current Good Manufacturing Practices (CGMP) Standard Operating Procedures (SOP) and Hazard Analysis and Critical Control Points (HACCP) like planning are met. One of the key take away points of FSMA is that the law emphasizes preventing food borne illness.

Information on Good Agricultural Practices can be found on the USDA website at:  
<http://www.ams.usda.gov/AM5v1.0>

Information on Hazard Analysis and Critical Control Points can be found at the FDA website at:  
<http://www.fda.gov/Food/GuidanceRegulation/HACCP>

# Key Regulatory Points

Depending on where and what is sold, a particular product may be extensively regulated, minimally regulated, or fall somewhere in between. One general point to keep in mind is that a product sold in Illinois could be regulated by the state or local authorities as well as the federal government. The federal government may regulate any product sold across state lines because the federal government regulates commerce between the states. As a general rule, state and local government entities such as county health departments control commerce within the state, and the Federal Government regulates commerce between States.

In addition, someone selling food products can expect that the more potential his or her product has to harm people, the more intensively regulated the product will be. For example, whole raw vegetables were in the past exempted from many rules because they pose a comparatively low threat to human health; they are not as likely to harbor harmful bacteria and because many people will wash them. Raw milk, however, is highly restricted. As a product, it poses a greater potential threat from bacterial contamination and because the general public would presumably not be willing, able or likely to pasteurize it themselves.

In the aftermath of the events of September 11, 2001, the U.S. Government enacted new legislation that impacted food processing and sales: Public Health Security and Bioterrorism Preparedness and Response Act of 2002. This act gave the Food and Drug Administration (FDA) increased powers to insure the safety of the American food system. Based on this act, the FDA required food industry players to keep records, register their facilities, and give prior notice of importing food into the United States. If food processing entities failed to meet these requirements, the FDA had the power to administratively detain their food products and prevent them from shipping their food products. These powers are carried forward and expanded under FSMA.

There have been two major changes since the first publication of this guide. The first is the passage and implementation of the Illinois Cottage Food Law, which makes possible the sale of many processed homemade food items at farmers markets. The second is the passage of the Food Safety Modernization Act (FSMA) which on a very broad level does several big things for the U.S. Food and Drug Administration and its regulation of the U.S. processed food and produce sector. It gives the FDA the authority to order mandatory food recalls, and it imposes food safety protocols that reflect Good Agricultural Practices (GAP) on produce and practices that resemble Hazard Analysis & Critical Control Points (HACCP) on processed food.

GAP is a system of procedures and protocols designed to ensure farms practice good food safety techniques, and HACCP is a system designed to make sure food safety gets built into all the steps that go into making food. Both GAP and HACCP are designed to prevent food borne illness. In addition food providers should be aware of the importance of Standard Operating Procedures and how they can increase food safety.



# Illinois Cottage Food Law

Illinois enacted the Illinois Cottage Food Operation Law in 2011, which allows people who make and sell a non-hazardous food in their house to sell the product directly to the food's end consumer at farmers markets. This allows people to make some very specific foods in their dwelling without inspection by the Illinois Department of Agriculture, Illinois Department of Public Health or their local public health department. There are clear limits. Food, under this law, cannot be a potentially hazardous food as defined by the Federal Food and Drug Administration (FDA). In general terms, this means that people cannot produce foods that require time and temperature control for safety--like meats for example. Generally, the Cottage Food Law allows people to produce these items: non-hazardous baked goods, jam, jelly, preserves, fruit butter, dry herbs, dry herb blend, and dry tea blends.

The Illinois Cottage Food Law makes key distinctions based on the pH of a food. In very general terms, pH is a measure of the acidity of a food. For example, pure water has a pH of 7. Foods that are lower than a 7 would be considered acidic. The degree of acidity is key to food safety. High acid environments prevent the growth of many food borne illness creating microbes. A vast majority of fruits are high-acid with a pH of 4.6 or lower. Examples of low-acid foods would be vegetables, and meat. Low acid foods present a much higher risk for botulinus and require different processing steps. Beyond the general guidelines the Illinois Cottage Food Law is quite specific in what food items are allowed and which ones are not.

Specifically, the statute provides that the following foods can be produced: jams, jellies and preserves made from apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits.

However, not all fruit and vegetables jams, jellies, and preserves are permitted: rhubarb, tomato, and pepper jellies or jams are not allowed. Other jams, jellies, or preserves not listed as allowed or not allowed may be produced by a cottage food operation provided that the recipe has been tested and documented by a commercial laboratory as being safe. Of course, the cottage food operation must pay for the testing required to show the product is not potentially hazardous, and the product would have to contain pH equilibrium of less than 4.6. Specifically, the following fruit butters are allowed: apple, apricot, grape, peach, plum, quince, and prune. But, pumpkin butter, banana butter, and pear butter are not allowed.

As is the case for the jams, jellies and fruit preserves, fruit butters which are not listed as allowed or not allowed may be produced by a cottage food operation if the recipe has been tested and documented by a commercial laboratory. The cottage food operation must pay for the testing, and the testing has to show that the product is not potentially hazardous, and that it has pH equilibrium of less than 4.6. Recognizing that standard baked goods have had a "kill-step" applied as part of the process they are allowed under the cottage food law. Baked goods may include, but are not limited to, breads, cookies, cakes, pies, pastries and others. The Cottage Food Law treats fruit pies similarly to jams and jellies. Under the law, high-acid fruit pies that use the following fruits are allowed: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants or a combination of these fruits. Under the same kind of provisions as noted above, fruit pies not listed in the law may be produced by a cottage food operation. Again, the cottage food operation must show that their recipe has been tested and documented by a commercial laboratory as potentially non hazardous. The cottage food operation must pay for the testing. The testing must show that the baked good is not potentially hazardous, and that it has pH equilibrium of less than 4.6.

Cottage food operators should note that some baked goods are considered potentially hazardous and cannot be made and sold by a cottage food operation: pumpkin pie, sweet potato pie, cheesecake, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings are not permitted.



There are other important requirements as well. The food item must be sold at a farmers' market directly to consumers and the venture can only sell \$25,000 in gross receipts worth of food or less during a calendar year. There are also notice requirements. The person selling the food must label the food so it meets the requirements for labeling under the Illinois Food, Drug and Cosmetic Act. The label must have the name and address of the venture producing the food, the common name of the food, and the ingredients. If there are any colors artificial flavors or preservatives they should be listed in descending order by weight. The producer must also include on the label and display at the point of sale a notice prominently that alerts the consumer to the source of the product: "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens." The producer must also put on the label the date the product was processed and allergen labeling as specified under the federal labeling requirements. The name and residence of person making and selling the food must also be registered with the local health department. Also, the person preparing and selling the food as a cottage food operation must have an Illinois Department of Public Health approved food service sanitation management certificate.

## The Food Safety Modernization Act

In 2010, after several tries, Congress passed the Food Safety Modernization Act, (FSMA) and President Obama signed it. FSMA represents the biggest change in federal food safety laws in 70 years. The legislation has the goal of preventing food borne illness by achieving key milestones: (1) preventative controls, (2) inspection and compliance, (3) imported food safety, (4) response, and (5) enhanced partnership.

However, for Illinois food and farm entrepreneurs the passage and signature of the law is only the first step in a long process. Many of the key sections of the law that will affect food in Illinois require regulations to be developed by the FDA to be in effect. As is often the case, the federal regulation process is not completed as of writing this guide, and is very much a work in progress. Once a statute is passed, the enforcing agency (FDA) begins to write the regulations. This process also requires that the FDA develop a proposed rule. Once the proposed rule is developed, then the FDA must solicit public comment on the proposed regulations. Eventually when the process is done, the federal regulations will be in place and binding.

In the case of the law governing organic food production, it took almost a decade for the regulations to come into being after the statute was passed and signed into law. Some FSMA sections will require regulations to be truly in effect and other sections are self executing and do not require the regulations process that others do. However, the preventive controls and produce sections do require the regulation process to be completed before they go into effect. Generally, the preventative controls section is referring to controls throughout the processing and manufacturing of food items and the produce section refers to regulations regarding fruits and vegetables all directed towards enhancing food safety.

Historically, the United States Department of Agriculture (USDA) has regulated about 20 percent the national food supply, consisting of meat, poultry and eggs. In the 1990s, the USDA imposed the Hazard Analysis Critical Control Point (HACCP) system on these food sectors. The FDA regulates the other 80 percent of the U.S. food system, generally in the form of processed foods, seafood, and produce. One of the greatest differences in U.S. food policy resulting from FSMA is that it essentially requires almost the entire processed food sector in the U.S. be subject to the HACCP method. Some products such as juice and seafood, for example, were already required to use this process and this requirement remains unchanged for those products. FSMA also does not change the Organic Food Production Act which is administered by the USDA. Additionally, FSMA does not affect the 20 percent of the U.S. food supply of meat and poultry regulated by the USDA and State Departments of Agriculture. Lastly, FSMA is not suppose to conflict with, or duplicate, current requirements imposed upon certified organic producers and FSMA is not suppose to undermine beneficial on-farm conservation and wildlife practices.

Traditionally, small and very small businesses have had greatly reduced resources for regulatory compliance. Thus, the FDA has imposed a lesser regulatory burden on them. This desire to accommodate small business and local food is reflected in the amendments to FSMA that were sponsored by Senators Kay Hagen and Jon Tester. Until FSMA's passage, produce had not been required to have food safety protocols that reflect Good Agricultural Practices (GAP) or Hazard Analysis & Critical Control Points (HACCP). Now FSMA requires that produce growers develop and follow scientifically based produce safety plans. Before FSMA produce operations were encouraged but not required to have produce safety plans. Produce growers, with some exceptions, must now have produce safety protocols that reflect GAP. GAP can be defined in very broad terms as the practices and procedures which when followed by a farm are designed to promote food safety.

## Specific Exemptions Under FSMA

Many argued the produce requirements should apply to all produce operations without regard to their size or ability to comply. However, there are exemptions based on the size, amount of sales and geographic marketing area of the food venture. FSMA preventive controls, which are similar to a HACCP requirement, are also a big change for processed food for much the same reasons. Although, some high risk foods like juice have had HACCP requirements, FSMA essentially imposes a HACCP like protocol on all processed food. USDA, on the other hand, has imposed HACCP on the meat industry for some time. In general the HACCP approach requires a preventive stance, emphasizes records, more inspections, science-based approaches and better and more rigorous compliance.

Food companies have been subject to record keeping requirements since the Bioterrorism Act was passed after the Sept. 11, 2001 terrorist attacks. The Bioterrorism Act requirements are continued and expanded. If the food is adulterated or if the Secretary of Health and Human Services (HHS) believes the food presents a risk of human death or injury, the FDA may compel inspection of the records, and, of course, FDA can and does require records to be kept. The Bioterrorism Act began the trend and FSMA continues and expands the mandate that requires food facilities to register with FDA. Residences are not required to register under FSMA, although arguably once the residence begins making food for sale, and if there were a food borne illness associated with its food, the FDA might require it to register under FSMA. It does not appear this is the FDA's position as this guide goes to press.

In addition, FSMA imposes traceability requirements on most foods. The FDA is currently engaged in pilot projects and will write the regulations after the pilot process is done. The pilot projects involve tomatoes, peanut butter, and frozen Kung Pao Chicken. The specific foods which will have additional requirements will also be developed when the regulation process moves forward.

As this guide is going to press the FDA is still in the earlier stages of the process for developing and finalizing the rules and regulations that that will implement the produce safety and preventive controls sections of FSMA. The FDA has published for comment proposed rules governing the produce section and preventive controls section, those rules generally reflect the following discussion about sections within the actual FSMA statute that pertain to direct market farming and local food. It should be noted that status of the rules should be checked as that process will likely lead to important changes or inclusion of issues not covered in the limited discussion that follows.

The Food Safety Modernization Act contains some specific exemptions and holds the promise for possible accommodations for small and very small businesses under the law. For example, FSMA is designed to be largely separate from The Organic Food Production Act. There are also specific exemptions for local food under the produce sections, and possible flexibility for small and very small businesses under the Current Good Manufacturing Process requirements. This section of the guide discusses the exemptions in the order that the FSMA lists them.

## Section 101 Inspection of Records

The first issue under FSMA is whether a food business needs to keep records. The second issue is whether the establishment needs to register. The section of the FSMA that controls inspection of records applies to people who manufacture food and imposes the record keeping requirements generally required by the Bioterrorism Act. It does not apply to farms or restaurants or establishments that are regulated by the USDA, but a business that manufactures or processes food should be able to fulfill its requirements. In the case of businesses that are covered, it does not matter whether the food is sold within the state or in interstate commerce (between states). At a very basic level, the records should show what the food item is, where its ingredients were acquired and where it was shipped to. Documentation and record keeping are viewed as key steps to help achieve the goals of safe food. A food business should also be registered with applicable local State and/or Federal units of government.

Although this section of the FSMA exempts farms and restaurants from records inspection requirement, there is no specific exemption based on the localness of food for record keeping. However, when the Food Safety Modernization Act regulatory process is completed and all the small business guidance materials are developed, there may be some flexibility for small and very small businesses.



## Section 102 Registration Exemption

A food business should where applicable register with the FDA in order to sell food. However, certain entities which sell food directly to the public do not have to register. Farms, for example, are specifically exempt and so are restaurants, and so are retail food establishments. Retail Food Establishments include farmer's markets, farm stands and restaurants. This is an important distinction about who must register because FSMA exempts retail food establishments from registration. This section of the Food Safety Modernization requires registration but it allows for some facilities to be exempt from registration. The same language which allows for exemption from registration for retail food is used in other sections of the Food Safety Modernization to allow for exemptions for retail food establishments in the preventative controls and produce sections of the law.

The section also defines consumer as a “non-business”. As a general rule selling one’s own farm product to consumers, restaurants or grocery stores that sell directly to consumers does not trigger registration but selling to a business would. It should be noted that the farm exemption applies only to farms where the farm is in one general physical location on which the crops or animals are raised. And the farm has to have the same ownership, and the facilities that make or process the food have to have the same ownership.

A retail food establishment is one that sells food products directly to consumers as its primary business. If the annual monetary value of sales of food products sold directly to consumers exceeds the annual monetary value of sales of food products to all other buyers, then the business meets this definition. A consumer is not a business. Retail food establishments include grocery stores, convenience stores, vending machine locations, roadside stands, farmers markets, and community supported agriculture programs (CSAs).

**As a general rule selling one’s own farm product to consumers, restaurants or grocery stores that sell directly to consumers does not trigger registration.**

**A facility is exempt if it meets the definition of a “qualified facility”.**

## Section 103 Hazard Analysis and Risk Prevention Controls Exemptions

Produce growers should be aware that their farms are governed under the produce section of FSMA (Section 105), and not this one. Under this section of FSMA, a facility would be exempt from the requirement to have written and verifiable food safety protocols as specified in the FSMA rules that reflect GAP/HACCP approach goals of science based risk assessment and prevention, if it meets the definition of a “qualified facility”. A qualified facility is one that meets the regulation definition as a small or very small business. In general, a qualified small business is one where the average annual monetary value of the food it made or packaged, and sold directly to “qualified end-users” was more than it sold to other purchasers for the 3 years before the calendar year of when the exemption is sought. This means the business sells most of its production to consumers, and the sales value is less than \$500,000, adjusted for inflation. In this case, the qualified facility is not subject to the general requirements. However, during the applicable calendar year the business must submit to the FDA documentation that demonstrates that the facility has identified potential hazards associated with the food being produced, is implementing preventive controls to address the hazards, and is monitoring the preventive controls to ensure that such controls are effective. The facility may also meet this requirement by submitting documentation, which may include licenses, inspection reports, certificates, permits, credentials, certification by an appropriate agency (such as a state department of public health or agriculture), or other evidence of oversight. The documentation will be specified by the Secretary of Health and Human Services and must show that the facility is in compliance with state, local, county, or other applicable non-federal food safety laws. The filing must also meet the requirements for documentation, as specified by the Secretary in a forthcoming guidance document, which shows the facility is a qualified facility.

## Produce Exemptions section 105

As has been observed, the devil is always in the details. In this case, the statute reflects a broad policy choice in a sense; the facility may be exempt from specific requirements under this specific section of FSMA: preventive controls, hazard analysis, monitoring, corrective actions, verification, record keeping, written plan and documentation, requirements to reanalyze and other regulations. But, the facility still has to show that it is identifying potential hazards, implementing preventive controls and monitoring to show its controls are effective or it has to as noted show documentation that indicates the facility is in compliance with Illinois, local, county or other non-federal food safety laws.

Also, as a note, the FDA is part of the U.S. Health and Human Services, so it is the Secretary of Health and Human services who ultimately gives the facility its exemption. However, it should be carefully noted by the reader that what the secretary giveth the secretary may taketh, and these exemptions for qualified facility may be withdrawn in the event of a food borne illness.



A “qualified end-user” is a consumer, or a restaurant or retail food establishment that is located in the same state as the facility that produced the food, or not more than 275 miles from that facility.

One of the goals of FSMA is to have safer produce. The law seeks to accomplish that by having produce grown and handled under food safety protocols very much like GAP. Produce is a special area of concern for regulators because there have been a number of food borne illness outbreaks related to produce, and much of produce is not cooked and consumed raw so there is no “kill step” if harmful organisms are present. Unlike meat a lot of produce is simply eaten raw.

The regulatory process and produce safety rule that is called for in the statute is to be applicable to raw agricultural commodities (fruits and vegetables). The statute sets broad goals in that produce growers are required to draft and implement plans that meet minimum, science-based standards for the production, harvesting, handling, and storage of fruits and vegetables with specific attention paid to fruits and vegetables that have known safety risks based on a history of food borne illness. This requires analysis of the following broad categories of risk: reasonably foreseeable biological, chemical, and physical hazards (including intentional acts and bioterrorism). The regulation or produce safety rule is supposed to provide flexibility for small businesses and entities that sell directly to consumers, and it is supposed to be appropriate to the scale and diversity of the production. Entities should identify and manage risks associated with growing and storing of raw agriculture commodities and consider hazards that occur as part of the production process and unintentionally by accident.

However, as noted, there was great concern the regulations would be too difficult for small producers to meet. To address this concern, the Tester-Hagan Amendment was drafted and added to FSMA to create exemptions for direct farm marketing of produce. As noted above in broad terms the Produce Safety Standards section of FSMA will require produce growers to follow a plan that is very much a written and detailed GAP process, unless they fit within one of the exemptions. The Produce Safety Standards section of FSMA would require the development of science based standards for growing, harvesting, sorting, packing, and storage operations. These standards would also address soil amendments, hygiene, packaging, temperature controls, animals in the growing area, and water. Growers would be required to consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism.

There is a clear exemption in the produce safety section of FSMA for direct farm marketing. In short, you can't sell more than \$500,000 worth of food in a year, and the majority of those sales have to be direct to consumers, restaurants or retail food establishments in the same state as the farm that produced the food, or not more than 275 miles from that farm.

There is a clear exemption in the produce safety section of FSMA for direct farm marketing. The direct farm marketing exemption has several requirements. For example, for purposes of the exemption, the food must be sold to a qualified end-user.

A qualified end user of the food means the consumer of the food; or a restaurant or retail food establishment that is located in the same state as the farm that produced the food or that is located not more than 275 miles from the farm. It should be noted that "retail food establishment" means here what it did in the section on registration. In that section, the FDA is directed to include in the regulation governing this, roadside stands, farmers markets, community supported agriculture ventures and other direct sales platforms. However as of the publication date, these regulations are not yet in effect. In addition, the Secretary of Health and Human Services may exempt low risk food items. FSMA requires the secretary to use a flexible approach for farms that harvest and produce raw agricultural commodities. Again, as noted the secretary is also required to respect the requirements of Organic Food Production Act. However, just as documentation is a key step for organic food producers, documentation could be very important for food businesses who intend to show they meet exemptions.

In addition, there are economic size requirements. During the 3-year period prior to that in which the exemption is sought, the average annual monetary value of the food sold by the farm directly to qualified end-users must have exceeded the average annual monetary value of the food sold by the farm during the 3-year period to all other buyers during such period. Also, the average annual monetary value of all food sold during the 3-year period was less than \$500,000, adjusted for inflation. In short you can't sell more than \$500,000 worth of food and the majority of those sales have to be direct to consumers, restaurants or retail food establishments.

Even if the farm complies, it is not exempt from FDA inspection, and the Secretary of Health and Human services may in the event of an outbreak of food borne illness, withdraw the exemptions.

If the farm would be required to label the food under another section of the FDA, then the farm must include prominently and conspicuously on such label the name and business address of the farm where the produce was grown. If, however, the food is not required to be labeled under another section of the chapter, or where a food packaging label is not required by the Secretary then, the farm is directed to use a label that prominently and conspicuously displays, at the point of purchase, the name and business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents that are delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice. However, this section does not authorize the secretary to require an addition to labels already required under this chapter. As noted above, this exemption depends on several elements being present and it may be withdrawn by the Secretary of Health and Human Services (FDA) if a food borne illness occurs.

Under the proposed regulations or the proposed produce rule, if the farm sold more than \$250,000 but not more than \$500,000 it would be considered a small business. If it sold above \$25,000 but not more than \$250,000 it would be considered to be a very small business, and if it sold \$25,000 or less it would be excluded from coverage of the section all together. This would be an average annual monetary amount for the farm. This regulation would allow them to regulate raw agricultural commodities that were not shipped outside of the state and were purely intrastate commerce (within the state), according to the FDA's analysis.

As it was stated earlier, at the time that this guide is going to press the FDA is still in the earlier stages of the process for developing and finalizing the rules and regulations that that will implement the produce safety and preventive controls sections of FSMA. It should be noted that status of the rules should be checked as that process will likely lead to important changes and more detailed rules and regulations than discussed above.

**This exemption may be withdrawn by the Secretary of Health and Human Services (FDA) if a food borne illness occurs.**

# Sourcing the Right Information

Federal rules are contained in the Federal Food and Drug Act. Illinois rules for processed foods are contained in the Illinois Food, Drug and Cosmetic Act. In addition, Illinois regulates milk under the Illinois Milk and Milk Products Act. Registration requirements and other new requirements are described under the Bioterrorism Act and its regulations.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 significantly changed requirements for food producers everywhere. Two requirements merit special attention from food entrepreneurs, including farmers who process and sell directly to consumers. First, under the regulations, all food producers that do not fit under certain exemptions must have registered with the FDA by December 12, 2003. Certain operations such as farms, restaurants, other retail food establishments, and non-profit food establishments that prepare or serve food directly to consumers are considered exempt. The regulations do cover people who manufacture, process, pack, or hold food for animal or human consumption. Food entrepreneurs should check carefully to see if they fall under the 'farm' or 'retail' exemption. Generally, the Food Safety Modernization Act preserves the registration procedures, and farms remain exempt from registration.

The second regulation of interest requires people who manufacture, process, pack, transport, distribute, receive, hold, or import food keep records for two years that show from who they received food and to whom they shipped it. Farms, restaurants, and non-profit operations that prepare food or serve it directly to consumers are exempt. Again, if you are a food entrepreneur, you should check carefully to make sure you fall under the 'farm' or 'retail' exemption.

In general, the state of Illinois may make a law or regulation that is more restrictive than the federal government, but it cannot make one that is less burdensome. To further confuse the seeker of knowledge about food regulations, in Illinois raw agricultural commodities are generally regulated by the Illinois Department of Agriculture, while processed commodities are regulated by the Illinois Department of Public Health. However, with the passage of the Food Safety Modernization Act it is possible that the Illinois Department of Public Health will come to do more with raw agricultural commodities. Also, as noted previously, FDA's position is that although historically it only regulated commerce between States, because of provisions in FSMA it now has greater authority to regulate produce within a State.

In general, regulators are most interested in products that have the higher potential for severity of human harm. As a result of this, meat is tightly restricted because of its susceptibility to bacteria that have the ability to harm many people and harm them severely. However, as noted meat and poultry remain regulated by USDA and the Illinois Department of Agriculture. In general, regulators are most interested in products that have the higher potential for severity of human harm. As a result of this, meat is tightly restricted because of its susceptibility to bacteria that have the ability to harm many people and harm them severely. However, as noted meat and poultry remain regulated by USDA and the Illinois Department of Agriculture.

**Illinois Farm Direct Business:**  
An in depth online guide to the major tax, business and legal issues regarding operating a direct farm business in Illinois:

<http://www.directfarmbusiness.org/>



# Liability Issues

Liability comes in two basic flavors. Public liability means that various levels of government may fine or otherwise punish individuals and companies who fail to abide by the regulations involved in selling food. Private liability means a debt or obligation to pay that a court will recognize in the form of a judgment. A judgment is an order of a court directing a party to pay an amount of money or to perform an obligation. Selling food exposes the seller to both public and private liability for errors and omissions. People, for example, buy errors and omissions insurance that protects the insured in case he or she causes harm to someone by something that he or she did that was an error or from something he or she forgot to do. The law holds that people have a duty to behave reasonably towards others. Negligence is the omission to do something that a reasonable person would do or something that a prudent and reasonable person would not do.

Private liability exposure also exists in the form of lawsuits for damages by any customers who are injured by a product sold to them by a producer. These lawsuits are brought by the injured customer or by their insurance company. Under the legal theory of subrogation, one person may be substituted for another. This means that another person may sue in the name of an injured party to recover amounts paid out on their behalf. For example, an insurance company may “stand in the shoes of” the injured person to sue for damages to recover money paid out by the company to cover medical bills of the injured person.

As an example, the Illinois Sanitary Food Enforcement Act provides that after the State conducts a hearing regarding an alleged violation, the State may pass the violation on to the local States Attorney, who may then file an action against the offending party (i.e. the farmer-foodseller) for abatement of the nuisance (meaning STOP DOING IT) and for prosecution of the offense. If the offending party refuses to comply with the action, this statute provides for charging them with a misdemeanor offense. A misdemeanor offense is a criminal offense that can carry jail time as well as fines. This law has both ‘A’ and ‘B’ misdemeanor penalties for conviction of different crimes. Additionally, any customer who was injured by a product sold by the business or person that caused them injury would also have the ability to bring a private action against the producer for injuries suffered from the product and any other applicable damages (medical bills, time off from work, etc.).



For another example, if a person was warned repeatedly that he or she was conducting a food operation in a manner that caused it to be considered a nuisance, they might eventually be charged with a misdemeanor criminal offense. After being charged, the person would be given a court date and the case would go forward like any other criminal matter.

# Processing Foods

This guide looks at the direct sale of farm products to consumers, once a farmer or other food entrepreneur decides to process a food by cooking it or slicing it, then the regulations increase. Public health officials reason that a processed food increases the likelihood of causing human illness and thus requires that the products be more thoroughly regulated. For example, a raw apple poses little threat of carrying harmful bacteria because it is closed up and offers little area for bacteria to grow. Once the apple is sliced and served, however, the potential for illness becomes greater and the regulations governing its sale become more numerous. In addition to the requirements, if the apples are sliced for sampling, the business personnel should be trained and familiar with good food handling techniques and protocols.

Just like raw farm products, processed foods also fall under various regulatory schemes designed to protect public health. For example, the activity of processing foods could be governed by the Illinois and Federal Food and Drug Acts, as well as various labeling statutes. The Illinois Sanitary Food Preparation Act would require a farmer or food entrepreneur to have a state or locally inspected facility in which processing occurs. Readers should note the one of the main goals of FSMA is to increase safety in processed foods.

## Taxing Issues

### Sales Tax

Individuals making sales to customers in Illinois must report sales tax on their products whether the product is sold on the farm or at a farmers' market. The sales tax form to use is the ST-1, Sales and Use Tax Return. If you as a farmer or food entrepreneur are selling farm products both on 'the farm and at a farmers' market in another taxing area, you would use the ST-2, or multiple-site form. Farm products generally would be taxed at the lower sales tax of 1%, which is the food rate. Crafts and similar items, however, are taxed at 6.25%. Producers should check with the Illinois Department of Revenue to make sure they are collecting the correct amounts, because individual counties may also impose taxes of their own. Farmers Market Vendors should be aware they too are responsible for collecting and remitting sales tax. People filing sales tax should also file informational returns showing zero sales during months in the year when they are not selling product. Vendors should also be aware that sales tax may vary greatly within the State of Illinois.

### Income Tax

Individuals earning income from the sale of farm products are required to report the income and pay their tax as required by federal and state taxing laws. Adding direct sale income to a farm tax return may have significant tax effects. Farmers should consult the Internal Revenue Service's (IRS) pamphlet on farm income, which is available on the IRS web site at [www.irs.gov/](http://www.irs.gov/) or in print from one of their main offices.

When in doubt, ask. If still unsure, ask again. Ignorance of the law makes no excuse, unfortunately.



## Selling as Organic

After October 21, 2002, the federal government began regulating organic food and its production and sales in Illinois as well as the rest of the country. Individuals who wish to certify as 'organic' should consult the federal regulations and the website of USDA's National Organic Program ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)). Small-scale producers having gross sales of \$5,000 or less per year of organic products from their farm do not have to be certified to call their products 'organic' but still must comply with all other applicable regulations of the program as though they were being certified.

The USDA has adopted a National Rule to define organic. The USDA permits products to be labeled certified organic by (name of certifying entity) if they meet all the definitions and requirements contained in the national rule, including meat and poultry products. But labels for meat products must also pass approval by other entities at USDA besides the National Organic Program. Meat and poultry labels must be pre-approved by USDA and the claim must meet certain basic criteria. When in doubt, check it out.

In addition, the certifying entity chosen by a farmer or food entrepreneur who wished to sell their Illinois product as "certified organic" must have standards that define what constitutes an "organically produced" product as well as a system for ensuring that the products meet those standards. They must also be accredited by USDA's National Organic Program.

## Weights and Measures

Both the state of Illinois and local municipalities may regulate scales used in commerce. If commodities and other products are sold by weights and measures, then the scales used to do the weighing must be inspected either by the State of Illinois or the local municipality. Vegetables and fruit such as apples or pears may be sold by the count. Meaning, you may legally sell a dozen apples or a bunch of carrots without heeding an inspected scale, but you cannot sell three pounds of apples without using a scale to weigh the product. You may also legally sell a pint of berries in a pint box, just don't claim they weigh ten ounces unless you have weighed the berries with an inspected scale.

Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in the governing Act, commodities not in liquid form shall be sold only by weight or by measure. As a general rule



of thumb, liquid products are sold-by volume (i.e. maple syrup being sold by the quart or pint) and farm produce will be sold by weight (such as three pounds of potatoes).

Unless the products are sold in the Chicago area or Granite City, the Illinois Department of Agriculture has the responsibility for checking the accuracy of scales. Each city with a population of 25,000 or more may have a sealer of weights and measures and such deputy sealers of weights and measures as may be required. Granite City and Chicago have both chosen to have their own sealers.

## Zoning Rules

If you live in a rural county and want to set up a roadside stand, this should be relatively easy to accomplish. But you certainly will want to know what the zoning requirements are before actually setting up the structure. For example, local zoning in your area may require that a roadside stand be owned by the same person or persons who own(s) the lot. In addition, your county may set size requirements for the building itself or have standards for how entering and exiting onto the highway or roadway will be allowed. Checking on these potential pitfalls may prevent some costly errors later.



# Specific Food Regulations

## Apples

Apples are a good example of how the regulation of produce can change when a raw agricultural commodity is processed. Apples are also a good example of how the Food Safety Modernization Act has changed things as well. As a fruit, an apple is a raw agricultural commodity as defined under federal law and the Illinois statute governing food processing. As such, it should be washed before sale. Naturally, a prudent merchant would also inspect the apples to be sure he or she was selling a quality product. As noted above, however, a grower should now check to see how FSMA may affect them because apples are clearly governed under produce safety sections, and the grower should know if they are exempt under the size or distance or in state exemptions. Regardless of size, a prudent grower should be familiar with and implementing GAP protocols and other basic food risk management techniques.

If the farmer or food entrepreneur slices the apple for sale or offers sliced apples, then the grower has changed the apple into a more processed food. By breaking the skin of the fruit, the chances for creating an opportunity for bacteria to grow have increased. Thus, public health officials would want to make certain that the cut apples were being offered for sale in a sanitary manner. Before the apples are sliced, they are relatively likely-to not contain any harmful bacteria, but once sliced open, the fruit may be exposed to potential pathogens.

For example, people who want to slice up apples to give away as samples would need a temporary food permit. This means filling out a form, complying with rules set up by the local Public Health Department, and paying a fee. In Illinois, it is usually the municipal (Sanitarian) or county health department that will be the ones actually issuing the temporary food permit. Making applesauce for sale would require even more inspection and compliance, including having a certified processing facility.

Illinois apple growers who want to produce apple juice and pure cider now operate in a very different environment than they did previously. Following recent outbreaks of food poisoning related to apple cider, federal and state government officials reevaluated rules governing the production of cider.

The federal government determined that pure unpasteurized apple cider presented a potential threat and that when it was produced for businesses, it should be produced under a Hazard Analysis and Critical Control Point Program (HACCP).

HACCP requires a business to conduct an analysis of where its processes might allow for contamination (a critical control point) and identify steps to be taken to prevent such contamination. In addition, HACCP requires that extensive logs be kept by the business employees as a paper trail to determine that they have complied with all safety rules and steps in their HACCP plan. For juice that is to be sold to other establishments, which will then sell it to the public HACCP requires a “kill step.” This step is to ensure all potentially harmful bacteria are dead. It could be through pasteurization but it could also be a method that does not use heat, such as pulsed light or ultraviolet radiation.

The final rule developed by the Food and Drug Administration exempted retail establishments that only sell their cider directly to consumers. As long as these establishments sell only to consumers, they are not required to have a HACCP plan or pasteurize their cider. But both the federal government and the state of Illinois require retailers who sell unpasteurized cider to display a health warning that the cider has not been pasteurized and may cause health problems. In addition, under Illinois rules, a state public health official must inspect the cider press being used to make the cider. If a business makes a decision to produce juice (cider) it should become familiar with the code of federal regulations, juice HACCP requirements.



# Dairy: Milk and Cheese

Milk is one of the most highly regulated food substances around the farmstead. Although some consumers might prefer to drink raw milk, this option is not easily pursued in Illinois. For example, raw milk is allowed for use in cheese by the federal government only in cheese aged at least 60 days. With the exception of cheese aged a minimum of 60 days, the federal government's regulations require that all milk products in final form be pasteurized. The federal government has this power under federal law by its power to regulate interstate commerce. The state of Illinois, however, also regulates pasteurization requirements through the Illinois Department of Public Health. All food-grade milk intended for fluid consumption via retail sale off the-farm must not only be pasteurized but must also come from a dairy that meets grade A milk requirements. Check with the Illinois Department of Public Health's Dairy Division if you are interested in providing fluid milk directly to customers. The challenges will be many but a market exists in some areas, in Illinois for farm-fresh milk.

A market for artisan ice cream also exists but the barriers are considerable. Ice cream is a highly regulated food under Federal and Illinois State laws because it is a dairy item and a processed food item. In Illinois, milk and dairy products are regulated by the Illinois Department of Public Health. As a general rule food businesses that process milk require a dairy license.

Ice cream is not a permitted food under the Cottage Food Act. Generally speaking ice cream cannot be produced at home, and must be produced in its own commercial space. Labels also have to confirm to state requirements and commercial pasteurization is required.

## Raw Milk

Acquiring raw milk directly from the farm in Illinois is legally possible. According to Illinois statutes, "The pasteurization requirement of this Section (Grade A Pasteurized Milk and Milk Products Act) shall not be applicable to milk produced in accordance with Department rules and regulations if sold or distributed on the premises of the dairy farm." Traditionally this has been interpreted to mean that if a consumer comes to a farmstead, the farmer may legally provide them with raw unpasteurized milk for their own personal consumption in their own container. The farmer, however, could not advertise that the milk was for sale. In addition, the farmer cannot legally take raw milk off the farm to the consumer, even in their own container.

The farmer must also comply with other requirements of the Illinois statute that regulates milk products. However, as this guide goes to press, there are possible changes being discussed that might affect how raw milk is regulated. As such readers interested in raw milk should be certain to check the regulations in place at that time.

If anything goes wrong and the customer becomes ill, nothing in the statute protects the farmer from a private lawsuit to recover damages for the customer's injuries. Given this scenario, it might be prudent for the producer to check with the farm's insurer before offering raw milk for consumption.



# Cheese

The exemption for on-farm sales of raw milk directly to the customer does not apply to cheese made from raw milk. The federal government has established what are known as standards of identity for cheeses. These rules define how varieties of cheese should be made so they conform to the federal requirements. Only pasteurized milk can be used for milk and milk-related products such as yogurt, which are to be consumed directly by people. Cheese, however, can be manufactured from raw instead of pasteurized milk if the cheese is aged a minimum of 60 days to reduce or eliminate harmful bacteria.

Farmers wishing to make farmstead cheese for retail or direct sale in Illinois are encouraged to contact the Illinois Department of Public Health before beginning and work with a dairy inspector as well as a food processing specialist.

Although many states have thriving farmstead cheese businesses, Illinois is not one of them. Like all new ventures, some growing pains might be encountered as you navigate new waters. It's best to identify potential problems before you encounter them. Hopefully as farmstead cheese businesses develop, the rules governing them will become more accessible and more uniform with those in states that encourage these specialty products.

# Eggs

Almost everyone in or around a farm family has heard the phrase “egg money”. Farm families traditionally used egg money for everything from putting children through school to putting a roof over their heads. Town families in the past prized the quality and freshness of local eggs. A producer now hoping to sell farm-fresh eggs should begin by getting familiar with regulations governing egg sales in Illinois.

Imagine that invisible nets, which fall into layers, cover you and your farm. The nets are all the different food rules and regulations designed to protect the public from bad food. Your job as a grower is to conduct your activities so that you don't get snagged in the net. Because of their popularity, eggs are one of the most common sources of direct farm product sales.



Eggs are regulated by the United States Government in the form of federal statutes and regulations. The state of Illinois also has statutes governing the sale of eggs in the state and in municipalities; furthermore, counties may also have rules and regulations governing the sale of eggs in their areas. That's a lot of nets to navigate!

The Illinois Egg and Egg Products statute provides that farmers and others who raise poultry may sell eggs to off-farm customers provided that the following conditions are met. First, the eggs must be the shell eggs of domesticated chickens, turkeys, ducks, geese or guinea fowl. Second, the eggs must be the eggs from his or her own flocks. Third, the producer must sell the eggs on his or her own property and they may not be taken off the premises. Fourth, the sale must be directly to a household consumer, for the consumer's personal use and that specific consumer's non-paying guests. Finally, all eggs for human consumption must be maintained at a temperature of 45 degrees.

Producers selling only nest-run eggs produced by their own flocks on their own premises may advertise their eggs for sale. There is no quantity limit to how many eggs that can be sold on the farm.

Eggs that are sold at retail or to an institutional customer must be candled and graded for size. Selling eggs at retail or to an institution also requires an egg license, obtainable from the Illinois Department of Agriculture (not the Department of Public Health). The statute has recently been amended to make clear that it applies to all eggs and not just dirty eggs or those with checks. A “check” means an egg that has a broken shell or crack in the shell but has its membranes intact and contents not leaking. A “dirty egg” means an egg that has a shell that is unbroken and has adhering dirt or foreign material, or, prominent stains on the shell surface, or moderate stains covering more than one-fourth of the shell surface.

Any claim used to label or advertise eggs, such as 'organic', 'fertile' or others noting unusual qualities must be submitted to the Director of Agriculture. Currently, an egg may be advertised in Illinois as 'organic' only if it meets the National Organic Rule defined by the USDA National Organic Program and is certified as such. If all organic production requirements of the national rule are met and the farmer meets the small farm exclusion clause of having less than \$5,000 gross sales per year of organic products, the term "organic" may be used. If challenged legally, however, the burden of proof for meeting the exclusion will be on the farmer.

Producer-dealers with less than 3,000 birds or any producers, regardless of size, who do no candling and grading, are not required to register under the Federal Egg Products Inspection Act but may sell only from the farm. Producer-dealers with less than 3,000 birds who candle and grade eggs must be licensed by the state and therefore are subject to rules as they apply to restricted eggs. Producers who plan to do more than 3,000 birds should be aware that eggs now have separate regulations in place to help curb salmonella. These regulations require their own food safety protocols. Whether actually required by the federal authorities are not, all eggs should have the notice about safe handling: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."



## Grains

Grains are an increasingly popular farmer's market item. However grains present a challenge in Illinois. The previous iteration of Illinois Department of Public Health (IDPH) Technical Information Bulletin (TIB) #30 would permit the sale of unprocessed and unpackaged grains, therefore an argument could be made that the raw grain might be provided and sold by volume in its raw state if the customer measured the grain and bagged it themselves. The seller might have an issue with needing a certified scale if the grains were sold by weight. However, the new TIB #30, approved in May of 2013 now allows unprocessed raw agricultural commodities like grains or fresh vegetables to be packaged without being considered processing so long as it is in an unsealed package. IDPH technical information bulletins are guidance documents that are created to help guide local health departments in interpreting the law. IDPH technical information bulletins are only guidance documents and local health departments might choose to regulate certain products more stringently. IDPH TIB #30 covers more than just grains or raw agricultural commodities, covering general sanitation guidelines for farmers markets, a web-link to the most recent version of the bulletin can be found in the resource section of this guide.



# Meat

Federal, state and local governments may regulate the sale and processing of meat in Illinois. As defined by the Illinois statute, meat is a food product used as human food made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats.

If Illinois-raised meat is to be sold across state lines, it must be processed in a federally inspected facility. If the meat is sold only in Illinois, it can be processed in a facility licensed by the state of Illinois. Basically, three options exist. The first option as mentioned is that the animal(s) can be processed in a federally inspected facility. This allows the meat to be sold at the retail level and allows it to be sold across state lines.

The second option for meat sold in Illinois is to have it processed at a state-inspected facility. Meat processed in a state-inspected facility can be sold in Illinois on a retail basis. This option, however, does not allow the meat to be shipped across state lines.

Finally, Illinois meat can be processed on a “custom basis.” ‘Custom processing’ refers to the processing of meat or poultry products as a service by an establishment for the owner or the agent of the owner of the meat or poultry products. This meat can only be used in the household of-the owner and by his or her nonpaying guests and employees. Upon processing, it must also be labeled ‘not for resale’.

If the producer can locate a freezer plant that does custom processing work, he or she may sell some animals directly to consumers without having to get to a state-inspected facility. The farmer may sell a live animal directly to a customer and take the animal to the plant. The purchaser of the animal pays the slaughter fee as they pick the meat up at the plant. The customer gets farm-fresh meat and the farmer has the added value of the meat.

As it is the case with all direct marketing especially when selling at outlets beyond the farm, like a farmers market, it is important to check with your local health department whether or not there are additional local rules and regulations.



# Poultry

Under Illinois statute and regulations, up to 5,000 birds and rabbits (for some reason, the poultry exemption also applies to rabbits) may be processed on the farm per year and sold directly to customers. This 5,000-unit annual exemption applies only to animals on the farm controlled by the poultry statute such as rabbits, turkeys, ducks, and chickens.

A total of all animals processed count toward the exemption. It is not permissible to process 5,000 chickens and 5,000 ducks and still claim that only 5,000 animals were being processed per year. For example, if you had 7,000 turkeys to process for customers, you would need to process at least 2,000 of them at a state licensed facility. If you intended to ship them into interstate commerce, then you would need to process them at a facility licensed by the federal government as only the federal government may regulate meat designated for sale across state lines.

Other requirements pertain as well. The poultry must belong to the processor and be raised on the producer’s own farm or premises. The exemption is good for two years, beginning in the calendar year for which it is granted and must be applied for through the Bureau of Meat and Poultry Licensing at the Illinois Department of Agriculture.

The poultry raisers must not engage in buying or selling poultry products other than those produced from their own flocks. Furthermore, the poultry must be slaughtered, otherwise prepared, sold and delivered to the consumer on or from the premises for which the exemption is given (i.e. from the farm itself). The slaughter or preparation must be performed in sanitary facilities, in a sanitary manner, and be subject to periodic inspection by Department of Agriculture personnel.



Lastly, the persons applying for an exemption must submit a written request to the department. The exemption will be effective upon written notice from the department and remains in effect for a period-of 2 years, unless revoked. The person keeping the poultry must maintain adequate records to be certain that not more than the number of exempted poultry are slaughtered or processed per calendar year. The records must be kept for one year following the termination of each exemption. Any advertisement regarding the exempt poultry or poultry products must reflect the fact of the on-farm exemption to not mislead the consumer into thinking that official inspection was made under the Meat and Poultry Inspection Act.

Note that no on-farm processing exemption exists for meat such as beef, sheep, goat or pork. As discussed above, these meats must be processed at a state or federally licensed facility to be sold directly to a customer. You may, however, slaughter and process your own meat or sell a live animal to someone who will slaughter and process the animal themselves.

## Vegetables and Fruit

The reader is directed to read with care the Key Regulatory Points section as the Food Safety Modernization Act greatly changes how fruits and vegetables are regulated. The Act imposes produce safety requirements on this group of food items. Although there are exemptions for local food and for small and very small ventures, the grower should know if and specifically how they fit within them. Historically before FSMA, it could have been said the FDA was mostly interested in food shipments between states, however, growers and sellers should be very much aware that, the FDA has indicated that it may consider key sections of FSMA to apply within Illinois as they relate to produce

As a rule of thumb, the more potential a food product has for making someone ill, the more tightly regulated it will be. Washed, raw, and unprocessed produce poses comparatively little threat of causing human illness, so in many ways they are the least regulated of the direct farm products. Produce sold directly off the farm to customers in Illinois does not require inspection or grading.

In addition, produce can be sold by either weight or quantity. Remember, if you as a grower decide to sell produce by weight, you will need a scale suitable for commercial use. You must also have your scale certified by the Illinois Weights and Measures Section of the Illinois Department of Agriculture.

Selling the same produce at farmers markets in the state requires more attention to regulations, especially those governing the offering of samples at the market. You will need to check market rules at the individual markets about cut samples that are not being sold. Whole uncut fruit or vegetables such as whole apples or pears might not present a problem, but if you are planning to offer “tastes” of your heirloom tomatoes, you may want to check with the market manager. As mentioned earlier in the section on grains, new guidance from the Illinois Department of Public Health in the form of an updated Technical Information Bulletin #30 states that unprocessed raw agricultural commodities like grains or fresh vegetables can be packaged without being considered processing so long as it is in an unsealed package. However, IDPH technical information bulletins are guidance documents and local health departments might choose to regulate certain products more stringently.

Processed fruits and vegetables such as jams, jellies, and pickles come under rules and regulations governing processed foods unless it is done as a cottage food operation. To offer them for sale, you will need a certified processing facility, one regulated by the Illinois Department of Public Health. Check with them and your local county health department about the guidelines for construction and operation of such a facility. Building one may seem like an expensive proposition, but Joel Salatin, author of *You Can Farm* and *Salad-Bar Beef* and guru of direct farm marketing, maintains that a certified kitchen facility is probably the most important part of your farm enterprise if you are looking for profit.



# Quick Checklist of Issues to Consider Before Selling Farm Products Directly

## 1. Business Entity

How will you conduct your business? You will need to decide whether you are doing business as a sole proprietorship, partnership, or limited liability entity such as a corporation, limited liability company, or Limited liability partnership.

## 2. Employees

Will you have employees or will it just be you? If you intend to employ other people, you must pay various tax and workers compensation obligations as their employer. This includes but may not be limited to Social Security and Workman's Compensation if your employees exceed very low limits on their wages. If you need to offer contracts to your employees, you may need to check the contract language with your attorney. You should also be aware that requirements for filling out employment verification forms I-9s are changing on the federal level.

## 3. Insurance

Do you have farm insurance? If you do, does it include coverage for non-farm activities? Will you have customers coming on to your farm to make purchases? Be sure to check with your insurance provider and get in writing a list of covered activities.

## 4. Liability/Risk Management

Do you know what liabilities you are assuming by selling food to consumers? Again, check with your insurance carrier to make sure you are covered for any liabilities that may arise. All food vendors should give some thought to risk management, ability to recall products if necessary, ability to identify and implement Good Agricultural Practices (GAP), current good manufacturing practices, and hazard analysis and critical control points (HACCP).

## 5. Markets

The assumption in this guide is that you'll be selling farm products to consumers. The sale of farm products to wholesalers or grocery stores can present more complex issues. In addition, if you're selling at farmers markets, it pays to read the rules of the individual market. Each one may have different requirements. Check with each market where you sell and get their accepted best practices in writing. Keep records to demonstrate that you are making a good faith effort to comply with their guidelines.



## 6. Organic Produce

The federal government regulates organic production, labeling, processing, and, to some degree, marketing. There are specific requirements under the federal organic regulations that must be met in order to sell organic products. Check out these regulations online at [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop) or contact an organic certification agency. The Illinois Department of Agriculture's Bureau of Marketing has a list of some certification agencies that operate in Illinois, although other agencies not on the list may also certify in the state.

## 7. Processing

How much food processing will you be doing? In general, the more processed a food item is, the more regulated it is likely to be. Remember that ignorance of the law is not a legally defensible position in court. Find out who is responsible for oversight of your product and what regulations govern its production and processing. Do you know the rules of the Illinois Cottage Food Law?

## 8. Rules and Regulations

Depending on what you sell, you may be heavily regulated, lightly regulated or fall somewhere in between. It is your responsibility to familiarize yourself with the various federal, state and local rules and regulations. When in doubt, start with your local health department or the Illinois Department of Agriculture.

## 9. Sales and Income tax

What's the old expression? Tax avoidance is legal; tax evasion is a crime? Find out what you will owe and what you have to collect and then do it. Keep records.

## 10. Zoning Rules

What rules and regulations might govern your on-farm enterprise in your locality? It will probably be different in different parts of the state so make it your business to find out. Zoning may vary widely by county. What is acceptable in rural counties will be very different than what might be permitted in a county adjacent to an urban or urbanizing area. Generally, the rural counties will be more tolerant. The suburban counties, however, may be, more eager to control farm activities.



# Resource Section

The following is a list of websites and organizations where you can find additional information regarding issues covered in this guide as well as general information about local food and sustainable agriculture. The resource section is organized by Illinois and National websites and organizations.

## Illinois

### Illinois Direct Farm Business

Illinois Direct Farm Business, created by a team from the University of Illinois Agricultural Law Group, is an in depth guide to the major tax, business and legal issues regarding operating a direct farm business in Illinois.

[www.directfarmbusiness.org](http://www.directfarmbusiness.org)

### University of Illinois Extension

University of Illinois Extension is the flagship outreach effort of the University of Illinois at Urbana-Champaign, offering educational programs to residents of all of Illinois' 102 counties – and far beyond. Extension is a valuable source of information and educational programs for farmers and local food entrepreneurs. U of I Extension offers educational programs in five broad areas: Healthy society, Food security and safety, Environmental stewardship, Sustainable and profitable food production and marketing systems and enhancing youth, family and community well-being.

*General Information:*

[web.extension.illinois.edu/state/index.html](http://web.extension.illinois.edu/state/index.html)

*Small Farms:*

[web.extension.illinois.edu/smallfarm](http://web.extension.illinois.edu/smallfarm)

*Commercial Agriculture:*

[web.extension.illinois.edu/state/commag.html](http://web.extension.illinois.edu/state/commag.html)

### Illinois Farm Beginnings

Illinois Farm Beginnings is a great way to jump-start your entrepreneurial farm business. It is a year-long training and support program with three components: business planning seminars, on-farm field days, and one-on-one mentorships.

*Illinois Farm Beginnings:*

[www.illinoisfarmbeginnings.org](http://www.illinoisfarmbeginnings.org)

*Stateline Farm Beginnings (Northern IL):*

[learnrowconnect.org/what/training/stateline](http://learnrowconnect.org/what/training/stateline)

*Central Illinois Farm Beginnings:*

[central.illinoisfarmbeginnings.org](http://central.illinoisfarmbeginnings.org)

*Southern Illinois Farm Beginnings:*

[www.eatsouthernillinois.org](http://www.eatsouthernillinois.org)

## Upper Midwest Collaborative Regional Alliance for Farmer Training (CRAFT)

CRAFT is a farmer-led coalition organized by sustainable agriculture farmers in the upper Midwest. Participating farmers offer up their time, talents and experience to help prepare the next generation of farmers through technical assistance and hands-on training. CRAFT upper-Midwest is organized by Angelic Organics Learning Center's Farmer Training Initiative located in Northern Illinois. The CRAFT – Upper Midwest Network encompasses both Northern Illinois and Southern Wisconsin.

[www.learnrowconnect.org/farmer](http://www.learnrowconnect.org/farmer)

## Prairie Crossing Farm Business Development Center

The Farm Business Development Center at Prairie Crossing (FBDC) supports the development of successful family farm enterprises by focusing on the production and marketing of organic foods for local and regional food systems. Also known as an “incubator,” the FBDC is located on a one hundred acre organic farm in Grayslake, Illinois. The incubator program provides land, farm infrastructure, and a positive learning environment that helps beginning farmers develop the entrepreneurial skills, farming knowledge and market networks needed to become successful professional farmers.

[www.prairiecrossingfarms.com](http://www.prairiecrossingfarms.com)

## Land of Lincoln Legal Assistance Foundation Inc.

Land of Lincoln Legal Assistance Foundation (LOLLAF) is an Illinois not-for-profit corporation that provides free civil legal services primarily to low-income persons and senior citizens in 65 counties in central and southern Illinois. LOLLAF also provides legal services and help for small farmers.

[lollaf.org](http://lollaf.org)

Angela L. Tucker, Small Farm Legal Fellow,  
(217) 356-1351, [atucker@lollaf.org](mailto:atucker@lollaf.org)

## Illinois Department of Public Health Regional Office

Contact Information and Listing of Local Health Departments by Region.

[www.idph.state.il.us/local/map.htm](http://www.idph.state.il.us/local/map.htm)

## Illinois Department of Public Health – Sanitation Guidelines for Farmers Markets

Illinois Department of Public Health Technical Information Bulletin #30 providing guidance to local health departments on food safety and sanitation issues related to farmers markets.

<http://ilfarmersmarkets.org/wp-content/uploads/2013/05/IDPH-FDD-TIB30-Farmers-Markets-051613-1.pdf>

## Illinois Food Sanitation Managers Course

Under Illinois law cottage food operations are required to have an Illinois Food Sanitation Managers Certificate. In order to receive that certificate you must take a corresponding course.

Information about the course:

[www.idph.state.il.us/about/fdd/fdd\\_fs\\_certificate.htm](http://www.idph.state.il.us/about/fdd/fdd_fs_certificate.htm)  
IDPH Course Listing: [dph.illinois.gov/fssmccourses/](http://dph.illinois.gov/fssmccourses/)

## Illinois Stewardship Alliance

Illinois Stewardship Alliance (ISA) is a state wide non-profit that promotes environmentally sustainable, economically viable, socially just, local food systems through policy development, advocacy, and education. In addition to publishing this legal guide ISA has a number of other useful guides including a Farm-to-Table Guide for Farms and in depth information about Illinois' Cottage Food Law.

[www.ilstewards.org](http://www.ilstewards.org)

## Angelic Organics Learning Center

Angelic Organics Learning Center is non-profit educational organization and a partner to Angelic Organics farm working to develop urban and rural local food systems. Angelic Organics offers hands-on learning at Angelic Organics Farm, engaging the body, heart and mind to experience life on a vibrant working farm.

[www.learnrowconnect.org](http://www.learnrowconnect.org)

## Central Illinois Sustainable Farming Network (CISFN)

The network's mission is to promote the development of local food systems in Central Illinois through farmer support and training. Network members are committed to sustainable farming and are willing to share knowledge and participate in learning opportunities.

[cisfn.org](http://cisfn.org)

## Illinois Farmers Market Association

Illinois Farmers Market Association is a non-profit educational organization whose mission is to provide educational support for farmers' market organizers, farmers, vendors and other community food and nutrition organizations through partnerships, resource-sharing, and training on best management practices, operating procedures, and state regulations through workshops, webinars, and various social marketing venues.

[ilfarmersmarkets.org](http://ilfarmersmarkets.org)

## FamilyFarmed.org

FamilyFarmed.org helps consumers and trade buyers develop trusting relationships with farmers and artisanal food producers by sharing information about their values and production methods. FamilyFarmed.org organizes the annual and very popular Good Food Festival and Conference.

[www.familyfarmed.org](http://www.familyfarmed.org)

## The Land Connection

Educational nonprofit in order to preserve and protect our agricultural heritage by educating farmers and the public about the value of farmland and the need for more local food production and consumption.

[www.thelandconnection.org](http://www.thelandconnection.org)

## Food Works – Southern Illinois

Food Works is a non-profit organization facilitating the development of a regional food economy in Southern Illinois. We believe that a truly enduring approach emphasizes access to good food for everyone, keeps food dollars circulating in local communities, and balances human needs with the health of the air, water and land resources on which all life depends.

[eatsouthernillinois.org](http://eatsouthernillinois.org)

## Illinois Local Food, Farms and Jobs Council

The Illinois Local Food, Farms, and Jobs Council was created by the Illinois General Assembly to facilitate the growth of an Illinois-based local farm and food product economy that revitalizes rural and urban communities, promotes healthy eating with access to fresh foods, creates jobs, ensures a readily available supply of safe food in an emergency event and supports economic growth through making local farm or food products available to all Illinois citizens.

[foodfarmsjobs.org](http://foodfarmsjobs.org)

## National

### Farm Commons

Farm Commons provides business legal services to farmers, creates useful legal education resources, and works with attorneys to reach community-based farmers around the country.

[farmcommons.org](http://farmcommons.org)

### Farmers Legal Action Group

A non-profit law center dedicated to providing legal services to family farmers and their rural communities in order to help keep family farmers on the land.

[www.flaginc.org](http://www.flaginc.org)

### Rural Tax

Rural Tax is a website that provides farmers and ranchers, other agricultural producers and Extension educators with a source for agriculturally related income and self-employment tax information that is both current and easy to understand.

[ruraltax.org](http://ruraltax.org)

### Niche Meat Processing Assistance Network

NMPAN is a network and info hub for people and organizations who want small meat processors to thrive. We offer tools and information for small processors and the farmers, marketers, and meat buyers who depend on them.

[www.nichemeatprocessing.org](http://www.nichemeatprocessing.org)

### Farm to Consumer Legal Defense Fund

The FTCLDF protects the rights of the nation's family farms, artisan food producers, consumers and affiliate communities to engage in direct commerce free of harassment by federal, state and local government interference; it protects the rights of farmers and artisanal producers to make their products available and the rights of consumers to access the foods of their choice from the source of their choice.

[www.farmtoconsumer.org](http://www.farmtoconsumer.org)

## United States Department of Agriculture Good Agricultural Practices

Good Agricultural Practices (GAP) and Good Handling Practices (GHP) practices and audits focus on best agricultural practices to verify that fruits and vegetables are produced, packed, handled, and stored in the safest manner possible to minimize risks of microbial food safety hazards.

[www.ams.usda.gov/AMSV1.0/HarmonizedGAP](http://www.ams.usda.gov/AMSV1.0/HarmonizedGAP)

## Food and Drug Administration Hazard Analysis and Critical Control Points (HACCP)

HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.

[www.fda.gov/Food/GuidanceRegulation/HACCP/NationalOrganicProgram](http://www.fda.gov/Food/GuidanceRegulation/HACCP/NationalOrganicProgram): Information on USDA's National Organic Program, including certification, organic standards, and compliance.

[www.ams.usda.gov/AMSV1.0/nop](http://www.ams.usda.gov/AMSV1.0/nop)

## ATTRA

National Sustainable Agriculture Information Service: ATTRA is a program developed and managed by the National Center for Appropriate Technology (NCAT). ATTRA provides high value information and technical assistance to farmers, ranchers, Extension agents, educators, and others involved in sustainable agriculture in the United States.

[attra.ncat.org](http://attra.ncat.org)

## Direct Marketing Agricultural Marketing Resource Center

Resource website for information about direct marketing food and farm products.

[www.agmrc.org/business\\_development/operating\\_a\\_business/direct\\_marketing/direct-marketing/](http://www.agmrc.org/business_development/operating_a_business/direct_marketing/direct-marketing/)

## Farm Aid: Farmer Resource Network

The Farmer Resource Network connects farmer to resource partners and hundreds of organizations providing services, tools and opportunities for family farm profitability and sustainability, as well as immediate support.

[ideas.farmaid.org](http://ideas.farmaid.org)

## The National Sustainable Agriculture Coalition

The National Sustainable Agriculture Coalition (NSAC) is an alliance of grassroots organizations that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities.

[sustainableagriculture.net](http://sustainableagriculture.net)

## The Farmers Market Coalition

The Farmers Market Coalition is a nonprofit dedicated to strengthening farmers markets across the United States so that they can serve as community assets while providing real income opportunities for farmers.

[farmersmarketcoalition.org](http://farmersmarketcoalition.org)



# Appendix

Selected Federal and State Statutes and Administrative Rules Governing Direct Sale of Farm Products in Illinois with Entities Having Jurisdiction

## Illinois Department of Agriculture

**Illinois Food, Drug and Cosmetic Act**

410 ILCS 620

(As it pertains to the Department of Agriculture)

**Meat and Poultry Inspection**

225 ILCS 650

**Weights and Measures**

225 ILCS 470

**Illinois Egg and Egg Products Act**

410 ILCS 615

## Illinois Department of Public Health

**Illinois Food, Drug and Cosmetic Act**

410 ILCS 620

**Sanitary Food Preparation Act**

410 ILCS 650

**Food Safety Transportation Act**

410 ILCS 630

**Illinois Cottage Food Act**

410 ILCS 625

**The Illinois Food, Drug and Cosmetic Act**

77 Ill. Adm. Code 720

**The Manufacturing, Processing, Packing or Holding of Food**

77 Ill. Adm. Code 730

**Processors of Fresh and Smoke Fish**

77 Ill. Adm. Code 735

## Federal Statutes

Compilation of Laws Enforced by the U.S. Food and Drug Administration and U.S. Department of Agriculture

**Federal Food, Drug, and Cosmetic Act**

21 USC 301

**Egg Products Inspection Act**

21 USC 1051

**Fair Packaging and Labeling Act**

21 USC 1450

**Federal Meat Inspections Act**

21 USC 60

**Organic Food Production Act**

7 USC 6501

**Poultry Products Inspection Act**

21 USC 451

**Sanitary Food Transportation Act**

49 USC 5701

Additional copies of this guide are available from Illinois Stewardship Alliance. The guide is also available online at [www.ilstewards.org](http://www.ilstewards.org)



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