A summary of *Can We Have Our (Safe and Local) Cake and Eat It Too? Oregon Re-crafts Food Safety Regulations for Farm Direct Marketed Foods*, by Christy Anderson Brekken, published in 2013 in the *Journal of Agriculture, Food Systems, and Community Development*, 3(2), pp. 95–108; see the full paper at [http://dx.doi.org/10.5304/jafscd.2013.032.003](http://dx.doi.org/10.5304/jafscd.2013.032.003).

Brief written by Tracy Lerman

**Context and issue**

Food safety regulations have recently been at the center of national and regional policy debates. A major crux of these debates is balancing the needs to safeguard public health while considering the cost of regulation for small-scale, direct-market farms, who incur disproportionately higher costs for complying with regulations.

In response to the substantial growth of Oregon’s farm direct sales since the late 1990s, the Oregon Department of Agriculture (ODA) drafted several food safety guidance documents to clarify how the state’s food safety regulations apply to farm direct marketing venues. Meanwhile, farmers’ market advocates argued that state food safety regulations as drafted were inappropriate for them. Advocates and ODA representatives formed a working group to draft legislation that would clarify existing regulations and address concerns over key statutory provisions and their impact on farm direct marketers. This legislation, called the Farm Direct Marketing Bill (FDMB), became law in 2011.

**Study objectives and approach**

This study is a policy analysis of the FDMB. The bill has three main parts. First, it resolves conflicts regarding licensing and inspection ambiguity for the physical spaces where farm direct products are sold; second, it narrows the definition of wholesale produce dealer licenses; third, it deregulates specific low-risk, producer-processed, farm direct marketed products. The author examines problems for direct-market farmers in the previous regulations and ODA guidances, analyzes how each part of FDMB addresses those problems, and evaluates the effectiveness of FDMB in resolving these issues while preserving food safety. The study also assesses the bill’s future impacts on farmers’ regulatory compliance burden and consumer food safety.

**Key findings**

- **Food establishment licensing: Venue conflicts**
  ODA found it challenging to enforce food safety regulations for farmers’ markets due to ambiguity over whether farmers markets qualified as food establishments, therefore requiring a food establishment license. The Attorney General’s opinion in 2007 stated that farmers’ markets are food establishments similar to retail food establishments such as grocery stores. Farmers’ market representatives disagreed, arguing farmers’ market do not own the location or the products and do not handle food. Further, they were concerned licensing would result in higher vendor costs that would be passed onto consumers. In 2010, ODA’s guidance stated food establishment licenses for farmers’ markets were not required currently but might be in the future, depending on how current laws are interpreted, causing uncertainty for farmers. The FDMB resolved these issues by clarifying that the physical places where farm direct sales are conducted (e.g. farmers’ markets, CSA drop sites, and certain farm stands) do not need a food establishment license. Farm direct marketer’s activities may still be subject to regulations and ODA has the power to enforce any applicable licenses regardless of where sales take place.

- **Produce dealer licensing exemptions for farm direct marketers**
  Oregon law defines wholesale produce dealers, who must obtain licenses, extremely broadly, potentially and inappropriately capturing farm direct marketers. This definition includes individuals who deal in, handle, or trade in produce and do not exclusively grow, retail, or warehouse it. ODA’s 2008 guidance requires
wholese produce licenses for farmers selling produce not grown on their own farm, in keeping with the regulatory statute. However, ODA changed the guidance in 2010 and exempted farm direct marketers from obtaining a wholesale produce license for selling up to US$2,000 of another producer’s products. This exemption was not in the food safety statute or rules. This situation created uncertainty for farm direct marketers because of both the lack of statutory exemption and ODA’s frequent reinterpretation of the law.

The FDMB addresses this ambiguity by exempting farm direct marketers from wholesale produce dealer licensing and by considering farmers’ sales of other farmers’ products at farmers markets consignment sales so that participants in these types of transactions are not considered wholesale produce dealers and do not need to obtain licenses. This removes some protections provided by the wholesale produce license for consigning producers but also reduces regulatory burdens, thus making it easier for producers to sell each other’s products.

- **Food safety licensing exemptions for farm direct marketers**

  Previously, ODA required a food processing license for farm direct marketers who process their own products. ODA’s licensing requirements were potentially costly and burdensome, and defined processing broadly and ambiguously. For example, some processes were exempt under certain settings but included in others, such as curing garlic in a field as opposed to a kitchen. In addition, the definition included low-risk processing, such as grinding grains that consumers would boil or preserving acidic foods. Finally, ODA’s guidance included a nonstatutory exemption for stored, processed products valued under a certain amount. This exemption produced more confusion as it was not in Oregon law and created ambiguity over whether other licensing was required. The FDMB clarified these ambiguities by exempting licensing requirements for foods processed in specific low-risk manners, including post-harvest handling, foods meant to be cooked, and acidified preserved foods.

  A controversy over a requirement that recipes and samples be submitted for approval by Oregon State University was resolved by incorporating suggestions from farm direct marketing advocates. In the final rule, farm direct marketers selling acidified foods must keep batch-by-batch records of recipes and test pH levels in their products in accordance with FDA regulations. In addition, farm direct marketers are allowed to use published formulations created by any recognized process authority.

  Finally, the rules require traceability procedures and labeling for exempt farm direct processors, and empower ODA to remove exemptions and require additional licensing for bad actors.

**The future of farm direct marketing and food safety in Oregon**

Local food safety advocates argue the direct relationship between producers and consumers achieves the same outcomes as government regulations; they establish trust among consumers by ensuring visibility, reliability, accountability, and traceability. Further, small-batch producers who sell directly to consumers comprise a tiny percentage of the food market. These factors are recognized in the FDMB. The bill’s provisions do not strip ODA of its enforcement abilities, but instead directs those powers to the greatest food safety risk. Because the bill was created through a deliberative process between ODA and farm direct marketers, it has buy-in from both sides.

From a practical standpoint, the bill clears up ambiguities in existing statutes and their inappropriateness in regulating farm direct marketing. In addition, it removes the threat of costly and overreaching regulatory burdens for small-scale, low-risk producers and allows those producers to expand into the nonperishable and processed food markets, creating more local food options for consumers. While a small portion of the food market is addressed by this bill, it has the potential to impact many of Oregon’s small farmers. Finally, the bill reduces administrative costs for enforcing food safety regulations that may not be scale- or venue-appropriate.

**Resource**


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