



**A Guide to Illinois Laws
Governing Direct
Farm Marketing**
For Farmers and Other Food Entrepreneurs

By Rich Schell J.D.

Edited by Juli Brussell

A Guide To Illinois Laws Governing Direct Farm Marketing

For Farmers and Other Food Entrepreneurs

Acknowledgements

The author would like to acknowledge the kind assistance of the many people who helped in this project. The Illinois Stewardship Alliance also wishes to recognize the many organizations and agencies that contributed either time or funds to make this guide a reality. Thanks especially to Sustain, whose expert geniuses in layout and design added flair to a potentially dry subject. Thanks as well go to the North Central Region Sustainable Agriculture Research and Education program (NCR SARE) of the United States Department of Agriculture, whose funds from the University of Illinois' SARE Small Farm Enterprise Project paid for the guide's content. We extend additional thanks to the Illinois Department of Agriculture's C2000 program for publication assistance. Last, but not least, thanks to Neil Hamilton, director of the Agricultural Law Center, Drake University, Des Moines, Iowa. His unflagging devotion to helping family farmers make a living transcends state boundaries. His *Legal Guide to Direct Marketing* provided the impetus for this brief, state-specific guide. As farmers, food entrepreneurs, and eaters, we salute you!

Rich Schell

Rich Schell is an author, attorney, and small farm owner in Illinois. He grew up in a farm family and continues the family tradition by transitioning his farm into organic production. He currently serves as secretary for The Chicago Farmers and as a board member for the Initiative for the Development of Entrepreneurs in Agriculture (IDEA). He is a part-time instructor at Joliet Junior College and writes frequently on the topics of agricultural entrepreneurship. Reach him at Schellville@excite.com.

Juli Brussell

Juli Brussell directs the Community Food and Farming Systems program at the Illinois Stewardship Alliance and coordinates the Illinois Sustainable Food Policy Council. She serves on the Board of Directors for the Organic Farming Research Foundation and on the Illinois Small Farm Task Force. She and her husband Kevin farm 500 acres in southeastern Illinois, where they raise organic crops and forages as well as beef cattle.

Dedication

This guide is dedicated to my wife and son who patiently put up with me while I was researching and writing it, and to the memory of my father who, in a different time and era, actually made a living on a small farm.

Table of Contents

Introduction	4
General Overview	4
Key Regulatory Points	5
Sourcing the right information	5
Liability Issues	6
Processing Foods	7
Taxing Issues	8
Sales Tax	8
Income Tax	8
Selling as 'Organic'	8
Weights and Measures	9
Zoning Rules	9
Specific Food Regulations	10
Apples	10
Dairy: Milk and Cheese	10
Raw Milk	11
Cheese	11
Eggs	11
Meat	13
Poultry	13
Vegetables and Fruit	14
Checklist of Issues to Consider Before Selling Farm Products Directly	15
Appendix	16
Selected Federal and State Statutes and Administrative Rules Governing Direct Sale of Farm Products in Illinois with Entities Having Jurisdiction	

Disclaimer

This guide was written to give the reader accurate and authoritative information about selling farm products directly to consumers. The Illinois Stewardship Alliance, however, is not engaged in giving legal or other professional 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 or other professional.

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 might wonder about the legal ramifications of establishing a farmers market or processing locally grown foods.

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. Federal, state, and local government entities, however, regulate food sales. 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. This first section serves as an introduction and a general overview. The second provides an overview of key regulatory points. The third section discusses regulations for specific products. Last 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.



Key Regulatory Points

Depending on where and what is sold, a particular product may be little regulated, extensively regulated, or fall somewhere in between. One general point to keep in mind is that a product sold in Illinois could be regulated by Illinois at the state or local level 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.

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, raw vegetables are specially 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 the new legislation that impacts food processing and sales: PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002. This Act gave the Food and Drug Administration (FDA) broad powers to insure the safety of the American food system. The FDA has been working on regulations to implement this Act and intends to have a final version published in October, 2003. The FDA may require food industry players to keep records, register their facilities, and give prior notice of importing food into the United States. If food processing entities fail to meet these



Who Regulates What? State, Federal, or Local?

requirements, the FDA may administratively detain their food products and prevent them from shipping their food products.

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 proposed regulations, all food producers that do not fit under certain

exemptions must register with the FDA by December 12th 2003. At the time this document went to print, 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.

The second regulation of interest requires that 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 regulated by the Illinois Department of Agriculture while processed commodities are regulated by the Illinois Department of Public Health.

In general, regulators are most interested in products that have the higher potential for severity of human harm. Because of this, meat is tightly restricted because of its susceptibility to bacteria that have the ability to harm many people and harm them severely.



Just remember, in general regulators are most interested in products that have a high potential for severity of human harm.

Liability Issues

Liability comes in two basic flavors. 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. On the public side, 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 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-food seller) for abatement of the nuisance (meaning STOP DOING IT) and for prosecution of fines.

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' & '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 melon poses little threat of carrying harmful bacteria because it is closed up and offers little area for bacteria to grow. Once the melon is sliced and served, however, the potential for illness becomes greater and the regulations governing its sale become more numerous.



If it's chopped, sliced, diced, bottled, jammed or jelled, pickled or put into a bag, chances are there is a regulation telling you how it must be handled.

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

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 both 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.

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 percent, which is the food rate. Crafts and similar items, however, are taxed at 6.25 percent. 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.

Income Tax

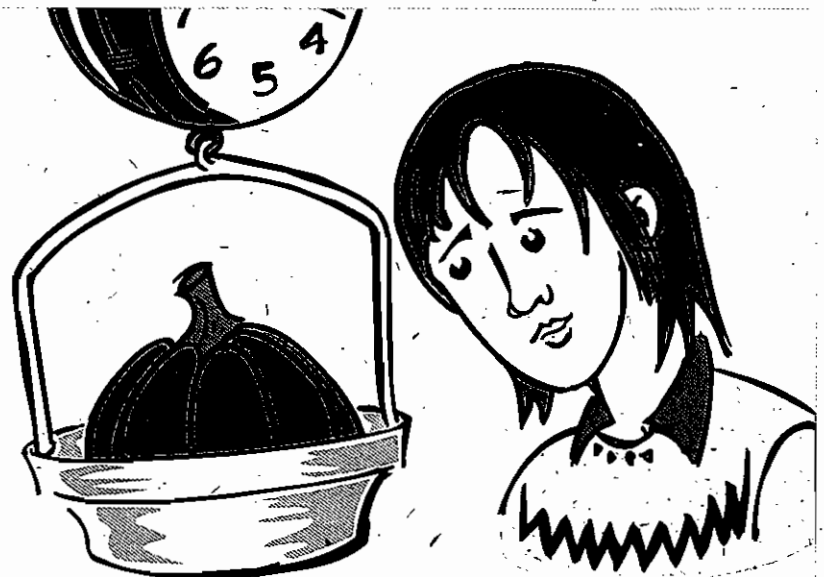
Individuals earning income from the sale of farm products are required to report the income and pay their tax as required by federal and state taxing laws. Adding direct sale income to a farm tax return

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/ or in print from one of their main offices.

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). 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", although the USDA is still working on ramifications for products such as wild-caught fish. 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



Weighing your options...

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.

After the magical date of October 21, 2002, producers and handlers of organically produced agricultural products had to discontinue the use of their former (pre-October 21, 2002) labeling practices and adhere to the labeling standards provided in subpart D, Labeling, of the Final Rule (Got that? Up to October 20, 2002—old labeling practices allowed; after October 21, 2002—old labeling practices not allowed). Organic products that entered the chain of commerce before October 21, 2002 will not be in violation of NOP regulations. After October 21, 2002, such products not properly labeled that enter the chain of commerce will be in violation of NOP regulations and subject to fines and penalties that may vary from state to state.

Weights and Measures

Both the state of Illinois and local municipalities may regulate scales used in commerce. If



OUCH! Don't watch your dollar bills fly down a drain.

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 needing 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. 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.

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 Public Health Department, and paying a fee. 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 require 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.

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.

Raw Milk

Acquiring raw milk directly from the farm in Illinois is technically possible. According to Illinois statutes, 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.

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 by 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.

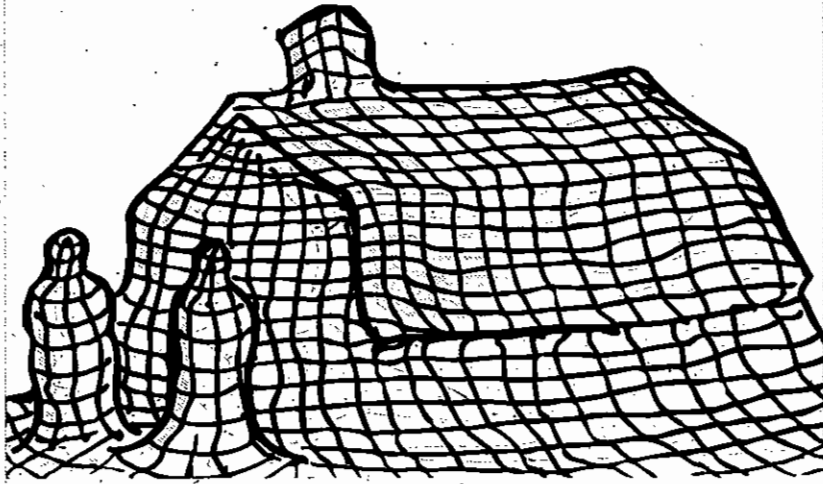
Eggs

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



To pasteurize or not to pasteurize, there is not much question, or much choice for most products.



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.

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. 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, turkey, duck, 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 IL 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.

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 go 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.

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



Don't play chicken with the Illinois regulations!

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.

In addition, 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.

Last, 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 to think that official inspection has been made under the Meat and Poultry Inspection Act.

Please note, 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

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 number. 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 any 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 master.

Processed fruits and vegetables such as jams, jellies, and pickles come under rules and regulations governing processed foods. To offer them for sale, you will need a certified processing facility, one regulated by the IL 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. Check with the IL Secretary of State's office in Springfield, IL to see what obligations you have as an employer. If you need to offer contracts to your employees, you may need to check the contract language with your attorney.

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*

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.

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 products*

The federal government now 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 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.

8. *Rules & 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 that 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.

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

Food, Drug and Cosmetic Act (As it pertains to the Department of Agriculture)	410 ILCS 620
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)
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 Smoked Fish	(77 Ill. Adm. Code 735)

FEDERAL STATUTES

Compilation of Laws Enforced by the U.S. Food and Drug Administration and Related Statutes

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 Foods Production Act	7 USC 6501
Poultry Products Inspection Act	21 USC 451
Sanitary Food Transportation Act	49 USC 5701

Additional hard copies of this guide are available from the Illinois Stewardship Alliance. It is also available on-line at www.illinoisstewardshipalliance.org



PO Box 648 Rochester, IL 62563 217-498-9707