

Final:

Farm Direct Marketing Rules

603-025-0215

Purpose

This administrative rule recognizes farm direct marketing, including consignment between farm direct marketers, as a modern and accepted method of producing and selling food products, and maintains the integrity of food safety principles as required by state and federal laws. These legislative mandates are accomplished by exempting from licensure and inspection only those that raise their own products, that limit their food processing activities to only those identified by the Legislature as permissible without a license, and that sell to an end user a limited amount of products produced without a license and regulatory oversight.

603-025-0225

Definitions

For purposes of this chapter:

- (1) “Acidic foods” means a bottled, packaged or canned food product that meets any of the following requirements:
 - (a) Having a naturally occurring equilibrium pH of 4.6 or below; or
 - (b) Having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below; or
 - (c) Having a water activity (a_w) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below.
- (2) “Address” means physical street address, city, county, state, and zip code.
- (3) “Agricultural producer” means a person, including family members and employees, who grows, raises, and harvests agricultural products to the point at which the products are ready for sale.
- (4) “Approved” means conforming to scientific principles, applicable federal laws, and generally recognized industry standards that protect public health.
- (5) “Approved source” means a source that is licensed and inspected by a recognized regulatory authority, and whose license is in good standing.
- (6) “Comingle” means to mix, pool, or combine agricultural products of more than one agricultural producer prior to the sale of the products.
- (7) “Consign” means to send a farm direct product to market to be sold by a farm direct marketer who did not produce the product. Ownership of consigned products remains with the agricultural producer who produced the product until the product is sold to an end user.
 - (a) Consignment agreements are limited to farm direct marketers who are from the same county or from adjoining counties.
 - (b) A farm direct marketer is prohibited from representing that products offered for sale on consignment are his/her own.
 - (c) Farm direct products that may be consigned to a farm direct marketer are limited to:
 - (A) Fruits, vegetables, edible flowers and herbs that are fresh, or cured or dried as a part of routine post-harvest handling;
 - (B) Unshelled nuts that are raw, cured or dried in the shell; and
 - (C) Honey that has not been combined with any other ingredient.
 - (d) Shell eggs may be consigned only to a farm direct marketer who is a licensed egg handler.
- (8) “Cure” means to ripen naturally or by controlled environmental storage whereby the taste, smell, texture, or appearance of the product is altered without causing the product to become adulterated or

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processed to an extent that the product changes significantly from its original form. Examples of agricultural products that may be cured include, but are not limited to: garlic, potatoes, and sweet potatoes.

(9) “Department” means the Oregon Department of Agriculture.

(10) “Farm direct marketer” means an agricultural producer that sells farm direct products or producer processed products directly to the retail consumer.

(11) “Farm direct product” means an agricultural product grown, raised and harvested by an agricultural producer to the point at which the product is ready for direct, retail sale.

(12) “Fresh” means not altered by processing. “Fresh” excludes potentially hazardous foods, including but not limited to, raw seed sprouts of all kinds, raw melons that have been cut in any way, and raw tomatoes that have been cut in any way.

(13) “Lacto-fermented” means food processed by lactobacilli whereby the lactic acid content of the food decreases the equilibrium pH to 4.6 or below. Examples of lacto-fermented products include sauerkraut and kimchi.

(14) “Major food allergens” means the eight most common food allergens defined in the Food Allergen Labeling Protection Act of 2004 (FALCPA). The major food allergens that may be used under the farm direct marketing rules are peanuts, treenuts, soy and wheat.

(15) “Principal ingredients” means the farm direct products that comprise a producer-processed product except for: herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey, and sugar. For example, jalapeño peppers produced by a farm direct marketer would be a principal ingredient in pepper jelly, and tomatoes, onions, peppers, and garlic would be principal ingredients in salsa.

(16) “Producer-processed products” means farm direct products for which an agricultural producer has performed every step necessary to prepare the farm direct products for sale, including but not limited to: processing, bottling, canning and packaging. Every step necessary to prepare the farm direct products for sale will be conducted in a facility located where the farm direct products were grown.

(17) “Retail consumer” means the end user of a product. “Retail consumer” excludes: restaurants, grocery stores, schools, daycare centers, caterers, and other institutions, such as, prisons, hospitals, and nursing homes.

(18) “Water activity” means the measure of free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

Stat. Auth.: ORS 561.190, ORS 616 & (Enrolled House Bill 2336)

Stat. Implemented: ORS 616.230 & (Enrolled House Bill 2336)

603-025-0235

Farm Direct Marketer Exemption

(1) Agricultural products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruits, vegetables, edible flowers and herbs that are:

(A) Fresh; or

(B) Cured or dried by the agricultural producer as part of routine post-harvest handling.

(b) Dried or cured fruits, vegetables, edible flowers and herbs for which drying or curing is not part of routine post-harvest handling, if:

(A) All principal ingredients are grown by the agricultural producer; and

(B) The product is labeled with a list of ingredients and the name and address of the

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agricultural producer that produced the ingredients.

- (c) Shelled nuts and unshelled nuts cured or dried by an agricultural producer as part of routine post-harvest handling;
- (d) Shell eggs;
- (e) Honey, only when not combined with other ingredients;
- (f) Whole, hulled, crushed or ground grain, legumes and seeds, if of a type customarily cooked before eating;
- (g) Parched or roasted grains, if of a type customarily cooked before eating;
- (h) Popcorn, nuts, peppers and corn on the cob, if those items are:
 - (A) Roasted at the place of purchase,
 - (B) By a farm direct marketer,
 - (C) After purchase, and
 - (D) Not sold for immediate consumption.

(2) Producer-processed products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruit-based syrups, fruit in syrup, preserves, jams, jellies, processed fruits and processed vegetables that meet all of the following conditions:

- (A) They are producer-processed products;
- (B) They are acidic foods;

- (i) Products having a naturally occurring equilibrium pH of 4.6 or below will be processed in a clean, healthful and sanitary manner;
- (ii) Products having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner;
- (iii) Products having a water activity (a_w) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner using:

(I) A published process and product formulation that has been approved by a recognized process authority. Examples of published processes and product formulations that have been approved by a recognized process authority can be found in:

(I-a) United States Department of Agriculture Complete Guide to Home Canning, 2009 Revision;

(I-b) Pacific Northwest Extension publications. The Pacific Northwest Extension publications are produced cooperatively by Oregon State University, Washington State University, and the University of Idaho; or
(I-c) *So Easy to Preserve*, 5th Edition, which is offered by the University of Georgia Cooperative Extension.

(II) Any process and product formulation that has been submitted to, and approved by a recognized process authority. A recognized process authority may be contacted through the Oregon State University, Department of Food Science and Technology Extension Service.

(C) They are labeled with:

- (i) A product identity;
- (ii) Net weight;
- (iii) An ingredient statement that also includes properly declared major food allergens; and
- (iv) The name and address of the agricultural producer that produced the principal ingredients and processed the product.

(D) During the preceding calendar year, had annual sales of producer-processed products that in total did not exceed \$20,000.

- (i) Bottling, packaging and canning supplies will be made from food grade materials.
- (ii) Ingredients other than the principal ingredients are limited to herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey and sugar, and will be:
 - (I) From an approved source; or
 - (II) Farmed or produced by the agricultural producer.

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(b) Producer-processed products that are exempt from licensure do not include any raw juices.

(3) The provisions of ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing) and ORS 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) do not apply to the following:

(a) A farm direct marketer;

(b) A consigning agricultural producer; and

(c) The location(s) used by a farm direct marketer or a consigning agricultural producer to prepare, store, sell, expose for sale, or offer for sale the farm direct marketer's own or consigned agricultural products identified in Sections (1) and (2).

(4) The farm direct marketer exemptions provided in Section (3) may be revoked by the Department when it determines that:

(a) The location used by a farm direct marketer is not maintained in a clean, healthful and sanitary condition, or

(b) A farm direct marketer failed to ensure the condition and safety of the food it processed for direct sale.

Stat. Auth.: ORS 561.190, ORS 616 & (Enrolled House Bill 2336)

Stat. Implemented: ORS 616.700, ORS 616.835 & (Enrolled House Bill 2336)

603-025-0245

Consignment Sales

(1) Consigning agricultural producers exempt under OAR 603-025-0235(3)(b) are limited to sales of the following types of agricultural products:

(a) Fruits, vegetables, edible flowers and herbs that are:

(A) Fresh; or

(B) Cured or dried by an agricultural producer as part of routine post-harvest handling.

(b) Unshelled nuts cured or dried in the shell by an agricultural producer as part of routine post-harvest handling;

(c) Shell eggs, if the agricultural producer selling the consigned eggs is an egg handler licensed under ORS 632.715 (Egg Handler's License);

(d) Honey, only when not combined with other ingredients.

(2) A consigning agricultural producer will provide a farm direct marketer with documentation to be clearly and conspicuously posted during the sale of the products on consignment. The documentation will include:

(a) The name of the consigning agricultural producer;

(b) The product consigned by the consigning agricultural producer;

(c) The address of the consigning agricultural producer.

(3) A farm direct marketer will maintain separate sales logs for products sold on consignment.

(a) Sales logs will include, but are not limited to, the following information:

(A) The name of the consigning agricultural producer;

(B) The contact information of the consigning agricultural producer, including the address and phone number;

(C) Item(s) sold on consignment; and

(D) Quantity of item(s) sold on consignment.

Stat. Auth.: ORS 561.190 & (Enrolled House Bill 2336)

Stat. Implemented: ORS 616.700, ORS 616.835 & (Enrolled House Bill 2336)

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Prohibitions; Department Enforcement

(1) A farm direct marketer will not:

- (a) Sell, offer for sale, or expose for sale foods that are adulterated or misbranded under ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);
- (b) Receive, accept, possess, sell, offer for sale, or expose for sale food from a consigning agricultural producer that is adulterated or misbranded under ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);
- (c) Commingle products;
- (d) Knowingly sell or offer for sale foods covered by the farm direct sales exemption to a person that is not a retail consumer;
 - (A) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed honey producers are exempt from this requirement.
- (e) Sell foods other than those covered by the farm direct sales exemption found at OAR 603-025-0235 without an appropriate license.

(2) The Department may require a farm direct marketer or the entity in control of the location used by farm direct marketers to obtain and maintain a license under ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing), 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) for failure to maintain the location in a clean, healthful and sanitary condition in accordance with rules adopted under ORS 616.700 (Department to Enforce Sanitation Requirements for Food and Food Establishments).

Stat. Auth.: ORS 561.190, ORS 616.700 (Enrolled House Bill 2336)

Stat. Implemented: ORS 616.835 & (Enrolled House Bill 2336)

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Labeling Requirements

(1) The principal display panel of a producer-processed product as defined by OAR 603-025-0225(15) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

- (a) **“THIS PRODUCT IS HOMEMADE AND IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT”** and
- (b) **“NOT FOR RESALE.”**

(2) The principal display panel of shell eggs, grain, legumes, seeds and honey described under OAR 603-025-0235(1)(d) to (g) and 603-025-0245(1)(c) and (d) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

- (a) **“THIS PRODUCT IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT”** and
- (b) **“NOT FOR RESALE.”**
- (c) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed honey producers are exempt from the labeling requirements in (a) and (b).

(3) All bottled, packaged and canned food products described under OAR 603-025-0235 will be labeled with all of the following:

- (a) A product identity, which is a truthful or common name of the product that is contained in the package;
- (b) The net weight of the product. Net weight or volume must be in both the US lbs./oz. and metric scale. For example, “Net Wt. 12 oz. (340 g)” for a dry product and “Net Wt. 32 fl. Oz (1 QT) 946 ml” for a liquid product;
- (c) An ingredient statement that properly declares all major food allergens. All ingredients will be listed in descending order of predominance by weight or volume; and

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(A) Major food allergens allowed in producer-processed products under this rule are peanuts, tree nuts, soy and wheat;

(B) Major food allergens will be labeled:

(i) Using the appropriate major food allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen, for example, if a product contained semolina, the ingredient list could read: semolina (wheat); or

(ii) Using a “Contains” statement to summarize the allergen information in a statement at the end of, or immediately adjacent to, the ingredient list.

(d) The address of the agricultural producer that produced the principal ingredients and bottled, packaged or canned the food products.

(4) When Oregon or the Federal Government has adopted a standard of identity for any labeled product covered by the farm direct marketer exemption, that product will specifically meet those standards of identity found in ORS Chapters 616 (Food and Other Commodities) and 632 (Agricultural and Horticultural Products) and in OAR 603-025-0190 (Standards of Identity).

Stat. Auth.: ORS 561, ORS 616 & (Enrolled House Bill 2336)

Stat. Implemented: ORS 616.835 & (Enrolled House Bill 2336)

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Producer-Processed Foods Records

(1) Raw materials, packaging materials, and finished products that are not in compliance with United States Food and Drug Administration (FDA) regulations may be considered adulterated.

(2) Processing and production records for products having a water activity (a_w) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will show that the process and product formulations comply with all critical factors mandated by a recognized process.

(a) To demonstrate compliance with acceptable equilibrium pH measurements, batch-by-batch records of pH meter calibration and batch-by-batch records of finished product testing will be maintained.

(A) Finished product testing will be performed following the requirements of the 2010 version of 21 CFR 114.90(a) and (b) (Methodology). A pH meter or potentiometer is the primary instrument used in determining product pH. Colorimetric methods including, but not limited to, indicator solutions and indicator paper may be used if the equilibrium pH of the product is 4.0 or lower.

(b) Processing and production records will be associated with production dates and batches.

(c) Any deviation from an approved process and the corrective action taken to remedy the deviation will be recorded and maintained.

(A) A product produced with a processing deviation will:

(i) Not be sold for human consumption; or,

(ii) Be permitted for sale for human consumption if the product is reprocessed to rectify the deviation in a manner approved by a recognized process authority.

(3) Farm direct marketers will maintain sales records of products subject to OAR 603-025-0235(2). Sales records will include, but need not be limited to, the following information:

(a) Product(s) sold;

(b) Price;

(c) Quantity sold;

(d) Current, rolling total of year-to-date sales.

(4) Copies of all records required by these administrative rules (OAR 603-025-0225 through 0275) will be retained at the processing facility or other reasonably accessible location for a period of three years from the date of manufacture.

(a) Records will be made available to the Department upon request.

(b) Failure to provide records to the Department upon request may result in the revocation of the farm direct marketer exemption.

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Stat Auth.: ORS 616.700 & (Enrolled House Bill 2336)

Stat. Implemented: (Enrolled House Bill 2336)