

KEEP IT LEGAL

First and foremost in any entrepreneur's mind should be legal considerations—rules and regulations pertaining to food-related production and commerce are vast and mostly on the federal and state levels. Covering the entire scope would be a book in itself.

Neil D. Hamilton, director of the Agricultural Law Center at Drake University, has written such a book: *The Legal Guide For Direct Farm Marketing*. From licensing to labeling and from pick-your-own to processing, the publication addresses most every legal aspect you might encounter. We highly recommend you purchase this book and read it cover to cover before diving into your agricultural venture. The book can be purchased at the Drake University Agricultural Law Center, Des Moines, Iowa 50311.

LAND USE AND PROPERTY: ZONING LAWS

On a county-wide basis, the laws you must adhere to mainly address land-use issues; zoning and fences are two important issues to consider. The Warren County Zoning Ordinance—including the Comprehensive Land Use Plan and Policies Update and the Revised Zoning and Subdivision Ordinances—is available at the office of the Zoning Director, Robert Folkestad, 301 N. Buxton Street, Suite 212, Indianola, IA 50125. (515) 961-1060.

Here are some highlights from the Warren County zoning ordinance, as they pertain to agriculture. The numbering of the sections and lettering of the subsections may seem out of kilter; this is because only those sections that pertain to our subject matter have been copied from the ordinance:

Chapter 40.03 AGRICULTURAL EXEMPTION In accordance with the provisions of Chapter 335, CODE OF IOWA No regulation or restriction adopted under the provisions of the Zoning Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other buildings, structures, or erections that are primarily adapted by reason of nature and area, for use for agricultural purposes while so used, provided, however, that such regulations or restrictions which relate to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream shall apply thereto. It shall be the responsibility of any group or person claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes.

Chapter 40.04 DEFINITIONS "Agriculture" means the use of land for purposes of growing the usual agricultural or farm products, including vegetables, fruit, trees and grains, pasturage, dairying, animal and poultry husbandry, and the necessary accessory for treating or storing the produce, provided that the operation of such accessory used shall be secondary to that of the regular activities. If the tract of land is less than 20 acres, it shall be presumed that the tract is not primarily used for agricultural purposes.

Chapter 40.05 OFFICIAL ZONING MAP The Official Zoning Map shall be on file in the office of the Warren County, Iowa, Zoning Director.

Chapter 41.02 A-1 DISTRICT REGULATIONS The A-1 Districts (Agricultural Districts) are intended and designed to preserve the agricultural resources of the County and protect agricultural land from encroachment of nonagricultural uses and activities.

1. Principal Permitted Uses. Only the use of structures or land listed in this section shall be permitted in the A-1 Districts.
 - A. Agriculture and the usual agricultural buildings and structures including livestock feedlots, poultry farms, grain-storage and grain-drying facilities.
 - I. Nurseries, greenhouses and truck gardens.
2. Special Use Permits A-1. The following uses may be permitted in the A-1 District subject to approval by the Board of Adjustment after notice and public hearing and subject to the conditions in subsection 3 of this section:
 - K. Temporary establishment or enterprises involving large assemblages of people or automobiles, including, but not limited to:
 - L. Rodeo grounds, music festivals and sports festivals.
 - M. Livestock feedlots and poultry farms, as provided in subsection 41.02 (1) (A) (2) of this section.
 - Q. Home Business. Subject to the limitations of the Zoning Ordinance of Warren County and this section, home businesses may be permitted, provided such business is neither noxious, offensive, nor hazardous by reason of vehicular traffic, generation or emission of smoke, dust, or other particulate matter, odorous matter, humidity, radiation or other objectionable emissions.
3. Conditions for Special Use Permits. In its determination upon the particular use at the location requested, the Board of Adjustment shall consider all of the following conditions:
 - C. That such use shall not unduly increase congestion in the streets or public danger of fire and safety.
5. Permitted Accessory Uses. Roadside stand for the sale of products grown on the premises.

Chapter 40.03 C-A DISTRICT REGULATIONS The C-A Districts (Commercial Agriculture Districts) are intended to provide for those agriculturally related service businesses uses unique to or interrelated to the A-1 Agricultural Districts.

1. Principal Permitted Uses. Only the use of structures or land listed in this section shall be permitted in the C-A District.
 - A. Agriculture and the usual agricultural buildings and structures including livestock feedlots, poultry farms, grain-storage and grain-drying facilities; provided, however, that all feedlots and poultry farms meet all of the waste treatment requirements of the Iowa Department of Natural Resources and obtain the necessary permits where applicable.
3. Special Use Permits—C-A. Conditions for Special Use Permits. In its determination upon the particular use at the location requested, the Board shall consider all of the following conditions:
 - C. That such use shall not unduly increase congestion in the streets or public danger of fire and safety.

Chapter 41.04 RR-1 DISTRICT REGULATIONS The RR-1 Districts (Rural Residential Districts) are intended and designed to provide for the development of very low density single-family subdivisions in the agricultural areas of the county.

1. Special Permitted Uses. Only the use of structures on land listed in this section shall be permitted in the RR-1 Districts.
 - G. Agricultural uses, including nurseries and truck gardens, but not including the feeding or raising of livestock or poultry, provided that no offensive odors or dust are created, and provided further, that no retail sales shall be permitted on the premises.

Chapter 41.12 M-1 DISTRICT REGULATIONS The M-1 Districts (Light Industrial Districts) are intended and designed to provide areas of the County suitable for activities and uses of a light industrial nature.

1. Principal Permitted Uses. Only the use of structures or land listed in this section shall be permitted in the M-1 Districts.

D. The manufacturing, compounding, processing, packaging, or treatment of cosmetics, pharmaceuticals, and food products, except fish and meat products, sauerkraut, vinegar, yeast, and the rendering or refining of fats and oils.

3. No use shall be permitted to be established or maintained that by reason of its nature or manner of operation is or may become hazardous, noxious or offensive owing to the emission of odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse matter or water-carried waste. All facilities required for the discharge, collection and treatment of liquid, solid or gaseous wastes shall be designed, constructed and operated in accordance with the regulations of the Iowa Department of Natural Resources.



LAND USE AND PROPERTY: FENCE LAWS

Fence Laws are spelled out in the Code of Iowa, chapter 359. The laws are published in a handy *Township Trustee and Clerk Orientation Booklet*. You

can order this booklet CRD 112 from your Extension Service. Following are some of the more important points to keep in mind.

Sec. 359A. 19. DUTY TO MAINTAIN TIGHT FENCES All partition fences may be made tight by the party desiring it, and when that party's portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than 20 feet apart, the adjoining property owner shall construct the adjoining owner's portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than 20 feet apart.

Sec. 359.21. DUTY TO KEEP FENCE TIGHT In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep that one's share of the partition fence in such condition as shall restrain such sheep or swine.

DIVISION OF FENCE RESPONSIBILITY Iowa fence law acknowledges that each adjacent landowner can compel the other to build and maintain part of the line fence – or contribute toward its construction and maintenance. Iowa law does not, however, specify the amount of fence each owner is to build or maintain or the particular part of the fence for which each is to have responsibility. It is generally assumed that each is to be responsible for one-half, although nothing would seem to preclude one maintaining the entire fence.

SOIL AND CROPS: ORGANIC STANDARDS

ORGANIC STANDARDS and CERTIFICATION

Just what does it mean when a food is labeled “organic”? Right now, that depends on the state where the food was produced. Although not every state has a set of organic standards written into law, Iowa adopted its own organic certification program in September 1999.

Farmers and food manufacturers who certify with the Iowa Department of Agriculture and Land Stewardship that they meet the state's standards for organic food production can place an Iowa Certified Organic seal on food labels. The seal guarantees that at least 95 percent of the food's ingredients were organically produced.

When a grain product, such as cereal or flour, is certified organic by the State of Iowa, this means that no synthetic fertilizers or pesticides were applied to the fields where the grain was produced for at least three years.

Iowa-certified organic foods also cannot contain grains that have been genetically altered to produce higher yields or boost their natural resistance to insects.

Organic food manufacturers have their own set of standards under Iowa law. Specifically, manufacturers must keep organic ingredients physically separated from non-organic ingredients, and they must clean equipment used to process non-organic foods before placing organic ingredients in the machines.

Certifying with the State of Iowa is not required of all Iowa organic farmers. Many farmers instead choose to certify with private agencies that may have equal or stricter standards compared to Iowa's organic certification program. Rules establishing state organic standards and an Iowa organic certification program took effect on November 10, 1999, as Iowa Administrative Code Chapter 47, Organic Certification and Organic Standards.

To obtain a copy of the adopted rule or to obtain an application for Iowa certification of organic producers and processors, write, call or e-mail:

Iowa Department of Agriculture and Land Stewardship

Organic Agriculture

Henry A. Wallace Building

Des Moines, Iowa 50319

Maury Wills, Program Coordinator

(515) 281-5783

maury.wills@idals.state.ia.us

ROADSIDE MANAGEMENT

Organic producers are reminded to post no-spray signs along their fencelines bordering roadside right-of-ways. Please make sure that signs are clearly visible from the road. Many counties also have a process by which a producer can request that specific roadside areas not be sprayed, and policies requiring landowners making such a request to take responsibility for weed control

in those areas. Organic producers are advised to contact their County Weed Commissioner or Roadside Manager for more information. The Warren County Weed Commissioner is:

Stanley Wickett
301 N. Buxton, #211
Indianola, IA 50125
(515) 961-1050

SOIL AND CROPS: CHEMICAL APPLICATION

Iowa State University Extension, in cooperation with the Iowa Department of Agriculture and Land Stewardship (IDALS), provides training and certification programs for commercial and private pesticide applicators in Iowa. Pesticide use in Iowa is regulated under the Pesticide Act of Iowa, Chpt. 206 of the Code of Iowa. The rules governing pesticide use, application, registration, and certification are contained in Section 45 of the Iowa Administrative Code. The term Pesticide applies to both Insecticide as well as Herbicide. Iowa State University Extension pesticide applicator training programs are divided into two main categories: private applicators and commercial applicators.

Certified Private Applicator means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. Iowa Code, Chpt. 206.2

Commercial Applicator means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide, but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person's general duties, or a person who applies pesticide as an incidental part of a custom farming operation. Iowa Code, Chpt. 206.2

For further information on applicator training and certification, write or call: Pest Management and the Environment Program

Extension Entomology
109 Insectary Building
Iowa State University
Ames, IA 50011
(515) 294-1101
www.pme.iastate.edu/

MARKETING: PROCESSING and SELLING

SALE OF HOME-PREPARED FOODS

Extension Publication PM 1294 Revised March 2000. Prepared by Jim Huss, PhD, associate professor and extension specialist, in the Department of Hotel, Restaurant, and Institution Management, 11 MacKay Hall, Iowa State University, Ames, IA 50011, (515) 294-3527.

Be sure to visit the ISU Food Safety and Quality Web-Site at <http://www.extension.iastate.edu/foodsafety/>

Iowa law requires inspection and licensing for all people who advertise or distribute potentially hazardous food products prepared in the home for consumption off the premises.

Licensing is required to sell non-potentially hazardous food and potentially hazardous food on a wholesale basis (such as selling or distributing products to restaurants, retailers, or institutions). Licensing also is required to cater food from the private home.

Potentially hazardous food refers to food that requires refrigeration to 41 degrees Fahrenheit or below after preparation. Non-potentially hazardous food refers to food that does not require refrigeration after preparation.

LICENSING REQUIREMENTS

All home-based firms that sell any volume of food products on a wholesale basis must be licensed. Home-based firms that wholesale bakery products can be licensed as a home food establishment if they gross under \$20,000 per year, or as a food processing plant if they gross over \$20,000 per year. In addition, all home-based firms that sell any products besides bakery items on

a wholesale basis must be licensed as a food processing plant, regardless of their sales volume.

The home food establishment license is limited to only those operations that sell bakery products, which are defined as: breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies). If approved on the inspection, the home kitchen can be used for this operation.

Firms whose sales are over \$20,000 a year are required to be licensed as either retail food establishments (if the majority of sales are made to consumers, or as a food processing plant (if the majority of sales are made on a wholesale basis). A separate self-contained food preparation area is required to obtain a retail food establishment license or a food processing plant license.

The processing of low-acid foods by retort canning or processing of acidified foods is not allowed, unless these products are commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution. Processing of these food products, without state and federal (FDA) permission, is both a violation of state law and the Federal Food, Drug, and Cosmetic Act. Securing a food processing plant license from the state is one requirement to process these types of foods. For more information contact the Department of Inspections and Appeals.

All meat or poultry products sold to restaurants, grocery stores, or institutions must be processed in an official plant, under state or federal meat inspection.

EXEMPT FROM LICENSING

Home-based firms that only sell non-potentially hazardous food (including bakery products) on a retail basis are exempt from licensing. A license is not required to sell raw/unprocessed produce to restaurants and grocery stores. If the produce is cut, bagged and sealed, or processed in any way, then the

firm must be licensed.

People can prepare and sell cookies from their homes for sale to the general public. If they sell cookies or other non-potentially hazardous bakery products to restaurants, grocery stores, or to an institution, then the preparer must be licensed as a food processing plant.

Licensing is not required to sell non-potentially hazardous food directly to consumers for consumption off the premises. The sale of these food products at a farmers market to consumers would be exempt from licensing, since this is considered as direct sales to consumers.

LICENSE REGULATIONS AND FEES

Home food establishments (potentially hazardous bakery products only) are regulated under Chapter 137D of the Code of Iowa. License fee is \$25 annually. Retail food establishments prepare or distribute food for consumption off the premises (grocery store) and are regulated under Chapter 137F of the Code of Iowa and the 1997 FDA Food Code.

Food service establishments are places that prepare food for individual portion service and include catering operations. Both retail food establishments and food service establishments are regulated under the 1997 FDA Food Code. The purpose of the Food Code is to safeguard the public health and provide food to consumers that is safe, unadulterated and honestly presented.

Both retail food establishments and food service establishments pay a license fee based on annual gross sales, which ranges from \$30 to \$225 per year. Food processing plants are firms that primarily manufacture, package, or label food that is not directly sold to consumers. These plants sell food to restaurants, grocery stores, retailers, wholesalers, or institutions. Iowa has adopted FDA requirements for the regulation of these firms. In addition to the Good

Manufacturing Practices, specific regulations have been adopted for bottling water, retort canning and processing of acidified foods. These firms are all licensed and regulated by the State, not by local county health departments.

FARMERS MARKETS

Farmers markets are not required to be licensed. The sale of raw fruits and vegetables, honey, eggs, and non-potentially hazardous food is permitted in these seasonal common marketplaces. With the exceptions of jams and jellies, no “home-style” canned goods can be sold at farmers markets, since food in a hermetically sealed container shall be obtained only from a licensed food processing plant (Section 3-201.12 of the Food Code, which has been adopted by Section 137F.2 of the Code of Iowa).

LABELING

Food products must be properly labeled with: 1. Name and complete address of the manufacturer, 2. Product name, 2. List of ingredients in order of predominance (by net weight), and 4. Net weight, net volume, or numerical count. These labeling requirements do not apply to non-potentially hazardous bakery products prepared in home food establishments or home-based honey operations. Those labels must include only the name and complete address of the manufacturer and the product name. These labeling requirements only apply to those products sold in Iowa. More stringent requirements must be met for firms involved in interstate commerce, or that make a “health” or “nutrient content” claim (such as low in fat). For more information, contact the Department of Inspections and Appeals.

INSPECTIONS REQUIRED UNDER CHAPTER 137F

Obtaining a food service or retail food establishment license requires a

consultation and inspection. Contact the Department of Inspections and Appeals for the name of the local inspector. A copy of the firm's plans should be submitted prior to construction of the food-processing area that will be licensed. The food inspection covers those areas of the home that have an impact on the food-processing operation. Basic requirements include the following:

- Demonstrated knowledge of the Food Code, as it applies to the specific operation;
- A self-contained food preparation area that is separate from the family kitchen;
- A three-compartment sink for ware-washing, or a commercial-style dishwasher;
- Separate drainboards for soiled and clean dishes. Clean dishes must be air dried (no toweling);
- The use of an "approved sanitizer" for food contact surfaces and test kits to check concentration;
- A separate hand-washing sink—the ware-washing sink or mop sink cannot be used for this purpose;
- A separate mop sink;
- Easily cleanable floor surface—no carpeting;
- Cleanable, smooth wall surface (preferably light in color);
- Food contact surfaces that are easily cleanable;
- Lights to be shielded over/around to prevent breakage;



- Vented hood system over the range. Food preparation area should be adequately vented
- Thermometers in all cold holding units (41°F or lower).

Questions about local licensing inspections can be answered by the food and Consumer Safety Bureau, Department of Inspections and Appeals, Lucas

State Office Building, Des Moines, IA (515) 281-6538. The inspector for Warren County is Mark Speltz. You can reach him at (515) 669-3266.

SALE OF MEAT AND POULTRY

Animals that must be inspected under federal law before they can be sold for food are: cattle, sheep, swine, goats, equines, and domestic poultry.

In addition to the species listed above, under Iowa state law, fallow deer, sika deer, red deer, and elk, must be inspected before they can be sold for food.

'Inspected' means ante- and postmortem inspection of the animals by federal or state meat/poultry inspection

personnel in official establishments. Both the USDA/FSIS and Iowa Meat and Poultry Inspection program offer voluntary ante and postmortem inspection programs for some exotic species.

Voluntary inspection programs offer ante- and postmortem inspection to producers or official establishments that want to slaughter and process ostrich, emu, rhea, pheasants, quail, buffalo, antelope, migratory waterfowl, and

members of the deer family not mentioned above.

Mandatory inspection is paid for by all taxpayers through general dollar funds. Voluntary inspection is a reimbursable service, paid for by the establishment or the producer. The fee is \$25 per hour for the state program. Contact USDA/FSIS for their rates.

Official plants are establishments that have requested and received a Grant of Inspections. They must maintain higher standards of facility and responsibility. These establishments slaughter animals that are inspected and can be sold, process products under inspection, or both. Depending on your needs and locality, we can advise you of the official plants in your area that can do the slaughter and/or processing of the products you want.

Custom plants are in the business of slaughtering animals for the producer's exclusive use in the producer's household. The animals they slaughter are not inspected and the products from these animals are marked NOT FOR SALE. These facilities may buy inspected raw materials for use in retail sales to consumers. Official plants are allowed to do custom or uninspected work for producers, too, but they must keep these products separate and apart from the inspected meat that is eligible for sale.

Always check the status of a plant before having animals slaughtered or processed for sale. If you want to sell in interstate commerce, you must use a USDA/FSIS inspected establishment for cattle, sheep, swine, goats, domestic poultry, and their products. Exotic animals slaughtered and processed under a voluntary federal or state program are eligible for interstate commerce. State-inspected cattle, sheep, swine, goats, equines, domestic poultry and their products must stay within the state of Iowa.

If you have any questions about meat and/or poultry processing, call the USDA/FSIS office, or Mike Mamminga at the Iowa Meat and Poultry Inspection

Bureau; (515) 281-3338; Mike.Mamminga@idals.state.ia.us

For Interstate Commerce, call the USDA/Food Safety and Inspection Service area office in Ames at (515) 232-1163.

For Intrastate Commerce call Mike Mamminga at the Meat and Poultry Inspection Bureau of the Iowa Department of Agriculture and Land Stewardship at (515) 281-3338; Mike.Mamminga@idals.state.ia.us

MEAT LABELING

Whether processed in a federal- or state-inspected establishment, you may mark your product with a label that has your business or company name. This is referred to as 'distributed by' or 'prepared for' labeling. The mark of inspection will contain the establishment number for the plant where the product was actually processed, while the label itself will declare a statement such as 'Distributed by Mike's Family Farm' or some similar statement.

All labeling that bears a federal or state mark of inspection must go through a prior approval process that begins at the plant where the product is made and packaged. All labeling begins with a sketch approval that starts with the establishment owner and inspector filling out a label approval form. Work with them on labeling from start to finish. Labeling bearing a federal or state mark of inspection may only be applied at an official establishment. You cannot take your packaged product home and apply the labeling yourself.

GENERAL LABELING

The Food Processing Center Business Development Office at the University of Nebraska-Lincoln offers the Food Processing Center's Entrepreneur Assistance Program, which specializes in providing business, marketing and technical assistance to entrepreneurs in the value-added food-processing industry. The

program consists of three phases: “From Recipe to Reality,” “From Product to Profit,” and “Existing Business Development.”

The one-day “Recipe to Reality” seminar addresses the issues to consider when starting a food-processing business. If you or someone you know is interested in selling a food product, is just starting a business, or has been in business less than a year, this seminar is a good source of information. The seminar addresses topics including Packaging and Labeling Requirements, Government Regulations, and Food Safety Requirements.

The “From Product to Profit” phase provides individualized consultation and assistance that is crucial to successfully develop a business. Assistance is provided in the areas of technical and business/marketing issues including Business Structure Development, Regulatory Requirements, and Food Safety and Sanitation Programs.

During the “Existing Business Development” phase, project proposals are prepared by the Food Processing Center’s professional food consultants. Each proposal is customized to the specific needs and goals of the company. Services include, but are not limited to, logo and label development and nutritional analysis and labeling.

To request additional information about services or seminars, or to speak with a food industry specialists, e-mail Arlis Burney at aburney1@unl.edu or call her at (402) 472-8930. Mailing Address:

The Food Processing Center Business Development Office
University of Nebraska-Lincoln
60 Filley Hall
Lincoln, NE 68583-0928

You can read more about this program in the chapter “To Market, To Market,” beginning on page 53.