



Tennessee Department of Agriculture

# FARMERS MARKETS

STATE COMPLIANCE GUIDE

Spring 2017

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# **RULES FOR FOOD SOLD AT FARMERS MARKETS: A GUIDANCE DOCUMENT**

## **INTRODUCTION**

A safe and wholesome food supply is a primary mission of the Tennessee Department of Agriculture (TDA). All food sold in Tennessee comes from an approved source inspected and permitted by the appropriate regulatory authority. There are some exceptions as explained in following sections.

This document is not intended to be the all-inclusive final authority on food safety. It points the reader to laws and source materials that give guidance to farmers, market management, and potential vendors. More detailed information on beginning a food manufacturing business or how to market products is available from the Center for Profitable Agriculture, <https://ag.tennessee.edu/cpa> and the University of Tennessee Extension Service, <https://ag.tennessee.edu>.

References in this document to T.C.A., Tenn. Comp. R. & Regs., and CFR are to Tennessee Code Annotated, Tennessee Comprehensive Rules and Regulations, and the Code of Federal Regulations. Specific sections may be accessed at [lexisnexis.com/hottopics/tncode](https://www.lexisnexis.com/hottopics/tncode), <http://share.tn.gov/sos/rules/0080/0080.htm>, and [ecfr.gov](http://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 that is adulterated in anyway. (T.C.A. § 53-1-104)

## TYPES OF FOOD

### FRUITS and VEGETABLES

Unprocessed fruits and vegetables in their raw or natural state with only a minimal amount of cutting or trimming necessary for harvesting are exempt from permitting and inspection in Tennessee. (T.C.A. § 53-8-203). The federal Food Safety Modernization Act has placed new requirements on large scale produce growers who conduct more than \$25,000 in sales per year. If you think you may fall into this category contact (615) 837-5193.

### FOOD FOR IMMEDIATE CONSUMPTION

Products sold for immediate consumption on site like restaurants or concessions stands are under the jurisdiction of the local health department in each county. (T.C.A. § 68-14-704)

### PROCESSED FOODS

Processed foods in any form, packaged for resale, and offered for sale at a farmers market must come from a licensed and inspected facility unless the food is from a facility that is exempt from licensure by meeting the following criteria:

- The food is not potentially hazardous, as defined by departmental regulation;
- The person is not subject to any license or permit requirements under the Tennessee Egg Law (T.C.A. § 53-2-107), the Dairy Law of the State of Tennessee (T.C.A. §§ 53-3-105; 53-3-106), the Tennessee Meat and Poultry Inspection Act (T.C.A. §§ 53-7-216; 53-7-220), or the Tennessee Retail Food Safety Act (T.C.A. § 53-8-206);
- The person introduces food into commerce only through direct retail sales to end consumers in the state;
- The person employs no regular, full-time employees for the manufacturing, processing, packing, or holding of food; and
- Prior to introducing the food into commerce, the person labels the food in accordance with this part and regulations promulgated by the commissioner.

"Non-potentially hazardous food" means jam, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food. "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. 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, may be sold only 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 Service:  
<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 contain no additives may 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. §§ 53-1-101 *et seq.*; 53-16-101)

### **HONEY**

“Honey” means the natural food product resulting from the harvest of nectar by honeybees. Honey must comply with composition and labeling requirements under Tenn. Comp. R. & Regs. 0080-04-12.

Infrequent casual sales of honey or the selling or packaging of less than 150 gallons of honey per year do not require the producer to be licensed and inspected. (T.C.A. §§ 53-1-102(29); 53-8-203(13))

### **DAIRY**

All dairy products, including ice cream and cheeses, must come from an approved source that is inspected and permitted. (T.C.A. § 53-3-106). In addition, such foods must be stored at or below 41° Fahrenheit (or frozen in the case of ice cream) at point of sale.

Raw milk cannot be offered for sale for human consumption. Raw milk may be



obtained through cow share programs. Cow share programs are agreements between the owner of the cow or herd and the share owner allowing owners to take possession of their share of milk production upon payment for their share of the cow or herd. (T.C.A. § 53-3-119). For any questions on raw milk production, please contact TDA at (615) 837-5536.

## JUICE

Because of the potential for pathogenic microbial growth juices 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:

- Compliance with sanitation requirements of egg rules.
- Eggs sold as unclassified or ungraded eggs must be sold in containers that are labeled to indicate 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 over 2% poultry or 3% beef, it is regulated by USDA. The exception 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. Contact USDA at: <http://offices.sc.egov.usda.gov/locator/app>

## FARM BASED RETAIL MEAT

- Requires a Food Establishment/Retail Meat Sales Permit and TDA inspection (T.C.A. § 53-8-207). Permit must be posted where meat sales occur.
- This permit is for retail meat sales only. Product sold to restaurants, grocery stores or other retail outlets is 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 approved by on site USDA personnel and must include name of product, complete address of individual offering meat for sale and net weight. Lot or code numbers are recommended. Other information under the weights and measures law, such as the price per pound, the total weight and the 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, or freezer units used for the storage or transportation of meats must be cleanable, kept clean, and in good repair.
- Storage in cooler/refrigerator/freezer units dedicated for the meat offered for sale requires location 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, or freezer to prevent cross contamination with meats of other species unless all such stored meat is received and maintained hard frozen.
- Re-freezing of product is prohibited. 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.
- Clean hands and outer clothing are required when handling meat offered for sale.
- Records of the source of the animal and where the consumer purchased it should be maintained for traceability purposes.

## SEAFOOD

The vendor is required to be under inspection by the Tennessee Department of Agriculture, Consumer and Industry Services Food and Dairy Division. A permit and semiannual inspection is required.

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 must 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 products must be maintained in the condition intended for sale, either frozen by mechanical device (below 0°F) or refrigerated (below 41°F). If refrigerated and held by ice, all melted water must be contained and disposed into an accepted waste water disposal system.

Vehicles from which loose product is sold 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 that are smooth and moisture resistant. Product sold must meet requirements for packaged products. (21 CFR 123)

## POULTRY

Poultry products are under federal jurisdiction of the Food Safety Inspection Service (FSIS) of USDA. Producers may be exempt from compliance with federal authority in certain circumstances (Poultry Products Inspection Act). Exempt operations are exempt from continuous bird-by-bird inspection and the presence of FSIS inspectors during the slaughter of poultry and processing of poultry products. Exempt operations may also sell birds they process to the public if the birds were raised on the producers' farm and were 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.

### PET FOOD

Any person manufactures or distributes an animal feed or pet food in the state, including 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. (T.C.A. § 44-6-105). Additional information may be obtained by contacting TDA Agricultural Inputs Section at (615) 837-5135.



## PLANTS

All persons offering plants and plant material for sale must possess a Plant Dealer, Greenhouse or Nursery Certificate from the Tennessee Department of Agriculture. (Tenn. Comp. R. & Regs. 0080-06-01). Additional information may be obtained by contacting TDA Plant Certification Section 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 times in 90 days, is required to be licensed as a livestock dealer by the Tennessee Department of Agriculture. (T.C.A. § 44-10-202)

Any equine that changes ownership must be accompanied by proof that the equine(s) tested negative on an official test for Equine Infectious Anemia, 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 or CVI).

All out of state poultry must be accompanied by evidence of certification in the National Poultry Improvement Plan for Pullorum-Typhoid and Avian Influenza or be accompanied by a Certificate of Veterinary Inspection indicating negative individual test results for Pullorum-Typhoid within 90 days prior to entry and Avian Influenza within 21 days prior to entry.

For additional information on livestock import requirements, please visit: <http://www.tn.gov/agriculture/regulatory/animals.shtml>.

Report sick animals to (615) 837-5120 or [animal.health@tn.gov](mailto:animal.health@tn.gov).

## 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. §§ 44-17-102 and 103) "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 may be offered for sale.

Dog and cat dealers are licensed by the Tennessee Department of Health and may be contacted at: (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 (800) 628-2631 or at: <http://www.state.tn.us/agriculture/regulate/permits/index.html>. Particular TDA programs that may be of interest include:

### *Pick Tennessee Products Program*

Farmers or Producers of fresh TN agricultural products and manufactured or processed food products are eligible to be included in the Pick TN products program and may apply online, [www.picktnproducts.org](http://www.picktnproducts.org).

### *Agriculture 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. 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 are only sold by weight, measure, or count, using a commercial scale that complies with state law. Scales are inspected on an annual basis. Approval seals are placed on those scales in compliance. Non-compliant scales must be repaired by scale agencies licensed by the department. Commodities labeled by weight must be sold by net weight and state that amount 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  
P. O. Box 40627  
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Phone: (615) 837-5193

Tennessee Department of Agriculture  
Market Development  
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Nashville, TN 37204  
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Tennessee Department of Health  
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425 Fifth Avenue North  
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