

# The Regulatory Environment for Farms in Western North Carolina



Written by Peter Marks at ASAP with review and expertise from: Richard Boylan, Melinda Roberts, and Tammara Cole, NC Cooperative Extension Service; Melanie Pollard, Alan Wade, and Jim Melvin, NCDA; Meredith McKissick, Organic Growers School; Chris Sawyer, Jake's Farm; Rick Harty, ISAMPA; Casey McKissick, NC Choices; Jo Ann Miksa-Blackwell, Mountain BizWorks; Anna Littman, Molly Nicholie, Megan Ray, Charlie Jackson, Lee Seabrook, and Maggie Cramer, ASAP.

**This project was supported by the Beginning Farmer and Rancher Development Program of the  
National Institute of Food and Agriculture, USDA, Grant # 2010-49400-21817**

*rev. February 2014*

## The Regulatory Environment for Farms in Western North Carolina

In some ways, farming is a business like any other. Many new farmers justifiably worry that they may unknowingly fail to follow the rules, get the right licenses, or file the right forms.

Interestingly, there is no “license to farm” required. One can’t be a barber in North Carolina without completing at least 1,528 hours of training, apprenticing for 12 months, and passing an exam, whereas anyone can choose to start farming tomorrow. However, this does not mean farms are exempt from law and regulation. Depending on what a farmer grows, where they grow it, and how they sell it, there are different laws to be aware of, and there may be some specific types of licenses, inspections, certifications, and tax procedures to follow.

### Licenses

#### Privilege or Business License

Some locations—especially within town or city borders—require that anybody selling anything have a business license, sometimes called a privilege license. This is more likely to be enforced if a farm has a visible location to receive customers, such as a farm store or roadside stand. This is a yearly fee, typically in the \$25-\$100 range. For more information, or to pay this fee, ask at your town hall or county office. Getting a business license is not the same as incorporating or registering your business name. If you are interested in incorporating your farm, get legal advice and then do so through the NC Department of Secretary of State ([www.sosnc.com](http://www.sosnc.com)). If your farm is not going to be incorporated, then it is wise to register your business name with your County Register of Deeds office. To find your County Register of Deeds office visit [www.ncard.us/Directory/CountyMap.htm](http://www.ncard.us/Directory/CountyMap.htm).

#### Meat Handlers License

You must become a registered meat handler if you wish to deal in commerce of meat or poultry. Contact the NCDA&CS Meat and Poultry Inspection Division at 919-707-3180 to start the process. A member of their field staff will visit, and you will fill out some simple paperwork. Most farmers say this is not a difficult process.

The NC Department of Commerce Business ServiCenter exists to be a one-stop location for information on all the licenses and inspections your business may need. Reach the Center at 800-228-8443.

### Taxes

#### Collecting Sales Tax

Sales taxes are a system by which retail merchants collect a tax from customers and pass it on to the state. The retailer does not gain or lose money and only serves as a pass-through from the customer to the government; the only cost is your time. Once you are signed up, though, make sure

you file as required, usually monthly. If you forget or run late, there can be heavy fees. There are two sales tax rates in North Carolina, and they can vary slightly between counties. Certain foods have a tax rate at 2%; most other items have a tax rate at or around 7%.

Farms that only sell wholesale do not have to worry about sales tax at all. The retailer will collect on your products when they sell to the end user. Among farms that sell retail (direct to the final customer), sales of raw, unaltered produce by the person who grew it are also exempt. Beginning January 1, 2014, a new North Carolina general statute requires farmers that sell at farmers markets to register with the North Carolina Department of Revenue and obtain a Certificate of Registration even if no tax will be due. For more details on how to register and comply with the new law see [Guide to Compliance with NC statute for Farmers Market Managers and Vendors](#). Beyond that, the rules are complicated regarding specific farm products. For example, once you add seasoning of any kind to raw vegetables, they become taxable. Live animals are untaxed, but raw cuts of meat are taxed at 2%. To view one recent, helpful paper from the North Carolina Department of Revenue, see [www.dor.state.nc.us/practitioner/sales/bulletins/section8.pdf](http://www.dor.state.nc.us/practitioner/sales/bulletins/section8.pdf).

#### Paying Sales Tax

Farms have a sales tax exemption when purchasing certain items, such as farm equipment, certain supplies, and even on-farm fuel. To apply for the exemption, complete Form E-595-EA and mail it to the state to receive your exemption number.

See [www.dornc.com/downloads/fillin/E595EA\\_webfill.pdf](http://www.dornc.com/downloads/fillin/E595EA_webfill.pdf). Contact your local NC Department of Revenue office for more information or see [www.dornc.com/downloads/e595ea\\_faq.pdf](http://www.dornc.com/downloads/e595ea_faq.pdf).

#### Income Tax

Farming is not a tax-exempt activity. Most farms, with the exception of those who choose one of the more elaborate and expensive-to-maintain corporate structures, will pay taxes using the IRS Schedule F. This form itemizes all of your farm's income and expense items and states your profit or loss from farming on the bottom line. Any profit or loss then carries over to your personal income tax form, such as a 1040, and becomes part of the household taxation picture. As with any business, it is wise to educate yourself so that you can set up your business' legal structure and make ongoing choices that reduce your tax burden.

#### Property Tax

Farmers should be aware of the Present-Use Value Taxation (PUV) program administered by county tax departments. This program allows your property to be taxed based on its use for farming or forestry and the quality of its soils, instead of based on its development value. The minimum parcel size in farming to qualify ranges from 5 to 20 acres depending on use. See [www.dor.state.nc.us/publications/puv\\_guide.pdf](http://www.dor.state.nc.us/publications/puv_guide.pdf) to learn more.

### **Certifications**

#### Food Safety

Other than for specific products mentioned elsewhere, food safety practices are not a matter of law . . . yet. The Food Safety Modernization Act (FSMA), signed into US law in 2011, will take months or years to pass through a “rulemaking” process and actually come into practice. Until then, we can’t know how it will impact the average farmer. While current standards are voluntary rather than government-mandated, buyers, such as major grocers, may require GAPs certification of farmers in order to purchase your farm produce.

All farmers, but particularly produce growers, should make it part of their job description to keep updated on food safety changes. Your local Cooperative Extension office ([www.ces.ncsu.edu/index.php?page=countycenters](http://www.ces.ncsu.edu/index.php?page=countycenters)) will be an excellent source of information and training. Farms with interest in wholesaling should begin to seek out this training and work down the path toward GAPs certification. Farms which might reach sales of \$500,000 or more will be above an exemption level in the FSMA and should also take special interest in food safety.

### Organic

The “organic” label is a federally regulated program. Certification is provided by independent certifiers registered with the National Organic Program of the USDA. There are no certifying agencies based in North Carolina. Two certifiers used by some area farms are Clemson University ([www.clemson.edu/public/regulatory/plant\\_industry/organic\\_certification/index.html](http://www.clemson.edu/public/regulatory/plant_industry/organic_certification/index.html)) and Florida-based QCS ([www.qcsinfo.org](http://www.qcsinfo.org)). The cost varies depending on the size and complexity of your operation. There are federal and state cost-share programs that can help pay. Monies come and go from these programs, so search at [www.ams.usda.gov](http://www.ams.usda.gov) and [www.ncagr.gov/markets/commodit/horticul/ncorganics/index.htm](http://www.ncagr.gov/markets/commodit/horticul/ncorganics/index.htm) to find current information.

There is some controversy among farmers about the use of the word “organic” when not referring to a farm or product that has been certified under the federal program. The law is clear: It is illegal to use the word to describe your farm or product if not certified. A budget has recently been assigned to enforce this law, and stiff penalties are possible. There is an exemption for farms with \$5,000 or less in annual sales of organic products. However, such farms must still meet the production requirements of organic certification in order to use the word and keep some records to document those practices. They just don’t have to file as such.

### Other Certifications

Other certifications of production methods used by some farms in WNC include: Certified Naturally Grown ([www.naturallygrown.org](http://www.naturallygrown.org)), biodynamic certification ([www.demeter-usa.org/stellar-certification](http://www.demeter-usa.org/stellar-certification)), Animal Welfare Approved ([www.animalwelfareapproved.org](http://www.animalwelfareapproved.org)), and Certified Humane ([www.certifiedhumane.org](http://www.certifiedhumane.org)).

### Appalachian Grown: Certified Local

ASAP’s Appalachian Grown™ program certifies food and agricultural products grown or raised on farms in Western North Carolina and the Southern Appalachian Mountains. The Appalachian Grown label helps consumers, retailers, and wholesalers better distinguish and identify local

agricultural products. To become certified, you sign that you are a family farm located in a certain geographic area, and you agree to only label products as Appalachian Grown if they were grown on your farm or another certified farm.

Appalachian Grown certified farms can access matching funds from ASAP (when available) to help pay for marketing expenses that use the logo. ASAP also provides some stock labeling and signage items at half of our cost. Contact us at 828-236-1282 to learn more about these and the many other features of the program.

### NC Branding

Farms interested in participating in the state branding program, Goodness Grows in NC, can learn more at the NCDA's program website: [www.gottobenc.com/become-a-member](http://www.gottobenc.com/become-a-member).

### **Land Use**

#### Zoning, Limits on Land Use, and Right to Farm

Farms in city and town jurisdictions need to be aware of the zoning designation of their farm, especially regarding farm stores or stands. Cities, some towns, and a few counties do regulate land use so that stores with busy parking lots can't be built in quiet residential neighborhoods.

North Carolina law says, however, that local governments have limited authority to regulate the land use activities of "bona fide farms." So, for example, if your local government places a limit on small or large livestock, as a true working farmer you may find the law does not apply to you. The use and interpretation of these rules varies from place to place.

North Carolina has Right to Farm laws. They protect you (somewhat) from lawsuits by neighbors and developers who consider a farm a "nuisance" because of sounds, smells, dust, flies, etc. The law says that if a farm has been in existence for more than a year and was not a nuisance when founded, it cannot become a nuisance because the conditions around it changed. In other words, if somebody chose to build a housing development next to your manure pile, the law says that is their problem. But this does not override common sense. NC law also requires that certain best management practices be used with livestock to minimize odor, maintain clean rivers, prevent chemical dumping, and so on.

### Signage

You can't just put a sign up anywhere. With the exception of some town and city residential zones, a sign on your own property is fine, but you may still need a permit. Contact your local planning department for more information. Signs on the right-of-way of state roads and highways are common in rural areas but are not legal, so do not be surprised if your sign is removed by NCDOT and you do not get it back. Right-of-way width varies; 50 feet from the center line of the road is typical. If there is a key intersection where you want signage to direct people to your farm, your

best bet is to talk with the property owner about posting a sign beyond the right-of-way, with the proper permits in place.

The state does have an official agricultural tourism signage program for major highways, but it is slow-moving, expensive, and requires that your farm have regular hours most of the year. See [www.ncagr.gov/markets/agritourism/HighwaySignInfo.htm](http://www.ncagr.gov/markets/agritourism/HighwaySignInfo.htm) to learn more.

### Waste Management and Use of Agricultural Chemicals on Your Land

Application of restricted-use pesticides on the farm scale requires a Private Pesticide Applicator certification. Training and exams are available at county Cooperative Extension offices. For larger animal waste systems and other activities that could cause pollutant discharge into waterways, there are state and federal laws that restrict your activity and may require permitting. A great source of information on these laws, as well as the various cost share programs that can help you pay for environmental improvements, is your local Soil and Water Conservation District office ([www.ncaswcd.org/?page\\_id=113](http://www.ncaswcd.org/?page_id=113)).

## **Labor**

In many ways, laws governing labor on the farm are the same as for any other employer. In some ways, farms enjoy special legal considerations. For example, there are certain exemptions from overtime laws and youth employment regulations for farmers. There are also specific laws regarding the registration and use of farm labor contractors (typically employed to manage farm worker crews).

You may also be wondering whether you can get in trouble when you rely on minimally compensated farm interns and apprentices. Apprentice programs can be perfectly legal. There are laws governing reporting of this labor. In-kind compensation, such as housing or food, may not be over-valued. Exemptions for small farmers employing fewer than five full time employees or employees who live off of the farm can allow for more flexible labor programs without minimum wage requirements. Federal and state departments of labor, the Occupational Safety and Health Administration (OSHA), and the IRS all govern worker laws, so be sure to research your particular intentions before you start the hiring process. For a more specific explanation of these issues, refer to the local publication *Structuring Labor on the Small Farm*, available at [www.organicgrowersschool.org/content/1876](http://www.organicgrowersschool.org/content/1876).

## **Product-Specific Rules and Regulators**

### Eggs

The NCDA Marketing Division regulates eggs ([www.ncagr.gov/fooddrug/food/egglaw.htm](http://www.ncagr.gov/fooddrug/food/egglaw.htm)). Egg sellers of more than 30 dozen per week, unless sold on-farm, need to grade their eggs. Reusing cartons is legal if they are clean, but they must be labeled with the name and address of the producer (with previous name and address not visible). Selling eggs at a tailgate market without

mechanical refrigeration is legal if (in some way of your choice) they are kept at a safe temperature (under 45 degrees).

### Meats and Poultry

The NCDA Meat & Poultry Inspection division regulates large animal and poultry production and processing ([www.ncagr.gov/meatpoultry](http://www.ncagr.gov/meatpoultry)). Meat animals being sold to the general public must be killed and butchered at an inspected meat processing plant. There is an exemption for the slaughtering of up to 20,000 (per calendar year) chickens, turkeys, and/or other poultry of your own, raised on your own farm and sold within North Carolina. Operating under this exemption requires monitoring and scheduled reviews by NCDA to verify that required criteria are being met. Local small animal producers' group ISAMPA links to the most recent NCDA ruling on this subject: [www.isampa.org/MPID%20Reg.pdf](http://www.isampa.org/MPID%20Reg.pdf).

The NCDA Food & Drug Protection Division now regulates rabbit production and processing. It is generally true that regulations mirror those of poultry, but with the recent shift in who regulates, the regulatory landscape for rabbits may be in flux. See [www.ncagr.gov/fooddrug](http://www.ncagr.gov/fooddrug) and contact the division with your questions. Jim Melvin is the current contact on these issues.

Meats and poultry processed at an NCDA-inspected facility can only be sold in state. Exempt poultry processed on the farm can only be sold in state. Out of state sales, or sales with interstate commerce implied (such as to a grocery chain), are only allowed under USDA inspection.

Labeling of meats is regulated. When your meats are processed at an NCDA- or USDA-inspected plant, any labels you intend to use will first need to be approved by regulators, via the plant. For example, your beef cannot legally be labeled “hormone free,” but it can legally be labeled “raised without added hormones.”

### Cheese and Dairy

To sell milk for drinking, it must be bottled in a “Grade A” plant. Grade A milk is regulated by both the NCDA and the Dairy and Food Protection Branch at the NC Department of Environment and Natural Resources (“DENR”). Milk processing for cheese can be under “Grade B” conditions. This still requires a sterile environment and commercial-grade equipment. Making cheese on a home stovetop for commerce is not legal, and, in fact, multiple producers of this type were shut down by NCDA in recent history. A good one-stop information point about cheese and dairy is [www.ncdairyadvantage.com](http://www.ncdairyadvantage.com).

### Kitchen Inspection

Most baked goods, some canned goods, some dried foods, and other low-risk, shelf-stable products, can be produced in a home kitchen. But, the kitchen must have been inspected by the NCDA Food & Drug Protection Division. Most farmers and food entrepreneurs report that this is a fairly simple process and field staff are helpful. However, certain factors can prevent approval.

Indoor cats are one commonly encountered barrier that the division will not abide. Our current local inspector of many years is Susan Parrish. Schedule a visit by contacting the division's main number at 919-733-7366.

### Other Food Processing

Some farm products are typically not processed in a home kitchen, rather in a designated cooking or processing facility or area of the farm. These products are also regulated by the NCDA Food & Drug Protection Division. It is important to call the regulators before investing in making these products. Many traditional Appalachian practices, such as boiling down sorghum in the open air or grinding corn meal or grits in the barn, may not be deemed safe enough. Use the same NCDA phone number above to ask questions or be connected with a local regulator.

People processing for sale acidified foods in rigid (glass or plastic) containers are required to complete a training offered by NCSU called *Acidified Food Processing and Packaging - Better Process Control School* (commonly called "pickle school") and pass tests offered at the end of each training day. This training schedule is usually posted at [www.ncsu.edu/foodscience/workshops\\_training.htm](http://www.ncsu.edu/foodscience/workshops_training.htm). Local organization Blue Ridge Food Ventures ([www.blueridgefoodventures.org](http://www.blueridgefoodventures.org)) is often involved in these sessions. Pickle school is not cheap to attend.

### Prepared Foods

Foods that are served ready to eat (typically with eating utensils or plates) and/or which are not shelf-stable are regulated by the NC Department of Health and enforced at the county level. It is almost always impossible to prepare such foods in a home kitchen, and it is difficult and expensive to do so in a mobile/temporary setting such as a community event. Contact your county Health Department for more information. To find your local Health Department, visit [www.ncalhd.org/county.htm](http://www.ncalhd.org/county.htm).

## **Risk Management**

### Insurance

For the most part, insurance is not a regulatory issue. While some buyers require that farms carry product liability insurance in order to supply them, it is generally a matter of choice if and how much insurance to carry.

Here's a basic overview of some of the types of insurance a farm may carry. First, a *farm rider* on your home policy is not the same as a dedicated *farm insurance policy*. It is generally weaker and may not assume you are conducting serious farm business. A *general liability* policy helps protect you against most lawsuits, accidents, and damages to the property of others that occurs on your farm, but not damages due to your farm products. *Product liability* coverage helps protect against damage related to your products, such as food-borne illness. *Property coverage* protects against damage to or theft of your farm property and items on that property. *Crop insurance* covers losses

due to crops that are planted and don't reach marketable quality. Don't assume that your "farm policy" covers any or all of these items. Ask and get a clear answers.

The one law in place in NC regarding farms and insurance is an act passed in 2005 that limits liability for farms when inviting the public on to their property for agritourism purposes. Follow links from [www.ncagr.gov/markets/agritourism/index.htm](http://www.ncagr.gov/markets/agritourism/index.htm) for more detail. A key point is that in order to qualify for the protections this law provides, farms must post on their property a sign with specific text given in the law.

#### Disaster Relief

Widespread crop loss events such as flood or drought are sometimes followed by relief packages from state or federal agencies. To qualify, it is important to have already registered your farm with your local FSA (Farm Services Agency) office ([www.offices.sc.egov.usda.gov/locator/app](http://www.offices.sc.egov.usda.gov/locator/app)). Some relief packages require that recipients carried crop insurance. See [www.rma.usda.gov/help/faq/basics.html](http://www.rma.usda.gov/help/faq/basics.html) to learn more.

#### Recordkeeping and Planning

Keeping good records supports meeting the concerns of regulators and helps your farm make good management decisions. Farm planning can save you years of wasted time on enterprises that were never priced to make a profit. Like any enterprise, farms need business plans. To better understand business management resources made available by ASAP and our partners, see [www.asapconnections.org/beginning\\_farmers.html](http://www.asapconnections.org/beginning_farmers.html).