

TENNESSEE DEPARTMENT OF AGRICULTURE

DIVISION OF CONSUMER AND INDUSTRY SERVICES

FARMERS MARKETS

STATE COMPLIANCE GUIDE



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RULES FOR FOOD SOLD AT FARMERS MARKETS:

A Guidance Document

Introduction

Ensuring a safe and wholesome food supply is a primary mission of the Tennessee Department of Agriculture (TDA). To that end, all food sold in Tennessee must come from an approved source that is under inspection and permitted by the appropriate regulatory authority with some exceptions as explained in following sections.

This document is not intended to be all inclusive or the final authority on food safety. It is designed to point the reader in the direction of laws and source materials that will give guidance to farmers market management and potential vendors. Those who need more detailed information on beginning a food manufacturing business or how to market their products should consult organizations like the Center for Profitable Agriculture (<https://ag.tennessee.edu/cpa>) and the University of Tennessee Extension (<https://ag.tennessee.edu>).

References in this document to T.C.A. and CFR are to Tennessee Code Annotated and the Code of Federal Regulations. Specific sections may be accessed at www.lexisnexis.com/hottopics/tncode and www.ecfr.gov.

Individual farmers markets may have their own rules in addition to those mentioned in this document.

General Considerations

All food, except fresh fruits and vegetables, sold at farmers markets must be properly labeled. (T.C.A. § 53-1-105).

The label must contain:

- The name and place of business of the manufacturer, packer or distributor;
- An accurate statement of the quantity of contents in term of weight, measure or count (if an item is sold in random weight packages, the label must contain the price per pound, the net weight and the total price) (T.C.A. § 47-26-917);
- The common or usual name of the food;
- In case it is fabricated from two (2) or more ingredients, the common or usual name of each such ingredient; and
- If the food product contains one of the eight major food allergens – milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat and soy – that ingredient must be shown on the label. (21 USC 343(w))

No food shall be sold at a farmers market that contains poisonous or deleterious substances or is adulterated or misbranded in anyway. (T.C.A. §§ 53-1-104)

TYPES OF FOOD

FRUITS and VEGETABLES

Unprocessed fruits and vegetables are exempt from permitting and inspection in Tennessee. "Unprocessed" means a raw agricultural commodity in its raw or natural state with only a minimal amount of cutting/trimming that is necessary for harvesting. (T.C.A. § 53-8-203)

FOOD FOR IMMEDIATE CONSUMPTION

Products sold for immediate consumption on-site, such as at a restaurant or concessions stand, are under the jurisdiction of the local health department. Contact your local health department for more information. (T.C.A. § 68-14-305)

PROCESSED FOODS

Processed foods in any form and packaged for resale offered at a farmers market must come from a licensed and inspected facility unless it is non-potentially hazardous food prepared in a domestic kitchen. (T.C.A. § 53-1-208)

Food manufacturers of non-potentially hazardous food may voluntarily attend a specified food safety class and undergo permitting and inspection of a domestic kitchen by TDA.

Unlicensed vendors of non-potentially hazardous food are required to place a sign (8.5"x 11" with 3/4" font) at the point of sale and on the label which states "These product(s) were made in a private home not licensed or inspected" (T.C.A. § 53-8-117)

"Non-potentially hazardous food" means jam, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food. (T.C.A. § 53-8-117(a)(2))

"Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, home canned foods other than jams and jellies, or any food that requires temperature control for safety. (T.C.A. § 53-8-117(a)(3)) Food items that contain these ingredients like milk and eggs that are baked and do not require temperature control to remain safe are not potentially hazardous foods.

Canned foods, other than jams and jellies, shall only be sold if processed by a licensed and inspected operation. These kinds of processed food are classified as "formulated acid foods" and "acidified foods." There are specific regulations for each. Persons interested in manufacturing these foods should consult the

following publications by the University of Tennessee Extension:
<https://utextension.tennessee.edu/publications/Documents/SP747-A.pdf>
<https://utextension.tennessee.edu/publications/Documents/SP747-B.pdf>

FOOD PRODUCTS

SORGHUM MOLASSES

All sorghum molasses sold or offered for sale in this state shall be prominently labeled as being either one hundred percent (100%) pure sorghum molasses or not pure sorghum molasses. Only sorghum molasses that contains no additives shall be labeled as one hundred percent (100%) pure sorghum molasses. All sorghum molasses offered for sale shall come from a permitted, licensed and inspected facility. (T.C. A. § 53-16-101 and §§ 53-1-101 et seq.)

HONEY

All honey sold or offered for sale in this state shall be prominently labeled as honey, along with the name and address of the producer and the net contents. (New regulations for the labeling of honey are being drafted by TDA and will be available in late 2014.) (T.C. A. § 53-15-101 and §§ 53-1-102(24))

DAIRY

All dairy products, including ice cream and cheeses, must come from a licensed dairy or composed of pasteurized dairy products from a licensed dairy. In addition, such foods must be stored at or below 41° Fahrenheit (or frozen in the case of ice cream) at point of sale. (T.C.A. § 53-3-106)

Raw milk cannot be offered for sale for human consumption. Raw milk can be transferred through cow share programs. Cow share programs are viewed by TDA as a marketing agreement between the owner of the cow and the contracted share owner. A written herd share agreement should be in place. (T.C.A. § 53-3-119) For more information contact TDA at 615-837-5193.

JUICE

Because of the potential for pathogenic microbial growth juices and other beverages sold at a farmers market must be produced in a facility that is licensed, permitted and inspected. (21 CFR 120)

FARM EGGS

A producer may sell eggs at a farmers market from his own flock of less than 3,000 birds under the following conditions:

- Indications the eggs have been effectively cleaned and sanitized.
- Eggs sold as unclassified or ungraded eggs shall be sold in unused containers that are labeled with the name and address of the producer of the eggs.
- Eggs deemed adulterated may not be offered for sale.
- Eggs are stored at 41° or below. (21 CFR 115.50)

MEAT AND MEAT PRODUCTS

Meat and Poultry products fall under the jurisdiction of USDA. If a meat product is more than 2% poultry or 3% beef, it is regulated by USDA. The exception to this is farm based retail meat that is permitted through the Tennessee Department of Agriculture. This is meat processed at a USDA inspected facility then provided refrigerated or frozen in original packaging (from USDA facility) with USDA seal readily visible and in compliance with all labeling requirements. USDA Contact information can be found at <http://offices.sc.egov.usda.gov/locator/app>.

FARM BASED RETAIL MEAT

- Requires a \$50 Food Establishment/Retail Meat Sales Permit and TDA inspection. (T.C.A. § 53-8-207) Permit must be posted where meat sales occur.
- Permit is acceptable for "retail meat sale" only. Product sold for the purpose of resale to restaurants, grocery stores or other retail outlets will be regulated by USDA.
- Animals must be processed at a USDA inspected facility which is credentialed for the animal to be processed. Meat must be processed, packaged and labeled at the USDA facility.
- Labels are to be approved by on-site USDA personnel and at a minimum must include name of product, complete address of individual offering meat for sale and net weight. Lot/code numbers are recommended. Meat items shall be sold by weight. The price per pound, total weight and total price is required to be on the label.
- Meat must be transported in a secure manner. A freezer or refrigerator operated by inverter is acceptable.
- Cooler/refrigerator/freezer units used for the storage or transportation of meats must be cleanable, kept clean and in good repair.
- Storage in cooler/refrigerator/freezer(s) units dedicated for the meat offered for sale and are located in a secure area away from potential sources of contamination and accessible for inspection by TDA. Thermometers are required in coolers/refrigerators to verify temperatures of storage.
- All poultry meat must be stored in a separate cooler/refrigerator/freezer to prevent cross contamination with meats of other species unless all such stored meat is received and maintained hard frozen.
- If the product is acquired frozen from the processor it must be maintained in a frozen state from the processing facility to the consumer. Refrigerated product must be maintained under 41°F from the processing facility to the consumer.
- Hands and outer clothing must be kept clean when handling meat being offered for sale.
- Records of animal source and location of consumer purchase should be maintained for traceability purposes.

SEAFOOD

Vendor is required to be under inspection by the TDA. All products must be from an approved, inspected source. All products must be packaged by a facility under inspection by the responsible authority in the state of origin. Packages should bear the item name, weight, and name and address of the packer or distributor (if an item is sold in random weight packages, the label must contain the price per pound, the net weight and the total price). All product must be maintained in the condition intended for sale, either frozen (below 0°) or refrigerated (below 41°) by mechanical device only in the case of frozen. If refrigerated and held by ice, all melted water must be contained and disposed into an accepted waste water disposal system.

If loose product is sold from a vehicle it must be equipped with the following: hand washing sink; 3 compartment ware washing sink; hot and cold running water; potable water tank (if not equipped with hook up); waste water tank (with larger capacity than potable tank); certified scale; shielded or shatter resistant lights; floors, walls and ceilings should be smooth and moisture resistant; and comply with the requirements listed above for packaged products. (21 CFR 123)

POULTRY

Poultry products are under the jurisdiction of the Food Safety Inspection Service (FSIS) of USDA. All poultry processors must register with FSIS on form 5020-1 available at www.fsis.usda.gov/wps/portal/fsis/forms. The Poultry Products Inspection Act authorizes certain exemptions whereby poultry may be slaughtered and processed. Poultry products processed under one of these exemptions and meeting all the criteria set forth by FSIS are exempt from continuous bird-by-bird inspection and the presence of FSIS inspectors during the slaughter of poultry and processing of poultry products. These poultry products must be slaughtered and processed in sanitary conditions suitable for human food. (9 CFR 381)

NUTS

Unprocessed nuts in the shell are exempt from inspection. If nuts are shelled and pre-packaged, permitting and inspection by TDA is required. (T.C.A. § 53-1-208)

SHELLED PEAS

Unprocessed peas in the shell are exempt from inspection. If peas are shelled and pre-packaged, permitting and inspection by TDA is required. (T.C.A. § 53-1-208)

OTHER PRODUCTS

SOAPS

Homemade soaps made from goat/sheep raw milk are under the guidance of Consumer Product Safety Commission. No inspection or permitting is required by the Tennessee Department of Agriculture. See cpsc.gov for more information.

PET FOOD

Any person manufacturing an animal feed or pet food, including pet treats and raw milk, must be licensed by the TDA. Required labeling must accompany the product, including the manufacturer's name and address, net weight and guaranteed analysis (percent protein, fat and fiber). (T.C.A. § 44-6-104) Additional information may be obtained by contacting Ag Inputs at 615-837-5137.

PLANTS

All persons offering plants and plant material for sale, except vegetable plants, must possess a Plant Dealer, Greenhouse or Nursery Certificate from the TDA. (T.C.A. § 43-6-101-112) Additional information may be obtained by contacting Plant Certification at 615-837-5137.

LIVESTOCK

Any person who buys, receives, or assembles livestock for resale, either for that person's own account or that of another person more than nine (9) times in any consecutive three (3) month period, is required to be licensed as a livestock dealer by the TDA. (T.C.A. § 44-11-102)

Any equine that changes ownership must be accompanied by proof that the equine(s) tested negative on an official test for Equine Infectious Anemia, which was conducted within the previous twelve (12) months.

Any sheep and any goat that has been comingled with sheep must have an official USDA scrapie identification (official USDA ear tag or registration tattoo if accompanied by registration papers) identifying the sheep or goat to the flock of origin.

All out-of-state domestic animals (sheep, goats, swine, dogs, cats) must be accompanied by an official Certificate of Veterinary Inspection, commonly called a veterinary health certificate.

All out-of state poultry must be accompanied by National Poultry Improvement Plan documentation or a Certificate of Veterinary Inspection indicating their negative flock status or negative individual test results for pullorum-typhoid.

Report sick animals to the State Veterinarian's Office at 615-837-5120 or animal.health@tn.gov. For more information visit <http://www.tn.gov/agriculture/regulatory/animals.shtml>

DOGS AND CATS

Any person who sells or buys for the purpose of resale, dog(s) or cat(s) at a flea market, is required to be licensed as a dog and cat dealer by the Tennessee Department of Health. (T.C.A. § 44-17-105) "Flea market" means any assemblage of twenty (20) or more persons gathered together at regular or irregular intervals, whether in open air or under cover, for the purpose of buying, selling, or trading merchandise to and from the general public, when this buying, selling, or trading is outside of the regular business or occupation of the majority of persons so gathered, and when the majority of the persons so gathered do not pay a business privilege tax for their activities at the flea market. Only healthy animals should be offered for sale. Contact the Tennessee Department of Health at 1-877-403-7350 or 615-532-7350.

RESOURCES

Tennessee Department of Agriculture (TDA)

Information on all permits and licenses required by the Tennessee Department of Agriculture can be found by calling 1-800-628-2631 or at:
<http://www.state.tn.us/agriculture/regulate/permits/index.html>

Pick Tennessee Products Program

Farmers/Producers of fresh TN agricultural products and manufactured/processed food products are eligible to be included in the Pick Tennessee Products program and may apply online at www.picktnproducts.org.

Ag Inputs

Any person manufacturing an animal feed or pet food, including raw milk and pet treats, must be licensed by the Tennessee Department of Agriculture. Required labeling must accompany the product, including the manufacturer's name and address, net weight and guaranteed analysis (percent protein, fat and fiber). Additional information regarding the sale and distribution of animal feed, agricultural seed and commercial fertilizer products may be obtained by contacting Ag Inputs at 615-837-5135.

Weights and Measures

Most commodities may only be sold by weight, measure or count, using a commercial scale that complies with state law.

Scales

Scales may be inspected on an annual basis. Approval seals are placed on those scales in compliance. Non-compliant scales are to be repaired by scale agencies licensed by the department. Commodities labeled by weight must be sold by net weight and contain at least the amount stated on the label. Additional information may be obtained by contacting Weights & Measures at 615-837-5109.

CONTACTS

Tennessee Department of Agriculture

Consumer and Industry Services Division
Food and Dairy Section
P. O. Box 40627
Melrose Station
Nashville, TN 37204
Phone: 615-837-5193
Fax: 615-837-5335

Tennessee Department of Agriculture

Market Development Division
Holeman Bldg, P. O. Box 40627
Nashville, TN 37204
Phone: 615-837-5160
Fax: 615-837-5194

Tennessee Department of Health

Division of General Environmental Health
Cordell-Hull Bldg.
425 Fifth Avenue, N. Sixth Floor
Nashville, TN 37247-3901
Phone: 615-741-7206
Fax: 615-741-8510

University of Tennessee Extension

2509 River Drive
114 McLeod
Knoxville, TN 37996-4539
Phone: 865-974-7274
Fax: 865-974-7332

UT Center for Profitable Agriculture

P.O. Box 1819
Spring Hill, TN 37174-1819
Phone: 931-486-2777
Fax: 931-486-0141

USDA Meat & Poultry Inspection Section

100 Alabama Street, Bldg. 1924, Suite 3R-90
Atlanta, GA 30303
Phone: 404-562-5900
Fax: 404-562-5877

USDA Food Safety & Inspection Service District 90

715 South Pear Orchard Road
Ridgeland, MS 39157
Phone: 601-965-4312 or 1- 800-647-2484
Fax: 601-965-5901

United States Food and Drug Administration (FDA)

Contact: 1-888-INFO-FDA
(1-888-463-6332)

