

REGULATORY ANALYSIS: VALUE-ADDED AGRICULTURE IN MARYLAND

Summary of Findings

Regulatory Themes:

Value-Added Processing

Agritourism and Food Service

Retail Sales of Value-Added Products

Challenges:

Lacking Clarity and Consistency of Regulatory Framework

Outdated Licenses and Regulatory Language for Agricultural Processing

Limited Scalability for Infrastructure Requirements

Opportunities:

Licensing Alternatives to “On-Farm Home Processing License”

Establish Scalable Regulations within State Code

Reassess Revenue Caps for Direct Sales of Farm Raised Meat (and Cheese)

Training for County-Level Agricultural/ Economic Development Professionals

Guides and Materials

Agricultural Enrichment Opportunities for Local Health Departments

Forum for Problem Solving and Collaboration

Primary friction points:

- value-added food processing (State);
- retail of value-added food products (Local);
- agritourism & food service (State/Local);

- Virginia and Pennsylvania seem to be able to find solutions and speedily license/permit farm-based businesses.

Some consistent issues:

- Producers often lack professional representation (attorney, engineer, etc.), leading to a heavier-than-customary reliance on the agency for guidance. Plus, it's my experience that this leads to consternation between agency staff/business, and often leads to *stricter interpretations* rather than a willingness by agency to seek/suggest alternative solutions;
- Lack of scalability in the regulatory framework to allow businesses to scale up (i.e., you can make things in your home kitchen, but to scale up one must become a full-scale commercial kitchen...which may not be feasible on a farm or fit certain processes, i.e. Flour milling/Herb dehydrating);
- Lack of definition regarding "seasonal" vs "temporary" related to processing, bathrooms, infrastructure (i.e., requirements re: on-farm camping);
- Inability to propose creative solutions to permit requirements.
- The business/agricultural community does not understand/appreciate where state regulation ends and local regulation begins;
- Requirements change ("goalposts move");
- No clear business development navigator at MDH to support the startup/launch/development of rural, farm-based businesses (Kirk Engle has been helpful resource for us, but is not a POC for businesses).

Opportunities:

1. Education for local health department staff. Industry was previously invited annually to workshops/in-service training to talk through the challenges we're seeing on the ground. Ideally, this starts happening again;
2. Education for business development specialists and industry. *This is something we're taking on.* Our value-added specialist Martin Proulx has developed regulatory seminars ("boot camps") to educate industry and county support staff (economic development, electeds, staff). Your team will be invited to each, and received a copy of the first agenda two weeks ago (still waiting for a response so we can announce). See attached draft we shared.
3. Guides. Develop FAQs and checklists with resources and roadmaps for each type of value-added enterprise to offer consistency across the state and counties. *This is something the agritourism workgroup has been discussing.*
4. Forum. Our Governor's Inter-Agency Committee on Agriculture will relaunch this summer, providing a forum for these discussions going forward.

Maryland Department of Agriculture, Regulatory Recommendations for Supporting Value-Added Agriculture

With Maryland's agricultural landscape evolving to include more value-added and tourism driven functions, farms and agricultural businesses throughout the State are currently subject to outdated and arduous regulations. Local farms and agricultural businesses expanding into the value-added space expect to obtain compliance in a reasonable and feasible manner, but **Maryland's current regulatory framework for environmental health does not recognize or address the uniqueness of farm and agricultural-based businesses.** These gaps and regulatory challenges continue to stifle and hinder Maryland's untapped economic potential for value-added agriculture.

Although the focus of the interagency Agritourism Workgroup's efforts over the last year have been primarily focused on real-life scenarios, specific to food service at on-farm craft beverage tasting rooms, necessary regulatory solutions span beyond food service. Value-added agricultural opportunity is a critical vessel for protecting and expanding agriculture's economic impact across the State and must have achievable and feasible regulation to be successful.

The Maryland Department of Agriculture (MDA) presented to the Agritourism Workgroup in June 2024, which was the last meeting before these discussions and initiatives were absorbed by the Governor's Intergovernmental Commission on Agriculture (GICA). In the presentation, **MDA identified and addressed three primary themes related to improving the regulatory environment for farms and agricultural businesses: Value-Added Processing, Agritourism and Food Service, and Retail Sales of Value-Added Products.** Following the presentation, MDH representatives expressed intent to continue to focus narrowly on food service specific matters.

Since environmental regulations and policies are in State code, the theory that local ordinances and code can be used to skirt licensure requirements are a product of ineffective State policy, communication, and guidance between regulatory offices at various levels of government. **Clear and concise terms, definitions, and guidelines that adopt and recognize value-added activities on farms are needed for equitable and accessible regulation.**

Agriculture is part and parcel of Maryland's history and economic future, but the industry's landscape is constantly changing. In response to a steady decline in acreage and average farm size, the industry has evolved significantly faster than State regulation. Value-added agriculture is a genuine opportunity to support farms and small businesses, with positive economic impact. However, to support small businesses existing or entering this industry, the existing regulatory framework must be adjusted to reflect the trends and opportunities within Maryland's agricultural communities. The industry is caught in limbo within a regulatory framework it has outgrown. Although there are actions and initiatives that can be implemented to offer clarity and consistency with cumbersome regulation, State policies do not currently reflect where the agricultural industry is headed with the emergence of value-added agriculture.

The below regulatory notes and recommendations address some much needed regulatory changes across all three value-added themes mentioned above. These recommendations may not be fully inclusive, but address various sections of COMAR requiring immediate attention.

Regulatory Recommendations for Value-Added Agriculture, Maryland State Statute, Environmental Health

Article – Health – General

§2-102 (Agricultural Ombudsman)

1. Recalibrate and formalize role and responsibilities. *

Note: Role has been informal and not designated by the Secretary. Role also includes providing information related to “on-farm food processing, **on-farm food preparation, and other on-farm activities.” This role should be offering guidance on agritourism food service matters.*

§21-301 (Expand Definitions)

2. Adopt and reflect relevant definitions from Article – Land Use
 - §4-212, “Agritourism” activities
 - §4-214, “Agricultural Alcohol Production”

§21-301 (On-Farm and Temporary food Service)

3. Expand “On-farm food service facility” to mean a seasonal operation (up to 8 months, with annual renewal), and establish regulation to allow for portable toilets and holding tanks for temporary water and appropriate waste disposal.
4. Include “farm and agritourism activities” under “temporary license” definition; Removing renewal limits.
5. Exemptions or specs for “Agricultural Alcohol Production”

§21-308 (On-Farm Home Processing License)*

6. Define “Farm” or replace with language related to “Where majority of ingredients are grown”
7. Define “Domestic Kitchen” located on an individual’s farm as a facility separate from a home kitchen.
8. Remove revenue caps for meat and cheeses processed off-site and sold on-farm or through appropriate channels.

Regulatory Recommendations for Value-Added Agriculture, Code of Maryland Regulations (COMAR), Environmental Health

(Health)

10.15.03.02 (MDH, Food, Food Service Facilities - Definitions)

1. Establish a simple standard definition for "Farm"
2. Consider adding to (68-1)(c)
3. Expand "On-farm food service facility" (48) to mean a seasonal operation (up to 87 months, with annual renewal), and establish regulation to allow for portable toilets and holding tanks for temporary water and appropriate waste disposal.
4. Include "farm and agritourism activities" under "temporary license" definition; Removing renewal limits.

10.15.03.18 (Control of Sanitary Facilities)

5. Exempt certain agritourism activities from water under pressure (C)

10.15.03.25 (Special Food Service Facilities)

6. Expand "Special Food Service Facility" text for "On-farm Food Service Facility" (G), to increase operating period and include language similar to "Mobile Units" for wastewater tanks.*
7. Explore adding "food service wastewater" to the MDA/MDE land application discharge permits (Grease has always been the issue)

*Note: A sewage disposal system requirement is included for "Semi-permanent Food Service Facility", but not for "On-Farm Food Service Facility".

10.15.04.18 (On-Farm Home Processing)

8. Remove "Home" from license title and alter or expand "in a home or domestic kitchen" to include out-buildings on a farm.
9. Add "or leases" to (A) which requires that a farm is owned for the license to be issued.
10. Increase annual revenue caps for "On-Farm Processing" to exceed Cottage Food
11. Establish a separate license for the storage and sale of meat and cheese processed off-site or exempt these products from annual revenue caps.

(Environment)

26.04.02.01 (MDE, Water/Sewer/Waste – Definitions)

1. Define "Seasonal Agritourism Activities" as a function of bringing the public to an existing agricultural operation.
2. Recognize "On-farm food service facility" and establish regulation to allow for portable toilets and holding tanks for temporary water and appropriate waste disposal.

26.04.02.02 (MDE, Water/Sewer/Waste - General Provisions)

3. Add "Seasonal Agritourism Activities" as an exemption under 26.04.02.02 (I) and (K)

Value-Added Agriculture: Regulatory Analysis

Martin Proulx, Value-Added Agricultural Specialist
Maryland Department of Agriculture

December 12, 2024



Value Added Agriculture: Legislation and Specialist

In 2023, the Maryland General Assembly created a **Value-Added Agricultural Specialist** position within the Maryland Department of Agriculture (HB 389/SB34)

- “Value-added agriculture” was defined in law, with the inclusion of processing, marketing, experiences (Agritourism), and equine activities
- The VA Specialist position was established within MDA in July 2023.



Value Added Agriculture (VAA) Specialist

- The VAA Specialist offers general support to new and existing Maryland farmers and agricultural stakeholders
 - Technical guidance and navigation through various regulatory frameworks
- Work and collaborate with colleagues and stakeholders to streamline and consolidate regulation from the top down to open the door to opportunity for farms and agriculture.



VAA Initiatives

- Dialogue between State Agencies (Agritourism Workgroup/GICA)
- **Education**
 - Local Ag. and Economic Development Professionals
 - **Regulatory Seminars**
 - *“Value-Added Agriculture: Navigating Regulatory Framework”*
- Guides and Materials
- **Identify Regulatory Challenges and Opportunities**



Value-Added Agriculture: Regulatory **Challenges**



Regulatory Themes

- Value-Added Processing
- Agritourism & Food Service
- Retail Sales of Value-Added Products



Value-Added Processing

- Value-Added Processing
 - *On-Farm Home Processing License*
 - Revenue cap and product limitations
 - Farm home kitchen ~~or domestic kitchen~~ on-farm
 - **Storage of packaged processed hard cheese and processed raw meat (USDA)**
 - Requires “Agricultural Zoning” – Confirmation inconsistent and sometimes \$
 - A "Processing License" must meet commercial requirements that may include but might not be limited to a commercial kitchen with potable water, an approved sewage disposal system, and formal plan review.



Agritourism & Food Service

- Lacking definitions and guidelines for “Seasonal” and Agritourism operations at the State level introduce cost prohibitive regulations associated with permanent restroom facilities and “water under pressure”.
- “Commercial” and “septic” are prominent buzzwords businesses face through the regulatory process that often present different expectations and regulations depending on the agency or office-level the business communicates with.



Retail Sales of Value-Added Products

- Farm or roadside produce markets interested in selling refrigerated, frozen, or other “hazardous” goods are going to be regulated as a commercial retail establishment.
- “On-Farm Home Processing” license allows for farms to store and sell their own meat/cheese – but the sales of other refrigerated goods or perishables could catapult them into “retail” with full commercial requirements.
- *Sometimes*, a small business seeking a “processing license” with intent to only sell direct to consumers (farmers markets, events, etc.) will be redirected from MDH to their Local Health Department – categorized as “retail”



Overarching Challenges

- Layered and conflicting frameworks (Local, State, Federal)
 - Zoning and Permitting*
- Lack of scalability
- Lack of clarity and consistency
- The Industry is evolving faster than the speed of Government
 - Outdated Licenses and Regulatory Language for VAA



Value-Added Agriculture: Regulatory **Opportunities**



Opportunities

- Alternate Licensing for Farms/Agritourism
 - Value-Added Processing
 - Food Service
 - Retail
- Establish Scalable Regulations within State Code (Environmental Health)
- Reassess Revenue Caps for Direct Sales of Farm Raised Meat (and Cheese)
- Forum for Problem Solving and Collaboration
 - Agricultural Enrichment Opportunities for Regulators



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