

Managing Legal Risks in the Direct Farm Business

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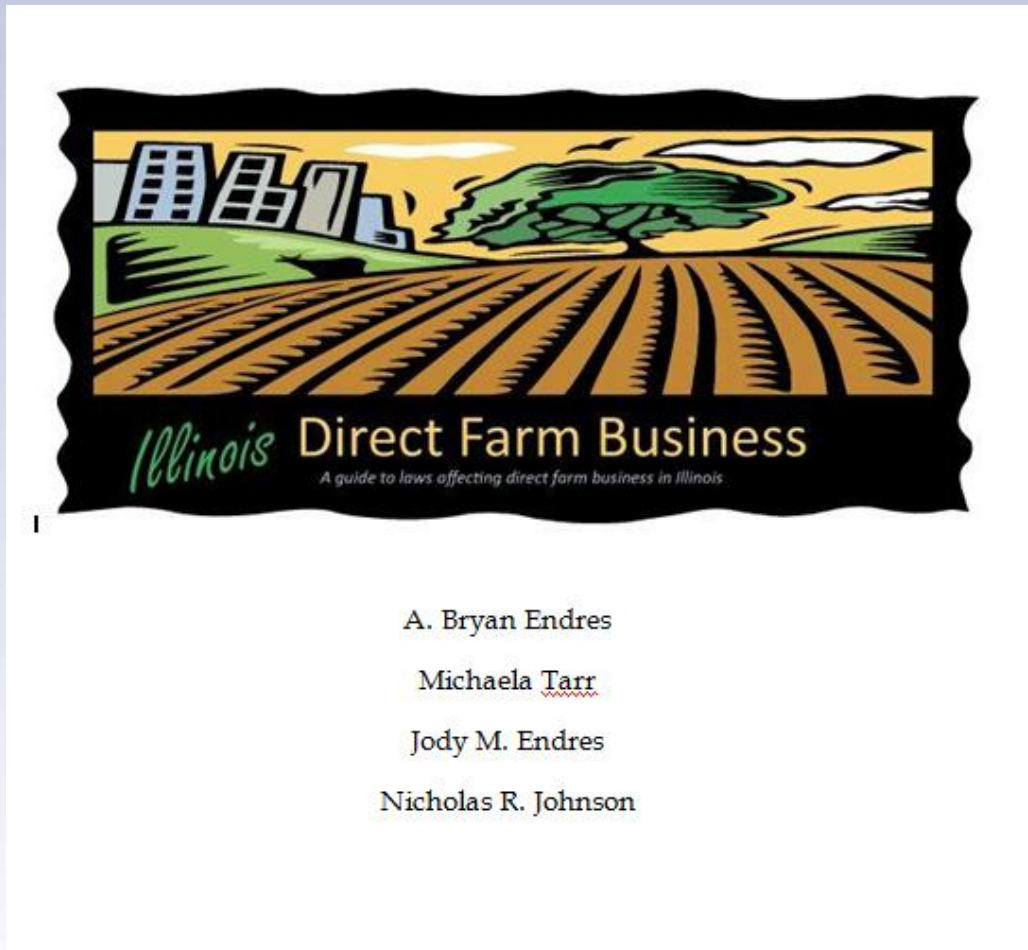
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Direct Farm Business Guide— a primer



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Direct Farm Business Guide— a primer

Directfarmbusiness.org

If you are reading this website, you are probably well aware of the growing interest in local foods. Consumers seek out local producers for a variety of reasons. Some believe that locally-grown food is healthier, safer and tastier. Others hope that local farmers are more invested in the community and stewardship of the land. And many people buy locally because they want to learn more about where their food comes from and make connections with people who produce it. Although consumer demand is the primary motivation for expanded local food networks, national leaders, in an era of bioterrorism threats and increased energy costs, have recognized that direct farm businesses can play a critical role in local and regional food security plans. For example, the Federal Farmer-to-Consumer Direct Marketing Act (7 U.S.C. Chapter 63) recognizes the importance of direct farm businesses by funding state direct marketing assistance programs and directing a yearly survey to determine what methods of direct farm marketing are being used.

Direct farm businesses can meet all these demands while increasing profitability for farmers and local producers. Selling directly to consumers increases the farmer's share of the consumer's food dollar, which often goes predominantly to brokers and processors in conventional food supply systems. Furthermore, building a connection with customers and the community can make farming a more enjoyable and rewarding experience.

However, managing a successful direct farm business can be difficult due to a labyrinthine set of laws and regulations. These rules touch upon nearly every

Navigation

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- Regulation by Product Category/Activity



Questions and Answers – state/local regulation

- **Q: what government level regulates processed food at farmers' markets?**
- **A: The state of Illinois, mainly.**
 - Illinois Dept. of Public Health (IDPH) has specific requirements for processed foods
 - Reqs are based on food safety risks inherent to each food
 - IDPH has guidance documents, but individual inspectors at the county level are responsible for enforcement.
 - IDPH contact info:
 - Ph: 217-785-2439
 - Regional office contact search: <http://www.idph.state.il.us/local/map.htm>
 - Some federal-level requirements (labeling); individual farmers' markets might also impose rules.



Questions and answers – state/local regulation

- **Q: when do local/county ordinances supersede state provisions - or can they?**
- **A: typically, they don't. But cities with “home rule” authority, may, in some cases, pass laws that supersede state laws.**
 - “home rule unit”:
 - any county that has a popularly elected chief executive;
 - Any municipality with a population of 25,000+
 - Any municipality that elects to become a home rule unit
 - home rule units may “exercise any power and perform any function pertaining to its government and affairs,” including public health regulations, licensing, and taxing.
 - if a court decides that a local law pertains to a city or county’s government and affairs, then that law supersedes contradictory state laws as applied in that city or county.



Questions and answers – state/local regulation

- **Q: Can the county dictate the number of animals allowed per acre?**
- **A: In some cases, yes.**
- The County Zoning Act prohibits counties from regulating animal and poultry husbandry when...
 - Agriculture constitutes the principal activity on the land
 - Unless the parcel is less than 5 acres
 - For example, Madison County restricts the number of livestock and fowl on rural residential parcels of one acre or less (1 cow; 10 fowl)
- Livestock Management Facilities Act is the primary Illinois statute regulating large livestock facilities and counties play a minimal role in the approval process



Questions and answers – business entities

- **Q: At what point during the tax year should you form an LLC?**
- **A: As soon as possible.**
- Assuming for tax purposes you elect to treat the LLC as a sole proprietorship or partnership rather than a corporation, when you form the LLC makes no difference.
 - Income in these situations would pass through to the individual or partnership
 - There may be an issue of filing multiple schedule Cs for the two parts of the tax year to reflect the two business entities
- The primary reason to form an LLC is for liability purposes—therefore, the sooner the better. Don't wait for the next tax year.



Questions and answers – business entities

- **Q: What the easiest business entity to form and operate?**
- **A: A general partnership. BUT...**
 - No liability protection!!
 - No filing, no fees, partnership tax return
- LLC
 - Can be a single-member LLC in Illinois
 - Must file formation document “Articles of Organization” with the Secretary of State (\$500 filing fee)
 - <http://www.ilsos.gov/llcarticles/frontinstructions.html>
 - Must file an Annual Report with the Sec. of St. (\$250)
 - A Guide for Organizing Domestic Limited Liability Companies
 - https://www.cyberdriveillinois.com/publications/pdf_publications/c334.pdf
 - Operating Agreement will specify internal management of LLC
- S-Corp
 - Filing requirements similar to LLC
 - Must have bylaws (similar to LLC Operating Agreement)
 - Must have annual meetings
 - Increased formality in operations to maintain liability protection



Questions and answers – business registration

- **Q: can you give me more information about protecting business images, logos, names, etc.? Where are the forms?**
 - ***Assumed name registration:***
 - Many businesses adopt an “assumed name” for purposes of transacting business (e.g., “Sunnyside Farms”). These names must be registered.
 - Sole proprietorships and general partnerships must register with county clerk and publish notice in a local newspaper
 - All other business types must file an application with IL Secretary of State
 - Application available online:
http://www.cyberdriveillinois.com/departments/business_services/publications_and_forms/home.html
 - ***Trademark registration:***
 - Federal registration: <http://www.uspto.gov/trademarks/index.jsp>
 - State registration:
http://www.cyberdriveillinois.com/departments/business_services/publications_and_forms/trademark.html



Questions and answers – business registration

- **Q: Do we need to register under the Bioterrorism Act if we feed our own animals? Does hay fall under the provisions of this Act?**
- Purpose: of registration reqs: Aid FDA's response to threats to the food supply
- Farmers growing crops and custom mixing feed for their own animals do not have to register
- Farmers growing crops and custom mixing feed for other's animals must register as a processing facility
- Farmers storing own crops (corn, hay) for direct sale to *other* farms *may* be exempt from registration as "retailers"
 - If I harvest corn, store it on-farm in my grain bin, and then sell it to my neighbor for animal feed, that is a retail sale so do I need to register?
 - If I harvest hay, bale it and store it and then sell directly to others, do I need to register?
 - The answer depends if that is the facilities' primary function
 - Registration is free and does not take much time



Questions and answers - producer liability

- **Q: Can I reduce my liability by selling meat from home as opposed to delivering it to a buyer?**
- **A: No, mainly not.**
 - *Liability concerns:*
 - Whether you sell meat from your farm, or to retailers, or at the farmers' market, you are still ultimately liable for diseased or adulterated meat.
 - *Licensing requirements:*
 - All meat offered for sale must come from licensed and inspected slaughterhouse, regardless of where it is sold.
 - Poultry products may be sold from home without complying with inspection requirements in some cases:
 - No more than 5,000 birds slaughtered per year
 - Poultry raisers do not buy or sell poultry products other than those produced on their own farms or premises
 - Birds are slaughtered and sold on the premises where the exemption is given
 - Slaughter must be sanitary
 - Request in writing must be made to IDPH



Questions and answers – producer liability

- **Q: Once I sell a live animal to a packer or processor for slaughter, does the liability transfer? The customer is paying the processing fee and picking up the meat.**
- **A: No – not to the extent that it can still be traced back through the supply chain.** If an animal that you own (and then subsequently sell to a slaughterhouse) is diseased, or contaminated with antibiotics, thereby sickening a consumer, you can be liable for those injuries if the meat is traced back to your farm.



Questions and answers – producer liability

- **Q: what's the difference between workers' compensation and an LLC?**
- **A: One is liability “insurance” and the other is a liability “shield.”**
- An LLC protects (shields) the business owners personal assets from liability incurred by the business. An LLC may still be sued for damages, but the only thing at risk are the assets of the LLC, not the individual
- Workers' Compensation is a type of insurance (mandated in some cases, but many farms are exempt) that protects the business (whether an LLC or sole proprietorship) from liability resulting from an employee's injury—compensating the worker
- Businesses exempt from mandatory workman's compensation insurance should still have some private insurance to protect the business' assets in the event an employee is injured and to ensure the employee's medical bills are covered



Questions and answers – producer liability

- **Q: If there is a sign at the entrance to a facility as well as the actual selling areas (e.g., at the actual farm stand) disclaiming responsibility for injuries that occur while on the location, as well as sicknesses that result from purchasing produce, would this absolve the farm business from liability lawsuits?**
- **A: No, generally not.** Even if signs are posted, a farm may still be liable for:
 - Injuries that occur on the premises due to the negligence of the owner (e.g., a failure to inspect and make safe)
 - Illness resulting from contaminated products, due to the doctrine of strict liability
 - the same is true about release forms - signing one isn't going to guard against negligence or product contamination suits.



Questions and answers – sales tax

- **Q: Is the producer or the buyer responsible for the sales tax?**
- **A: the buyer is responsible for *paying* the tax. The producer is responsible for *collecting* the tax.**
 - Buyers pay a state “use tax” on any “tangible personal property” that they purchase for their own use or consumption in the state of Illinois. However, buyers usually don’t pay this tax directly into the state coffers themselves. Instead, it is collected for them by *retailers*, who add a *sales tax* to any item purchased in the state. It is the *retailer’s* job, in most cases, to remit that money to IDOR.
 - However, if the retailer *does not* collect Illinois sales tax, then it is the consumer’s duty to pay the use tax directly.
 - So for example, if you order a lobster from a Maine company via online website and have it shipped to Illinois to eat, the Maine company will probably not charge Illinois sales tax, and then you will be responsible for paying the use tax on the lobster.



Questions and answers – sales tax

Attach Schedule CR.

Line 18 _____ Property tax and K-12 education expense credit

You may be entitled to credit for property tax and K-12 education expenses you paid. See the instructions for Schedule ICR to see if you are eligible for these credits.

Attach Schedule ICR and any required supporting documents.

Line 19 _____ Credit from Schedule 1299-C

See the instructions for Schedule 1299-C to determine if you are eligible for these credits.

Attach Schedule 1299-C and any required supporting documents.

Line 20 _____ Total nonrefundable payments and credits

Add Lines 17, 18, and 19, and write the total on Line 20.

Caution

IL-1040, Line 17 + Line 18 + Line 19
cannot be greater than Line 16.

What is Illinois Use Tax?

Illinois Use Tax is a sales tax that you, as the purchaser, owe on items that you buy for use in Illinois. If the seller does not collect this tax, you must pay the tax to the Illinois Department of Revenue (IDOR). The most common purchases on which the seller does not collect Illinois Use Tax are those made via the internet, from a mail order catalog, or made when traveling outside Illinois.

When must I pay Illinois Use Tax to IDOR?

You must pay Illinois Use Tax to IDOR if

- the items you bought are taxable in Illinois,
- you used or consumed these items in Illinois, **and**
- when you purchased the items you **either**
 - did not pay any sales tax to the seller, **or**
 - paid sales tax at less than Illinois' Use Tax rates of 6.25 percent for general merchandise and 1 percent for food and drugs.

For example, if you purchased

- a computer over the internet for use in Illinois and paid no sales tax, you owe 6.25 percent Illinois Use Tax.
- jewelry while vacationing in Georgia upon which you paid 4 percent sales tax and which you brought back to Illinois, you will owe Illinois Use Tax on the 2.25 percent difference in tax rates.
- cheese by mail order from a company in Wisconsin and paid no sales tax, you owe 1 percent Illinois Use Tax.

Questions and answers – sales tax

	16	Total tax amount from Page 1, Line 15	16	<input type="text" value=""/>	<input type="text" value=".00"/>
Step 7: Tax After Nonrefundable Credits and Use Tax					
	17	Income tax paid to another state while an Illinois resident. Attach Schedule CR.	17	<input type="text" value=""/>	<input type="text" value=".00"/>
Complete	18	Property tax and K-12 education expense credit amount from Schedule ICR. Attach Schedule ICR.	18	<input type="text" value=""/>	<input type="text" value=".00"/>
Schedule ICR	19	Credit amount from Schedule 1299-C. Attach Schedule 1299-C.	19	<input type="text" value=""/>	<input type="text" value=".00"/>
	20	Add Lines 17, 18, and 19. This is the total of your credits. This amount may not exceed the tax amount on Line 16.	20	<input type="text" value=""/>	<input type="text" value=".00"/>
	21	Tax after nonrefundable credits. Subtract Line 20 from Line 16.	21	<input type="text" value=""/>	<input type="text" value=".00"/>
- New - Pay IL Use Tax here.	22	Use tax on internet, mail order, or other out-of-state purchases from UT Worksheet or UT Table in the instructions. Do not leave blank.	22	<input type="text" value=""/>	<input type="text" value=".00"/>
	23	Tax after nonrefundable credits and use tax. Add Lines 21 and 22.	23	<input type="text" value=""/>	<input type="text" value=".00"/>
Step 8: Payments and Refundable Credit					
	24	Illinois Income Tax withheld. Attach W-2 and 1099 forms.	24	<input type="text" value=""/>	<input type="text" value=".00"/>
	25	Estimated payments from Forms IL-505-I and IL-1040-ES, including overpayment applied from 2009 return	25	<input type="text" value=""/>	<input type="text" value=".00"/>
See Instructions	26	Pass-through entity tax payments. Attach Schedule K-1-P or K-1-T.	26	<input type="text" value=""/>	<input type="text" value=".00"/>
Complete	27	Earned Income Credit from Schedule ICR. Attach Schedule ICR.	27	<input type="text" value=""/>	<input type="text" value=".00"/>



Questions and answers – sales tax

- **Q: If I am renting beehives, do I need to collect sales tax?**
- **A: No, not from the people who you rent to.**
 - Sales of service, including leasing situations, are not taxed in Illinois. That's because the tax burden is on the lessor, not the lessee.
 - In what the law calls a “true lease,” there is no buy-out provision, and therefore no transfer of personal property. Therefore, the lessor is the end user and must pay the tax on the cost price of the tangible personal property. Lessees do not have tax liability in this situation.



Questions and answers – sales tax

- **When selling to a restaurant, who does the collecting of sales tax? Do we (the wholesale vendor) need to keep back taxes or a record?**
- **A: the restaurant is responsible for collecting the tax, but you should obtain a *certificate of resale* for each transaction.**
 - If the direct farm business sells an item to a purchaser for resale (e.g. to a restaurant or grocery store), the transaction is exempt from occupation taxes (86 IAC § 130.120(c)).
 - This is because the state's use and occupation tax only applies to sales made *at retail* – that is, sales made to the end consumer (or *user*) of the product.
 - In a resale situation, the seller should obtain a certificate of resale from the purchaser to demonstrate that the transaction is indeed exempt (86 IAC § 130.1405).



Questions and answers – sales tax

- **Q: When selling beef from the farm when does one need to collect sales tax?**
 - **When one sells the animal at the farm to the consumer? Consumer takes animal to packer. Yes.**
 - **When one sells the animal by live weight, delivered to packer, and consumer pays for processing? Yes.**
 - **When one sells the animal delivered to the packer, sells on the hanging side weight, and consumer pays for processing? Yes.**
 - **What is the determining factor in this sale?**
 - The determining factor is *retail sale* – that is, the sale to the consumer. Sales and use taxes apply when tangible personal property is used or consumed in Illinois. “Tangible personal property” is an asset that exists physically (i.e., you can touch it) and that can be used or consumed.



Questions and answers – sales tax

- **Q: When you under the realm of wholesale, are seed purchase considered wholesale purchases? (and therefore exempt from sales tax)**
- A: Seed purchases are exempt from use and occupation tax in several situations:
 - If you buy the seed for feeding livestock or poultry for marketing, or for producing dairy products or eggs for marketing.
 - If you buy the seed for raising vegetables, crops, or other plants for marketing.
 - They are *not* exempt if you buy the seed to produce animals or plants that are not for sale to someone else (e.g., if you plan to consume the products yourself).



Questions and answers – sales tax

- **Q: Does the municipal tax apply to things sold outside the municipality?**
- **A: No. A municipal sales tax would apply to only items sold within the municipality's borders.**



Questions and answers – specific products

- **Q: Hard cheese can sold made from raw milk if it is aged for a time. Can butter be sold this way also?**
- **A: Probably yes, “raw milk butter” may be sold in Illinois.**
 - Butter is regulated under IL FDCA, which requires butter and cheese to conform to federal standards of identity and definitions.
 - Therefore, there is no pasteurization requirement in Illinois for butter or cheese, so long as they meet the definitions provided by federal law.
 - Federal regulations prohibit milk or *milk products* (including butter) being sold across state lines unless they are pasteurized, but says nothing about butter sold completely within a state’s borders.
 - Federal law is silent as to whether butter must be aged or pasteurized if made from raw milk.
 - Therefore, raw milk butter *probably* may be sold in Illinois if (1) it is not distributed across state lines, and (2) conforms to all other standards for butter.
 - **CALL IDPH if you wish to produce this product. This is a grey area in IL law.**



Questions and answers – labor and employment

- **Q: What are the poster requirements that farms and small-scale food processing facilities must display with respect to employee wages, employee safety and food safety?**
- **A: federal poster requirements:**
 - **Employee wages:** Employers subject to the Federal Fair Labor Standards Act's (FFLSA) minimum wage provisions must post a notice in all their establishments that explains the Act.
 - Many small farms will be exempt from the FFLSA's requirements and will therefore not need to post.
 - More information: <http://www.dol.gov/compliance/guide/minwage.htm#who>
 - **Employee safety:** Employers subject to the Occupational Safety and Hazards Act (OSHA) must post OSHA citations, injury and illness data, an OSHA poster, and any other notices provided by OSHA in a conspicuous place.
 - most small farms that have employees will be subject to the Act, though "immediate family members of farm employers that do not employ outside employees" are not covered .
 - More information: <http://osha.gov/workers.html#3>
 - **Food safety:** The federal government has not established poster requirements for food safety.
 - **More information on required federal posters:**
<http://www.dol.gov/compliance/topics/posters.htm>



Questions and answers – labor and employment

- **Q: What are the poster requirements that farms and small-scale food processing facilities must display with respect to employee wages, employee safety and food safety?**
- **A: state poster requirements:**
 - The Illinois Department of Labor maintains a website that includes copies of all posters that Illinois employers are required to display (including federal laws):
 - <http://www.state.il.us/agency/idol/posters/poster.htm>
 - **Food safety:** IL regs specify an employee handwashing procedure, illustrated on this poster: <http://www.idph.state.il.us/about/fdd/HandWash2.pdf>



Questions and answers – labor and employment

- **Q: How do interns fit into the labor and employment rules?**
- **A: technically, they're employees. BUT...**
- Guide pages 88-89
- An intern performing work on the farm that contributes to the farm's profitability is an "employee"
- BUT many farms in Illinois qualify for the minimum wage exception (less than 500 man-days per quarter)—Illinois only rule
- Federal and Illinois law have provisions for "student-learners" attending school—see guide for details



Questions and answers – labor and employment

- **Q: Can you provide a summary of migrant worker laws?**
- **A: Sure.**
- Guide pages 86-88
- H-2A Visa for Temporary Workers (foreign)
 - <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>
- Migrant and Seasonal Worker Protection Act
 - Standards for employment
 - 2 routes
 - Hire a Farm Labor Contractor to obtain workers
 - Farm must then register with IL Dept. of Labor as farm labor contractor (unless small business exception—500 man days during every quarter of the preceding year)
 - Directly recruit workers
 - No need to register
 - Specific rules on wages (bi-weekly as minimum); pre-employment disclosures; housing and transportation (if provided); and recordkeeping



Questions and answers – labor and employment

- **Q: What's the employment status of volunteers?**
- **A: “bona fide” volunteers are exempt from regulation.**
- The FLSA's definition of “employ” means “to suffer or permit to work” thus when someone is permitted to work, that person is an employee and thus must be paid minimum wage and overtime under the Act.
- Exception for “Bona Fide Volunteers”
 - Limited to labor for “public service, religious or humanitarian objective”
 - 1997 Cooperative Grocery Store case
 - Not “volunteers” as service performed for commercial business purposes
- BUT...remember Federal and Illinois exemption from FLSA and minimum wage rules for small agricultural operations—same as with interns



Questions and answers – labeling

- **Q: What restrictions are there to using the claim “Beyond Organic”?**
- **A: A claim that a product is “Beyond Organic” makes a representation that the product is organic, therefore the NOP regulations will apply to such products.**
 - Besides the NOP requirements, other statutes regulate the misuse of the term “organic” and its variations:
 - Federal Food, Drug and Cosmetic Act considers food to be “misbranded” if “its label is false or misleading in any particular.”
 - Lanham Act prohibits the use of “any word, term, name, symbol, or device, or any combination thereof, ...false or misleading description of fact, or false or misleading representation of fact, which (A) is likely to cause confusion, or...cause mistake.”



Questions and answers – labeling

- **Q: What are the rules regarding labeling of non-GMO products?**
- **FDA’s General Policy on Food Labeling**
 - Except for health-related claims, labels do not need pre-market FDA approval
 - Labels cannot be false or misleading
- **FDA’s GMO Labeling Policy**
 - Discourages “GMO-Free” labels as there is a chance there may be some very low level of GMOs and thus the label would be “false”
 - Discourages use of “GMO-Free” labels on products in which there are no commercialized GMOs (e.g., green peppers) as this may be “misleading” as it implies products other than yours are genetically modified
 - Preferred practice is to say “produced without GM”
 - *Additional resources:*
 - <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059098.htm>
 - <http://www.nongmoproject.org/>



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- ***Federal laws governing cosmetics:***
 - The FDA, under the FDCA, regulates the sale of cosmetics. A cosmetic is defined as (1) “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.”
 - *Compare the FDA’s definition of “drug”:* “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease” and “articles (other than food) intended to affect the structure or any function of the body of man or other animals.”
 - *Therefore, whether an item is a “cosmetic” or a “drug” depends on its intended use.*
 - Unlike drugs, there are **no premarket approval requirements** for cosmetics.
 - Unlike drugs, **no duty to register** a cosmetic establishment or marked cosmetic with FDA, though producers may do so voluntarily.



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- **Federal laws governing cosmetics:**
 - Cosmetics brought to market cannot be **adulterated** or **misbranded**.
 - **A cosmetic is adulterated if**
 - *It contains a poisonous or deleterious substance that might injure people who use the product as intended.*
 - *It consists in whole or in part of any filthy, putrid, or decomposed substance.*
 - *It was prepared, packed, or held under unsanitary conditions .*
 - *Its container is composed in whole or in part of poisonous or deleterious substances that render the contents injurious to health.*
 - *The product is not hair dye and contains a color additive which is unsafe.*



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- **Federal laws governing cosmetics:**
 - Cosmetics brought to market cannot be **adulterated** or **misbranded**.
 - **A cosmetic is misbranded if**
 - *Its labeling is false or misleading.*
 - *if packaged, unless it bears a label containing (1) name and place of business of mfr, packer, or distributor; and (2) an accurate statement of the quantity of contents.*
 - *If it omits words or statements required by law to appear on the label.*
 - *If its container is formed, filled, or made so as to be misleading.*
 - *If it is a color additive and does not conform to the packaging and labeling requirements for color additives.*
 - *If its packaging violates poison control laws.*



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- ***Federal laws governing cosmetics:***
 - *Substantiation of safety requirement:* Cosmetic ingredients or finished products must be *adequately substantiated for safety prior to marketing*. This requirement imposes a duty on the cosmetic marketer to assure itself that the product is safe.
 - *Cosmetic product warning statements:* A cosmetic label must bear a warning statement “whenever necessary or appropriate to prevent a health hazard that may be associated with the product.” Warning labels must be used on:
 - *Products that have not been proven to be safe.*
 - *Self-pressurized containers.*
 - *Feminine deodorant sprays*
 - *Foaming detergent bath products*
 - *Coal-tar hair dyes that pose a risk of cancer.*



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- **Federal laws governing cosmetics: what about soap?**
 - *Products that meet the Act's definition of soap are exempt from regulation. A product is a “soap” if:*
 - The bulk of the nonvolatile matter in the product consists of an alkali salt of fatty acids and the product's detergent properties are due to the alkali-fatty acid compounds; AND
 - The product is labeled, sold, and represented solely as soap.
 - *If a cleansing product does not meet this definition, then it will be sold as either a cosmetic or a drug. For example:*
 - If a product consists primarily of alkali salts of fatty acids but is advertised for moisturizing as well as cleansing, the product would be regulated as a *cosmetic*.
 - If a product is made mainly from alkali salts of fatty acids but also contains a chemical intended to treat acne, then the product would be regulated as a *drug*.



Questions and answers – specific products

- **Q: What are the rules and regulations for making cosmetics (e.g., soap, shampoo, powders)?**
- **Organic cosmetics:**
 - *USDA has no authority over personal care products that claim a generic "organic" status.*
 - *USDA does have jurisdiction over personal care products that claim "certified organic".*
 - *More information: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5068442>*
- **Illinois laws regulating cosmetics:**
 - *Illinois law mainly tracks the federal statute. Can't be adulterated, and can't be misbranded.*
- **Additional resources:**
 - *Compliance and regulatory information:*
<http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/default.htm>
 - *Labeling cosmetic products:*
<http://www.fda.gov/Cosmetics/CosmeticLabelingLabelClaims/default.htm>
 - *Voluntary cosmetics registration program:*
<http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/default.htm>



Questions and answers – specific products

- **Question: Are there any regulations regarding the sale of fresh-cut flowers in the wholesale market? Anything about “woodies” (blooming trees and branches)?**
- **A: Yes – mainly with regard to controlling pests and diseases.**
 - The federal Plant Protection Act (PPA) states that “no person shall import, enter, export, or move in interstate commerce any plant pest, [unless authorized].” 7 U.S.C. 7711.
 - The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) has authority to regulate plants moving in interstate commerce, including “cut flowers, garlands, wreaths or greenery of any plants.”
 - The Secretary of Agriculture may require that certain plants or plant pests move in interstate commerce only with a permit. 7 U.S.C. 7712(c).
 - The Secretary may, in the case of an “extraordinary emergency,” prohibit or restrict the movement *within* a state of plants if required to control a new plant pest or noxious weed.



Questions and answers – specific products

- **Question: Are there any regulations regarding the sale of fresh-cut flowers in the wholesale market? Anything about “woodies” (blooming trees and branches)?**
- **A: Yes – mainly with regard to pests and diseases.**
 - Illinois Department of Agriculture has the authority to implement a plant or plant pest quarantine “to prevent the spread of dangerous plants or dangerous plant pests or dangerous disease throughout the State”
 - Current list of exotic pests is available at <http://www.agr.state.il.us/Environment/>.
 - Dept. of Ag. has established quarantines in certain parts of IL for certain exotic pests, including gypsy moths and Emerald Ash Borers. Federal quarantines for the pine shoot beetle and the Japanese beetle include Illinois.
 - More information on IL quarantines: <http://www.agr.state.il.us/Environment/> (“exotic pests” section; follow the hyperlink for info on each)



Questions and answers – specific products

- **Question: Can you offer someone a sample of raw milk in Illinois? If so, where? On farm? Off-farm?**
- **A: Yes, on the farm – so long as you meet all the other requirements for *selling* raw milk on the farm.**
 - In Illinois, all milk and milk products sold *or distributed* for human use or consumption must be pasteurized, unless sold *or distributed* on a dairy farm.
 - A sample of raw milk would likely be considered a distribution, therefore permitted on the premises of the dairy farm. For additional rules on the sale and distribution of milk that has not been pasteurized, contact the Illinois Department of Public Health.



Insurance

- **General farm liability insurance policies:**
 - Typically protect against claims for **bodily injury** or **property damages** that occur on the farm premises.
 - MAY or MAY NOT cover roadside stands/U-Picks
 - Typically DO NOT cover other types of direct farm businesses
 - Typically DO NOT insure against claims of injury based on foodborne illnesses



Insurance

- **From one standard farm/ranch insurance policy:**
 - “Liability and medical payments . . . Do not apply to bodily injury or property damage . . . arising from an insured’s business pursuits.”
 - “The following activities are business:
 - “The operation of a roadside stand principally for the sale of produce grown on the insured location when gross receipts exceed \$4,000 in a calendar year.
 - “U-Pick operations in the insured location. U-Pick means the harvesting of produce by customers.”



Insurance

- **Special insurance coverage that can help fill gaps:**
 - Commercial general insurance (CGI):
 - Covers activities not considered “agriculture” or “farming”
 - Large U-picks, agri-tourism, processing facilities, etc.
 - Product liability:
 - Covers injury caused by foodborne illness, no matter where the injury took place (e.g., off-premises)
 - Some retailers may require product liability insurance
 - Does NOT cover the cost of recalls
 - Accidental or product contamination policy:
 - Covers direct and indirect costs associated with product recall
 - Insures growers against claims resulting from unintentional /unknowing distribution of products later deemed unsafe
 - Only applies to growers whose product was contaminated



Insurance

- **Special insurance coverage that can fill gaps:**
 - Special insurance products may not only help reduce your legal risk, but may be *required* to take advantage of certain marketing opportunities. The Farmers' Market Coalition Handbook notes:
 - “Many farmers markets require their vendors have liability insurance.”
 - “Some farmers markets also require their vendors to list the farmers market and the municipality that the market operates at as an “additional insured” on their policy.”
 - It’s also recommended that a market require product liability insurance coverage from their producers, such that they are protected if someone gets sick from consuming their product.”
 - Additional resources:
 - http://www.nyfarmersmarket.com/NYFM_Training_Manual.pdf (see the “Understanding Liability Insurance” section)
 - http://www4.ncsu.edu/~rmrejesu/Food_Safety_Risk/ag-710%20final%20printed.pdf (good overview of coverage options)
 - **Your insurance agent** is the best resource.

