

FARMERS' MARKETS

During the 82nd Legislature, Regular Session 2011, and the 83rd Legislature, Regular Session 2013, the Texas Legislature enacted Senate Bill 81 and House Bill 1382 that amend the Health and Safety Code (HSC), Chapter 437, by creating and amending provisions for farmers' markets. These laws became effective September 1, 2011 and September 1, 2013.

Farmers' Markets are exempt from the requirements of a food service establishment and do not have to comply with the Texas Food Establishment Rules. Permits may be issued and temperature requirements are necessary for potentially hazardous foods (time/temperature control for safety (PHF/TCS) food. The Department of State Health Services or local health authority may issue temporary food establishment permits to food vendors who sell potentially hazardous foods. The Department of State Health Services or local health authority may not require permitting for sampling or cooking demonstrations that are conducted for bona fide educational purposes.

For Farmers' Markets:

- A farmers' market is defined as a designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.
- Producers are defined as a person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls.
- Food is defined as agricultural, apicultural, horticultural, silvicultural, viticultural or vegetable product for human consumption, in either its natural or processed in this state. The term includes:
 - Fish or other aquatic species,
 - Livestock, a livestock product, or a livestock by-product,
 - Planting seed,
 - Poultry, a poultry product, or a poultry by-product,
 - Wildlife processed for food or by-products,
 - Produce
 - A product made from a product described above by a farmer or other producer who grew or processed the product;
- A farmers' market may serve samples of food if
 - Samples are served in a sanitary manner,
 - Served while wearing clean, or disposable plastic gloves when preparing samples and observing proper hand washing techniques immediately before preparing samples,
 - The produce intended for sampling is washed in potable water to remove soil or other visible material,
 - Potable water is available for use,
 - All potentially hazardous food is maintained at 41°F or below or disposed of within two hours after cutting or preparing; and,
 - Utensil and cutting surfaces used for cutting samples are smooth, non-absorbent, and easily cleaned or disposed of.

- A person who sells or provides a sample of meat or poultry or food containing meat or poultry must comply with Health and Safety Code, Chapter 433.
- A person who sells fish must have it processed by a licensed and inspected retail establishment. The fish has to be caught or raised by a person or entity that has a commercial fisherman's license from the Texas Parks and Wildlife Department (TPWD) or an aquaculture license from the Texas Department of Agriculture (TDA).

A potentially hazardous food (PHF) is a food that requires time and temperature control for safety (TCS) to limit pathogen growth or toxin production. In other words, a food must be held under proper temperature controls, such as refrigeration to prevent the growth of bacteria that may cause human illness. A PHF/TCS is a food that: contains protein, moisture (water activity greater than 0.85), and is neutral to slightly acidic (pH between 4.6 -7.5).

The Department of State Health Services is in the process of developing the rule, Texas Administrative Code, Title 25, Part 1, Section 229.701, concerning farmers' markets.

Farmers' Markets

Frequently Asked Questions

1. What is the definition of a farmer?

A farmer is a person who has ownership of, or financial and/or productive responsibility for producing, an agricultural product intended for use as a food or raw material. The term usually applies to people who do some combination of raising field crops, orchards, vineyards, poultry, aqua-culture or some other form of livestock. A farm is usually owned by that person or under direct control of that person.

2. What is the definition of a farmers' market?

A farmers' market is a designated location used primarily for the distribution and sale of food directly to consumers by farmers and other producers.

3. What is a farm stand?

A farm stand is defined as a premise owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods.

4. Is a farmers' market a food service establishment?

No. A farmers' market is not a food service establishment.

5. Do I need a temporary food establishment permit to sell food at a farmers' market?

A temporary food establishment permit is not required to sell whole, intact unprocessed fruits and vegetables and pre-packaged non-potentially hazardous food/time temperature for safety foods.

A temporary food establishment permit is required to sell all other potentially hazardous food/time temperature control for safety foods.

6. What is a potentially hazardous food/time temperature control for safety food (PHF/TCS)?

A potentially hazardous food (PHF) is a food that requires time and temperature control to limit pathogen growth or toxin production. In other words, a potentially hazardous food must be held under proper temperature controls, such as refrigeration to prevent the growth of bacteria that may cause human illness. A PHF/TCS is a food that: contains protein, moisture (water activity greater than 0.85), and is neutral to slightly acidic (pH between 4.6 -7.5).

7. May I provide/distribute samples at a farmers' market?

Yes.

To provide samples of food at a farm or farmers' market, you must:

- Distribute the samples in a sanitary manner
- Have potable water available

- Wash any produce intended for sampling with potable water to remove any visible dirt or contamination
- When preparing the samples, either wear clean, disposable plastic gloves or observe proper hand washing techniques immediately before preparation;
- Use smooth, nonabsorbent, and easily cleaned (i.e. metal or plastic) utensils and cutting surfaces for cutting samples, or use disposable utensils and cutting surfaces;
- Samples of cut produce and other potentially hazardous foods shall be maintained at a temperature of 41°F or below and discarded within two hours after cutting or preparation.

A permit is not required to provide samples at a farmers' market.

8. What is a sample?

A sample is defined as a bite size portion, not a full serving.

9. Do I need a temporary food establishment permit to provide samples at a farmers' market?

A temporary food establishment permit is not required to provide samples at a farmers' market.

10. What are proper hand washing techniques?

- Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and exposed arms (or vigorous rubbing the surrogate prosthetic devices for hands and arms) for at least 10 to 15 seconds, followed by;
- thorough rinsing under clean, running warm water; and
- immediately following the cleaning procedure with thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using individual, disposable towels

11. What are the requirements for performing a cooking demonstration at a farmers' market?

For a farmers' market a cooking demonstration, the following is required:

- A person with a certified food manager's license supervising the demonstration; and
- Compliance with the requirements for a temporary food establishment permit.

12. What are the requirements for providing sample as a part of a cooking demonstration at a farmers' market?

A farmers' market may distribute samples as part of the cooking demonstration:

- If the samples are a part of the "bona fide educational purpose"; and
- The samples are disposed of within 2 hours of the beginning of the demonstration.

13. Do I need a temporary food establishment permit to perform a cooking demonstration at a farmers' market?

Cooking demonstrations conducted by a farmers' market for a "bona fide educational purpose," are exempt from having to obtain a temporary food establishment permit.

14. What is a 'bona fide educational purpose'?

A bona fide educational purpose means the cooking demonstration made in good faith or made with earnest intent to instruct and educate.

15. Can raw milk be sold at a farmers' market?

No. Raw milk cannot be sold at a farmers' market.

16. Will the Department of State Health Services conduct inspections at farmers' market?

Yes. The Texas Department of State Health Services has the authority to conduct inspections of all food vendors who are required to obtain a temporary food establishment permit at a farmers' market.

17. Will the Department be required to write rules concerning farmers' markets in a separate chapter outside the Texas Food Establishment Rules?

Yes. The department is in the process of developing the rule concerning the regulation of farmers' markets to comply with the requirements of Senate Bill 81 of the 2nd Legislative session and House Bill 1382 of the 83rd legislative session.

18. Do I need to have food handler's certification or food manager certification to sell food at farmers' market?

No. A temporary food establishment operating under the Department of State Health Service is not required to obtain a food handlers card or a certified food manager certificate. If the food vendor is associated with a 'bona fide' cooking demonstration, the farmers' market must have a certified food manager.

19. Can a cottage food production operation sell food at a farmers' market?

Yes. Foods produced at a cottage food production operation (CFPO) may be sold at farmers' market. The CFPO must comply with the guidelines as required in the law concerning Cottage Food Production Operations.

20. Can I sell yard eggs at a farmers' market?

Yes. To sell farm eggs at a farmers' market the following is required:

- You must have a temporary food establishment license; and
- Eggs must be maintained at an ambient air temperature of 45°F and below; and
- Eggs must be properly labeled as "ungraded" with safe handling instructions.

21. May I sell my own cattle or poultry that I have slaughtered at a licensed and inspected facility?

Yes. Meat or poultry products must come from animals processed in compliance with the regulations for livestock processing (Texas Health & Safety Code Chapter 433) and a temporary food establishment permit is required.

22. May I sell fish and other aquatic species at a farmers' market?

Yes. Commercial fishermen must possess a license from the TPWD or the fish and other cultured species must be produced and raised in a facility that has an aquaculture license from TDA and a temporary food establishment permit is required.

23. May I sell honey at a farmer's market?

Yes. Honey may be sold at a farmer's market. In order to sell honey as food in Texas, you will need to follow the rules for Good Manufacturing Practices (GMPs) 25 TAC §§229.210-229.222 and obtain a food manufacturing license.

Also, a small honey production operation may sell honey directly to consumers at the beekeeper's home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival or event according the Health and Safety Code Chapter 437, Section 437.001(7). The honey sold or dispensed must be labeled in accordance with Subchapter E, Chapter 131, Agriculture Code. The label must include: the net weight of the honey expressed in both the avoirdupois and metric systems; the beekeeper's name and address; and the statement, "Bottled or packaged in a facility not inspected by the Texas Department of State Health Services."