

Arkansas Food Freedom Act Guidelines

Can I make or sell a specific food product:

4. Can I use milk/dairy in a baked good product? **Yes, provided it is not the primary ingredient and the resulting product does not require refrigeration for safety.**
5. Can I make buttermilk pie, buttercream frosting, or butter itself? **Buttermilk pie and butter are considered Time/Temperature Control for Safety (TCS) Food and cannot be sold under the Food Freedom Act. However, buttercream frosting made with real sugar is typically Non-TCS and is allowed.**
6. Can I sell microgreens if they are grown in small flats and not cut for sale? **Since the microgreens have not been harvested, they would not be considered food and therefore would not be allowed or prohibited under the Food Freedom Act. You should contact the Arkansas Department of Agriculture to discuss any Rules they may have regarding the sale of plants.**
7. Can I make beef jerky? **No, items containing meat, poultry, seafood, wild game, or dairy are prohibited.**
8. Can I make pickles for sale at my local market? **Yes, the Food Freedom Act allows for acid and acidified food (like pickles) to be sold provided they are heat treated, packaged, and have a pH below 4.6. H**
9. Can I make vanilla extract? **Products that contain greater than .5% alcohol are regulated by the Arkansas Alcoholic Beverage Commission and therefore, the Food Freedom Act cannot be applied to those products.**
10. Can I sell mushrooms? **Wild harvested mushrooms are prohibited, however, mushrooms produced under controlled conditions from commercially obtained spores would be allowed**
11. Can I make marinara sauce? **Yes, provided the product is heat treated, packaged, and has a pH below 4.6.**
12. Can I use honey in my jams/jellies? **Honey in small quantities may be added as a flavor enhancement but cannot substitute for sugar.**
13. Can I make applesauce? **Yes, provided the product is heat treated, packaged, and has a pH below 4.6.**
14. Can I make low- or no-sugar jams/jellies? **Not without having the recipe/process validated by a Process Authority or testing each batch to verify the pH is below 4.6.**
15. Can I make fruit-filled fried pies? **Yes, provided the fruit filling meets the definition of Non-TCS Food.**
16. Can I use sugar alternatives in baked goods? **Sugar alternatives may be used for baked goods like breads and cookies, however, frostings, fillings, etc. must use real sugar.**
17. Can I infuse honey? **The addition of any product that would increase the moisture content of honey would not be allowed without validation from a Process Authority. The addition of dry Non-TCS ingredients (such as spices, fruit powder, or nuts) would be allowed.**
18. Can I make fruit (peach) salsa? **Yes, provided the product is heat treated, packaged, and has a pH below 4.6**
19. Can I make pickled okra or pepper jam? **Pickled okra is allowed provided you follow the requirements for acid/acidified foods. Pepper jam is typically considered a low-acid food and is prohibited unless the recipe/process is validated by a Process Authority.**
20. Can I sell shelled peas? **No, fresh shelled peas typically have a pH between 5 and 6 and are considered TCS food. However, dried peas are allowed.**

Business certifications/licenses, Legality, Other Certifications

21. I plan to sell greens and vegetables for farmers markets, restaurants, and grocery stores. Do I need additional certification? **Additional certification is not required by the Food Freedom Act. Please contact the Arkansas Department of Agriculture ((501) 225-1598 .**
22. Do I need insurance? Who should I talk to? **The potential for lawsuits is typically high should a foodborne illness outbreak occur. Please consult with your attorney to determine the best ways to limit your liability.**
23. Who is liable/what are the legal ramifications if someone becomes ill after eating my food? **Typically food falls into what is called “Strict Liability” meaning should an illness occur the producer is liable. Please consult with your attorney to determine the best ways to limit your liability.**
24. Am I required to have a business license for selling homemade items? **The Food Freedom Act prohibits the Arkansas Department of Health from licensing foods produced in accordance with the Act. Please consult with your local city or county governments to determine if there are any necessary licenses or permits for your business. You may also wish to reach out to the Arkansas Department of Finance and Administration regarding any sales tax collections that would be necessary for your products.**
25. Should I form a limited liability corporation (LLC)? Will this protect me? **Please consult with your attorney to determine the best ways to limit your liability.**

Farmer’s Market Questions

27. As a farmers’ market manager, who has legal liability for improperly labeled products? What are the consequences if my products are mislabeled or missing a label? **The Arkansas Department of Health will address all issues of misbranded products directly with the producer of that product. However, the market managers should be proactive as well as they could be found to have some liability for the product if an illness occurs and they were aware of an issue with the product.**
28. Do I need a permitted kitchen to sell my homemade products at a farmers’ market? **No, provided the products are produced in accordance with the AFFA.**
1. Are there separate guidelines for farmers’ markets? Does the AFFA apply to farmers’ markets? **Yes, there are separate guidelines for Farmer’s Markets as that guideline addresses many other products that typically are sold at a Farmer’s Market. However, any product produced under the AFFA can be sold at a Farmer’s Market.**
30. Can I provide food samples at a farmers’ market? **Yes, provided the samples are individually prepackaged ahead of the event.**
31. Can a farmer’s market require me to test and label my products as a condition of being a vendor? **Yes, individual markets may implement rules regarding the types of foods that are offered, the dates/hours of operation, additional testing, etc.**

General AFFA

32. Can you define a TCS and non-TCS food? **TCS foods are those that require **Time-Temperature Control for Safety**. These foods can support growth of microorganisms that could make them unsafe if left uncontrolled. Examples include foods that have a water activity >0.91 or a pH >4.5 (cut produce, potato dishes, creams or custards, meat products). Non-TCS foods are those that are often referred to as “shelf-stable” because they do not**

readily support microorganism growth (crackers, dehydrated fruits or vegetables, jams and jellies with real sugar)

33. Can you define an “informed end consumer?” An “informed end consumer” is a person who is the last person to purchase the homemade product, who does not resell the product, and who has been informed that the product is not regulated, inspected, certified or made in a facility that is state licensed, permitted, inspected, or regulated.

34. What is the difference between a “sale” and a “delivery,” as defined by the Food Freedom Act? Can you provide an example, or two? The transaction (sale) is the exchange of buying and selling in person, by telephone, or online, and the delivery of the homemade food/drink. Delivery is the transfer of the product resulting from a transaction between a producer and an informed end consumer. The law requires that the transaction occur directly between the seller and the informed end consumer.

35. Can a third-party vendor sell my food products? Yes, the Act allows for third-party sales.

36. Can I resell my food at food auctions? Items produced under the Food Freedom Act have to be sold directly to the informed end consumer. Therefore, once the product is sold it cannot be resold.

37. How are dehydrated items defined? Are freeze-dried items dehydrated? Are there specific freeze-dried items that are prohibited from sale? Dehydrated are those that are preserved by removing water. Dehydrated or dried foods usually have a water activity <0.65, which is very effective in preventing the growth of microorganisms. Freeze-dried foods are dehydrated by flash-freezing followed by rapid removal of water. Freeze-dried dairy products (such as ice cream) as well as products containing meat, poultry, seafood, or eggs cannot be sold.

38. Where can my products be sold? Where can they not be sold? Sales can occur anywhere except products produced under AFFA cannot be used in a restaurant.

39. If I own a small store that has a kitchen, can I make breads/cookies to sell in my store in that kitchen? No, foods produced under AFFA must be produced in your home/residence. To sell items prepared in your store you would need a permit from the Arkansas Department of Health.

40. Who should I contact for questions about the sale of dairy products from my farm? Please contact the Arkansas Department of Health Grade A Dairy Program at 501-661-2171.

41. Why is water bath canning not recommended in the guidelines? **Water bath or Boiling Water Canning is only appropriate for foods that have a documented pH below 4.6 and usually involves the addition of vinegar and measurement with a pH meter to verify that the pH is below 4.6. That pH prevents the germination of the spores of Clostridium botulinum which like to be cooked and will survive boiling water. For low acid foods with a pH above 4.6, the use of a pressure canner is required to take the coldest part of the food to 250 degrees F to inactivate all of the spores in a very robust process and low acid canned foods are not allowed under AFFA.** Why isn't water bath canning of high acid foods required? What about pressure canning for items like salsa? Please refer to:

<https://nchfp.uga.edu/publications/nchfp/factsheets/salsa.html>

42. Can vendors at a market “gift” wine or mead with the purchase of a different product? Please contact the Arkansas Alcoholic Beverage Commission.

43. Can I sell my products online to out-of-state customers? AFFA allows for sales to occur out of state, however, it is recommended you contact the local public health jurisdiction in that state to ensure they do not have rules that would prohibit such sales. If the products are

sold out-of-state for resale, then those products would be regulated by the United States Food and Drug Administration and you should contact them regarding how to comply with their rules.

44. Can I build a separate, un-permitted kitchen to make foods for sale under this Act? **Yes, provided the separate kitchen is at your private residence.** What are the requirements for a permitted kitchen? **You can find a copy of the Retail Food Establishment Plan Review Guidelines here:**

[https://www.healthy.arkansas.gov/images/uploads/pdf/Retail Food Plan Review \(Mobile\).pdf](https://www.healthy.arkansas.gov/images/uploads/pdf/Retail_Food_Plan_Review_(Mobile).pdf)) This document will summarize the requirements, please contact your Local Environmental Specialist at the closest Arkansas Department of Health Local Health Unit who can further assist you in obtaining a permit.

Food Safety and ServSafe

45. Is there any data on foodborne illnesses related to where they originate? For example, what percentage come from food industry versus local markets versus home gardens? **Foodborne illnesses are reported when an outbreak occurs. An outbreak contains at least two illnesses that are not within the same household (except cases of botulism, in which only one illness is considered an outbreak). Foodborne illnesses are drastically underreported, with estimates that only 30% of illnesses are ever reported or confirmed. Outbreaks are not categorized by size of producer, though that information could technically be derived from the publicly available records. However, the interpretation could be skewed based on what is reported and available. Larger members of the food industry may be more likely to be linked to an outbreak because they distribute more food and may be regularly testing their products or processing environments. Local markets and growers are probably not testing their products or environments, and they distribute to far fewer individuals. While individual illnesses associated with local markets or growers may certainly occur, it would be more difficult to identify an outbreak or link to a grower.**

47. How often are ServSafe classes added? Will there be any in Central Arkansas later this year? **ServSafe classes are added to the schedule on a regular basis and are offered in more than 50 counties. Please visit uaex.uada.edu/servsafe for more information**

48. Is ServSafe required for home production or simply a beneficial option? **AFFA does not require any standardized training. However, basic food safety training is strongly encouraged. Even though the foods allowed under AFFA do not require refrigeration, they are capable of causing foodborne illness if they are contaminated with pathogenic organisms.**

pH and Water Activity Testing

1. Is pH testing required for jams and jellies? **No, if they are produced using real sugar. Jam and jellies made with sugar have a water activity below 0.85 and would be Non-TCS based on water activity alone. Additional pH testing is not required.**

49. What is the definition of a low-acid food? Does this refer to the acidity level of ingredients or to the final product to be sold? **Low-acid foods are those with a final pH >4.6 (greater than 4.6). Ingredients in a product may be low-acid foods individually, but if combined with other ingredients and the final pH is <4.6 (less than 4.6), it is considered a**

low-acid food. For example, cabbage and carrots are low-acid foods. If they are fermented properly and have a final pH <4.6 (less than 4.6), they would be considered an acid food.

50. What do the Guidelines say about alcohol? Products that contain alcohol are regulated by the Alcoholic Beverage Commission therefore products flavored with alcohol are not allowed.

51. Where can I purchase a pH meter and does it need to be regularly calibrated? pH meters can be procured from a variety of sources (see question below) provided they measure in tenths and are solely used for food testing. All pH meters should be calibrated before each use.

52. What is the difference between types of pH meters? Which pH meters are recommended for testing my products? Will a pH meter that tests soil be sufficient? There are many ways to measure pH, but an accurate and calibrated pH meter should be used when measuring the pH of food. Soil pH meters may not be accurate or specific enough, and test strips only provide a pH range and do not provide a specific reading. A food pH meter can be purchased online and training resources are available online. Helpful resources:

<https://extension.okstate.edu/fact-sheets/choosing-and-using-a-ph-meter-for-food-products.html>

<https://www.youtube.com/watch?v=-DEP-fBWjGs>

53. Can I make a pasta sauce with a pH of less than 4.6 and sell it under the Guidelines? Yes, pasta sauce with a pH below 4.6 can be sold under AFFA.

Product Labeling

54. Does any part of that label need to be a minimum font size? A minimum font size is not required by the AFFA, however, the required statements need to be legible without the need for magnification. Products that are not easily readable could be found to be misbranded under the Food Drug and Cosmetic Act.

55. Does my label need to be affixed to my product or can it be attached by another means (string, ribbon, etc.)? The law requires the product to be “affixed” to the container unless the product is sold in bulk. Then a placard must be displayed with the required information and the producer must provide a separate document containing the required information to the consumer at the time of sale.

56. Should the list of ingredients be recorded on the label by weight or volume? For dry products, the label should be in order of predominance by weight. For liquid products, the label should be in order of predominance by volume.