Food for Profit: Registering Your Business

All businesses need to comply with local, state, and federal registration procedures in order to legally operate. Food-processing businesses are no exception.

In Pennsylvania, wide variations exist in the amount of authority given to township, borough, and city governments, which can make the task of determining just what regulations apply to your business difficult. However, by keeping an open line of communication with agencies that regulate your product, you will be able to make timely changes.

Local Requirements

Your first step is to contact your township, borough, or city office to determine which local regulations are applicable to new businesses in your area. Some local governments assume responsibility for inspecting and licensing food businesses, and others may require additional costs such as business privilege licenses. Some collect special taxes to cover costs related to refuse collection and sewer or water usage.

Most local governments have regulations in place with respect to zoning and property-related issues. Contact the local government office in your municipality to determine if commercial food establishments are allowed in the location where you might want to operate your business. Obtain written verification of permission to operate your business since you will need to show this to the Pennsylvania Department of Agriculture inspector during their initial inspection. If local ordinances do not permit you to operate your business at the address you provide, you may file for a variance from the regulations, which will take some time and money, or you may need to pick an alternate location.

“Get your ducks in a row.” -- Pa. food entrepreneur

Pennsylvania Requirements

General business requirements. There are many forms of businesses, including corporations, limited liability companies (LLC), general partnerships, and sole proprietorships. Each has its own advantages and disadvantages. For many years, most small businesses in Pennsylvania started as sole proprietorships or partnerships since very little paperwork is needed for these structures. However, the owner(s) incur all liability for these types of businesses, so many new business owners start LLCs. We will discuss fictitious names since they apply to sole proprietorships/partnerships here, but if you wish to register as an LLC or to incorporate, it is best to consult an attorney who specializes in business law.

Department of State

To set up a sole proprietorship in Pennsylvania, you need to register your business name with the Department of State’s Corporations and Charitable Organizations. An exception to this is when you, as the owner, do business under your full and proper name, such as Susan Clarke Smith. The inclusion of words that suggest additional owners, such as "& Sons" or "& Associates," makes the name an assumed or fictitious name. Registration of a fictitious name ensures that no other business may legally use that name in Pennsylvania. To start the process, go to the Department of State website and search to see if someone has already registered your preferred name. Assuming your name is not taken, the Fictitious Name Registration form (DSCB:54-311) must be filed and a nonrefundable filing fee of $70 submitted for this form. Once your business is officially registered, you must then notify your county legal journal and post a notice in your local newspaper of your intent to do business under that name (often called “DBA”). You are required to reregister every ten years.
Department of Revenue

The Pennsylvania Department of Revenue is responsible for collecting state tax earnings for the Commonwealth. All food businesses that sell products intended for consumption at the place of purchase must collect state sales tax. Contact your regional Department of Revenue office to find out which taxes are required for your type of business. Contact the Department of Revenue for information on how to apply for a tax license. Businesses that do not need to collect sales tax often apply for this license since it serves as proof of being in business and may exempt them from paying tax on supplies and materials directly used in their business.

Department of Agriculture

In addition to the general state requirements mentioned, all commercial food establishments must register with the Pennsylvania Department of Agriculture (PDA) and pay a small fee. Food establishments may include a business, a place or portion thereof, or a vehicle maintained, used, or operated for the purpose of commercially manufacturing, processing, packing, holding, or otherwise preparing, transporting, or handling food. PDA’s Bureau of Food Safety has sole jurisdiction over all establishments in Pennsylvania under the Food Protection Act (Title 3, Pa. C.S.A., Part VII, Ch. 57, Subch. B) and the Frozen Dessert Law. To register, contact your regional PDA office and ask to speak with a food inspector, known as a “sanitarian.” They are trained in food safety and sanitation and can provide valuable information on regulations and what you need to do to prepare for a future inspection. Be prepared to describe your product, how you plan to make it, and how it will be packaged. There will be different requirements depending on whether you will retail or wholesale food and use a home, commercial, or mobile kitchen. After you have completed and submitted the registration form, a sanitarian will make an appointment to visit your establishment. Once you pass this initial inspection, you are officially registered and may begin to manufacture your food products for commercial sale. Each year, the state will send you a notice requiring you to reregister. For more information about all the programs and license/registration requirements, visit the PDA Food Safety website.

Department of Labor and Industry (DLI)

The DLI regulates issues related to wages and employee safety. If you plan to hire people to work at your establishment, you must register for unemployment compensation taxes and file a new hire report with the Pennsylvania Department of Labor and Industry.

Federal Requirements

Food and Drug Administration

The FDA Food Safety Modernization Act (FSMA), enacted on January 4, 2011, amended section 415 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) to require that facilities engaged in manufacturing, processing, packing, or holding food for human or animal consumption in the United States register with the FDA (Bioterrorism Act of 2002). This regulation applies to virtually all types of food processing businesses, including those making animal and pet foods, and is required regardless of size or whether that business sells across state lines. Registration is free and may be completed using form FDA-3537 by mail, fax, or online. Beginning in 2020, registrants must submit registrations, renewals, updates, or cancellations to FDA electronically unless a waiver is granted.

The FDA does not register home-based food businesses; they may be subject, however, to registration as a Food Canning Establishment if they make certain types of canned foods, as noted below.

Manufacturers of low-acid or acidified foods that do not require refrigeration (e.g., canned fruits or vegetables, barbeque sauce, salsa) must also register with the FDA as a Food Canning Establishment. According to the law, if you use ingredients that you obtain from other states or if you sell your product to people who live in other states, you are required to register your business with the FDA. If you are unsure of federal regulations that apply to your situation, contact the Central Region FDA Small Business Representative. For more information about the regulatory requirements related to starting a food business, refer to FDA website.

Internal Revenue Service

Every employer subject to employment taxes is required to have a federal Employer Identification Number (EIN) to identify their business with the Internal Revenue Service (IRS) and the Social Security Administration. Some businesses, such as corporations, partnerships, and enterprises that have a qualified retirement plan (such as Keogh) or pay federal excise tax, are required to have an EIN even if they do not have any employees. You can apply to the IRS for an EIN by telephone, fax, or mail depending on how soon you need to use the EIN. Under the Tele-TIN program, an authorized officer or business owner can obtain an EIN by telephone.

Many of the requirements to operate a food product business are once and done, as long as you don’t change your business or product line substantially. The time spent learning what you must do to get started legally is well worth the effort.

For more information, contact your regional PDA office or visit the PDA Food Safety website. You can also contact the Penn State Extension office in your county or visit Penn State Extension’s Food Entrepreneurs.
Authors

Luke LaBorde, Ph.D.
Professor of Food Science
lf5@psu.edu
814-863-2298

Winifred W. Mc Gee
Extension Educator, Business Management

extension.psu.edu

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