



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law Webinar Series

Understanding the Basics of

Licensing & Regulation of Direct Agricultural Product Sales

December 16, 2022





Ag Law Center Website Resources

aglaw.psu.edu

- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Agricultural Law Tracker
- Shale Law Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Videos/Presentations
- PA Ag Mediation Program



Agricultural Law Weekly Review

[SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS »](#)

[Agricultural Law Weekly Review—Week Ending November 11, 2022](#)

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌟 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No. 2:22-cv-00091. According to the complaint, filed May 11, 2022, River Valley and Tyson acquired ten-year exclusive

Tweets from @AgShaleLaw

 **PSU Ag & Shale ...**
@AgShaleLaw · 2h

Today at noon (ET):
"Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales" 🍷
1 CLE credit available for PA attorneys
[Learn more and register:](#)



Pennsylvania Agricultural Mediation Program

Who can request mediation?

USDA-related issues:

- Agricultural Loans
- Wetlands determinations
- Compliance with farm programs, including conservation programs
- National organic program established under the Organic Foods Production Act of 1990
- Agricultural Credit
- Rural water loan programs
- Grazing on National Forest System land
- Pesticides

Non-USDA issues:

- Land and Equipment Lease issues.
- Family farm transition.
- Farmer-neighbor disputes.
- As approved by PA Secretary of Agriculture



Contact us:

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University Park, PA 16802

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AgMediation@PennStateLaw.psu.edu

Website: www.PAAgMediation.com



Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Webinar Series: Past Topics

Understanding the Basics of

1. Agricultural Labor Laws (April 29, 2022)
2. Leasing Farmland for Energy Development (May 20, 2022)
3. Local Land Use Regulation of Agriculture (June 24, 2022)
4. Statutory Protections for Ag Operations (July 22, 2022)
5. Agricultural Cooperatives (Aug. 26, 2022)
6. Livestock Market Regulation (Sept. 23, 2022)
7. Crop Insurance (Oct. 21, 2022)
8. Federal & State Conservation Programs (Nov. 18, 2022)



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Friday, January 27, 2023, noon–1:00 ET

- *Understanding the Basics of:*
Agricultural Finance

Friday, February 24, 2023, noon–1:00 ET

- *Understanding the Basics of:*
Pennsylvania's "Clean & Green" Preferential Tax Assessment Program



Housekeeping

- This webinar is being recorded.
- Please Use the Q&A feature for questions.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form
 - Listen for code word, enter code word in form



Understanding the Basics of **Licensing & Regulation of** **Direct Agricultural Product Sales**

This webinar will cover the ***state laws*** and ***county/municipal ordinances*** that regulate the activity of producing and selling foods for human consumption, including ***health/food code licensing*** requirements for the ***storage, production*** and ***sale*** of food.



Pennsylvania Licensing and Regulatory Obligations

(NOT INCLUDING FSMA)

PDA's Bureau of Food Safety
enforces most applicable laws.

- *“The mission of the Bureau of Food Safety and Laboratory Services is to protect and keep food safe, from the farm to the fork, by educating, regulating and ensuring compliance with food safety laws and regulations.*
- *The Bureau has several divisions where each provides important oversight to the production and service of safe food.”*

Milk and Dairy
Product
Permitting

Eggs, Fruit and
Vegetables

Retail Food
Inspection
Reports

Laboratory

Food
Manufacturing,
Packing,
Holding and...

Retail Food

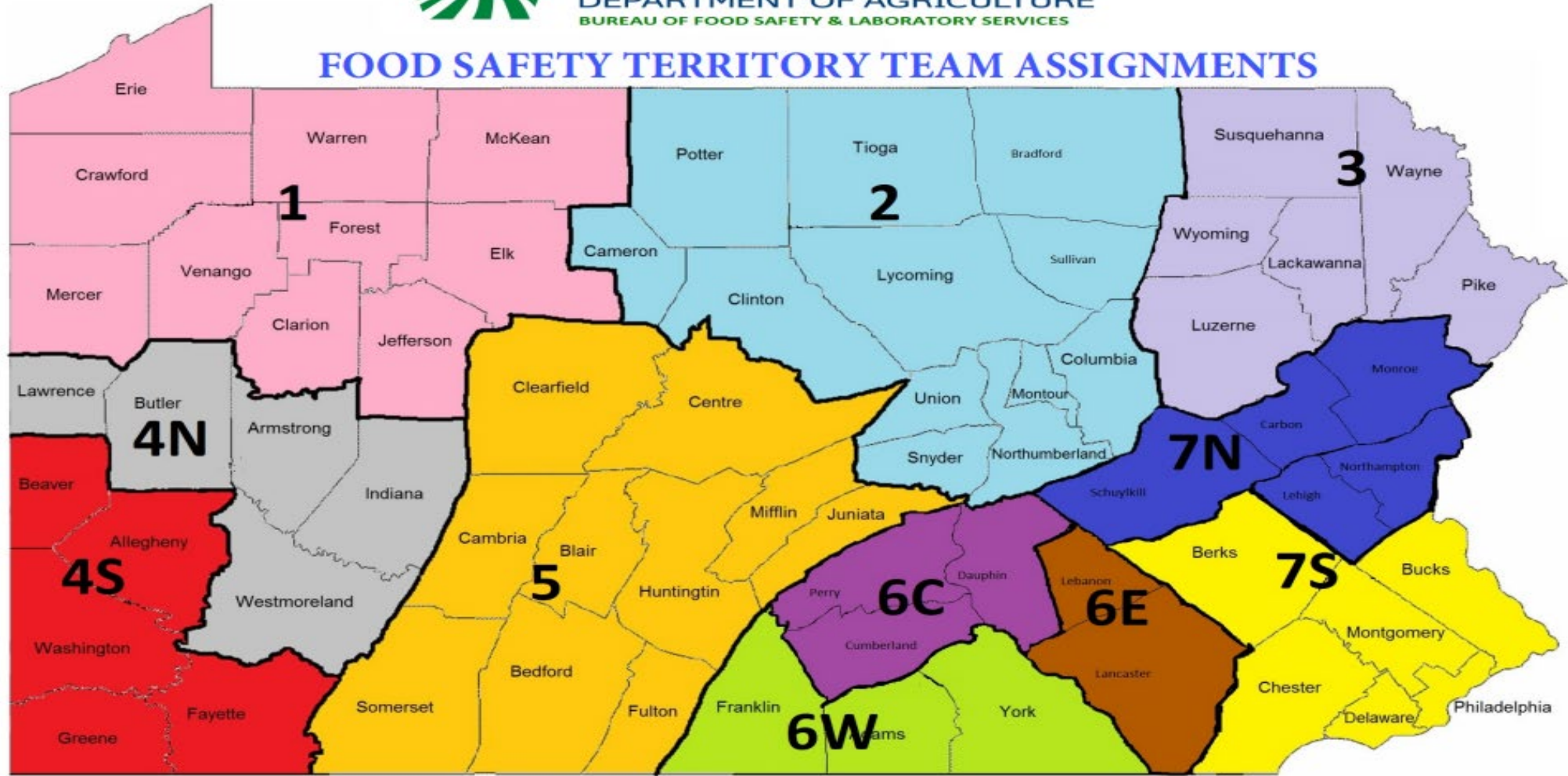
Food Safety
Modernization
Act (FSMA)

Consumer
Protection

Food Safety
Complaints



FOOD SAFETY TERRITORY TEAM ASSIGNMENTS



Territory 1 Supervisor Jill Burnham jburnham@pa.gov	Territory 2 Supervisor Leon Napolitano lnapolitan@pa.gov	Territory 3 Supervisor Patrice Smith spatrice@pa.gov	Territory 4N Supervisor Robert Delancey rodellancey@pa.gov	Territory 4S Supervisor Richard Paterini rpaterini@pa.gov	Territory 5 Supervisor Richard Choboy rchoboy@pa.gov
Territory 6W Supervisor Daniel Devine dadevine@pa.gov	Territory 6C Supervisor Raymond Barlow rbarlow@pa.gov	Territory 6E Supervisor Melissa White mwhite@pa.gov	Territory 7S Supervisor Judy Miller judithmil@pa.gov	Territory 7N Supervisor Mary Hinton mahinton@pa.gov	

Search for Inspection Results [Help](#)

Bureau of Food Safety and Laboratory Services

Disclosure: Please remember that any inspection is a 'snapshot' of the day and time of the inspection. An inspection conducted on any given day may not be representative of the overall, long-term cleanliness of an establishment. Also, at the time of the inspection, violations are recorded but are often corrected on site prior to the inspector leaving the establishment.

Establishment Match By Name/Location

Establishment Name (Full or Partial Name):

Most Recent Inspection:

In Compliance Out of Compliance

Jurisdiction:

Street Number and Name:

City

State

Pennsylvania

Territory

County

Zip

Inspection Date Range

Start:



End:



Search

Clear

Plot results on Map Search within mile(s) of the address above.
(Results sorted by distance from center point.)



Primary Laws Enforced by PDA

- [Retail Food Facility Safety Act](#)
- [Food Safety Act](#)
- PA Regulations: [PA Food Code](#) – Pennsylvania has incorporated almost verbatim the “[Model Food Code](#)” published by the FDA.

Food Code

U.S. Public Health Service



2017

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service • Food and Drug Administration

College Park, MD 20740



Retail Food Facility Safety Act

- [§ 5701. Short Title of Subchapter](#)
- [§ 5702. Definitions](#)
- [§ 5703. License Required](#)
- [§ 5704. Inspection, Sampling and Analysis](#)
- ~~[§ 5705. \(Reserved\)](#)~~
- ~~[§ 5706. \(Reserved\)](#)~~
- [§ 5707. Powers of Department](#)
- [§ 5708. Infectious Persons](#)
- [§ 5709. Linens, Equipment and Utensils](#)
- [§ 5710. Retail Food Facility and Employee Cleanliness](#)
- [§ 5711. Toilets, Sinks and Drains](#)
- [§ 5712. Applicability](#)
- [§ 5713. School Cafeterias and Organized Camps](#)
- [§ 5714. Penalties](#)

Food Safety Act

- [§ 5721. Short Title of Subchapter](#)
- [§ 5722. Definitions](#)
- [§ 5723. Prohibited Acts](#)
- [§ 5724. Temporary or Permanent Injunctions](#)
- [§ 5725. Penalties](#)
- [§ 5726. Detention and Condemnation](#)
- [§ 5727. Temporary Permits](#)
- [§ 5728. Adulteration of Food](#)
- [§ 5729. Misbranding of Food](#)
- [§ 5730. Regulations to Exempt Certain Labeling Requirements](#)
- [§ 5731. Poisonous or Deleterious Substances and Tolerances](#)
- [§ 5732. Inspection, Sampling and Analysis](#)
- [§ 5733. Rules and Regulations](#)
- [§ 5734. Registration of Food Establishments](#)
- [§ 5735. Product Registration](#)
- [§ 5736. Construction of Subchapter](#)
- [§ 5737. Acts Not Affected](#)



What is a *Retail Food Facility*? (needs a License)

- **“Retail food facility.”** A public eating or drinking place or a retail food establishment.
- **“Retail food establishment.”** An establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.



What is a *Food Establishment*? (needs a Registration)

“Food establishment.” A room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food. The term excludes retail food facilities, retail food establishments and public eating or drinking places and those portions of establishments operating exclusively under milk or milk products permits.



What is “*Reg. Penna. Dept. Agr.*” ?

§ 5735. Product registration

The secretary **may** promulgate regulations allowing food establishments to label their food products as having been registered by the department. “Reg. Penna. Dept. Agr.” shall be the approved abbreviation. This registration label shall be limited to food products prepared or packed in a food establishment registered under section 5734 (relating to registration of food establishments).



Retail Food Facility License Exemptions

§ 46.1141. License requirement.

(a) *General requirement.* A person may not operate a retail food facility without a valid license issued by the Department or licensor, unless otherwise provided in subsection (b).

(b) **Exemptions.** The following retail food facilities are exempt from licensure requirements under the Retail Food Facility Safety Act but remain subject to the inspection provisions and all other provisions of the Retail Food Facility Safety Act:

(1) **A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold.**

(2) **A retail food facility that sells only raw agricultural commodities.**

(3) A retail food facility that is exempt from licensure **by an order of the Secretary** that has been published in the *Pennsylvania Bulletin* in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act (relating to license required) if the licensor is the Department.

(4) A retail food facility that is **exempt from licensure by an order of the local government unit or units having licensing authority** in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act if the licensor is an entity other than the Department.



County/Local Health Departments (110 total)

There are County and Local Health Departments. [Consult the spreadsheet located on PDA's website.](#) Maps become quickly outdated.

You may be in a jurisdiction where there is local retail food facility licensing and enforcement, and they may have enacted their own version of a food code or some provisions.

Counties: Allegheny, Bucks, Chester, Delaware, Erie, Philadelphia.

Major Municipalities: Examples are Reading, State College, Chambersburg, Scranton, Lancaster, Lebanon, Allentown, Bethlehem, Wilkes Barre, Williamsport, Easton, Sunbury, Pottsville, York. There are many more.



Retail Food Facility License Exemptions (cont.)

State-wide (cannot be changed by a county/local health dept.):

- 1) A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold.
- 2) A retail food facility that sells only raw agricultural commodities.



PDA Jurisdiction Additional Published Exemptions

(PDA [Exemption Order 05/07/2016](#))

- 1) Operates on no more than three (3) days per calendar year.
- 2) Food bank owned by a charitable nonprofit entity and operated for charitable or religious purposes.
- 3) Soup kitchen owned by a charitable nonprofit entity and operated for charitable or religious purposes.
- 4) Charitable nonprofit entity established to promote and encourage participation or support for extra- curricular recreational activities for youth.
- 5) Food or beverages sold only through a vending machine.
- 6) School cafeteria.

A retail food facility that is exempt from the license requirements under the Act is exempt from the licensure requirement only and remains subject to inspection and all other provisions of the Act.



Retail Food Facility License Application

– 20 pages w/ detailed instructions

- [Application Packet- Retail Food Facilities and Restaurants \(PDF\)](#)
- [Application Packet- Retail Food Facility- CHANGE OF OWNER \(PDF\)](#)
- [Application Packet- Retail Food Facility- REMODEL \(PDF\)](#)
- [Shared Facility Agreement \(PDF\)](#)



Retail Food Facility License Application

- Submitted 60 days before any food prep/sale.
- Largest Requirements:
 - HACCP Plan
 - **Water:** municipal water or DEP documentation and water test results (“If DEP determines your facility does NOT qualify as a public water system, written documentation from DEP must be provided and current water tests for Total Coliform (4 initial samples in 24 hours) and 1 initial sample for Nitrate/Nitrite.”)
 - **Sewer:** “For retail food facilities NOT using a municipal/public sewer: It is the responsibility of the owner/applicant of the retail food facility to contact the local Sewer Enforcement Officer for their municipality to review whether the current on-lot sewage system is approved and adequate for the use of the facility . . . Approval of all sewage disposal systems will be based upon satisfactory compliance with Chapter 71 and 73 of this title, The Clean Streams Law, . . .and/or as determined by the local governing sewage enforcement agency or local Sewer Enforcement Officer (SEO) and with The Food Code. “

Retail Food License

- New Licenses:
 - Under 50 seats AND Owner Operated – **\$103**
 - All others – **\$241**

Other fees

- Remodel Plan Review – no charge
- Change of Ownership – \$82
- Annual Renewals – \$82
- 2nd Follow-up Inspection – \$150
- 3rd or Subsequent Follow-up Inspection – \$300
- Duplicate License – \$14
- Courtesy Inspection – \$150

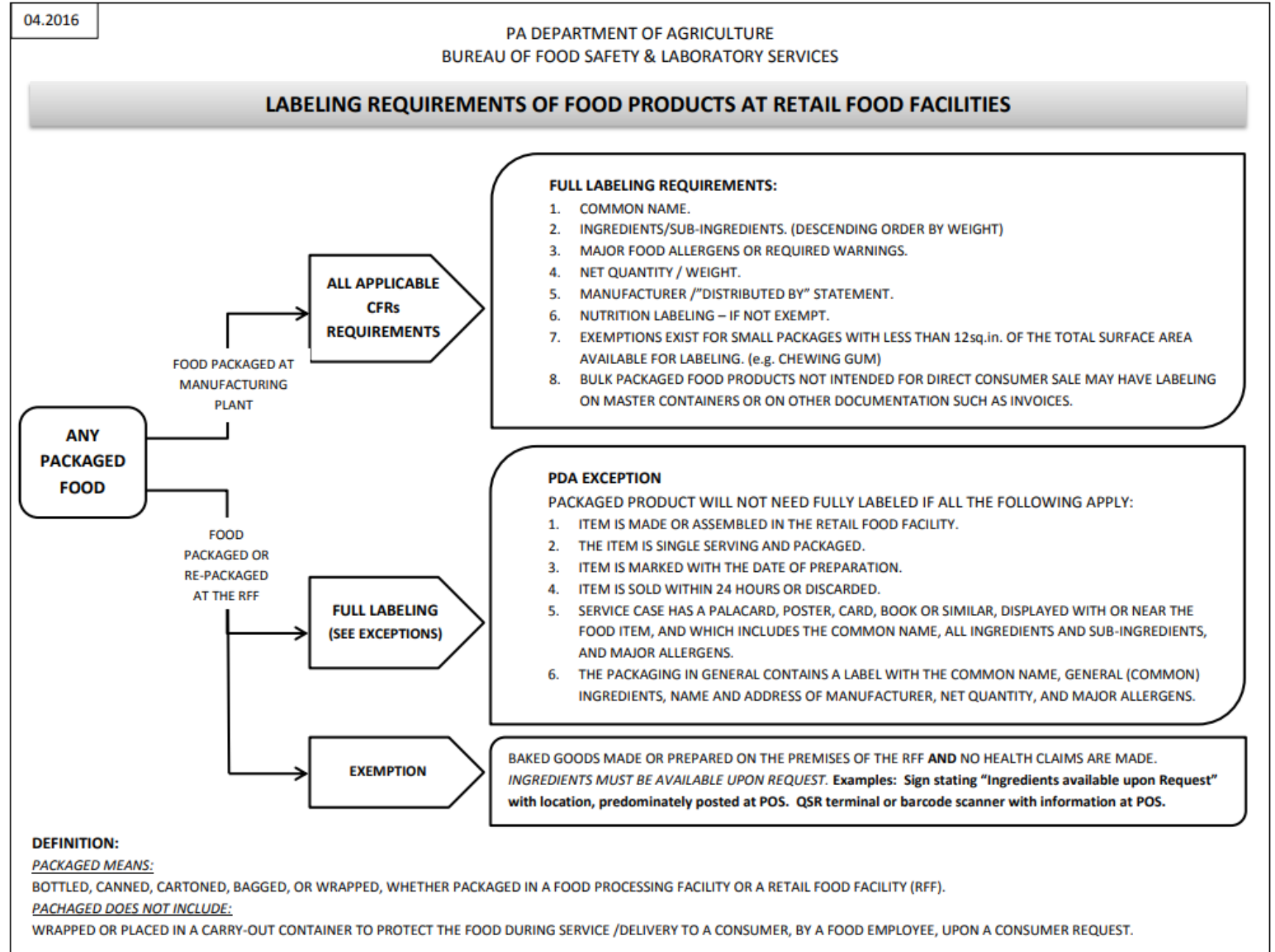
A HACCP plan **must** be submitted with this application if you are processing any of the following:

HACCP Plan

Beyond the scope of this presentation – consult PDA and obtain help if you need one. Penn State Extension may be able to help.



PDA's website has extensive [flowcharts](#) (example ->) and resources on [labeling](#) for [packaged](#) and [unpackaged](#) foods sold at any retail food facility, as well as [sampling](#) guidelines, regulation summaries for the [sale of eggs from small flock producers](#), and much more.





Food Establishment Registration

- [Application Packet - Food Establishment Registration](#) (PDF)
 - Same 60 day advance submission; same water & sewer requirements; No HACCP plan per se.
- Wholesale incorporation of [CFR Title 21, Subchapter B](#) into PA's food manufacturing regulations, including standards of identity and 'Good Manufacturing Practices' (GMPs): "All PA registered food establishments (no exceptions) must comply with the GMPs for Human Food Standards found in [21 CFR 117 Subpart B](#). GMPs are the basic operational and environmental conditions required to produce safe foods."



Limited Food Establishments

- “The Department will allow some 'limited' types of food processing to occur in a 'residential style kitchen ' that may not meet the full regulatory code requirements, with the intent of the producer to offer these products for sale to the public. These processors are regulated under The Food Safety Act (3 Pa.C.S.A. §§ 5721 - 5737). Regulations under this Act include all federal regulations related to food and can be found in Title 21 of the Code of Federal Regulation (CFR). CFR's can be accessed at www.ecfr.gov. In some cases, businesses may additionally be regulated under PA Code Title 7, Chapter 46, Food Code (if products are retailed direct to consumers from the business).”
- [Application Packet - Limited Food Establishment](#) (PDF) – “Types of operations that would be considered “limited food establishments” may include, but are not limited to:
 - Warehousing (storing) food on a residential property,
 - Processing/handling food from a home -residential kitchen,
 - Processing/handling food in a residential-style kitchen (not meeting regulatory standards), in alternate locations, such as a church, fire hall, or remodeled garage area or out-building.”
- Same water & sewer req.; 60 day advance submission



Mobile and Temporary Food Facilities

- Just a sub-type of Retail Food Facility.
 - Application Packet - Temporary Food
 - Retail Food Facility operating for no more than 14 days in duration, whether consecutive or non-consecutive, in a fixed location and in conjunction with an event or celebration
 - Application Packet - Mobile Food Facilities
 - Mobile units including food trucks, stick stands, carts, and other similar structures that are mobile/transitory by design from which food is stored, prepared, processed, distributed or sold.
 - Mobile food facilities physically located at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time.
 - A food facility that is physically located at any one site for more than 14 consecutive days shall not be considered a mobile food facility.



Farmers Markets (as opposed to a “Farm Market”)

- “Farmers Market Vendors must obtain a Retail Food License to operate a food facility at a farmers’ market, whether the market is inside or outside. Each individual stand is considered its own retail food facility and must obtain its own license to operate.”
- All material must be submitted at least 60 days prior to the preparation/sale of food from a retail food facility.
- [Farmers Markets Application Packet](#) (PDF)
- PDA has its own interpretation of how “mobile” and the farmers markets license parameters work together for those who sell at multiple markets throughout the week.



PDA's Retail Food Program

“The retail food program covers all proprietors who serve food and/or drinks directly to the consumer with or without charge”

1. Retail Food Facilities: Restaurants, caterers, bar/clubs, beer distributors, grocery stores, convenience stores, corner markets, delis, butcher shops, retail bakeries, schools, food auctions and similar.
2. Farmers Markets: Farmers market stand/vendor with food or drink including indoor or outdoor farmers' markets or stands.
3. Mobile Food Facilities, Fairs and Temporary Events: Food trucks, stick stands, BBQs, and fairs/events lasting up to 14 days or less.
4. Frozen Dessert: Production and service of frozen desserts such as soft serve ice cream, frozen yogurt, Italian ice and other similar products.
5. Food Employee Certification: Requirements for retail food facilities and approved courses.
6. Specialized Processes & HACCP: Guidance documents for specialized processes and HACCP plans for retail food facilities.”



Food Employee Certification Requirement

- PA's [Food Employee Certification Act](#) requires one employee per licensed retail food facility to obtain a nationally recognized food manager certification, post the certification on-site, be available during all hours of operation. Consult PDA website for [course listings](#).
- Exemptions:
 1. Retail food facilities where only commercially prepackaged food is handled and sold.
 2. Retail food facilities that handle only non-TCS foods (“time/temperature controlled for safety” food, a.k.a. nonpotentially hazardous foods)
 3. All food manufacturing facilities
 4. Retail food facilities managed by a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986
 5. Retail food facilities managed on a not-for-profit basis



Sales Tax License

- Every PA retail food facility license category requires proof of a PA sales tax license having been issued by the PA Department of Revenue in the application process.
- [Read it, know it, get it.](#)



Sales Tax

If your business sells taxable items or performs taxable services, you are required to obtain a sales tax license. Taxable items are subject to a 6% sales tax. Additionally, retailers in Allegheny County are required to collect an additional 1% local sales tax and retailers in Philadelphia are required to collect an additional 2% local sales tax. All three sales taxes are reported on the same tax return and under the same sales tax Account ID.

To determine if your business is required to collect and remit sales tax, review the Retailer's Information Guide (REV-717) or visit our website at www.revenue.pa.gov for more information on sales tax.

Filing & Payment Requirements

Sales tax must be collected at the time of sale, unless the sale is on credit. Taxes due on credit sales must be remitted within 30 days of the date of sale. A seller is liable for reporting and remitting taxes and fees with the tax return covering the period in which either a taxable sale was made or the tax, or fee, should have been collected.

The filing frequency may vary. When you are a new sales tax filer, you are set up as a quarterly filer, meaning that your returns are due in April, July, October and January. But your filing frequency can change. Every year the department reviews each business that files returns to determine whether or not the filing frequency should be changed. If such a change is made by the department, the business is notified in writing.

Payments and reports are required from sales tax licensees as follows:

- **Monthly returns with pre-payment obligations** – Businesses that have an actual sales/use tax liability for the third calendar quarter of the previous year totaling at least \$25,000 but less than \$100,000 have two prepayment calculation options. They can either remit payment equal to 50% of the actual tax liability from the same month of the previous year or at least 50% of the actual tax liability for the current period. Businesses remitting more than \$100,000 for the third calendar quarter of the previous year must remit 50% of the actual tax liability due from the same month of the previous year. Prepayments are due by the 20th of the current month and returns for the period are due on or by the 20th of the following month.

- **Monthly returns** – Licensees whose actual tax liability is less than \$25,000, but greater than \$600 per quarter, must file monthly. Monthly returns are due the 20th day of the month that follows the month in which the tax was collected.
- **Quarterly returns** – Licensees whose total tax liability is less than \$600 in the third calendar quarter, but greater than \$300 annually, must file quarterly. The report for January, February and March is due by April 20; the report for April, May and June, is due by July 20; the report for July, August and September is due by Oct. 20; and the report for October, November and December is due by Jan. 20.
- **Semi-annual returns** – Licensees whose total tax liability is \$300 or less annually must file semi-annually. The report for January through June is due on Aug. 20, and the report for July through December is due Feb. 20 of the following year.



NOTE: It is important to know your filing and payment frequency. The Department of Revenue offers a vendor discount for timely filed returns and payments. This discount is limited to a flat rate or 1% of tax collected, whichever is lesser.

- **Monthly Filers:** \$25 or 1% of tax collected
- **Quarterly Filers:** \$75 or 1% of tax collected
- **Semi-Annual Filers:** \$150 or 1% of tax collected

How to File

The department offers three electronic filing options: e-TIDES, TeleFile, and third party vendors. (See e-TIDES and TeleFile information under Employer Withholding Tax.)

The department also has third party vendors who will provide e-filing software for those taxpayers who do not wish to use the department's e-filing options. A list of approved software vendors is available on the department's website at www.revenue.pa.gov.



THANK YOU!

Upcoming:

Understanding Agricultural Law Series

- Fri. Jan. 27, 2023—Understanding the Basics of Agricultural Finance

Quarterly Dairy Legal Update Series

- Tue. Jan. 17, 2023—Interstate Regulation of Milk Production & Processing

3rd Annual Pennsylvania Farm Show

Agricultural Law Symposium (January 10 & 12, 2023)

Register under "Events" at aglaw.psu.edu