



PennState Law

Center for Agricultural
and Shale Law



Legal Considerations for **RETAIL FARMERS** *Market* (PART ONE)

SEPTEMBER 14TH
AT 12PM



Legal Considerations for **RETAIL FARM** Markets

PART TWO!

OCTOBER 31ST
AT 12PM



PennState Law

CENTER FOR AGRICULTURAL
AND SHALE LAW





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- 18 years in private practice in Lancaster County
- 12 years at the Pennsylvania Department of Agriculture (8 years as Chief Counsel)
- Penn State Ag Law Center since 2019.



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CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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Welcome to the Center for Agricultural and Shale Law

- [Agricultural Law Weekly Review](#)
- [Agricultural Law Virtual Resource Rooms](#)
- [Agricultural Law Trackers](#)
- [Agricultural Law Podcast](#)
- [Social Media /Twitter, Facebook, LinkedIn](#)
- [Videos/Presentations](#)
- [PA Ag Mediation Program](#)

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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



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Legal Considerations for Retail Farm Markets

Part One

- Zoning
- Uniform Construction Code
- Storm Water Management Plans & high tunnels
- Subdivision/Land Development Ordinance basics

Part Two

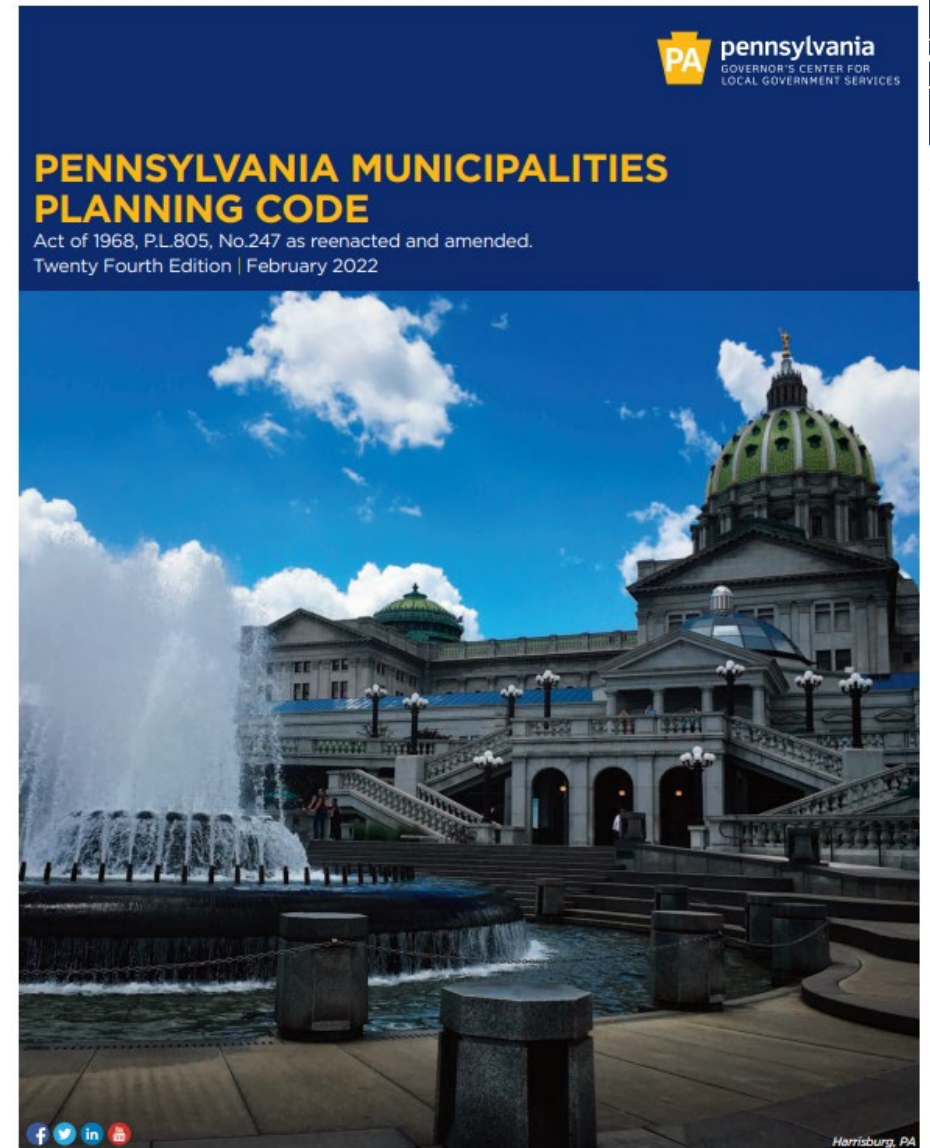
- PA Food Safety Laws
- Retail Food Facility Licensing
- Products Liability and Insurance



Zoning Resources & Background

PA Municipalities Planning Code

– The law that authorizes local municipalities (counties, cities, townships, boroughs) to **enact, administer and enforce zoning ordinances** (as well as some other ordinances such as subdivision and land development ordinances).





Agritourism Guidelines

For the Promotion and Regulation
of Farm-based Tourism Enterprises

Lancaster County, Pennsylvania



Agricultural Zoning District Guidelines for Lancaster County, Pennsylvania

Lancaster County, Pennsylvania



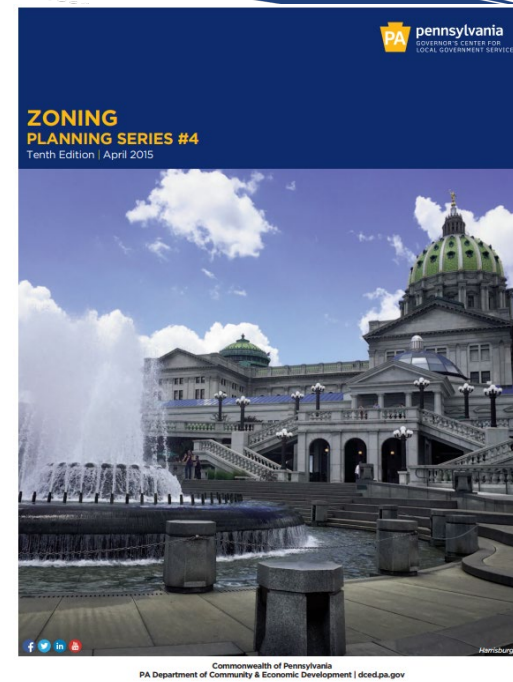
Lancaster County Planning Commission
October 2010

- *Pa.Gov*
Business One-Stop Shop: Includes a **municipal permitting & zoning entity search** function by address.
- *Center for Rural Pennsylvania*
Your Agritourism Business in Pennsylvania – A Resource Handbook
- *Lancaster County Planning Commission*
Agritourism Guidelines for the Promotion and Regulation of Farm-based Tourism Enterprises
- **Agricultural Zoning District Guidelines for Lancaster County, Pennsylvania**

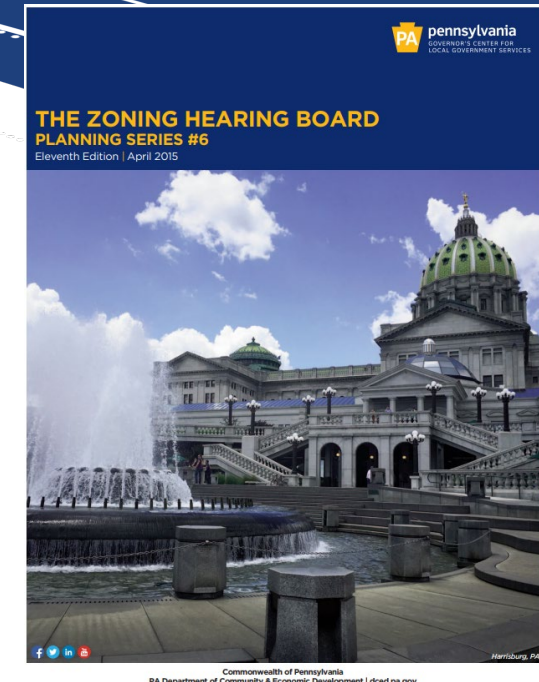


PA Local Gov. Services Publications

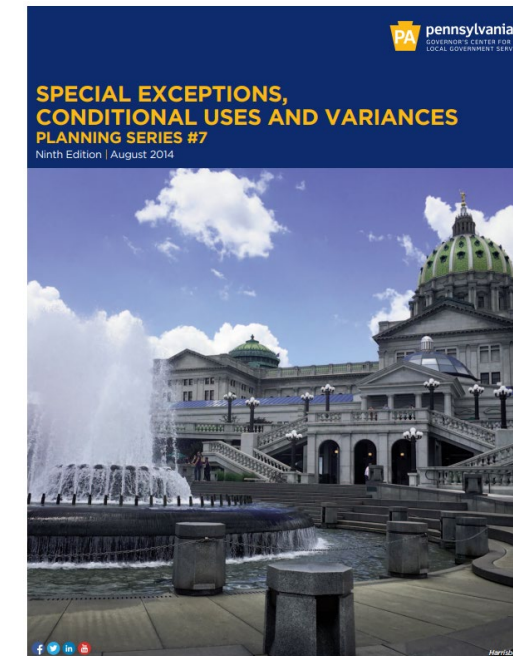
- Zoning
- The Zoning Hearing Board
- Special Exceptions, Conditional Uses and Variances
- The Zoning Officer (not pictured)
- Planning for Agriculture



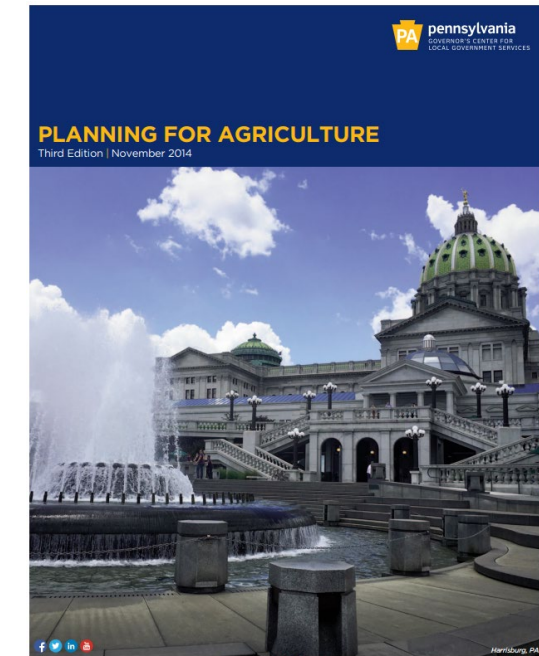
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Municipal Ordinances/Local Requirements

- 1. Zoning** – is the use permitted? If so, what are the requirements?
- 2. Uniform Construction Code (UCC)** – is any structure utilized sufficient for occupancy by the public?
- 3. Subdivision and Land Development Ordinance (SALDO)** – what alterations are being made to the land?
- 4. Stormwater Management Act (SWA)** – new impervious surfaces?



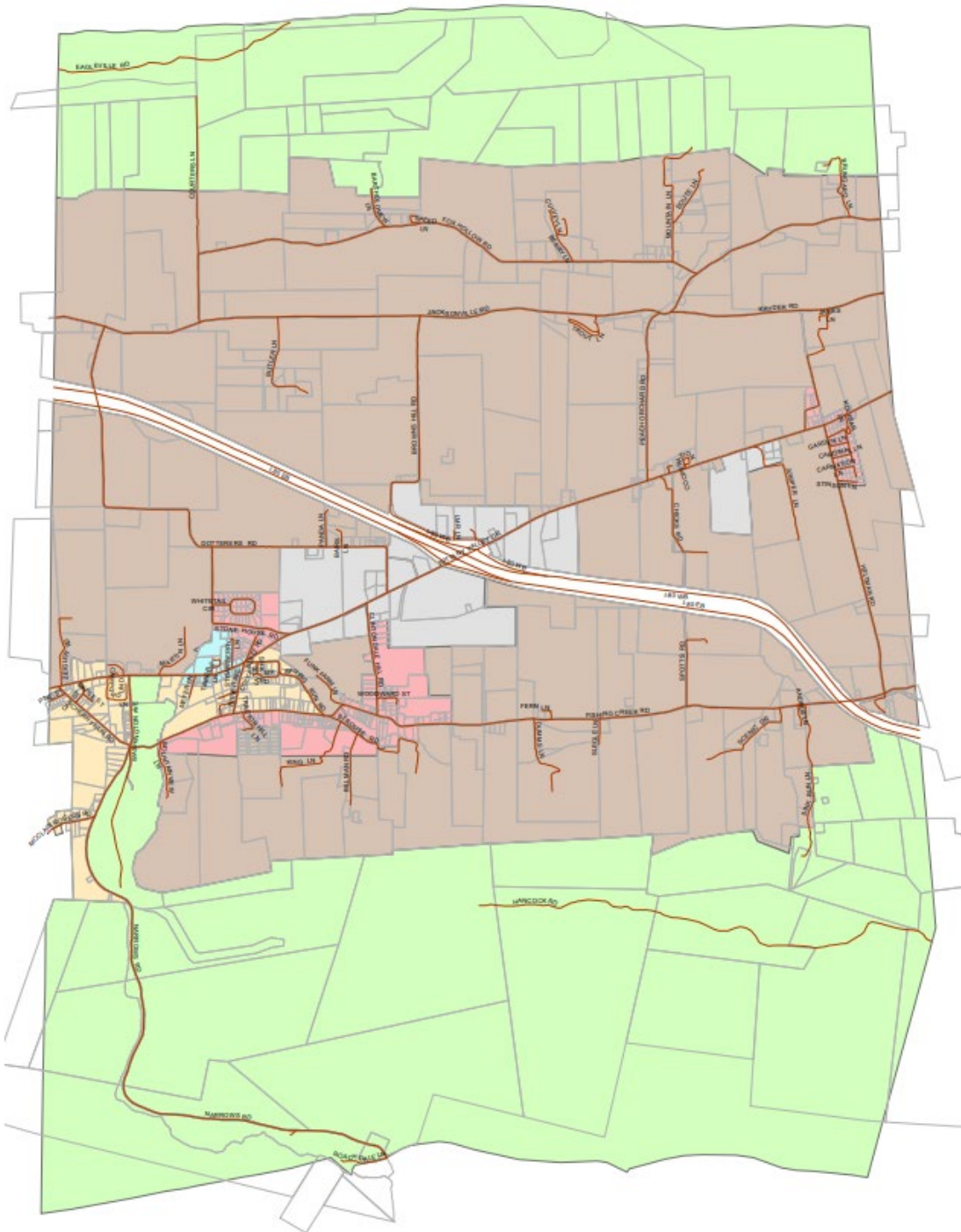
ZONING

- The regulation of *land uses & their requirements*.
- Municipalities Planning Code – **MPC** controls entire process.
- A buried “nugget” in the “Purpose of Act,” MPC Section 105:
“to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator’s need to change or expand their operations in the future in order to remain viable; . . .”



Steps to understand your land's zoning reqs.

- Township's current adopted **Official Zoning Map**.
- Identify the **Zoning District** in which located.
- List of "**Permitted Uses.**" (*"permitted by right"*)
- Uses can also be allowed by "**Special Exception,**" and "**Conditional Use.**"
- "**Dimensional regulations**" - may be deviated from by granting of a "**Variance.**"
- Objective: Zoning Officer issues a "**zoning permit**" approving your use, and all it entails, at this location. Terminology can vary.



Example of a Zoning Map

KEY							
	STREETS		AG		CONS		RES
	PARCELS		COMM/IND		NBH COMM		VILLRES



Zoning Districts

- Terminology for districts can differ and the formal name of the district is irrelevant.
- The list of permitted uses, plus the uses that may be permitted by right but by other means (special exception or conditional use), defines what a zoning district allows. Not the name of the district.
- Uses themselves are defined in the Definitions section. Definitions of uses in every zoning ordinance vary.



Definitions: “Agriculture”

- Zoning ordinances can define “Agriculture” differently. Must consult the ordinance. No state-wide definition for zoning purposes. All other uses are also defined in Definitions section.
- Ordinance Example: “Agriculture – the use of land for farming, dairying, pasturage, horticulture, floriculture, viticulture and animal and poultry husbandry and the necessary accessory uses for packing, treating or storing the produce and equipment for housing and feeding the animals and housing the equipment. The use of land for a dwelling site is not an agricultural purpose.”



MPC Definition of “Agricultural Operation”

"Agricultural operation," an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

Compare to Right to Farm Law (which has become somewhat of the Pennsylvania standard definition of “farm”):

“Normal agricultural operation.” The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the . . . Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

Note: Neither includes on-farm “marketing” or “sales” of agricultural commodities.



“Principal” and “Accessory” Uses

- Zoning ordinances employ the concept of *farm-related businesses* conducted on site as an accessory use.
- Example: “Businesses in the Agricultural District provide at-home employment opportunities that are intended to serve residents of the agricultural community. The business shall not become the primary use on the parcel. The primary use of the parcel shall be (1) residential or (2) occupied farm use...”
- Example: ***Farm Occupations*** are “An accessory use to the primary agricultural use of a farm in which residents engage in a secondary occupation conducted on the active farm.”
- Example: ***Rural Occupations*** are defined as “A commercial or industrial activity that is conducted as an accessory use to the primary residential use of a lot, which is clearly incidental and subordinate to the residential use of the lot.”



Permitted Uses

The following **example** from Warwick Township, Lancaster County, is a good illustration of the types of uses typically permitted by right in a so-called Agricultural District.

- (1) Agriculture, including one single-family detached dwelling contained on the site and including commercial poultry operations and commercial livestock operations as defined herein.*
- (2) Horticultural and forestry-related uses*
- (3) Municipal uses*
- (4) Public utilities structures*
- (5) Accessory uses customarily incidental to the above permitted uses including, but not limited to, the following **(a) roadside stands**... (b) family day-care facilities... (c) manure storage facilities, as an accessory use to the farm... (d) beekeeping*
- (6) On any parcel where the principal use is a residential use established before November 13, 1985, accessory uses permitted by the R-1 Residential Zone*



Uses by Special Exception

Example in the Earl Township, Lancaster County, Ag District:

1. Bed and breakfast establishments (conversion of existing residential structures only).
2. Churches.
3. Commercial grain or commercial feed mills.
4. Communications towers and antennas for the purpose of facilitating communications services and attendant support structures
5. Facilities for the sale, repair, and service of agricultural equipment, vehicles, feed, or supplies.
6. Kennels, including commercial animal breeding operations.
7. On-farm occupations.
8. Outdoor recreational uses with no permanent buildings or structures.
9. Public and private schools having a total enrollment of more than fifty (50) students.
10. Retail sale of nursery and garden materials.
11. Riding school or commercial horse boarding stable.
12. Wholesale agricultural produce sales, stockyards, and buying stations.



Use Approval by Special Exception (from ZHB) or Conditional Use (from Supervisors)

In addition to uses by right,

- a **Zoning Hearing Board** may approve, upon petition and after a public hearing, a use by **special exception**, with or without conditions.
- the **Township's Board of Supervisors** may approve, upon petition and after a public hearing, a petition for a use by **conditional use**, with or without conditions.
- In designating uses permitted by special exception or conditional use, the Township Board of Supervisors have **already made the determination that these uses generally are not contrary to public health, safety, and welfare**. Rather, they are permissible and legitimate uses within the zoning district. Their designation as special exceptions or conditional uses **subjects them to additional criteria and safeguards and a closer examination by a body beyond the zoning officer in granting their approval**.



Spec. Exception & Cond. Use (cont.)

- Special exceptions and conditional uses are usually reserved for those land uses that will have a significant impact on the zoning district or the whole community, or for those uses that necessitate additional safeguards. **These additional safeguards take the form of specific standards for special exceptions and conditional uses stated in the zoning ordinance.**
- The applicant for a special exception or conditional use is required to **demonstrate conformance with the specific standards stated in the zoning ordinance; having done so, the applicant is entitled to approval** of his or her special exception or conditional use.
- Often a zoning ordinance contains **subjective standards** as well as specific standards. However, those objecting to the application – not the applicant – bear the burden of proving that the proposed development does not conform to the subjective standards.
- And the objector must prove noncompliance with a subjective standard with credible and particularized evidence and further **prove that the proposed use will create harm greater than normal for a use of that type.**

Farm Related Businesses

PURPOSE – Goals and Intent of Farm-Related Businesses: Farm occupations provide at-home employment opportunities that are intended to supplement family income during non-growing seasons. The farm occupation opportunity is a method which can enhance and preserve the agricultural viability of the parent tract, and should be a secondary use of part of the parent tract, and should not become the primary use on the parcel. The primary use of the parcel should remain an agricultural use. Therefore, the applicant must provide evidence that the proposed use is important to local farming and is specifically sized to primarily serve local users. Farm-related businesses shall meet the following standards and conditions:

1. **ACCESSORY BUILDINGS** – A farm related business shall be conducted either in a farm dwelling or in an accessory building (including a roadside stand). [Note: some municipalities may require that the farm related business only be conducted in an existing accessory building]
2. **BUILDING CONVERSION** – Any building constructed for the use of the farm occupation shall be of the nature that it can be converted to agricultural use or removed from the property if the farm occupation is discontinued.
3. **COMPATIBLE USES** – For the purposes of this Ordinance, farm occupations may involve any one of a wide range of uses, so long as the use is not incompatible with the primary agricultural use of the land. The applicant must demonstrate that the farm occupation is compatible with the rural setting and will not create nuisances for nearby residences.
4. **MAXIMUM LOT COVERAGE** – The maximum lot coverage of a farm related business shall be two (2) acres, including all structures, buildings, parking and outdoor storage, but shall not exceed a total of five thousand (5,000) square feet of building space.
5. **MINIMUM SETBACK** – Farm-related businesses shall not be located within one hundred (100) feet of any property used principally for residential purposes, any farm dwelling in separate ownership, or from any roadway.
6. **MOBILE HOMES** – No mobile home may be utilized as part of the farm related business.
7. **OUTSIDE EMPLOYEES** – No more than five (5) persons in addition to occupants of the parcel, shall be employed in the farm business.
8. **OUTDOOR STORAGE** – Outdoor storage of supplies, materials and products shall be screened from adjoining roads and properties. The display of farm equipment for sale shall be excluded from this provision.
 - a. No outside storage areas shall be located closer than ten (10) feet to any rear property line and no closer than twenty (20) to any side property line.
 - b. All such storage shall be screened from roads and residences (except from dwellings located on the parcel). Such screening shall be composed of a year round vegetative visual barrier, which shall attain a height of six (6) feet within two (2) years of planting.
9. **OWNER OCCUPANCY** – At least one owner of the farm business shall reside on the premises.
10. **PARKING** – Off-street parking and loading shall be provided in accordance with the provisions of Section 313.
11. **PERMITTED USES** – For the purposes of this Ordinance, farm related businesses may involve any of the uses satisfying the requirements of subsection 425.3
12. **RESIDENTIAL SUBDIVISIONS** – For farm parcels up to fifty (50) acres in size, while the farm related business is in operation, non-farm related residential subdivisions... will not be permitted.
13. **SIGNS** – One outdoor sign shall be permitted for a farm-related business.
14. **VEHICLE STACKING** – The length of access drive shall be of a sufficient length to accommodate the stacking of delivery and customer vehicles.
15. **VEHICLE ACCESS** – If any portions of the farm related business are not paved, the farm related business must provide a paved apron and a gravel scraping area adequate to prevent tracking of mud and manure onto any public roadway.



PA's Uniform Construction Code (UCC)

- Any new structure, or existing structure put to a new use, into which the public is invited to enter, must be UCC compliant. A building permit is needed from the Zoning Officer for new construction or renovating structures. (May also need a Construction E&S Plan if temporary earth disturbance.)
- The state-wide PA Uniform Construction Code (UCC) was enacted in the mid-2000s and over the years PA has tweaked it a bit re: **two exemptions** to the kind of buildings to which it applies **in the context of a property devoted to agriculture.**
- The following slides set forth those exemptions as they appear in Pennsylvania law as of 2022. While it is possible, very few townships have adopted anything of their own different from the state-wide code.



Agricultural Building Exemption to UCC

Section 104. Application.

* * *

(b) Exclusions.--This act shall not apply to any of the following:

(4) Any agricultural building.

"Agricultural building." *A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and a structure used to grow mushrooms, agricultural or horticultural products. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term includes a structure that is less than 1,000 square feet in size which is utilized to process maple sap. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and **shall not be construed to mean a place of occupancy by the general public.***

The language "a place of occupancy by the general public" means that allowing the public to enter an existing barn/out building will require that structure to be fully UCC compliant.



“3-sided Small Temporary Farm Market” Exemption

Section 104. Application.

* * *

(b) Exclusions.--This act shall not apply to any of the following:

*(9) **No more than one structure** per parcel of land which meets all of the following requirements:*

- (i) The structure is used for the **direct, seasonal sale of agricultural commodities.***
- (ii) The structure is **open on at least 25%** of the perimeter of the structure when in operation.*
- (iii) The structure is operated by a producer whose products make up **not less than 50%** of the agricultural commodities being sold.*
- (iv) **If not located on the producer's property,** the structure is erected for **less than 180 days** of a calendar year.*
- (v) The structure has an area of **not more than 1,000 square feet.***



Other relevant definitions in UCC

"Producer." A person engaged within this Commonwealth or a production area within this Commonwealth in the business of producing agricultural commodities or causing agricultural commodities to be produced.

"Agricultural commodity." Any of the following, transported or intended to be transported in commerce:

- (1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.*
- (2) Livestock and the products of livestock.*
- (3) Ranch-raised fur-bearing animals and the products of ranch-raised fur-bearing animals.*
- (4) The products of poultry or bee raising.*
- (5) Forestry and forestry products.*
- (6) Products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption.*



Stormwater Management Act (1978)

Any exemptions for agriculture have gone away.

Obviously, stormwater management is at the heart of the efforts to reduce nitrogen, phosphorus and sediment contributions to the Chesapeake Bay and is too large an issue to cover in this webinar.

Stormwater Management Ordinances vary by municipality.

But one stormwater management issue re: agriculture use of land is small enough to address here.



High Tunnel Exemption from Storm Water Management Plan Requirement (2018)





A high tunnel shall be **exempted from the provisions of this act** if:

1. the high tunnel or its flooring **does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area**; and
2. the high tunnel meets one of the following:
 - i. The high tunnel is located at least 100 feet from any perennial stream or watercourse, public road or neighboring property line.
 - ii. The high tunnel is located at least 35 feet from any perennial stream or watercourse, public road or neighboring property line and located on land with a slope not greater than 7%.
 - iii. The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or other watercourse by managing storm water runoff in a manner consistent with requirements of this act.

Note: Ambiguous if each high tunnel can be up to 25% of the impervious surface, or if the sum of all high tunnels must be \leq 25%.

"High tunnel." A structure which meets the following:

1. Is used for the production, processing, keeping, storing, sale or shelter of an agricultural commodity . . . or for the storage of agricultural equipment or supplies.
2. Is constructed consistent with all of the following:
 - i. Has a metal, wood or plastic frame.
 - ii. When covered, has a plastic, woven textile or other flexible covering.
 - iii. Has a floor made of soil, crushed stone, matting, **pavers or a floating concrete slab.**

Note: Same definition was used for an exemption to property tax assessment in Act 114 of 2013 and Act 130 of 2013.



**Instead of an
exemption just for this:**



**The exemption may
also include this:**





SALDO & Land Development Plans

(SALDO = Subdivision and Land Development Ordinance)

- Each SALDO's terms vary by municipality. Very few universals. Must research what applies locally to each property and the building or improvements planned.
- The MPC does have some provisions relevant to ag uses. How these resolve can have significant financial implications.
- The threshold question of **“what qualifies as land development?”** requiring plan preparation/submission is the universal question for agricultural clients.

But first, there is also a smaller threshold question of **“what qualifies as subdivision?”** regarding leases.

- MPC definition: “Subdivision,” the division or redivision of a lot, tract or parcel of land ***by any means*** into two or more lots, tracts, parcels or other ***divisions of land including changes in existing lot lines for the purpose***, whether immediate or future, ***of lease***, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: ***Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.***



What Qualifies as Land Development?

MPC Section 107. Definitions.

“Land development,” any of the following activities:

(1) The **improvement** of one lot or two or more contiguous lots, tracts or parcels of land **for any purpose** involving:

* * *

(ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, . . . leaseholds.

* * *

(3) Development in accordance with section 503(1.1)

Section 503. Contents of Subdivision and Land Development Ordinance. The subdivision and land development ordinance ***may*** include, but need not be limited to:

(1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:

(ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; . . .



Legal Considerations for Retail Farm Markets

Part One

Zoning

Uniform Construction Code

Storm Water Management Plans & high tunnels

Subdivision/Land Development Ordinance basics

Part Two

PA Food Safety Laws

Retail Food Facility Licensing

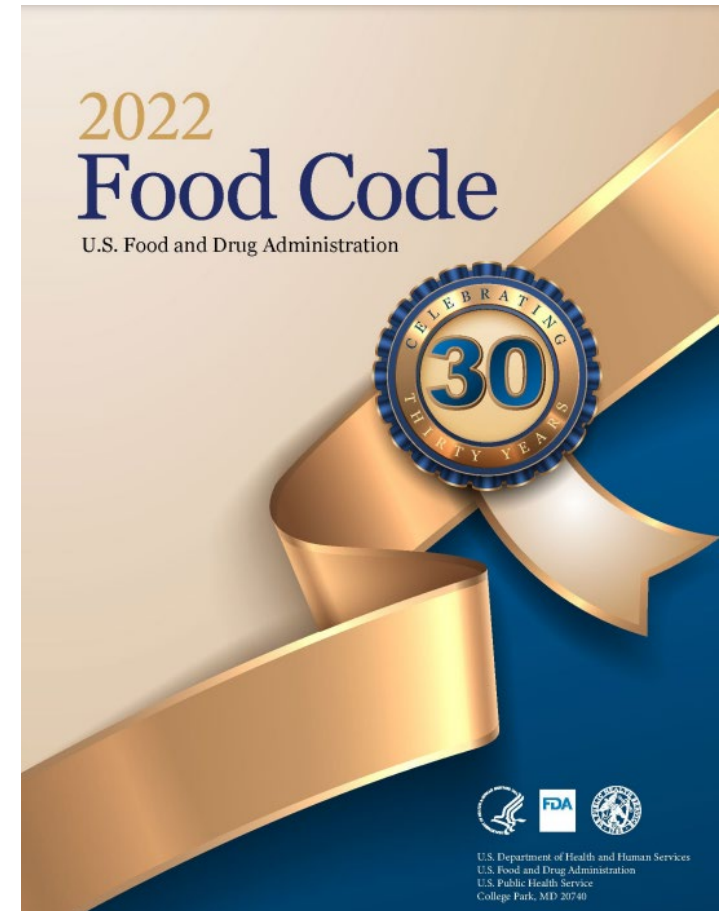
Food Establishment Registration

Products Liability and Insurance



PDA Food Safety Laws - applicable to Farm Markets

- [Retail Food Facility Safety Act](#) (2010)
- [Food Safety Act](#) (2010)
- PA Regulations: [PA Food Code](#) – Pennsylvania has incorporated almost verbatim the “[Model Food Code](#)” published by the FDA.





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

“Retail food facility.” A public eating or drinking place [*old, discontinued terminology*] 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.



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 licenser, 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, non-potentially 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 licenser is the Department. *[SEE NEXT SLIDE]*

(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 licenser is an entity other than the Department. *[CHECK THE LOCAL JURISDICTION FOR ANY APPLICABLE]*



PDA Exemption Order - 05/07/2016

A facility is exempt from having to obtain a Retail Food Facility License if:

1. The facility is located within PDA jurisdiction as the licensor. The exemption does not necessarily apply to facilities operating in Local Health jurisdictions.
2. The retail food facility is one of the following:
 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. Offers only prepackaged, shelf stable (non-TCS) foods or beverages (ex: canned soda, packaged chips, candy).
 6. Food or beverages sold only through a vending machine.
 7. Sells only raw agricultural commodities (unprocessed, not ready-to-eat).

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.



County/Local Health Departments (106 total as of 10/31/23)

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 of their own.

Counties: Allegheny, Bucks, Chester, Delaware, Erie, Montgomery, 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, non-potentially hazardous food or beverages are sold.
- 2) A retail food facility that sells only raw agricultural commodities.



Retail Food Facility License Application

– approx. 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



- Inspected at least once per year. Reports are public.
- Complaint-based inspections also occur.
- [Complaint form](#) online.
- Some local and county health department inspections are also posted here. Some are not. Check local jurisdictions.

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):

Jurisdiction:

Street Number and Name:

City State Territory County Zip

Inspection Date Range
Start: End:

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

[> ready](#) [> set](#) [> grow](#)



Commercial Food Establishments and Limited Food Establishments

- A [Registration](#), not a license: Free, no public inspection reports, same water/sewer.
- a 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 or transporting or handling food.
- [Limited Food Establishment Registration](#): Allows some 'limited' types of food processing to occur in a 'residential style kitchen' that may not meet the full regulatory code requirements. Limited to foods that are not 'time and temperature controlled for safety' (TCS) foods (i.e., potentially hazardous foods, 'PHF'). TCS foods are foods that will support the growth of pathogenic microorganisms and require temperature controls (kept hot or cold).



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.



Liability Claims / Food Borne Illness

- A Retail Food Facility / farm market exposes a farm to all the same liability claims that arise from inviting the public on to your farm, similar to conducting agritourism/agritainment.
- It also brings additional potential liability claims for food borne illness from its products.
- Liability can arise no matter how stringently you follow the Food Code and all applicable laws and regulations. You are entering a new area of business and there are no 100% “safe harbors.”



No State Immunity Laws Apply

- PA Equine Activity Immunity Act
- Recreational Use of Land and Water Act
- Pennsylvania's Agritourism Activity Protection Act
- There are no such laws re: food production and sales
- **The policy choice in the PA agritourism immunity law was that food and beverage service should **NOT** be given any immunity from liability claims.**



Protections: Liability Insurance

Enable your insurance to provide the benefits you are seeking from it:

- Your insurance agent needs to be an integral business consultant. Spend time with them and ask questions about exactly what is covered.
- Disclose all aspects of your business to your insurance agent and make sure you have a record of what you disclosed to them.
- If you expand your business endeavors, notify your insurance agent.
- *Post-claim:* Notify your insurance agency or insurance company immediately if an injury occurs. Document everything that occurred and occurs throughout the process. Take photos. Preserve “evidence” in a safe place, undisturbed by aging or tampering.



Products Liability – a specialized tort

- Food-borne illness cases generally take the form of “products liability” tort cases. Doesn’t require proof of negligence.
- All parties in the chain of manufacturing/processing and distribution of a product may be liable for damages caused by that product.
- In manufactured/processed products, potential defendants are:
 - producer of components/ingredients (if the cause of defect/injury)
 - an assembling manufacturer/processor
 - a wholesaler
 - a retail store owner



Products Liability

- Elements:
 1. The defendant sells a product that the plaintiff uses.
 2. The defendant is in the commercial business of selling that product.
 3. The plaintiff suffers an injury using the product.
 4. When the defendant sold the item, the item was **defective**.
 5. The defect was an actual and proximate cause of the plaintiff's injury.
- Notice there is no “mental state” (no negligence or intent needed).
- ***Product defects*** can be in manufacturing/processing, design or marketing (warnings/labeling).
- Contamination is generally the product defect in a food borne illness case.



Products Liability and Insurance

- Most liability insurance provisions of a standard farm policy of insurance exclude “products liability” claims.
- Why? Because insurance industry forms were not developed in an era of direct sales, value-added and producer processing. They were written for the production and wholesale sale of a raw agricultural commodity for further processing, generally “mono-culture” operations.



“Completed Products & Operations” Coverage

- To get insurance coverage for claims from value-added processing and direct sales, a producer must purchase supplemental coverage that specifically covers claims arising from those activities.
- Your insurance agent and company must know what you are doing in your business in order to provide the right insurance.



Additional Insured Coverage

- If you are selling products wholesale, for resale by a third party (a store), your insurance policy must have “vendors endorsement” coverage which confers upon the resellers of your products the status of an “***additional insured***” under your policy products liability coverage.
- You are the “***named insured.***” Re-sellers of your products, are “additional insureds.”



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTRACT NUMBER	
	PHONE (AREA NO.) EXT. FAX (AREA NO.) EXT.	
INSURED	E-MAIL ADDRESS	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

HEAT LTR	TYPE OF INSURANCE	EXPIR. DATE (MM/DD/YYYY)	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY SUP. (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> OCCUR <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					(COMBINED) SINGLE LIMIT (EA OCCUR) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per aggregate) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> COV <input type="checkbox"/> RESTRICTIONS					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY WORKERS COMPENSATION/EMPLOYERS' LIABILITY <input type="checkbox"/> N/A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - VENDORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization (Vendor):

ANY AND ALL VENDORS OF PRODUCTS SET OUT IN THE YOUR PRODUCTS SECTION OF THE SCHEDULE. LIST OF APPLICABLE VENDORS ON FILE WITH US.

Your Products:

LIST OF PRODUCTS ON FILE WITH US.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.



Additional Insured Coverage

- Must be written on an “***occurrence***” basis, not a “claims made” basis. The policy covers claims arising from sales of the product made within the policy period.
- ***Additional Insured Certificates*** are the evidence which the re-seller of your product will request to prove that this coverage has been purchased. Insurance Certificates may be issued by your insurance agent (or even you, in some instances – usually for large wholesalers).



Alteration of the product in distribution

- Products Liability and insurance coverage against such claims is based entirely upon the premise that the product is not altered in any unanticipated way from the condition it was in when it left the possession of the manufacturer/processor.
- If the product was altered in a way that solely caused or simply contributed to the damage, then the other parties in the distribution chain may have independent liability for those actions. Also, their additional insured coverage may be voided.



What if you are selling someone else's products in your farm market?

- You now have become the re-seller who can be held liable for illness caused by your vendor's product. You need maximum legal protection from those claims also. Insist upon an insurance certificate proving the proper coverage / vendor's endorsement has been purchased by your vendor that will cover you as an additional insured on their insurance policy.



Summary:

1. Food-borne illness caused by contamination causes strict product liability, regardless of how careful you have been.
2. Make sure you buy Completed Products Liability Insurance coverage. Make sure you have Vendors Endorsement Coverage that supplies additional insured status to any re-sellers, if selling wholesale.
3. Make sure you have confirmation of Vendors Endorsement Coverage and Additional Insured Certificates from the suppliers of any products you sell.



QUESTIONS / DISCUSSION?

Email questions and inquiries to Brook Duer at
dhd5103@psu.edu

Thank You!