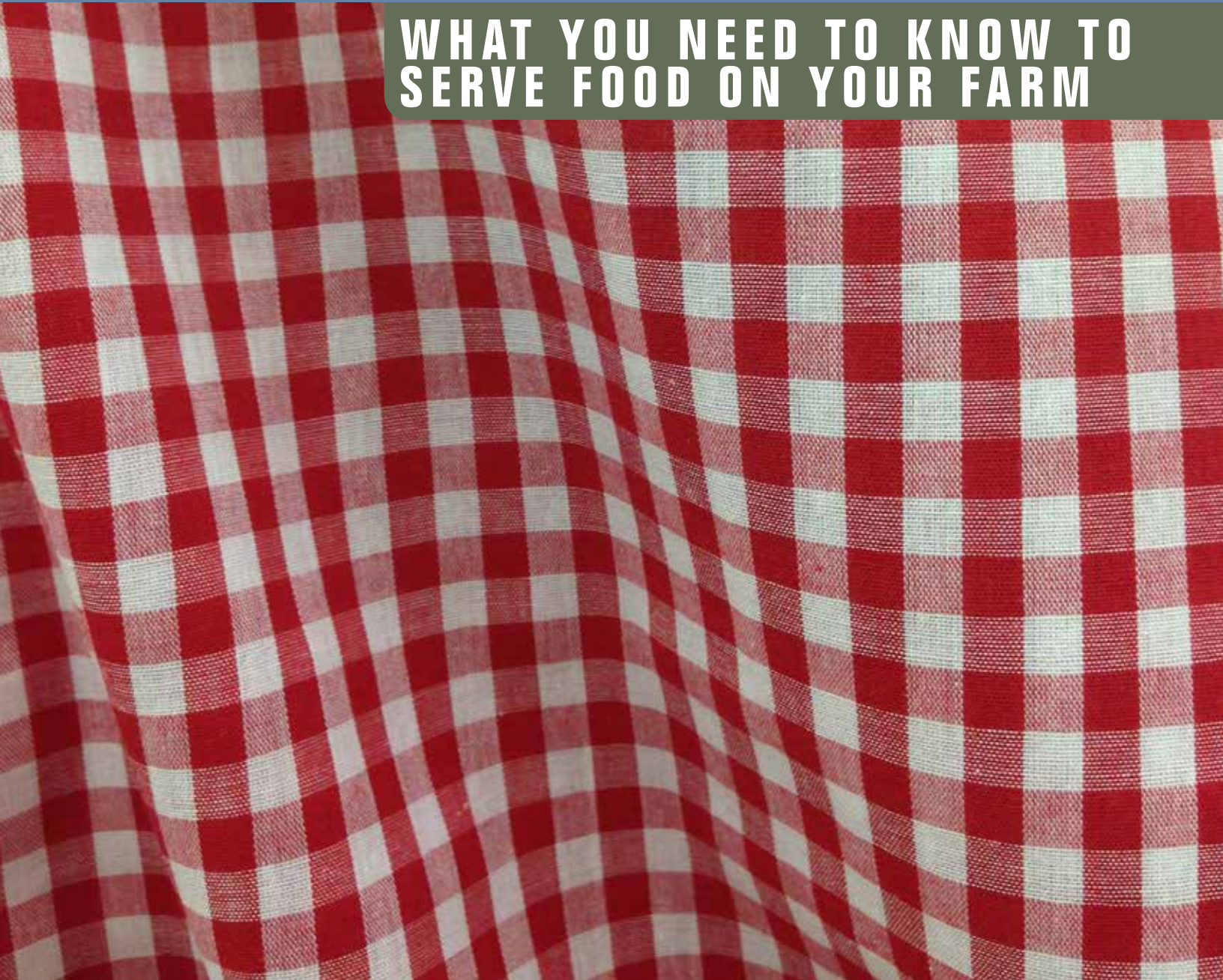




Come & Get It!

**WHAT YOU NEED TO KNOW TO
SERVE FOOD ON YOUR FARM**



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Table of Contents

Acknowledgements	2
License Decision Tree	4
Chapter 1. Introduction	5
Review manual purpose and goals	5
Explore market trends and opportunities	6
Understand key commercial kitchen elements	6
Define categories of on-farm food service	8
Chapter 2. Assessment: Is On-farm Food Service Right for You?	11
Assess if an on-farm food business is a right fit for you	11
Identify what additional skills you may need	12
Recognize how on-farm food service fits into your business mix	14
Chapter 3. Marketing	17
Define a target market	17
Identify customer loyalty building strategies	18
Understand key marketing plan components	18
Review key event flow logistic considerations	22
Chapter 4. Financing	25
Explore alternative financing models	25
Recap start-up checklist and resource list	26
Chapter 5. Profiles	27
Dinner on the Farm	28
Stoney Acres Farm	30
References	32

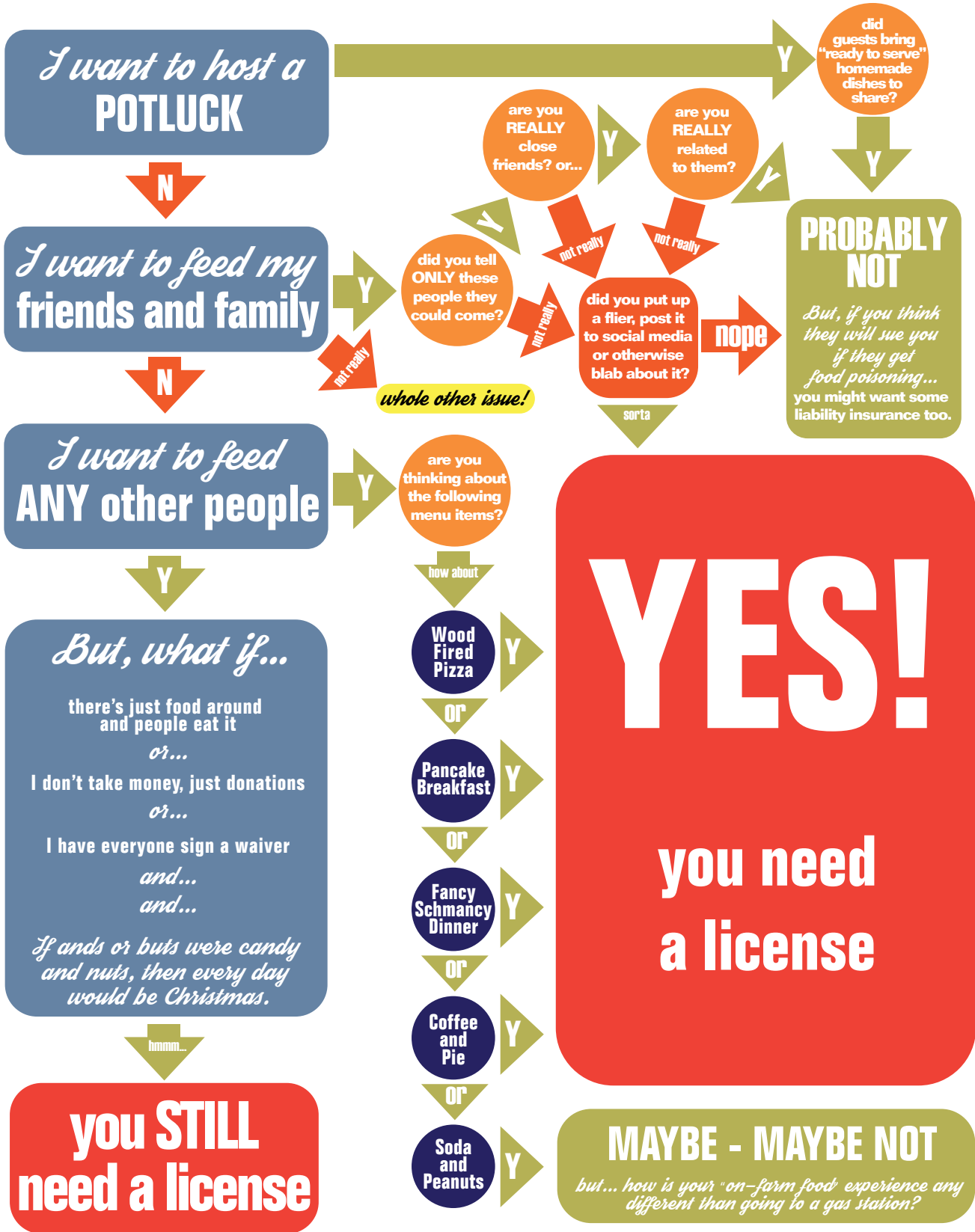
The following two documents feature state specific laws and regulations and are available for free download at www.misa.umn.edu/Publications/ComeandGetIt/

Minnesota
Wisconsin

Come and get it!

DO I NEED A LICENSE?

Before you ring the dinner bell - Let's discuss what you want to do.



Chapter 1

Introduction

Review purpose and goals
Explore market trends and opportunities
Understand commercial kitchen elements
Define categories of on-farm food service

Talk about paradise for the local food enthusiast: dining directly on a farm, savoring specialties made with that farm's fresh-raised fare, and chatting with the farmer who grew it. Nothing could be more of an entertaining and flavorful food connection for those looking for out-of-the-restaurant-box, unique and memorable dining experiences.

It's easy to see the initial appeal of such farm-to-table endeavors from the host farmers' perspectives as well. Not only would you be diversifying and increasing your income base, but you would foster the intimate opportunity to share both your farm home and bucolic setting while loyal customers taste your harvest in the freshest possible manner.

Add these two motivations together and you see a vibrant movement of various on-farm food events growing in number, from informal "pizza farms" selling wood-fired pizzas made with farm-raised ingredients to pricier white-tablecloth, multi-course dinners. These on-farm food events are still small when compared to the reach and volume of the restaurant industry in Midwest states; Minnesota, for example, has over 10,000 outlets and \$8 billion in sales (*Source*: National Restaurant Association). Still, this on-farm food service movement is increasing to the point that national media outlets, such as *USA Today*, increasingly shine the spotlight on what's happening here.

But while the concept of sharing a meal around a table reaches back through centuries of history, in today's business and regulatory reality it isn't as simple as setting out an extra table and chairs and collecting cash to

get something started. Adding any form of on-farm food service to your farm business mix requires a well-thought-out and strategic planning process to bring you to long-term success. While by no means impossible, it's a process that necessitates research, asking questions, patience, and intestinal fortitude to successfully navigate the start-up waters.

About this Publication

The goal of this publication — *Come and Get It! What you need to know to serve food on your farm* — is to help provide a starter toolkit and roadmap for farmers intrigued to potentially start such a venture.

While this is one of the first resources to explore and address the complex legal and regulatory issues related to on-farm food service, remember this whole "farm to table" movement still remains a young industry. Because it is new and without a deep-rooted history and track record to draw from, it is critical for the reader to understand that it is subject to change. By attempting to launch such a venture, you will be pioneering new entrepreneurial territory as these type of ventures don't readily fit into the existing regulatory and business check-boxes. Not regular restaurants but not exactly one-hit wonder special events, on-farm food service businesses require new approaches and perspectives from all sides involved with this process, from interpreting a state's food regulations to addressing insurance and liability issues.

As on-farm food ventures grow in number and volume, and shine a spotlight on various regulatory roadblocks

and business barriers that currently exist, some states are proactively addressing this by passing “Farm to Fork” legislation that authorizes and legalizes specific categories of on-farm food service.

For example, Nevada passed such legislation in 2013 that defines a “farm-to-fork event” as something organized on a farm where prepared food is provided for immediate consumption to paying guests. These events are exempted from the state’s standard food establishment permit requirements if they register with the “health authority” and hold no more than two farm-to-fork events in any month. (*Source: Nevada Assembly Bill No. 200, 2013.*)

Since no other state has similar legislation at this time, this manual will help farmers navigate current opportunities and build on-farm food service as a farm enterprise.

What this publication will cover:

- Part-time, on-farm food service ventures, such as pizza farms and farm-to-table dinners, that can supplement and diversify an existing farm’s income base. Most on-farm food service ventures involve food that is consumed on-farm, but could also be take-out (i.e., pizza).
- Information to help farmers understand and navigate the various regulatory categories and legal issues that need to be considered during the business start-up phase.
- Basic business planning, marketing and outreach suggestions to support ultimate business success.

What this publication will not cover:

- Information on full-time, full-service, on-farm restaurant start-ups.
- The ins and outs of producing and selling value-added food products that are not consumed on-site, either retail or wholesale (i.e., a jar of pickles).
- Regulations outside the states we currently have addendums for. While much of the information and perspectives covered in these first four chapters will be applicable to anyone starting on-farm food ventures, particularly related to business planning

and marketing, please note each state operates under its own definitions and legislation. Farmers need to understand and follow the rules of their state.

Importantly, this manual is written in the spirit of collaboration and teamwork between farmers as business owners and entrepreneurs and the various agencies that administer these related regulations and codes, from state-level Departments of Health to local county zoning boards. This is not a resource to work “around” the system or find loopholes. The manual comes from the belief that the ultimate priority and mutual goal between all parties is community health: providing safe food and a healthy and safe setting in which to consume it.

Some businesses, whether they realize it or not, may simply be operating outside the law – under the radar or at least not in the way that the regulations intended. Whether through honest misinformation or not, such situations involve risk for everyone involved, from the farmer’s business to attendees to the overall momentum of the farm-to-table movement. This is precisely what this manual aims to address by providing accurate, vetted and reviewed resources in an organized manner.

Local Food- a growing market:

A number of measures suggest that interest in local foods continues to grow. Here are a few examples:

- The number of farmers’ markets in the U.S. has increased more than 280% over the past 15 years, with 2,863 markets in 2000 and 8,268 markets in 2014. (*Source: USDA Agricultural Marketing Service, 2014.*)
- According to the *2015 Culinary Forecast* (National Restaurant Association, 2015) the top food trends are: people interested in locally grown produce; locally sourced meats and seafood; sustainability as a culinary theme.
- Number of CSA farms increased from 12,549 in 2007 to 12,617 in 2012. (U.S. Census of Agriculture, 2014). Assuming 50 to 500 subscribers each (Adam, 2006), CSAs may now supply nearly 3 million households.

Business Opportunities for On-Farm Food Service

The market timing is ripe and ready for on-farm dining opportunities, fueling the growth of what's currently happening.

Two target segments driving this market growth are:

1. Local Food/Family Farm Supporters

Definition: People who buy food directly from farmers at farmers' markets, through CSAs (Community Supported Agriculture), or from natural food stores or cooperatives. These people seek out and support direct farmer connections and want to know – and feel good about – where their food is coming from.

2. Culinary Tourism

Over the last ten years, the role food plays in the travel industry has grown tremendously, fueled by everything from *Food Paradise* and *No Reservation* shows on the Travel Channel to the swarm of tempting food photos invading social media feeds. Travelers increasingly seek out both the unique and flavorful, with dining consistently rated as one of the top three favorite tourist activities. (Source: World Food Travel Association, 2015.)

These travel and food enthusiasts are particularly seeking authentic agricultural experiences and “insider” perspectives, something a farmer and farm direct dining experience can offer. (Source: Travel Industry Association of America, 2015).

From 2007 to 2012, the number of U.S. farms catering to agri-tourists went up 42 percent and the amount of money brought in through agritourism enterprises rose by 24 percent, to more than \$700 million. (Source: U.S. Census of Agriculture, 2014.)

Types of On-Farm Food Service

For our purposes in this manual, the term “on-farm food service” refers to a range of different ways to bring people to your farm to eat and share a food experience. How you choose to engage in and structure your venture depends on a variety of factors, including what your ultimate goal is, who your audience is, and what partnership and facility options may be available locally. On the following pages eight different on-farm food service categories are summarized. They include: Private events, potlucks, partnering with a chef or restaurant, using an event management service, occasional food service options, Bed & Breakfasts, Pizza Farms, and full farm-to-table dinners

Come and Get It! Types of on-farm food service.

1. Private events

Description: A private event is one where food is offered to family and friends with no business interest in mind. No payment (or donation) is received for the food, nor is the gathering intended to market your business. An example would be hosting friends and neighbors for a harvest celebration dinner.

Pros: A license is not required to serve food to your family and friends if it is free.

Cons: Does not generate farm income.

See your state specific chapter for more definitions and details.

2. Potlucks

Description: A meal where people gather voluntarily and bring a dish to share that they prepared in their individual home kitchens or purchased from a licensed food business.

continued

Pros: Simpler way to host an on-farm food event that still markets the farm and business but does not require a license or other fees. Generates sense of community through everyone contributing and sharing food.

Cons: Doesn't generate farm income. Doesn't necessarily promote and showcase items grown on the farm.

See your state specific chapter for more definitions and details.

3. Partnering with a chef and/or restaurant

Description: Partner with a local restaurant to co-produce and market an event. Restaurant chef prepares food off-site in restaurant's commercial kitchen and delivers/preps on-farm in a catering capacity. Restaurant typically handles the reservations and payment. These situations most likely happen when a farmer and restaurant already have an existing relationship (i.e., the restaurant regularly purchases directly from the farm).

Pros: Works well when a restaurant manager is motivated and takes on coordination and marketing, tapping into their food service experience. Chef will often work directly with the farmer to plan the menu around what the farm has in season and purchase directly from the farm, resulting in extra income.

Cons: Often these partnerships can be a little unclear on who is responsible for what and how the overall budget will be managed. What is the farmer's role and expectation on compensation? It is best if these responsibilities are outlined in a contract between farm and restaurant to avoid issues.



4. Using an event management service

Description: An outside, third party company (i.e., Dinner on the Farm, Outstanding in the Field) organizes, markets and executes the on-farm event. Such companies will likely handle all licensing, insurance, payments/reservations, food ordering/prep, marketing/advertising, staffing, clean up, etc.

Pros: Minimal time commitment and financial investment needed of the farmer. Organizing entity typically buys some ingredients from the farm and may provide additional compensation to the farmer. Farm receives publicity and brand awareness through the event advertising and with attendees.

Cons: Typically does not generate much income for the farm.

See Case Studies section for profile of Dinner on the Farm.

5. Occasional food service options

Description: Holding occasional events that may fall under special regulatory categories such as: Special Event Food Stand or Seasonal Temporary Food Stand.

continued

Pros: Potentially lower-cost investment than more frequent events which will require a full commercial kitchen.

Cons: Limited in what you can prepare on-site. If a complex menu is desired, it may be possible to use an off-site commercial kitchen as the licensed location for more-complex prep work and do final assembly, cooking, and service on farm.

6. Renting off-farm space for both food preparation and service (i.e., church kitchen)

Description: Renting an existing kitchen space off-farm and using that for both food preparation and service. Examples include community center, restaurant, township hall, or church kitchen off-hours. While this option isn't on-farm food service, it can offer an alternative with some of the same benefits.

Pros: Much lower cost input than building an on-farm kitchen. Church kitchens may only ask for a donation or may even be free if you are a member. Possible opportunity to actually host the event at the restaurant or church site and not need to rent tables, dishware, etc.

Cons: Many community kitchens do not meet all regulatory standards for licensed food businesses; however, operating under a special event license is another option with fewer construction and equipment requirements. As a renter, your needs come secondary (i.e., you can get bumped if something else comes up), unless you have things detailed in a contract. If you are still serving on-farm, transport between facility and farm can be a hassle and can impact food quality and safety. Check the rules before you do this!

7. Bed & Breakfasts

Description: Overnight farmstay accommodations that include breakfast, showcasing items grown and raised on the farm.

Pros: Additional income derived from lodging element. Ability to give guests an authentic overnight farm experience.

Cons: Depending on your state's code, may be limited in what you can serve. Also, lodging requires you to understand an entirely different set of codes and regulations. For more information, see *The Farmstay Manual*.

8. Pizza Farms

Description: Pizzas assembled and baked on-farm, typically in an outdoor, wood-fired oven. Most pizzas consumed on-premise, picnic-style (i.e., no restaurant service) although take-out is available.

Pros: Opportunity to showcase farm-raised and produced items on the pizzas. Casual, informal environment and general affordability of pizza make these family-friendly events. Generates income and builds customer loyalty.

Cons: Unless you take preorders or reservations, it is difficult to manage volume and traffic flow. You must do pizza ingredient prep, ware-washing, etc. in a licensed commercial kitchen. Facility plan review and licensing could be tricky with the outdoor cooking component. The pizza-maker should read up on their state's food code facilities requirements and be prepared to work with their health inspector to gain approval. Additionally, attendee traffic is very weather dependent.

continued

9. Full farm-to-table dinners

Description: Full dinner (typically multiple courses) served in a sit-down, table setting on the farm. Menu features farm-raised and produced fare. Events typically require pre-registration/tickets.

Pros: Ability to incorporate various farm items into a flavorful, culinary experience (and charge a premium for it).

Cons: May need to rent various items (tents, tables, dishware, etc.), which increase overall cost. Requires similar facilities and licensing as mentioned in pizza farms above.

Beyond the Plate: Using commercial kitchens for additional income

As will be noted later in this publication, some on-farm food service ventures will require an investment in a commercial kitchen. (A commercial kitchen refers to cooking areas that meet specific health code requirements so that the food prepared in them can be sold to the public.) While such a kitchen is a serious investment, it can also offer opportunities to diversify your income further by using that space for other related ventures such as:

- **Value-added products:** An item made in a commercial kitchen could be sold and used in various ways, adding to a farm's bottom-line. If you are operating a pizza farm, for example, you could can tomato sauce in your commercial kitchen during the peak of the tomato crop and use that sauce on pizzas throughout the event season, including the early spring before the tomatoes are ripe. This commercially-produced sauce could also be sold to event guests, be included in early season CSA boxes, or sold wholesale to area retailers. Do note that each of these options will likely be subject to additional regulations, which are not covered here.
- **Kitchen rentals:** There may be other budding artisan food entrepreneurs in your area looking for commercial kitchen space to rent. Given that you probably are not using your kitchen space daily, even during the peak summer season, this could be an opportunity for rental income. However, the specific licensing issues for kitchen rental are not addressed here. *The Commercial Kitchen Guide* (Korslund, 2014) provides detailed information on this subject.
- **Culinary classes:** You could take food service up a notch by not just serving guests food on your farm, but inviting them to learn how to make it. Your kitchen space might lend itself to marketable on-farm cooking classes. See class listings at culinary stores or co-op websites for ideas that could range from cooking with kids to customized classes for bridal showers. Again, check with your state or local health department to understand what is allowed.
- **Kitchen space also provides the opportunity for local goodwill and giving back to your community.** You could make your site available to local health educators who may want to offer programs and classes on stretching food dollars and preparing healthy meals.

Most states have Extension programs that could be potential partners:

- **University of Minnesota Extension SNAP-Ed Program:** www.extension.umn.edu/family/health-and-nutrition/partner-with-us/snap-ed/
- **Wisconsin Nutrition Education Program:** www.uwex.edu/ces/wnep/overview/index.cfm

Chapter 2

Assessment

Is On-farm Food Service Right for You?

Assess if an on-farm food business is a right fit for you
Identify what additional skills you may need
Recognize how on-farm food service fits into your business mix



Are you a Food Service Entrepreneur?

The on-farm food service business concept blends a diversity of entrepreneurial skills that can readily draw on your existing strengths while adding to your farm income mix. However, to be a successful food service entrepreneur means you need exactly that: a diversity of skills, many of which are outside of the standard skill set of successful farmers. Just because you can grow beautiful heirloom tomatoes does not mean you can successfully transform them into pizza and sell it with a smile. You may cook up a gourmet Sunday dinner for your extended family of twelve, but those culinary skills don't necessarily translate to preparing a meal for 100. The quiz on the following page will help you to assess if you are a good candidate for an on-farm food business. However, as most entrepreneurs know, you can always train in and acquire the skills you currently don't have. (See quiz on page 14 to assess your skills.)

A first step before starting to research any new business venture, especially something as complex as food service, is to make sure the rest of your farm businesses are fiscally sound. While the ultimate goal of a food service venture is to add income to your bottom line, don't look to it as a way to bail out other sinking elements of your farm fiscal business ship. Whatever your current core business – from running a vegetable CSA (community supported agriculture) to grass-fed meats – make sure that your main income source is on solid ground before investing in something new and unknown.

Quiz! Am I a strong candidate for an on-farm food business?

Any successful on-farm food service venture, from a casual pizza farm to a high-end farm-to-table dinner, obliges you as the owner to embrace and exhibit the entrepreneurial mindset. You're the one in charge of and responsible for the bottom line. Do you have what it takes? Answer the following questions to help you assess your readiness:

1. I'm comfortable making decisions.

True False

2. I can handle risk and situations where there is no simple "yes or no" answer.

True False

3. If I'm stressed out about something, I maintain composure and don't pass along that bad energy to others. The show must go on!

True False

4. After any experience, I like to reflect and think about what worked well and what might need to be improved for next time.

True False

5. I have a strong network of friends and family that I can rely on for support and help; including someone to watch my children, if needed.

True False

6. I'm comfortable with money, both knowing I have enough in reserves and spending as needed to invest in the business.

True False

7. I can accept and even embrace failure. It is important to keep trying new ideas. Some may prove more fruitful than others.

True False

8. I don't take someone's "no" as the ultimate answer and always ask lots of questions. There are often many different ways to look at something. Even if that "no" is coming from someone of authority, I'm comfortable voicing my opinion and openly and collaboratively exploring other options.

True False

9. My husband/wife/partner/significant other is directly involved in this venture with me or, if not, is supportive and helps in ways that they can.

True False

10. I thrive on being busy and realize every project has highs and lows. I manage my time and priorities well and already know from farming that an entrepreneurial lifestyle is never just nine to five.

True False

11. I readily pay attention to detail and am comfortable juggling lots of things simultaneously.

True False

12. I have a knack for dealing with different personality types, especially difficult people. I'm good at making people feel comfortable no matter what the situation, communicate boundaries effectively and don't let challenging and dominant personalities affect my mood and outlook.

True False

If you answered "true" to most of these statements, consider yourself on the entrepreneurial start-up launching pad to further exploration of your own venture. If you couldn't positively embrace these statements or if some of these thoughts made you uncomfortable, regard that as a reality check as you read forward in this manual.

While the concept of running a farm-to-table dinner may sound fun, the reality of the risk and workload involved should not be underestimated.

A good way to test your readiness for on-farm food service is to begin with one of the simpler options listed on the preceding pages, like working with an event company. These businesses run the entire event on your farm and you simply serve as the host site. One of the first such entities, Outstanding in the Field (www.outstandinginthefield.com), along with increasing numbers of new such ventures, like Dinner on the Farm (www.dinneronthefarm.com), offer these types of collaborations. See the case studies for more advice from Dinner on the Farm.

Partnering with a restaurant, caterer or food truck who would run and manage an event on your farm is another simple option. While such arrangements may

not be big income generating sources for the farm – your time commitment and overall risk is much lower. Depending on the event size and the scope of the menu, selling your farm-raised produce, meats or other items as ingredients for the meal can be an additional income source.

Another option might be to do a “trial” event. In this scenario, you would run the event yourself, but could likely qualify for a special event license. While you would need to abide by all food safety and legal expectations, you would not need a commercial kitchen or the other infrastructure required for an ongoing enterprise, although you might be limited in what you could prepare and serve. This option would let you try your hand at planning, marketing, and managing an event with much less risk than options requiring large capital expenditures.



Quiz! What skills do I have and what do I need to develop?

In addition to embracing the entrepreneurial lifestyle, there will likely be additional skills you need to learn or further develop for your business to succeed. Here are five skills vital to a successful on-farm food service business that you may have to some degree, but that may need to be taken up a notch for this new venture.

For the areas below, rate your own current status of each skill with a “1” representing *no experience* and a “5” designating you’re a *seasoned expert*. Suggested skill-training ideas follow for those areas you need to further develop.

- **Food Safety Training:** Awareness of key food safety issues like “temperature danger zone,” foods susceptible to bacteria, food grade work surfaces, etc.

① ② ③ ④ ⑤

Training resources:

- Minnesota Certified Food Manager (CFM) training (www.health.state.mn.us/divs/eh/food/cfm/)

- **Financial Management:** Understanding how to keep accurate account records of your business, from tracking expenses to managing payroll.

① ② ③ ④ ⑤

Training resources:

- Fearless Farm Finances: A book written specifically for farmers by the Midwest Organic and Sustainable Education Service (MOSES) with instructions, tips and tools for setting up and managing a farm’s financial system. <http://mosesorganic.org/fearless-farm-finances/>

- **Culinary & Kitchen Management Skills:** Developing menus, inventory planning, table design.

① ② ③ ④ ⑤

Training resources:

- Work part-time in a restaurant for behind-the-scenes, hands-on training.
- Attend a culinary boot camp session at an institution like The Culinary Institute of America (CIA) (enthusiasts.ciachef.edu). These “Boot Camps” are designed around specific kitchen techniques such as specialty and hearth breads.

- **Event Management:** Understanding the flow and overall set-up of successful on-farm events.

① ② ③ ④ ⑤

Training resources:

- Visit as many such operations as possible and keenly

observe and ask questions. Take photos if possible.

- Remember any related costs and fees are business expenses during your research phase; make sure you ask for a receipt for everything. University of Minnesota Extension in partnership with the U of MN Tourism Center offers a helpful on-line course entitled “Festival and Event Management Online.” www.extension.umn.edu/community/festival/

- **Legal Savvy & Insurance Coverage:** Knowledge about how to structure your business and ensuring that adequate coverage exists

① ② ③ ④ ⑤

Training resources:

- Further detail in state specific chapters of this manual
- Farm Commons (www.farmcommons.org); non-profit organization providing various simplified and accessible resources specifically designed for farmers to navigate legal issues.
- Schedule an appointment with your current insurance agent to review your plans and assess potentially needed policy changes.

- **Customer Service Skills:** Feeling comfortable and confident in interacting with guests in a friendly, stress-free manner.

① ② ③ ④ ⑤

Training resources:

- Work part-time in a restaurant for behind-the-scenes, hands-on training.
- Your state’s tourism department may offer various customer service training that focuses on increasing the skills and knowledge needed to deliver high quality customer service while recognizing the significant role that culture plays in the such experiences.
- Host larger private on-farm parties to gain experience. (See your state’s specific chapters for a definition of private parties.)

Other Things to Consider:

Remember, you're pioneering new entrepreneurial territory with your on-farm food service business. As a new industry, there is no tested model on what a successful business must look like. While there are legal and regulatory requirements (more on this in your state's specific chapters), from the marketing standpoint, you can lead and direct the business how and where you want it to go. Here are some key variables to consider and think through in assessing such a business start-up:

- **Farm presentation and appeal**

Remember that while your farm operation may be a perfectly functioning agricultural enterprise, those coming as guests to an on-farm event may have a different image of what a "farm" should look like. Can you meet those expectations currently? Does your farm give off a generally neat and tidy impression? Get rid of any old equipment that isn't intended to be decorative, and make sure all storage areas and shelves appear uncluttered and clean; or minimize what these folks can see by closing barn and shed doors.

- **Peak summer timing**

It's a crazy concept at face value: adding another time-commitment-intensive business layered on top of an undoubtedly super busy summer farm season. But that's the reality of on-farm food service: customers want to come at a time when they can both enjoy the farm's scenic beauty while savoring fare made with the farm's produce at the peak of ripeness. Hence, the majority of all of this takes place at the apex of summer. Simply put: if you think you're working hard already, it's only going to increase.

However, if you're of that seasonal workload mindset where it's a constant schedule overload all summer that is then balanced with some time off and a lesser workload in the winter months, on-farm events in the summer could work for you. Do keep this in mind when planning your on-farm food service venture and prioritize down time during the winter months to re-group and re-charge for the following season.

- **Date and timing of event**

Take the summer schedule to heart when plotting

exactly when you host events. You will need to balance customer demand (i.e., when folks want to and can come) with your existing schedule (i.e., existing commitments to farmers' market and CSA deliveries). For dairy farmers, this may mean timing events around milking times. Other livestock operations may have more flexibility in scheduling options.

Because your on-farm food service venture is not open daily and year-round, you have the advantage of strategically creating an event at an off-peak time. For example, maybe you pick Tuesday nights so your weekends are open for farmers' markets and other commitments. Then the strategy would be to build a loyal customer following on that night when you're likely not competing with as many other local events. Such information needs to be clearly communicated on your website and other marketing materials as this is still new territory for potential customers: the idea that a place that serves food is only open one night a week or a handful of times a year. That said, this concept could work to your marketing advantage. It gives your venture a uniqueness factor right from the start by not always being available.

- **Family involvement, scale & staff**

Your business size and volume will be, granted, a bit of a moving target, particularly during the early start-up phase. It will be tricky to determine exactly how many people will attend and how much staff and support you will need to make those 100+ pizzas or whatever the meal plan may be. A key factor to success in these situations is to ensure you have a supportive base of family and friends to pitch in and help, as needed, in addition to farm staff you can draw on.

The friends and family side form your core support network and are integral to your ultimate business success, from helping to watch your kids to providing an objective sounding board when something doesn't go as planned.

- **Timeline to launch**

As you'll quickly realize when navigating the rest of this manual, successful on-farm food businesses do not pop up quickly overnight. These ventures take time to thoroughly research and plan, particularly as you navigate the regulatory and legal issues outlined in your state specific chapter.

As a first step, given the busy summer farming season, allow yourself time during the off-peak winter months to first fully explore, research and think through this idea. The more time you can allocate to this research and planning phase, the more money you'll potentially save in the long run. For example, commercial kitchen equipment will come up for sale intermittently at auction or there may be other opportunities to buy used equipment at a significant cost savings. If you can identify early the items you need, such as a commercial floor mixer, and keep your eyes open for a decent used one, this can lead to significant savings; but will take more time.

Ideally, you will be in a position to take one to two years to research, develop and act on your business plan. The first year, focus on simply visiting as many on-farm food events and ventures as you can. Come early, stay late, observe and ask questions. By experiencing a variety of events, you may come away with a clearer initial idea of what type of event suits you. A busy pizza farm serving over 150 pizzas on a summer night involves a different pace and atmosphere than a farm-to-table brunch for 30. Identify which settings would be the best fit for you, your farm and your lifestyle.



- **Synergy with other farm operations**
How a new on-farm food business fits into your existing farm operation is a key to successful diversification and risk management. Ideally, something like a pizza farm or farm-to-table enterprise will enhance and build on what you already are doing and not cause wheels to spin in ways that unnecessarily absorb time and money.

More things to think about:

- **Where is the bulk of my current time and commitment to this operation going?**
Is your business more seasonally focused, such as a maple syrup operation with heavy spring commitments, that then opens time for something else into the summer? If you're a vegetable CSA, when do your deliveries stop and would that potentially be an opportune time to do a farm-to-table event with a harvest theme?
- **What are my off-farm commitments?**
Do you have an off-farm job and how does that factor into your schedule and time frames? Is there any flexibility in your employment schedule during peak times of the potential on-farm food venture?
- **What are my family responsibilities?**
Do you have younger children needing attention, particularly during event preparation and implementation time? Some creative CSA farms trade a CSA share for a designated number of on-farm childcare hours. Another option is two neighboring farms pool their kids and "share" a baby-sitter for a designated number of hours.
- **What is my current schedule like?**
Is there space for something new? Does something need to be removed from your business mix before adding in on-farm food service? This may be a ripe time to look at a piece of your income pie that might have been languishing that could now be deleted to open up room for this new venture. Is there a certain farmers' market you've been attending since you started farming that isn't bringing in the income it used to? Perhaps you could let go of a certain labor-intensive crop to open up some time?

All of these factors should be considered carefully before moving forward with an on-farm food service venture.

Chapter 3.

Marketing

Define a target market
Identify customer loyalty building strategies
Understand marketing plan components
Review event flow logistic considerations

“Build it and they will come” may work as a marketing tactic for rural destinations in the movies, but unfortunately isn’t a viable success strategy for your on-farm food service business. However, the good news is your marketing plan doesn’t need to be expensive, complicated, boring cookie-cutter, or traditional. Given the uniqueness of on-farm dining options and the growing customer demand as well as media interest, you possess a timely opportunity to take advantage of this momentum.

Remember the cupcake craze: the first pioneers of this trend capitalized on the media frenzy and consumer curiosity as folks lined up and waited for a bakery product that one could argue isn’t even particularly unique. After the glut of specialty shops and related reality television shows, the food trend buzz moves on to whatever the next big thing may be. Take advantage of current timing and be the first in your area to offer a distinct on-farm dining experience. You can reap the benefits from being the entrepreneurial pioneer. However, realize that being a “pioneer” may have its long-term consequences as well, as the current hot farm-to-table trend may at some point diminish. The strategic question for you to consider is how to make investments wisely to best adapt and successfully weather through such potential future changes.

Identify your target market

Your “target market” refers to that core group of people who will support your business most frequently. Remember you can’t be everything to everybody, so it is important to narrow down and identify who exactly would be most likely to seek out, drive to and often pay a premium for an on-farm dining experience. Don’t think of yourself as necessarily competing with a local restaurant and needing to lure and convince customers to come to your farmstead instead. Those seeking on-farm dining experiences, your potential customers, are not looking for a quick, easy, cheap meal. You are not competing with the fast food, drive-through market. You are looking for people who are:

- Looking for unique and off-the-beaten path experiences — and are willing to drive for it
- “Foodies” — those seeking authentic flavors and artisan foods
- Supporters of sustainable and organic agriculture
- Understanding of the price/value of farm-fresh fare — and willing to pay for it.

Additionally, some of the more casual on-farm dining experiences such as pizza farms, given the informal take-out service and outdoor seating, attract the family target. Whereas at indoor restaurants it can be a challenge to control fidgety toddlers or crying babies, the pizza farm environment allows and encourages “kids to be kids,” gives them space to move, and open air acoustics to be themselves (and not embarrass parents in the process!)

But the most lucrative and loyal target market is right in front of you: your established, long-term farm customers. From CSA members to those dedicated folks you see at your farmers' market booth every week, these are the people who will most likely be both happy to pay to attend your event, and to spread the word and invite friends.

Prioritize customer relations

The “80/20 rule” in business refers to the idea that for many things in life, 80 percent of the outcomes come from 20 percent of the inputs. Interestingly, this theory stems from agrarian roots. It is sometimes known as the “Pareto principle” because Italian economist Vilfredo Pareto observed in the early 1900s that 80 percent of the land in Italy was owned by 20 percent of the population and that 20 percent of the pea pods in his garden produced 80 percent of his pea crop. The same principle applies to on-farm events: a core group will keep returning and loyally championing your business, providing that much-needed word-of-mouth marketing.

You'll quickly identify the core group of returning customers; be sure to thank them for their loyalty. For businesses like pizza farms, this can be done with a punch card similar to what you see at coffee houses where you “buy 12 get one free.” Or simply spontaneously giving away something free to these loyal customers – a complimentary pizza on a birthday – goes a long way in solidifying customer loyalty.

Make sure to have your core customers' contact information on file. With the seasonal nature of on-farm food businesses, it's like an intense summer romance that fades away in winter and needs to be re-ignited. A holiday card to loyal customers with some updates of new pizza combinations or dinner offerings planned for the upcoming season treats your loyal followers as friends versus clients.

Likewise, tap into this faithful customer pool for feedback and suggestions for your business. They will readily be your “eyes and ears” during the event as your focus will undoubtedly be elsewhere. Send an e-mail survey out during the winter to get feedback on new pizza combinations and let your loyal customers “name” a pizza or come up with a theme for a farm-to-table dinner.

Look beyond your paying customers and prioritize developing and maintaining strong relationships with your neighbors. While they may not be in your target market and may not come and pay for pizzas or dinners on the farm, you could give them free tickets or host a special event just for neighbors. By feeling a part of and connected to your business, neighbors can evolve into partners and supporters.

Outreach and marketing

As mentioned at the beginning of this chapter, marketing your on-farm food service venture does not need to be an expensive, complicated process – but it still needs to be a priority and requires an on-going commitment. Here are some key components to get you started:

Word of mouth referrals

Loyal customer referrals are the most effective form of advertising, and the cheapest – but they can't be bought. These referrals must be earned.

Print advertising

Colorful postcards or printed menus (with your farm's information on them) can be great promotional pieces to hand out at your farmers' market stand, stick in your CSA boxes, or send with customers who come to your farm.

Website

Your website needs to be the ultimate information portal where potential customers can find all the details they need to show up, attend, pay and enjoy an event on your farm.

While there are a lot of opinions about what makes a great website, ease of navigation remains key. Most websites either have a navigation bar across the top or along one side, which contains words or graphics that connect you to major components, or pages, on the site.

Elements to include on your website are:

1. Succinct description of event: dates, start and end time.
2. Details on reservation or tickets, if needed.
3. Detailed directions: complete address, Google map link, written instructions from the nearest major highway, or printable map as a pdf. The more directional detail, the better. Include information on parking.



4. Pricing and payment methods — cash, check or credit cards.
5. Past event photos (helpful so folks know what to visually expect).
6. Additional detail on what to bring, such as dishware for picnic-style eating, additional side dishes, drinks, or blankets to sit on.
7. Pet policy. Most venues do not allow pets, for several safety reasons:
 - a. Potential for harm to other guests, especially children, who are not familiar to the pet.
 - b. Potential for conflict with the farm's pets and livestock.
 - c. Need to keep animals out of food prep and service areas.
8. Menu.

This information can also be organized (or repeated) via a “frequently asked question/FAQ” section linked to the main event page.

Be sure to include a slice of your personal story. This helps differentiate what you are doing and showcases how it is so distinctly different than a restaurant experience. A simple “About” page could include a photo of you in the kitchen preparing the meal along with a lively question and answer format that helps support and promote your story. Replies to the following questions are a great place to start:

- Why did you start this business?
- How did you get started making your pizza/dinner/etc.? Any special recipes or techniques?
- What makes the experience on your farm unique?

Other things to consider including on your web page:

- **Media page** - listing any press links
- **Photo/slide show page**
Given the scenic beauty of your farm and event, photos can be an exceptionally strong marketing tool. Post quality shots to photo-driven sites like Instagram and Pinterest.
- **List/links to other local sources** you use for ingredients you don't grow yourself (i.e., cheese, wheat, etc.)
- **Testimonial endorsements** from attendees. This can be especially important to give an authentic perspective on the event, communicating its uniqueness so potential attendees have the right expectations. For example:
"Fabulous Farm Pizza Night is a hidden gem, best for folks who like things off the beaten path (literally -- wear good walking shoes as you'll be heading downhill) and rustic (don't expect tablecloths and bring your own drinks). Each pizza is made to order and the crowd can get large so bring snacks and plan on waiting at least an hour during peak times, 6-8 pm. This is "slow food" at its finest. Enjoy the beautiful setting and sunset and celebrate the freshest flavors around."

Thanks to "widgets," self-contained mini programs you just paste into sections of your website, you can keep your homepage dynamic and fresh with new content that gets posted to the widget, perhaps via a social media update. Feedburner (feedburner.com) is a tool that can be used to automatically repost your social media post to your website page.

For those who might just be starting out and don't have an existing website, the following companies offer the ability to modify easy-to-use templates and customize them for your business; there are many other options as well. If you have some computer experience, the intuitive nature of the websites make them easy to navigate, and instructional videos will guide you through the design, so there's no programming or "coding" involved. The websites do have some space and creative limitations and may come with small ads that also appear on your website. But for most first-timers, you'll be amazed by the results.

Just register for the website template you like the best and start uploading text and photos. There's plenty of free storage space.

- **wordpress.com**
This is the leading blogging interface that can be adapted easily as a business website. If you love writing about your products, ingredients or journey as a food entrepreneur, this option will be particularly attractive.
- **wix.com**
Containing numerous templates, many product oriented, this online website builder focuses on easy drag-and-drop design elements. Stick to their HTML5 options, which makes websites look good on small devices like smartphones.
- **weebly.com**
A very basic, visuals-driven website design interface. Not many bells and whistles, but its simplicity will appeal to less tech-savvy people and get you quickly set up on the Internet.
- **sites.google.com**
Created by the most widely used Internet search engine company, Google Sites provides the ability to create a free website with various features. If you like to write regularly, then you can use Google's blogspot.com.

Social media

Everything you do is about sharing your story, your farm and what makes your on-farm dining experience so special. Don't overlook ways to let your customers do this for you as well. To build awareness around your events, you'll need to get people to try it, love it and share what they like about it with the rest of the world. With the explosive growth of the Internet – plus access to it through computers, mobile phones and tablets – social media have become an increasingly important part of an advertising campaign. And it need not cost you a penny to get started.

Thanks to the proliferation of social media, there are lots of options for sharing your story with the world, in characters, updates, photos and video. Photos and video, in particular, provide tremendous visual opportunity for telling your story via social media. You're not just selling a meal; it's the unique farm setting that will drive people to your place. The multiplier-effect cannot be overstated, but it does

require a different mindset. Talking becomes typing and a printed poster becomes a “folder” of incredible photos of your products, your home kitchen and your customers savoring what you’ve produced. Because there aren’t enough hours in the day to do them all, carefully select the social media your customers use most.

The more your customers rave about your events to others on the Internet, the better. People who love your product can, in spirit, be your “in-house” advertising agency. They can tell their friends, share links to your products on Facebook and tweet about their favorites, too.

The following is a quick overview of some of the most popular social media sites.

- **Facebook: facebook.com**
Currently, the dominant social media networking service, where you can keep connected to your customers and share regular social updates, such as what’s on the menu and descriptions of the pizzas you’ll be serving this week. When you start your Facebook page for your venture, be sure to select and create a “business” profile, not a “personal” page. This keeps your business professional and opens up opportunities you won’t have on your personal page, including the ability to schedule posts in advance, assign other people as administrators (to help you), access analytic tools and implement targeted advertising campaigns, if you choose to do so down the line.
- **Google+: google.com/+business**
This search engine giant likewise has ambitions to thrive in the social media world through Google-plus for business. It provides many of the same features as Facebook.
- **Twitter: twitter.com**
If you like texting, then this online microblogging website is perfect for sharing what’s happening with your business in 140 characters or less.
- **Pinterest: pinterest.com**
Think cork bulletin board with photos, embedded on an Internet page. This pinboard-style website can spread images of your events through the Internet if your photos are beautiful enough.

- **Instagram: instagram.com**

Like Twitter, except what you share is snapshots, not text. Instagram currently only works with mobile devices.

Just because you have 742 Facebook “friends” doesn’t mean these friends see every “status update” you post. Also, make no mistake, not only are Facebook and other social media sites mining personal information about you and your online life, they’re making money off you, too. (In fact, if you have your “cookies” disabled on your browser, you cannot even sign in to use the site; cookies track everything you do.) Facebook and many other social media companies have proprietary and secret algorithms they use to control how many people see your updates.

If you want to boost your reach and increase your audience on social media, you have to pay for it. This is called “pay-for-clicks.” You can focus on people who “like” your page and their friends, or broaden your reach to people you target. Right on their main business page, the social media site will show you how you can increase your reach and how much it will cost you; heck, they even create a sample advertisement out of the content you just provided.

All you have to do is enter your credit card and set your parameters, including your budget, target market and duration of the campaign. Then with a click of a button your ad will reach a segment of the population so specific that it’s a bit creepy, particularly to older generations who didn’t grow up on social media. For younger Millennials, such targeted ads are the accepted norm. The good news, however, is you can effectively target a market at a potentially very low cost; your update will show up in their “news feed.”

Press release

People interact with the media in many ways, so consider the range of places you can send press releases. Keep in mind that those who watch a lot of TV may not regularly listen to the radio. Take into account that different media sources work on different deadlines. Most magazines work ahead from three to six months (or more) when covering a story. Newspapers and local radio stations often work a week or two ahead. Don’t forget about Internet media. Writers such as food bloggers are often eager to cover good stories and their blogs can sometimes go viral, which means what they write gets picked up, over and over again, by other bloggers.

Listing on Free Directories

Submit your farm and related farm events to a variety of free listings. Some of these may not have a specific “on-farm food event” category but have space where you can provide descriptive text of your offering.

- **LocalHarvest**
localharvest.org
Farms with food products for sale.
- **Agrilicious**
www.agrilicious.com
For all things local food, connecting potential customers, farmers and food-related businesses.
- **Green People**
www.greenpeople.org
Create a listing for your farm.
- **Eat Well Guide**
eatwellguide.org
Go to “suggest a listing” and suggest your farm.
- **CSA Center (Robyn Van En Center)**
csacenter.org
Only for farms operating with the community supported agriculture model.

Joining organizations & associations

Connecting with and joining groups that work with the foodie and travel target market you want to connect with can be an economical form of outreach:

- **Green Routes**
www.greenroutes.org
A sustainable travel initiative coordinated by Renewing the Countryside that promotes and supports unique, locally owned and environmentally conscious travel destinations as a strategy for building strong rural communities.

Paid advertising

If you are going to pay for advertising, make sure you’ve exhausted your free options first. Remember the ideal scenario is for a media outlet to do a story on you or run your press release. Not only does this save you money, but also there is a legitimacy factor when something appears as an actual article or news story versus a paid advertisement.

That said, sometimes paying for an occasional ad in a local outlet, like your community newspaper,

does more than just get the word out: you’re also helping support and collaborate with these, at times, struggling small-town media venues. Some on-farm food businesses, grateful for the coverage their local newspaper has given their farm business over the years, see paid advertisement as a good investment in their local community.

Additionally, there are opportunities to buy ad space in local outlets such as school sports calendars, school yearbooks, community calendars offered by groups such as the volunteer firefighters’ association, sponsor lists on the back of baseball t-shirts, etc. These kinds of items hang out in peoples’ homes longer than a newspaper and can build more community goodwill. They reach a target market of community-involved families better than a newspaper ad can and are typically quite affordable.

Determine logistics

Putting together an on-farm food event generates a list of to-dos and things to think about. Some categories to consider in planning your venture:

Farm and food service atmosphere

What type of atmosphere and environment do you want to convey at your events? Would additional entertainment or a musical performance enhance the experience? Once you start attracting a crowd on a regular basis, there may be enough volume that a performer or musician might be willing to play for tips alone, adding ambiance, but not subtracting from your bottom line. Or a musician might create enough of an added draw, that you can afford to factor their cost into your budget.

Hours

How long will your event be? When will you start and end? Remember there’s a seasonality factor to event timing too, with nightfall earlier as you move into the fall. Will you have adequate lighting available?

Pricing

The best way to determine pricing is via the classic business model – determine your input and ingredient costs and then add in your profit margin. Remember to calculate a fair value for the ingredients you raise yourself: if you were to purchase those organic heirloom tomatoes, how much would they cost? And don’t forget to value your time. Generally, pizzas



(16-18 inches; serves 2-3) range from \$18 - \$25 depending on toppings. Farm-to-table dinner pricing varies depending on what's included and the formality involved, with up to about \$75 for more informal picnic-style gatherings and \$100 to \$200 or more for the higher-end, white tablecloth affairs featuring known chefs.

Payment systems

Cash is always an easy option. In that case, it is easiest to price your items at a number requiring little or nominal change (i.e., \$20 per pizza). Checks are also a simple payment method but fewer folks have checks with them nowadays given increasing electronic payment options. Remember to add in sales tax. (See your state-specific section for more detail on sales tax.)

Credit and debit cards, thanks to their convenience and widespread use, have become the de facto way people pay for things. The good news is today you don't need a full-blown merchant account with cumbersome contracts and expensive scanning machines to accept a credit card payment. Thanks to the proliferation of mobile devices, smartphones and computers, plus Internet or cellular connections, processing credit cards has become easier and more widespread. Most companies offering "card readers," small devices that can read a swiped credit card, also provide an option to manually key in the credit card number, but charge a higher percentage fee and fixed transaction cost for this feature. The following are some of the many credit card-processing options where you only pay a nominal fee based on a percentage of the charge, and sometimes a per-transaction fee.

- **PayPal**
PayPal.com
Among the most widely used, secure and safe ways to receive payment via credit cards or through someone's PayPal account via a computer, tablet or smartphone. PayPal offers a mobile app and card reader for payments on the go.
- **Square**
Squareup.com
Using a free Square device that plugs into your smartphone, tablet or computer, you can swipe the card and complete your checkout from just about anywhere.

- **Spark Pay**
sparkpay.com
The free card reader from Capital One Bank can process credit cards on a smartphone, tablet or computer.

Reservation and ordering system

Determine how to best manage orders to not keep hungry customers waiting. Services like Brown Paper Tickets (www.brownpapertickets.com) enable you to sell online tickets for a nominal service fee. While this system works well for more formal events and full farm-to-table meals, pizza nights tend to be more casual and most operate with customers ordering on-site. Clearly communicating on your website that, during peak times, you may wait up to an hour (or whatever your time frame may be) gives folks a heads-up on scheduling, or bringing along some snacks to make the wait bearable!

Clear signage

For both safety and smooth event logistics, clear signage is a must. You don't want everyone asking you personally where the bathroom is. Clear directional signage on where to park is helpful; ideally you have a mowed field or other room on your property for cars to park completely off the road. In fact, make it clear to attendees to not park on the side of a public roadway, because they could technically be ticketed.

Cross-promotions with other local businesses

As your business grows, there's much opportunity to cross-pollinate and cooperatively support other local businesses: a true "win-win" situation. As some of your customers may be traveling longer distances to your place and lingering into the evening, local lodging connections are helpful. Especially if you're bringing traffic in on a slower weeknight, perhaps area lodging establishments would offer a discount for attendees to your events. If you purchase ingredients from other area food artisans like cheesemakers, put out information on their products along with information on how to purchase and again, perhaps a promotional incentive or coupon. Ask your local ingredient suppliers to return the favor and have your flyers or coupons available at their place of business.

Chapter 4

Financing

Explore alternative financing models Recap start-up checklist and resource list

Any way you slice it, starting an on-farm food business will require a financial investment. There are numerous opportunities, however, to expand without going into major debt. The first thing to consider is how you could launch your operation without taking on debt at all or to at least minimize the amount of the loan. Because on-farm food service business models are new, innovative, and not widely tested, keeping debt low is a good idea. This frugal approach may require more legwork and research on your part, such as keeping an eye on Craigslist.com and area restaurant equipment auctions for used equipment.

While traditional sources of borrowing capital are still viable options, you may also want consider a growing number of financial resources that have nothing to do with a commercial bank. Called “crowd-funding,” these mostly Internet-based sources of financing can provide everything from small, low-interest loans or thousands of dollars in donations. Success with these sources depends on whether you have the knack to create compelling, engaging fundraising campaigns and a customer base eager to support your dream with their open pocketbooks. The following summarizes a few of the currently popular options for financing.

- **Kiva**
kiva.org
Kiva taps the wealth of private individuals who fund small business with low-interest loans. You apply for a loan and share your story with

prospective lenders who, through an online portal, decide if your venture is worth funding. The Kiva Zip Loan program is for smaller \$5,000 to \$20,000 interest-free loans; these loans need to be paid back to Kiva within six to sixty months, depending on the loan size. Kiva also offers larger loans that carry interest.

- **Kickstarter**
kickstarter.com
The world’s largest, Internet-based, crowd-funding platform, Kickstarter supports a wide range of creative projects, including food products. Backers pledge various amounts of money in exchange for various incentives, called “backer rewards,” associated with different levels of funding support. One bakery start-up launched a \$10,000 campaign to pay for ingredients and manufacturing costs for their first major production run of three items. Kickstarter can be a good platform for businesses with good connections and great marketing savvy, but don’t underestimate the amount of time and effort it takes to pull off one of these campaigns.
- **Indiegogo**
indiegogo.com
Another Internet-based crowd-funding website that includes a food category. “Backers” receive “perks” with their financial contribution. Again, don’t underestimate the time and energy to run a successful campaign.

- **Slow Money Alliance**
slowmoney.org
A grassroots alliance of local networks that have catalyzed the movement of millions of dollars into food and farm enterprises in communities across the country and beyond. Funding supports a range of businesses, from farms to processors, in the local food space. Promising food enterprises register for an Entrepreneur Showcase, where they have the opportunity to formally pitch their business idea and funding need to potential investors.
- **Kabbage**
kabbage.com
From \$500 to \$100,000, Kabbage provides working capital online to currently operating businesses, based on the extension of a business line of credit. Interest rates vary from 1 percent to 13.5 percent.
- **Small Business Administration's Microloan Program**
sba.gov
Government-backed loans to small businesses up to \$50,000, made available through certain nonprofit, community-based organizations. Rates for the six-year term loans range from 8 to 13 percent.
- **Barnraiser**
barnraiser.us
Story—and people focused—crowd-funding site with a preference for the sustainable agriculture community. Fairly new with limited track record.
- **AgFunder**
agfunder.com
Crowdfunding platform specific to agriculture ventures. Again, fairly new with limited track record.
- **Farm Service Agency (FSA) Microloan Program (ML)**
www.fsa.usda.gov
Operated by the United States Department of Agriculture (USDA) and facilitated through your local FSA office, these loans go up to \$50K and are available to small and non-traditional niche agricultural enterprises.

The “free-money” myth

A note of caution for crowd-funding campaigns: Engaging in such an effort requires a large time commitment to create a successful campaign. From collecting engaging visuals, to writing motivational copy, to developing your tiered rewards and incentives, creating the actual campaign content takes time. Successful crowd-funding campaigns recommend investing time to tailor messages and follow-up with key potential donors, an activity that, again, takes time. As the crowd-funding movement continues to grow, a variety of consultants and specialists have popped up who can help in this process in a paid capacity. Once you go live and post your campaign, prepare yourself for solicitations by such entities.

Chapter 5

Case Studies

Dinner on the Farm

Stoney Acres Farm



Dinner on the Farm

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Dinner on the Farm Provides Options, No Money or Time Required

The blossoming local food movement and the increasing interest in on-farm dining experiences add up to one key opportunity for everyone: More room at the entrepreneurial table to support a multitude of different, related start-up ventures. Dinner on the Farm represents the growing sector of independent companies that facilitate on-farm food events, taking care of all the logistics and event planning so the farmer can focus on what they do best: farm! Working with such a business also enables farmers to experience and experiment with on-farm dinners and see what they are like before investing any time or resources to do something themselves.

“Often at our events, the host farmer works in the field until mid-afternoon, then takes a shower and simply walks on over and attends and enjoys their own party,” explains Monica Walch, owner and brainchild behind Dinner on the Farm, based in Saint Paul, Minnesota. Having grown up on an organic dairy farm, Walch understands and appreciates the farmer’s perspective and the peak season workload they have to deal with. “Our specialty and niche is we handle all the logistics for the event, from ticketing to promotion to licenses, insurance and staffing. The host farm benefits both from the attention and related marketing this event brings to their operation, along with the unique opportunity to actually relax and enjoy the event and meal featuring their farm-raised fare.” Walch does give farms a token “thank you” payment at the end of the event, but sees the marketing and networking opportunities as the primary appeal of host farms.

Today, Dinner on the Farm hosts events throughout the summer season, in Minnesota and throughout the country. A pioneer in the farm-to-table movement in the Midwest, Walch needed to overcome many barriers and hurdle regulatory obstacles to bring her vision for Dinner on the Farm to life.

“When I first started six years ago, this whole on-farm dining concept was so new to everyone, including agencies like the Minnesota Health Department. When my events grew to the point that I needed to engage these folks, I at first quickly received answers like, ‘you can’t do that,’” recalls Walch. “I then learned fast that I needed to be very open and transparent about what I was doing to develop a trusting relationship, but at the same time needed to be firm in my commitment that I wasn’t taking ‘no’ for an answer and that we could work something out and eventually we did, but it’s a constant process for me as I do new events in various parts of the state with different local zoning authorities and interpretations of the code.”

Given her seasoned experience working with agencies and regulations to bring farm-to-table dining events to life, Walch offers the following tips in working with such situations:

1. Communicate and Prioritize Food Safety

“I repeat continuously that I share the agency’s priority of serving safe food,” Walch recalls. “That is the underlying bottom line priority for health inspectors and it helps tremendously to have a spirit of collaboration and trust.” Walch recommends first thoroughly reading the regulations and understanding them yourself — then ask questions as needed — but take the time to review and absorb the key issues.

It helps, too, for agencies to understand why food safety is the key component of my business’ success,” adds Walch. “If anything happened to one of our guests, our entire operation and livelihood would be at stake.”

2. Remember “no” really means, “let’s look at this differently”

“I heard the word ‘no’ a lot in the beginning,” remembers Walch with a smile. “I quickly needed to redefine ‘no’ to really mean ‘we don’t

have a category or check-box for what you want to do.’ That meant I needed to use their language and help connect the dots so together we could find ways to make this all work.”

3. Find an internal ally

Eventually, Walch found someone within the Minnesota Department of Health who truly understood the mission and vision of Dinner on the Farm and helped champion things internally. “For awhile this person came out to every dinner to check things and understand what was going on, but since trust has been built in our relationship, I don’t have as many inspections.”

A unique feature of Dinner on the Farm events is they are family-friendly and affordable, with ticket prices averaging around \$50 to \$60 per person including wine or beer and kids are free. “Sometimes folks still assume farm-to-table events are only formal, white tablecloth affairs with tickets over \$200 per person, but we’re proving that doesn’t have to be the case,” adds Walch. A key way she keeps the cost per person lower is to serve in a more informal “picnic style” where guests

bring their own dishware and blanket, just like you’d expect for a picnic. This keeps both rental costs and the workload down tremendously, as both dishware and dining table rentals are no longer needed.

This family-friendly atmosphere reflects Walch’s underlying vision for Dinner on the Farm: Connecting people with their food sources in a fun and celebratory environment. “I love working with a range of different farms as our core clientele are customers who return to events every year and like to experience something new,” Walch explains. “My only real ‘rule’ for a farm host is that they practice sustainable agriculture.” Most events take place on Sundays, which Walch finds the best fit for everyone involved. “Restaurants are often closed on Sunday nights, so it’s easier to find a local chef to partner with to prepare the food. Everyone’s schedule is so busy nowadays; Saturday night might be booked but folks are more likely to have Sunday free.”

When asked what her official ‘title’ is at Dinner on the Farm, Walch replies with a grin: curator. Just like a curator at an art gallery brings an artist’s work to life, Walch takes the same approach on the farm, bringing all the multitude of elements together for a farm-to-table experience to come to life.



Stoney Acres Farm

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Pizza Adds Diversification to Farm Income Menu

“Diversification proves to be a win-win as it inspires us to continually be creatively challenging ourselves, thinking proactively about the future and always asking ‘what if,’” explains Kat Becker, co-owner with her husband, Tony Schultz, of Stoney Acres Farm. Their certified organic operation is located about thirty miles west of Wausau in north central Wisconsin. “Doing a weekly, on-farm pizza night proved to be one of our most lucrative and fun ventures yet and brings together the ultimate combination for us: sharing what we grow and raise directly with our community right on our land.”

Now in their eighth season of farm production, Becker and Schultz run a highly diversified operation and serve as the third generation of farmers on Schultz’s family land. The core of Stoney Acres Farm includes a twenty week CSA vegetable operation (Community Supported Agriculture), along with herb, fruit and flower production; raising grass fed beef, pastured pork and chicken; organic grains; maple syrup; and their newest venture, which officially opened in 2012: farm to table pizzas served on Friday nights from May through November.

“Diversifying into pizza made strategic sense on multiple levels as we already raised or grew most of the key ingredients, from pigs for the sausage to vegetables for toppings,” explains Becker. Their key pizza cost is cheese, which adds up to \$2,000 annually and is purchased direct from regional cheesemakers. “We saw the growing interest in pizza farms in other parts of Wisconsin and Minnesota and knew we could take

advantage of being the first such venture in our north-central part of the state.”

For those starting on the pizza farm business journey, Stoney Acres Farm offers five core pieces of advice:

1. Take Time for Research and Planning

Stoney Acres’ pizza operation showcases the importance of researching and planning strategically when a diversification idea requires an investment. “Installing a commercial kitchen isn’t as intimidating as you think, but we did need to research and understand the requirements so as to use our money wisely,” adds Becker.

The commercial kitchen was part of a granary remodel and included \$2,000 for the kitchen equipment, purchased at auction, and installing washable walls. Their total cost was around \$5,000, doing much of the labor themselves.

“Take the time to visit other operations and learn how others are doing things,” Becker continues. “We gained much insight from visiting other operations and seeing how others do things.”

2. Collaborate and Ask Questions

“Remember that state inspectors and agency folks are on your side and truly want your business to succeed, but they have their rulebooks so that proper and safe procedures are carried out and you need to fit into their boxes,” advises Becker. “Keeping dialogue open and transparent from the start really helped us develop strong working relationships with our local inspectors. We started talking way before we broke ground or spent anything, so we’d all be on the same page.”

However, if specific rules and requirements don’t make sense to you and your situation, don’t be intimidated to ask questions.

“Remember the inspectors are just following their checklists and are not really empowered to change things. If you want something different, you’ll need to go higher up the agency channel, ask for an exemption and get it in writing,” Becker offers.

Such was the case for Stoney Acres and cooking

sausage. Per code, they needed an exhaust vent over the stove when cooking meat, which would have cost over \$10,000. Given the fact that they are only operating one night a week during the summer season and spending just a few hours actually cooking the meat, Stoney Acres contacted the head state inspector and asked for an exemption, which he granted. “Once we showed that official state piece of paper authorizing the exemption to our local inspector, they then had all they needed and the whole thing went away, but we had to initiate the exemption process and ask,” Becker adds. In Minnesota, this is called a variance process and is an option that you as the farmer-entrepreneur need to be aware of and initiate. Your inspector probably isn’t going to offer it to you; you will need to ask for it yourself.

3. Keep Evolving

The pizza business keeps growing for Becker and Schultz: In 2013, Stoney Acres sold over \$30,000 in pizzas at \$18 to \$20 a pizza and are looking to double that in 2014. “We realized after some super high volume nights during which we had to refund money because folks were waiting over an hour for their pizza, that we needed a second oven to keep up with demand, which we added mid-season this year. That made a huge difference immediately,” Schultz explains. “We’re still trying to figure out the best work flow and how much staff we need to best handle peak season nights where we’ll be pumping out way over 100 pizzas.”

To further diversify income, Stoney Acres sets up a small farmers’ market stand right next to the spot where attendees order and pay for pizza, which adds up to a couple hundred dollars in sales per event. “We sell at the Wausau Farmers Market the next day on Saturday morning, so our produce is already harvested and it’s easy to set up a small market table at pizza night,” shares Schultz. “The market stand also helps us visually explain a certain topping item that folks may be unfamiliar with, like a garlic scape.” Stoney Acres blends unusual items like scapes into different weekly specials posted on their Facebook page, such as “Scape Goat Returns,” with local goat cheese, diced garlic

scapes, thinly sliced ham and mixed summer squash.

4. Be True to Your Values

With sustainability driving Stoney Acres, Becker and Schultz continually make decisions with environmental values in mind. Pizzas are served on reusable pans (cardboard boxes are provided for take-out) and you won’t find any Styrofoam anywhere. Compost buckets collect food scraps for pig feed. Stoney Acres provides water for free but doesn’t sell any other beverages, including soda. “I just don’t believe in soda,” laughs Becker. “You can bring it if you want, but we’re just providing good old water.”

Running a family-friendly business is also an important value of Stoney Acres. Their own three young kids are a part of the pizza night scene, under the watchful eye of grandparents while Becker and Schultz work. Five-year old Riley already embraces the family’s entrepreneurial spirit: He harvests sunflowers and sells them to guests for a dollar a stem.

5. Prioritize Your Core Customers

“The core of Stoney Acres Farm remains our CSA and we are fully committed to our members,” explains Becker. “These families form the backbone of our operation and believe in what this farm stands for and they support us through the ups and downs of small-scale agriculture.” This group also makes up the core marketing for pizza night, primarily growing the business through word of mouth.

The pizza farm venture reaches beyond an income source for Becker and Schultz; it’s a coming together of everything they value and their vision for the farm. “We believe in creating a family farm that serves our local community, moving toward environmental sustainability while providing a beautiful and constructive setting to raise a family,” explains Schultz. “When we see people enjoying our pizza as the sun sets on our land and kids are running around catching fireflies, it all comes together for us and is so incredibly rewarding.”

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Come & Get It!

MINNESOTA

**What you need to know
to serve food on your farm**

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Table of Contents

Acknowledgements	2
License Decision Tree	4

Chapter 1 - In the Kitchen **5**

Serving Safe Food and Legal Concerns within Kitchens

When do I need a license to provide prepared food?	5
Examples to help tease out the differences between public and private events	8
My event will require a license. What now?	10
Minimum requirements for legal food service	11
Moving beyond the minimum standards	13
Special Event Food Stand	14
Catering or Food Truck	16
Retail Food Handler's License with Added Food Service	17
Temporary Food Establishment License	18
Food Service Establishment License	22

Chapter 2 - Beyond the Kitchen **26**

Risk Management and Legal Concerns beyond the Kitchen

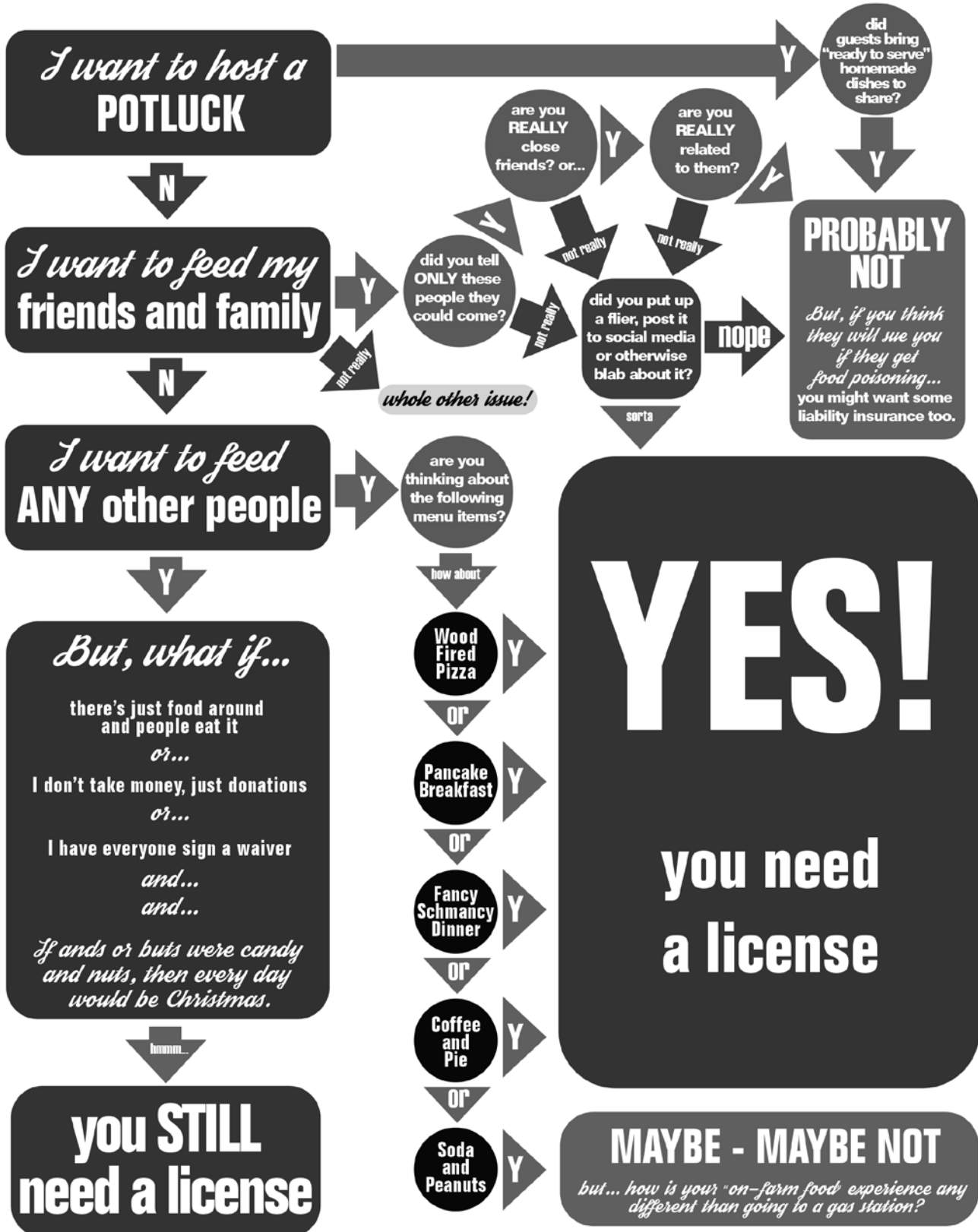
Zoning	26
Injuries	29
Food Safety Incidences	31
Employment Law	33
Sales Tax	35
Americans with Disabilities Act	36
Agritourism: Immunity from Liability	39

References **40**

Come and get it!

DO I NEED A LICENSE?

Before you ring the dinner bell - Let's discuss what you want to do.



Chapter 1

In the Kitchen

Serving Safe Food and Legal Concerns within Kitchens

Understand that a food service venture must be licensed if it is public.

Grasp the sometimes subtle process of distinguishing between private and public food service events.

Identify which food service licenses are best suited to accomplishing a wide variety of farm goals.

Understand the process a farmer must follow to obtain food service licenses.

Introduction

There's nothing like gathering around a table to create a sense of community. And while providing a meal on your farm may boost your community image and bottom line, it is critical to understand the pros and cons of such an endeavor.

Because consumer safety has been compromised in the past, national and state lawmakers have created food service standards that are enforced through inspections and documented with licenses. These licenses give members of the public assurance that, even though they cannot watch over the details of each step of production, the food they are about to consume has been produced in a manner that meets specific standards for safety.

Prepared foods today are vastly safer than before food production regulations were passed. In this way, the laws surrounding food production have increased the trust between food producer and customer. Few consumers ever think twice about the safety of prepared foods. This is good for you and your customers alike.

The increased public trust does come at some cost. If you want to serve food to the public, you must spend some

time understanding and complying with detailed rules and regulations and in many instances must pay specific licensing fees in order to serve food legally. These are costs of doing business in the food service world, and your business plan should take these costs into account.

When do I need a license to provide prepared food?

A license is always needed to provide prepared food to the public.*

(Minnesota Statute 157.16.

www.revisor.leg.state.mn.us/statutes/?id=157.16)

**Almost always. See exemptions available to farmers on the following pages.*

Because the shared goal of safe food is so important to public health and economic activity, food production and food service regulations have a very broad reach. Most times that food is made available within a business or commercial context, a license is required. It doesn't matter if the food is free, if it is included in some sort of club membership, or if customers have signed an agreement.

Minnesota farmers have a constitutionally protected right to sell the products of their farm (Constitution of the State of Minnesota, Article XIII, Section 7: www.revisor.leg.state.mn.us/constitution/#article_13). This right is important but limited. It applies only to the products of the farm. Any purchased ingredients such as salt, pepper, and sugar are not products of the farm, so when they are added to any food item, the constitutional exemption from licensing does not apply.

Having been very forthright about the extent to which you will need a license to conduct any food service operation, there are some very narrow exemptions to licensing requirements. Because the regulations are complex and depend on very precise circumstances, farmers should read this entire section rather than just individual exemptions to get the full picture.

Is my event a potluck?

- Do the guests bring *ready-to-serve* dishes to share that they prepared in their own homes or bought from a licensed food business?

Yes = potluck

- Is a licensed kitchen used for any of the on-site food preparation, reheating, etc.?

Yes = NOT a potluck

- Is there a charge to attend the event? This includes a request for donations.

Yes = NOT a potluck

- Is anyone paid for the food they provide for the event?

Yes = NOT a potluck

***EXEMPTION: ...Except for potlucks**
(Minnesota Statute 157.22;
www.revisor.leg.state.mn.us/statutes/?id=157.22)

Hosting a potluck is perhaps the easiest way to create a community food event at your farm without a license or a facility for food preparation. If individuals prepare their potluck dishes at their own home and bring the prepared dish to an event, no license is needed. It is important to note that the food guests bring cannot be prepared at the event location, which means that guests should bring their dishes ready to serve (i.e. no reheating or finishing dishes in the farmhouse kitchen). However, your own contribution to the potluck meal can be prepared at your farm.

The potluck exemption is a great option if you want to host community events at your farm. As the sponsor of the potluck, you can advertise it publicly under your farm's name. For example, many CSA farms host potlucks as a way to recruit new members. Although these events are permissible without a license, you should read:

1. The additional legal implications detailed in Chapter 2 of this section; and
2. The Minnesota Department of Health's fact sheet, "Potluck Events: Safe Food is Good Business," www.health.state.mn.us/divs/eh/food/dfs/potluck.html

Note that the law does not offer a definition of what a potluck is, exactly. Generally, a potluck is an event, without an admission charge, where food is brought to the event ready to eat and where no one is paid to bring food. Until the question of what a potluck is and is not goes before a court of law, we don't have a legal definition. In the meantime, take note of the Minnesota Department of Health's interpretation of a potluck with respect to fees and payments, as summarized in the side bar. The agency enforces the law, and the agency's opinion on the definition of a potluck will be persuasive in court.

If your farm becomes a licensed food establishment, then the option of sponsoring a potluck is no longer available. Per Minnesota Statute 157.22, Subd. 8, "Licensed food establishments other than schools cannot be sponsors of potluck events."

What if the only place in town where I could have a potluck meal is a licensed food establishment—do I need a license?

At times of the year when an on-the-farm meal isn't feasible because it's too cold, too snowy, too muddy, etc. – a farmer who wants to host a community potluck meal needs to find a different place to do it. In some rural communities and small towns, the local café may be the only space available to hold an event.

Yet, Minnesota Statute 157.22 says that licensed food establishments other than schools cannot be sponsors of potluck events.

BUT – licensed food establishments can provide a space for potluck events if some other entity is the sponsor of the event, **AND** if no food is brought into the licensed establishment's kitchen.

So, for example, there could be Farmer John's Potluck End-of-Season Dinner at Sam's Burger Bar.

***EXEMPTION:** ...Except for a private (non-business, non-commercial) event

Everyone knows that a family hosting a reunion, wedding, or birthday party doesn't need a license before they invite friends and neighbors over. But yet, this chapter begins with the broad statement that anytime farmers prepare and make food available, they need to go through the licensing process. So, what's the difference between the two?

Consider the example of a farm family who hosts a cookout to celebrate a child's graduation one week and the farm's autumn harvest party the next week.

Perhaps the farm family's relatives are also customers and customers are also friends; perhaps the same folks show up to both parties. Regardless, the first cookout likely does not need a food service establishment license while the second cookout likely does. Why?

The difference is that the farm's autumn harvest party is a business event and the child's graduation party is a personal event. When legislators were writing food service laws, they decided that the law should center on those who "engage in the business" of serving food and beverages. For farms where personal and business activities merge seamlessly, the distinction can be difficult to draw. In practice, the distinction between a personal and a business enterprise centers on whether the event is open to the public.

Graduation parties are not seen as public events while farm festivals are. In close-knit communities, the same people might attend both events. Still, society implicitly recognizes that perfect strangers don't normally pull into a graduation party and start eating the chips. If the farm family is hosting a festival, it's likely the family is looking to boost the reputation of the farm, advertise their products, and reach a wider audience. That makes the event a business venture. The general public *can* attend even if they don't.

Simple examples like a graduation party versus a farm festival make the distinction look clear! In reality, it's much murkier than that. Farmers are innovative folks who are deeply rooted in their communities. The diversity of farm business models can make for some difficult distinctions. When there is a question about whether an event is private or public, the safe route is to ask the licensing authorities for their guidance.

Examples to help tease out the differences between public and private events

Example 1: What if the food is free?

If your farm business is serving food to the public, the licensing process applies. Serving food on your farm may be done for business reasons even if the product is free. If serving food boosts your farm's name recognition, builds awareness, advertises products, or simply generates goodwill in the community for your farm, it is part of the business. If free food service is provided as part of a charitable non-profit operation or school, some exemptions may be available that are beyond the scope of this publication.

Example 2: What if I only accept donations for the food?

Asking for donations rather than charging a set amount does not turn a public event into a private one. If you are serving food to the public, the licensing process applies.

Example 3: What if no one actually eats the food?

The license obligations apply to those who make food service available to the public. Even if no one takes advantage of the food offered, the fact that it is offered to the public triggers the license obligations. Although this is an unlikely example, it helps illustrate the focus of the regulations.

Example 4: What if I invite only my CSA members to an exclusive meal on the farm?

This gets a little complicated. Let's say that you sell CSA memberships in the spring and then host a members-only dinner in the fall. That event isn't open to the public because only members can attend, right? You would not need a license, right?

Not exactly. If anyone can join the CSA, then the event is actually open to anyone so long as they join the CSA first. You might then argue that the CSA membership has been closed for years because everyone renews and no new memberships are created. Is a license

required then? The safe answer is likely still "yes." The event serves a business purpose for the farm; it is not strictly a private social gathering. In that situation, you should ask for guidance from the appropriate regulatory agency. Having the correct license and treating this as a business-related event may be some protection against liability if someone were to get sick. Possessing and following the terms of a food service license could help support an argument that you were not negligent.

Example 5: What if I organize a dinner club?

Many innovative farmers around the country are starting dinner clubs where club members purchase tickets that enable them to attend an event. Folks are using a variety of models such as charging for admission to the club and hosting free events, or making membership free but selling tickets for meals. Regardless of the precise business arrangement, if you prepare food for club members, you need to be licensed because this is not a private event and it serves a business purpose.

Now, if you coordinate with a group of your friends, and you all throw parties for each other, and you call yourselves the "Farm Dinner Club;" as long as those events are truly private parties, no license is needed. Whether a group calls themselves a "club" or some other name makes no difference as to whether a license is needed. The distinction is whether it's public or private.

Example 6: What if I ask guests to sign a waiver?

The law applies regardless of whether the guests want it to apply or not. Asking individuals to waive their rights or give your farm permission to serve from an unlicensed facility will not defeat the law.

Work with Inspectors Early

Approaching regulators pro-actively with a positive, cooperative attitude is more likely to give you a smoother path towards licensing. Some of the tasks and review processes leading up to a license take time, and starting the process well in advance of when you need the license will likely reduce stress for both you and your regulator.

Example 7: What if I set out refreshments for volunteer workers?

This can get complicated. If you have a couple of friends who regularly volunteer and you prepare sandwiches and lemonade at the end of a long day, it would be difficult to say the event was public. Clearly, it was only open to the volunteers and the volunteers were your personal friends. But, let's say the following week you recruit a crew of 20 CSA customers who donate a couple hours of volunteer work in return for lunch on the farm. Is this a public event? Reasonable people could disagree on the answer to that question. Even if you consider those volunteers to be friends, they are also customers. The work event may serve a business purpose and it does edge more toward the public aspect than the example of your personal friends helping out for a day. You should speak with your regulatory authorities for further guidance in this situation.

Example 8: What about setting out beverages and snacks at my open house, field day, or pasture walk?

A farm open house or field day is by its nature a public event, so food served at one of these events should be done under a license. What kind of license is needed depends on what foods and beverages you will offer. See the Special Event Food Stand section for more information about food types that fall under MDA or MDH licensing. There is a very narrow exemption that allows offering purchased single-serving bottles or cans of soft drinks, packaged candy, or packaged nuts without a license. The exemption is further narrowed by who can claim it. It is only available to persons whose primary business is not food handling. If your farm sells produce, processed meats, or value-added products for human consumption, you would not qualify for the exemption. This exemption is found in M.S. 28A. 15 Subdivision 7; www.revisor.leg.state.mn.us/statutes/?id=28A.15.

Find the inspector for your location:

MDH directory: www.health.state.mn.us/divs/eh/food/license/delegation.html

MDA directory: <http://gis.mda.state.mn.us/food/>

My event will require a license. What now?

Understand Safe Food Handling Principles!

There are five key risk factors in the serving of any kind of food. These were identified by the Centers for Disease Control as common elements in many foodborne illness:

- Food from Unsafe Sources
- Poor Personal Hygiene
- Inadequate Cooking
- Improper Holding Temperatures
- Contaminated Equipment/Lack of Protection from Contamination

Source: FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types. 2009. www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/UCM224682.pdf. Accessed online, 6/12/15.

These five risk factors should be addressed for any type of food service, licensed or not. The ways in which the risk factors can be managed in licensed food establishments can vary with the type of establishment and with the type of food being served. Temporary food establishment licenses have less strict requirements for equipment than permanent establishments do.

Regardless of the type of license and type of food, having a plan to manage and mitigate the risk factors is something that you will need for any food license. Before we get into the details of what license you need, it is important to know that there are several agencies that do licensing of food businesses. Figuring out what license you need and who to get it from takes some patience and diligence. While this publication is meant to help, if you get stuck and want to talk through it with a non-regulator first, contact the Minnesota Institute for Sustainable Agriculture for assistance: misamail@umn.edu, 612-625-8235.

We will be exploring the following licenses later in this chapter:

Safe Food Service: A New Skill Set

As a farmer, you are likely very knowledgeable in growing/raising high quality, safe food. You may not, however, have as much experience in the service aspects of safe food.

Preparation of ready-to-eat foods takes skills and knowledge that are very different from the skills needed to grow or raise food. While some aspects of preparing safe food are common sense, others are not at all obvious unless you have been trained in food service. Make sure you seek out the training you need to serve food safely to the public!

The Minnesota Department of Health provides a list of organizations that offer Food Manager training. Completion of one of these courses and passing the test earns you a “course completion certificate,” which can then be submitted to the MDH to acquire your Certified Food Manager certificate. Special Event Food Stands do not require a Certified Food Manager. Special event food stands, seasonal permanent food stands, and most seasonal temporary food stands and mobile food units do not require a certified food manager. It is still a good idea to have the training course, but operators of those types of food stands may choose not to pursue the official Certified Food Manager status.

Certified Food Manager course information:
www.health.state.mn.us/divs/eh/food/cfm/

University of Minnesota Extension offers an MDH -approved certified food manager training course:
www.extension.umn.edu/food/food-safety/

If you want to study food safety principles and procedures on your own, informational materials are available online:

Food Business Safety website, Minnesota Department of Health. www.health.state.mn.us/divs/eh/food/

1. Special Event Food Stand License
2. Transient or Temporary Food Service Licenses, including:
 - a. Mobile Food Unit,
 - b. Seasonal Temporary Food Stand, and
 - c. Seasonal Permanent Food Stand
3. Regular Food Establishment License

Learn as Much as You Can about Licensing

Many of the regulations that affect on-farm food service are inherently complex. Farmers, inspectors, and attorneys can all get confused. Although this guide is meant to help, everyone needs to communicate together in exploring new food service options. You can help yourself by reading this guide carefully, reviewing the Minnesota Food Code, and exploring the resources available from the Minnesota Department of Health on food service licensing. You may also need to help educate the inspector who works with your farm. Individual inspectors may not have handled a unique on-farm food service operation before and may be on a learning path themselves.

Minnesota Food Code.
www.health.state.mn.us/divs/eh/food/code/

Who licenses food businesses?

The food establishment licenses discussed in this chapter are issued by the city, county, or state departments of health, depending on where an operation will be conducted. This guide briefly touches on the Retail Food Handler License, which is administered through Minnesota Department of Agriculture rather than through departments of health.

For more detailed information about how agencies divide up responsibility for food licensing within Minnesota, see the following report:

A Guide to Regulations for Local Food Entrepreneurs. 2013. Megan O'Hara, Endowed Chair in Agricultural Systems. Contact the Minnesota Institute for Sustainable Agriculture. www.misa.umn.edu

What type of food will you serve?

Find the right inspector based on type of food to be sold:

Certain items commonly sold from food stands at festivals or fairs are regulated by the Minnesota Department of Agriculture, and other items by the Minnesota Department of Health. If you want to sell some things from each category, which inspector you work with depends on what percent of your sales fall under MDA or MDH. The inspector comes from the agency with authority over >50% of your sales.

This following list is compiled from page 31 of *Starting a Food Business in Minnesota* (2008) www.mda.state.mn.us/~media/files/food/business/startingfoodbiz.ashx; from the original Memorandum of Agreement between the Minnesota Departments of Agriculture and Health; and from communication with MDA and MDH regulatory staff.

Minnesota Department of Agriculture

1. Candy Floss / Cotton Candy
2. Popcorn
3. Caramel Corn
4. Caramelized Apples
5. Candy Manufacturing
6. Bakery Manufacturing
7. Fruit Concessions
8. Ice Cream Bars (wrapped)
9. Sno Cones
10. Retail Food Sales (prepackaged milk, meats, peanuts, fruits, etc.)

Minnesota Department of Health

1. Beverage Concessions (Soft Drinks and Beer)*
* dispensing only; cans & bottle sales regulated by Ag
2. Ice Cream Dipping
3. Ice Milk
4. Food Service Concessions (sandwiches and/or meals)
5. Milk (poured or dispensed from original containers)

Also available in print (160 pages) from Minnesota's Bookstore: www.comm.media.state.mn.us/bookstore/mnbookstore.asp 651-297-3000 or 800-657-3757

Licensing. Minnesota Department of Health; Food, Pools and Lodging Services. www.health.state.mn.us/divs/eh/food/license/index.html

Work with Your Local Inspector

Who your inspector will be depends on where you are located and what type of food establishment you are proposing. Start with the Minnesota Department of Health directory to find out whom to contact. The directory can be found at www.health.state.mn.us/divs/eh/food/license/delegation.html

In a few instances, you may need to work with an inspector from the Minnesota Department of Agriculture (MDA), but the inspectors at the Department of Health will let you know that. If they refer you MDA, its directory can be found at: <http://gis.mda.state.mn.us/food/>.

When you contact your inspector, be professional and willing to work with them, but keep in mind you may need to be persistent and assertive as well. Working with your local inspector should always be your first strategy. If you find that an individual inspector is not responsive to questions or requests for clarification, you should seek input from the inspector's supervisor. If an interpretation of the regulations seems unworkable or unfair, it's worth asking a higher-up authority for a second opinion.

Plan Your Menu

At the beginning of this process you will need to establish exactly what you would like to serve. The menu drives the licensing process, and likely the first questions the inspector will have for you will be about the menu. Be prepared to provide the inspector with a specific list of food items, and whether those foods will be made from scratch or purchased from a licensed food business.

Serving a menu of pre-prepared items such as grilled hot dogs and packaged cookies will likely result in less stringent equipment, process, and serving standards than items prepared from scratch – but may not meet your goals of showcasing your farm products and promoting locally grown food. If you are dedicated to making dishes from raw ingredients, you will have a longer list of obligations in order to address the five risk factors for food safety.

Address Risk Factor: Food and Water from Unsafe Sources

This risk factor for food-borne illness is the one that you have the most connection to as a farmer. If you want to serve the products of your farm and use your farm's well as a water source, then part of your task is ensuring and documenting that those items from your

farm meet the definitions of approved source.

You should be prepared to list for your inspector your source for each ingredient or food item that you will use. All ingredients and food items must come from approved sources.

This requirement is designed to ensure that the food served was produced under safe conditions. In a typical food establishment, approved source means that the food is sourced from a grocery store or a distributor; and that situation may be what your inspector is most familiar with. However, the approved source requirement does not prevent you from buying produce directly from farmers, growers, or backyard gardeners; or from using products grown on your own farm. Fresh, raw fruits and vegetables may be purchased directly from a grower or may be grown on your farm: a farm is an approved source for these products.

The situation is a little different with animal products. Meat, dairy, and eggs must be handled according to stricter requirements if they are to be used in a food establishment. This is also true for meat, dairy and eggs from your farm. It may be helpful to think about your farm's production operation as a separate business from the food service operation, and consider that anything you use from your own farm must meet the same requirements as if you were purchasing these ingredients from other sources.

What if my on-farm food service business really takes off and I'm serving a lot of people?

If a farm serves at least 25 people on at least 60 days of the year, for “approved water source” purposes that puts it into the category of “Restaurants, Resorts, Campgrounds (Transient).” Establishments in that category are required to use a public water source. If your farm is not connected to a municipal water supply, you may be able to get your private well re-classified as a “transient noncommunity public water source.” An inspector from the Minnesota Department of Health's Drinking Water Protection Program will review the well's construction record, isolation distances, facilities, maintenance, and operation to make sure that it meets the current standards for a public water supply. MDH will also test the water on a regular basis for bacterial and nitrate contamination; and possibly other contaminants also. You can learn more about the process at MDH's webpage for noncommunity public water supply systems: www.health.state.mn.us/divs/eh/water/ncom/

See the sidebar below on approved source for more information about the regulations for using your farm's own products for food service. You can download and print these fact sheets as needed; they may be helpful for the conversation with your inspector about your ingredient sources.

All water used in the food service must come from an approved source.

Minnesota Rules 4626.0980
www.revisor.leg.state.mn.us/rules/?id=4626.0980

Minnesota Rules 4720
www.revisor.leg.state.mn.us/rules/?id=4720

Minnesota Rules 4725
www.revisor.leg.state.mn.us/rules/?id=4725

Minnesota Statutes 31.175
www.revisor.leg.state.mn.us/statutes/?id=31.175

Water used in food establishments, including temporary ones, must be from an approved source, but that does not necessarily mean a public water supply. There are several options for sourcing water:

Fact Sheets for more information about “approved sources” of ingredients for food service:

Produce:

Serving Locally Grown Produce in Food Facilities. www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-produce.ashx

Meat and Poultry:

Approved Sources of Meat and Poultry for Food Facilities. www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/meatpoultry.ashx

Shell Eggs:

Sale of Locally Raised Eggs to Food Facilities. September 2011. Minnesota Department of Agriculture. www.mda.state.mn.us/licensing/inspections/~media/Files/food/foodsafety/eggssales.ashx

1. Municipal water supply. If your farm is already on a municipal or public water supply, that is considered an approved source. Note: While the public water supply is considered an approved source, there will still be a requirement for documentation that the plumbing that delivers the water to the food service site is up to code.
2. Your farm's private well. If your farm is not connected to a municipal or public water supply, you can, as part of the licensing process, request approval of a private well on the property as an approved source of water. The approval process has two main components: well construction records and isolation distances.
 - a. Construction records for the well are required for it to even be considered as an approved water source. These records have been collected by counties or the State of Minnesota since 1974. These records are available in the County Well Index Online: www.health.state.mn.us/divs/eh/cwi/ If the well is older than the mid-1970s, the contractor who constructed it may still have a construction record — or a copy of that record may be found in your farm's older files. If the well construction record is not available, the well cannot be approved as a water source. Testing of the water or inspection of the interior of the pipe cannot substitute for the construction record.
 - b. Onsite inspection to verify isolation distances is required for approval of a water source. New wells are constructed with the correct isolation distances from potential sources of contamination like a septic system or a cattle pen, but over time the uses of the area near the well can change on the farm. If a well meets construction standards but isolation distances have been violated since it was constructed, it cannot serve as an approved source of water. Isolation distances are available on the Minnesota Department of Health website: www.health.state.mn.us/divs/eh/wells/construction/isolate.html
 - c. The size and frequency of operations of your on-farm food establishment also affects whether your private well can be an approved source of water. If your food establishment will serve fewer than 25 people per day on fewer than 60 days per year, your private residential well can be an approved water

source for that licensed establishment -- IF that well meets the construction standards that were in place at the time the well was constructed and meets required isolation distances. If your days of operation and number of people served are more than that threshold of 25 people on 60 days per year, see the text box on page 12: "What if my on-farm food service business really takes off and I'm serving a lot of people?"

3. Farmers who are not on a public water supply and who cannot provide the required documentation for approval of their private well, could haul in municipal water or bottled water. The water must be transported in clean, food-grade containers or vessels.
4. Construction of a new well on the farm is another option. The Minnesota Department of Health estimates that a water well has a lifetime of 50 to 60 years. If your well is approaching that age and lack of a construction record for it is holding you back, it may be time for a new well. If this is your choice, consider the information about size and frequency of your business in point 2c, above and in the sidebar: "What if my business really takes off?" Is your business likely to grow to the point that a public water supply will eventually be required? If that is possible, you should have your new well constructed to those higher public water supply standards so that the well is eligible to be re-classified as a public water supply once that becomes necessary.

Address Other Risk Factors

The remaining common risk factors for food-borne illness are:

- Poor Personal Hygiene
- Inadequate Cooking
- Improper Holding/Time and Temperature
- Contaminated Equipment/Protection from Contamination

I would like the easiest license. Does that work?

No single license is the easiest or has the fewest obligations. Every license carries the same goal: safe food service. License holders for smaller or less frequent operations shoulder the same responsibilities in addressing food safety risk factors as larger or more frequent operations. Although smaller operations may potentially expose fewer people to problems, food safety problems develop in the same exact ways as larger operations. This means that smaller or temporary operations still need to follow safe food handling procedures when preparing and serving food.

These risk factors are not as closely tied to your farm as the previously discussed risk factor of approved sources of food and water. Rather, these are common risk factors for any kind of food service and you will address them through your licensing process. The details of the way that these are addressed is different for different types of licenses. For example, you address the risk factor of contaminated equipment by having clean equipment. For a Special Event Food Stand with no ware-washing sinks, that could mean bringing extra clean utensils so that you can keep changing out dirty for clean; then washing everything at the end of the day at an approved facility. For a regular Food Establishment, the requirement for clean equipment means having NSF-approved triple-wash sinks and a hot, pressurized water supply.

As we go through the different license types in the next section, keep in mind the risk factors and the concept that different licenses offer different ways to address those risk factors — but they must always be addressed.

Which License? It Depends on Your Goals

Every farmer who operates a food service venture for the public will need at least one license. The best place to start in exploring licenses is with your farm's goals in hosting food service. If you can identify clear goals first, it is easier to narrow in on the correct license to accomplish those goals. Putting goals on paper may seem like limiting your options, but when it comes to food service licensing, you will save time and frustration by choosing the most appropriate license on the first try.

You may have a wide variety of goals in serving food. Perhaps you have a strong personal interest in cooking or want to develop a new income stream, or maybe you are looking for a value-added use for surplus farm products. These goals are all good, but food service licenses are grouped according to the frequency of operation and the type of product served. You may need to reframe your goals in terms of a broader business strategy to find the right license.

The rest of this chapter is organized by the goals you may have in starting a food service venture. Each goals section also outlines the license requirements. This is not an exhaustive list of the requirements for

Goal Example 1:

I'd like to add food service to my pumpkin festival. I don't want full-time food service and I'm happy with a simple menu. I'd really like to serve the food myself rather than hire a caterer. What license should I consider?

Answer:

A *Special Event Food Stand License* may be right for these goals.

Similar examples:

- Serve apple pie at your farm's autumn festival
- Host a picnic with hot dogs and chips after a farm tour
- Sell sandwiches during an annual barn dance

each license type, but rather is intended to help you determine if the venture is a possibility within your farm's capital resources and farm situation. You will still need to contact the appropriate regulatory agency and speak directly with an inspector. Depending on the exact circumstances of what you want to do, the inspector may determine that a different or additional license is necessary.

Special Event Food Stand

Minnesota Statutes 157.15, Subd. 14
www.revisor.leg.state.mn.us/statutes/?id=157.15

Minnesota Statutes 157.16, Subd. 3 (c) and (g)
www.revisor.leg.state.mn.us/statutes/?id=157.16

With a Special Event Food Stand License you can serve food at up to three separate events, for up to 10 days total, counting all events. As with all food service licenses, the Special Event Food Stand License requires you to follow high standards for food safety. The Special Event Food Stand License has a streamlined application and inspection process, and less stringent facilities and equipment requirements than other licenses. No official plan review is required for construction or remodeling of a Special Event Food Stand.

How does the menu affect the Special Event Food Stand License process?

The menu will be the single most important element of your process to receive a Special Event Food Stand license. Earlier in this chapter (See Example 8 on page 9), we talked about regulators' emphasis on managing risk factors for food safety. Foods that are potentially hazardous require more attention. If you are serving a shelf-stable, prepared food item, little is needed to maintain the item's safety. But, if you are handling potentially hazardous foods that need temperature maintenance, risks rise, along with the equipment and processes needed to mitigate those risks.

Consider Goal Example 1 from the beginning of this section. Suppose you are interested in serving pumpkin-themed items at your harvest festival. The Special Event Food Stand License is a good option for you because you will only be serving food for a few days. You will need to know exactly what you want to serve to fully understand your potential obligations.

Let's say you would like to give pumpkins to your friend with a commercial bakery. The bakery staff will make pumpkin pie, slice the pies, and put the slices into cartons. You will simply sell the packaged slices. In this example, your inspector will want to know how you intend to keep the slices cold up to the point of sale, and how the slices will be distributed. If, on the other hand, you want to bake the pies yourself, the inspector has many more concerns. How is the pumpkin prepared and held prior to pie preparations? What type of oven is used? How are the pies held before and after slicing? Where are the other pie ingredients coming from? The demands of operating under a Special Event license will be greater if you choose to make your own items.

What is the process for getting a Special Event Food Stand License?

Unlike the process for receiving other food establishment licenses, the Special Event Food Stand license does not require you to first submit a facilities plan before submitting an application. Instead, you can go straight to submitting the application. This must be done at least 14 days before the event and it's always wise to allow more time than required. The steps involved are listed here:

- 1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place.** The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See text boxes on pages 9 and 11 for more information about how to locate the correct inspector.
- 2. Contact the licensing authority for an application.** Different agencies may use different applications and they are not interchangeable.
- 3. Complete the application.** The application will ask many general questions about what you plan to serve, how you plan to serve it, where the hand washing stations will be located, where water comes from, where waste water goes, and much more. Keep in mind that the application is a bit like a test. The regulatory authority doesn't just want to know that you have a plan- they want to know that you have a plan that meets the requirements of the Minnesota Food Code. If the

responses don't demonstrate that the food stand will comply with the Food Code, the application will be returned for modification. It is best to talk with an inspector early in the process to discuss a precise plan that will meet the Food Code requirements.

- 4. Submit the application with the appropriate fee.** Different licensing authorities charge different fees for the license.
- 5. Receive the license and post during operations.** If the application meets the requirements, a license will be issued.

What is needed for the Special Event Food Stand facility?

The food stand must have protection from weather and other potential hazards from its surroundings. There must be a floor surface (mats over dirt ground are acceptable) and overhead protection. If the stand doesn't have walls to protect from wind and rain, food service has to stop during adverse weather. Screening to keep out insects is desirable. If you want to serve food from a barn or shed, the facility needs to offer protection from dust and debris. Some farm facilities cannot provide that, even though the building has a floor, walls, and ceiling. If you lease or rent your farm or do not have control over the buildings, these facility requirements could pose a problem.

Special Event Food Stands do not require a formal Plan Review process for either construction or remodeling. Even so, the facility will be part of your discussion with your inspector. Some farms may not be able to meet the gas, electrical, plumbing, and fire code standards that are required with this license. If a barn does not have the electrical capacity to operate cooking equipment safely, for example, an electrical fire could result. That would certainly be bad for everyone. If your farm facility is less than modern and hasn't been upgraded recently, your business plan may need to include the cost of upgrades.

To receive a Special Event Food Stand License, you must describe the food served and the equipment, service ware, and facilities used to serve it. All food preparation must occur either at the special event food stand or in another licensed facility. All food must be held, transported and served in accordance with the

Minnesota Food Code. You as the operator of the food stand must designate a Person in Charge (PIC) to monitor operations and be responsible for food safety if you will not personally be present during the entire time the food stand is operating. A Special Event Food Stand does not require a Certified Food Manager (CFM).

The following are a few, select requirements that may be of special interest if you are considering a special event food stand at your farm. Note: this is not a complete list of requirements.

Goal Example 2:

I want to serve food, but I don't want to do all the cooking and serving myself. I am happy to pay another business to do the cooking and serving. In fact, I'd love if another business could handle as much of the logistics as possible. What license might work for me?

Answer:

These situations still require licenses. However, if you work with food businesses such as caterers and food trucks to provide the food service, you may be able to rely on those food business to hold the necessary licenses. For example, a food truck should already be licensed as a mobile food unit to prepare food in the truck and serve it from the truck. Caterers who perform all the food preparations in their licensed kitchen and simply dispense the food at the farm site can rely exclusively on their licensed facility. No additional license is needed in either of these cases.

Similar examples:

- Hire a local company to orchestrate a meal event
- Work with a local restaurant to host an upscale dinner on the farm
- Rent the barn or farm facilities out for weddings and receptions that are catered
- Bring a food truck to the farm for a movie night.

- **Handwashing** stations must be provided with, among other standards, potable (drinkable) water at between 70 and 110 degrees Fahrenheit.
- If **hoses** are used for water, the hose must be food grade.
- **Wastewater** cannot be dumped onto the ground. It must go into a sewer system, sewage treatment system, or into a wastewater holding tank.
- **Disposable** service utensils such as plates, forks, and napkins must be used. Farmers may not collect the disposable single-use service items for washing and future re-use.

For more information about the requirements for Special Event Food Stands, see these fact sheets from the Minnesota Department of Health:

Special Event Foods Stands.

www.health.state.mn.us/divs/eh/food/license/specevent.pdf

Special Event Food Stand Checklist. www.health.state.mn.us/divs/eh/food/license/sefsopcklst.pdf

Catering or Food Truck

If the food truck or caterer/restaurant does any food preparation at your farm and outside of their licensed facility, then an additional license may be necessary. In that case, a Special Event Food Stand License is the most likely license needed.

Food truck operators, caterers, and restaurants should be very familiar with their licensing obligations. The ability to handle the licensing process is part of the service these businesses usually provide. Although caterers and food trucks generally handle any needed licenses, assumptions aren't a good business strategy. If you work with one of these types of businesses, you should communicate with the business about who is handling license obligations. As with any important conversation, it's always wise to create a paper trail or email documentation so everyone has a reference after memories fade. Before the event actually starts, you should double-check that caterers and food trucks have secured the necessary licenses.

Even if the food business handles the license application, you may need to be involved in the process. The food business may need further information on water sources, electrical capacity, septic system, or other infrastructure issues to make sure they comply. If there are any problems with your farm infrastructure, you may still need to work with regulatory agencies to meet the requirements.

Although you may be able to offload the lion's share of duties related to the license, you will still have plenty of legal concerns. All the legal issues detailed in Chapter 2 of this section may apply when working with caterers and food trucks.

Steps involved in working with a food truck, caterer, or restaurant:

1. Communicate with the caterer or food truck about where food prep will occur and whether the caterer/food truck's existing license will fully cover all preparation and serving activities.
2. If additional on-site or out-of-truck food prep will occur, arrange responsibility for securing the appropriate license with the caterer or food truck.
3. Work with the caterer or food truck on any license obligations that affect farm infrastructure such as water sources, electrical supply, or wastewater disposal, among other factors.
4. Before the event, check that the license has been applied for and received.

For more information on writing contracts between businesses, such as a farmer and buyer or farmer and caterer, see *Sales Contracts for Farm Produce: Why and How*. Farm Commons. www.farmcommons.org

Retail Food Handler License with Added Food Service

If you are considering a food service operation that's part of a broader retail or grocery operation, you are in a slightly different licensing position than farms considering just food service. When an operation is more than 50% retail (including bakery and deli operations), the business needs a Retail Food Handler license. Retail Food Handler licenses are administered

Goal Example 3:

I already have a Retail Food Handler License, and I just want to add food service to my existing retail operation on a limited basis. Or, I'm on track to get a Retail Food Handler License. I'm now thinking about serving a few prepared items as a small part of my future retail store.

Where should I start?

Answer:

If you have Retail Food Handler License, you should work with your current inspector to add food service to the existing license.

Similar examples:

- Already selling jam, salsas, and baked goods but would like to start serving sandwiches to order
- Opening a retail store to sell farm products but wish to serve brunch on weekends

through the Minnesota Department of Agriculture. By contrast, the food establishment licenses for food service are administered by the Minnesota Department of Health, although they may be delegated to local units of government.

If your farm currently has a Retail Food Handler license and food service will be less than 50% of the total operation, a separate license for food service is not needed. You will work with your current inspector to add food service. You must contact your local inspector to discuss exactly what needs to be done to serve food. If your retail operation is currently very modest, such as sales of only prepared and packaged foods, the upgrades needed may be significant. But, if your retail operation is already preparing foods like salad mixes, the upgrades may be moderate. It all depends on what the farm is currently doing under its retail license.

If your farm is still in the planning stages for a retail operation, you should contact the inspector you are currently working with. The inspector will want to

know which operation will generate the majority of the revenue - retail or food service. If retail sales will make more than 50% of the income, you will need to work with MDA on a Retail Food Handler license. If your retail sales are less than half of total sales, you may need to work with MDH to obtain a different license. This is one of those areas where the regulations are confusing, so work closely with your regulator, and keep good notes.

The details behind a Retail Food Handler license are beyond the scope of this resource. The objective of this section is simply to emphasize that if you already have a retail operation, you should work with your current inspector.

If you already have a Retail Food Handler License and want to add food service you should:

1. Contact your local inspector about adding food service under your existing license.

Goal Example 4:

I want to serve food to guests more than a few times... but I'm not looking to open a restaurant. I want something in between. I'd also like to do my own cooking. Serving on non-disposable dishware and offering a more diverse menu is important to me. Where should I begin?

Answer:

A Temporary Food Establishment license may be right place to start.

Similar examples:

- Cook an elegant dinner on the farm 10-20 times per year from a small kitchen constructed onsite.
- Prepare and serve picnic dinners from the week's produce from an on-site kitchen facility.
- Build a permanent outdoor pizza oven and cook up pizzas on weekends.

If you are in the planning stages for a Retail Food Handler license and want to add food service to your plan:

1. Contact your local MDA inspector about adding food service to your plan if food service will be <50% of total sales.
2. Contact the appropriate MDH inspector or inspector with a delegated authority about developing a plan and obtaining the correct license if food service will be >50% of total sales.

Temporary Food Establishment License

The term Temporary Food Establishment is actually an umbrella term that encompasses five different licenses. The Special Event Food Stand license is one, but it was handled earlier in this section. The Food Cart will not be relevant to many farmers so it is not discussed in this resource. This section explores the Mobile Food Unit, the Seasonal Temporary Food Stand, and the Seasonal Permanent Food Stand, which are collectively called Temporary Food Establishments here. From a practical perspective it is a bit easier to break these license categories down into two options: Food Trucks and Food Stands.

Food Trucks

Food trucks are self-contained food preparation units, either motorized or pulled on a trailer. They come in many different shapes, sizes, colors, and capabilities. Different truck owners use their trucks in different ways. Some may do all the cooking inside the food truck. Others may prepare most of their food at a commercial kitchen in advance and do only final preparations in the truck. The confines of a food truck can impose practical limitations on the type and variety of foods that can legally be prepared inside. Food trucks that lack sufficient wastewater holding capacity might actually be licensed as Seasonal Temporary Food Stands.

Food trucks are increasing in popularity so you may find local options to purchase or rent a food truck. A food truck isn't necessarily more affordable or more expensive than building a licensed kitchen on your farm. It all depends on the local market and the truck under consideration. However, trucks do have the added advantage of portability. If you wanted to get several farms together to cooperatively purchase and manage a food truck, the costs could be spread across

What is a Temporary Food Establishment?

Temporary Food Establishments cannot operate for more than 21 days in each calendar year at each location. However, there is an exception: a Temporary Food Stand may operate for more than 21 days at a single location if the local regulating agency authorizes it. If operating for 21 days or fewer won't meet your objectives and the authorities won't authorize longer usage, you will have to move up to a regular Food Service Establishment License, described below. (A Temporary or Transient Food Establishment can operate for another 21 days at a different location. This may be an advantage in the case of a cooperative purchase of a food truck that moves from farm to farm, for example).

Temporary Food Establishment licenses come with generally lower fees, a different inspection schedule, and less stringent facilities and equipment requirements than a regular Food Establishment license.

Even though the **Mobile Food Unit**, **Seasonal Temporary Food Stand**, and **Seasonal Permanent Food Stand** licenses come with different names, applicants will follow the same basic safe food handling procedures.

Equipment and facilities requirements are similar for these three license types, and are detailed in this publication:

Mobile Food Unit, Seasonal Temporary Food Stand, and Seasonal Permanent Food Stand Construction Guide. Minnesota Department of Health.

www.health.state.mn.us/divs/eh/food/license/mfuseaconguide.pdf

the farms. A cooperatively managed food truck could boost the visibility of all the farms in an area, as well.

Food Stands

Food stands are another option within the Temporary Food Establishment arena. Anyone who has purchased fried cheese curds or similar items at a county fair has likely patronized a food stand. Food stands may also exist where a restaurant serves food next to a golf course or a beach on a regular, but seasonal, basis. Food stands that can be disassembled and moved are licensed as Seasonal Temporary Food Stands while those that cannot be moved are licensed as Seasonal Permanent Food Stands.

Licensing Process for Food Trucks and Food Stands

If you want to integrate a food truck or food stand into your enterprise to be used for food service, you will need to work with your local regulator and go through the process of applying for appropriate licenses. If you find a food truck that is licensed in your town or county, and you plan to run it with a similar menu and equipment, then the process may be expedited.

The first step is to determine who the appropriate licensing authority is.

See the description of how to find the right regulator by location and by food type on page 9 and 11.

This information is the same for Special Event Food Stands and for other Temporary Food Establishments.

After locating the appropriate agency, you should call and ask to meet with the inspector. This is an opportunity to share your plans and build a working relationship with this person. You will want to ask about the process and application for a Plan Review. Plan Review is a formal process that the agencies use to determine if your food stand meets the standards in the Minnesota Food Code.

The second major step is the longest and most significant: prepare the Plan Review Application.

The Plan Review Application may request many items such as a copy of the intended menu, detailed blueprints, information sheets on all equipment used, details on construction finishes, and more. While it can seem overwhelming, it is just a matter of going step-by-step through the process.

It is important to note that the facility, whether a food truck or a food stand, needs to comply with the Minnesota Food Code. If it doesn't comply, the regulating agency will hand the application back and ask for modifications. While farmers are geniuses at making their own or modifying equipment, that ingenuity is not often acceptable when it comes to food service. If you are unfamiliar with food service, you may need to seek expert advice to help you prepare an application that will be approved and that you have the ability to implement.

But wait, that's not all! A Permanent Food Stand (and possibly even a Temporary Food Stand) may require a building permit from the local zoning authority. A food truck might need a permit to operate within a municipality.

Even if there is no local zoning, other state agencies take an interest in food service facilities. You may need to have the plumbing approved by the Minnesota Department of Labor and Industry (DOLI). At the same time that you are submitting a plan to the appropriate food licensing authority, you should contact DOLI about submitting the plumbing plan for approval.

And then there is the local fire marshal, who may need to approve the plans with respect to fire codes. You should contact each of these agencies before

submitting your Plan Review Application to limit the chances that changes will be needed after construction has already begun.

A Temporary Food Establishment must meet the food code, plumbing code, and fire code to receive its needed licenses. Some people are willing and able to follow detailed, technical codes when designing their facility. Others will only be frustrated by the detail orientation and engineering skills required. Remember, you can always work with a professional contractor who can help you to design plans that will meet with inspectors' approval.

You should allow a minimum of 30 days for approval after submitting your Plan Review Application to the correct food licensing authority. Sometimes it takes longer, especially if the reviewers send it back for modifications, so submitting plans well in advance of when you need to begin construction is a good idea.

Your third major step is to begin construction or remodeling of the food truck or food stand.

This step cannot begin until the Plan Review Application has been approved. After the construction is complete, submit the license application and fees. After the facility is inspected and approved, the license is awarded.

Training of Food Service Staff

Minnesota Rules 4626.2010 Subpart 4, C.
www.revisor.leg.state.mn.us/rules/?id=4626.2010

Temporary Food Establishments are not required to have a Certified Food Manager.

Regardless of the CFM requirement, you as the owner and any employees or volunteer help should be trained in safe food handling practices for food service. See the sidebar on page 10, "Safe Food Service - a New Skill Set" for more information about training opportunities.

If you will not be personally present during all operations of your Temporary Food Establishment, you must designate a "Person in Charge" who is responsible for ensuring food safety when you are absent.

Summary of steps to get a Temporary Food Establishment License for a Food Truck or a Seasonal or Permanent Food Stand:

1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place. The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See sidebars on pages 9 & 10 for more information about how to find the right inspector.
2. Inquire with the regulatory agency about the Plan Review Process. The agency may have a Plan Review Application of their own or they may use MDH's application. If the facility is currently licensed in Minnesota for a similar menu and no changes are planned, a plan submission may not be necessary. Ask your local regulating agency about this.
3. Prepare all elements of the Plan Review Application. The packet will require blueprints, information sheets on equipment, a menu, and many other elements. It may take some time to assemble an accurate and thorough packet, and working with a professional may be necessary. If the plan does not meet the regulations, it will be returned for modification.
4. Inquire with the Minnesota Department of Labor and Industry, the local fire marshal, and the local zoning authority as to whether they need to review the plan. Ask whether a building permit is needed, as well. If a Seasonal Permanent Food Stand is being built, it likely needs a building permit and an accompanying review by these agencies.
5. Submit the Plan Review packet to the licensing authority along with the Plan Review fee.
6. Await approval. If the plan meets the regulations, it will be approved. If there are problems it will be returned for modification.
7. Do construction. Construction may begin only after the plan has been approved.
8. Get inspected. After construction is complete, the food stand or food truck must be inspected. This

process assures everything was installed as planned.

9. Receive the license. After a successful inspection, submit your license fee and the license will be issued.
10. Ensure that food service staff receive appropriate training and appoint a Person in Charge to take responsibility for food safety at times when you are absent from the operation.

Goal Example 5:

My vision is for a more traditional farm café or restaurant. I want to be able to serve food frequently, and I don't want to move from place to place. I might be interested in serving complex and innovative dishes that require special equipment. What might be the best license for me?

Answer:

A regular Food Establishment License may meet these goals.

Similar Examples:

- Hosting pizza nights and farm dinners year-round or multiple times per week over the summer.
- Serving farm dinners that highlight new chefs and challenging or trendy cooking techniques.
- Opening a regular full-time farm café that serves sandwiches and other prepared foods.

Food Establishment License

If your vision includes regular food service, a Temporary Food Establishment license won't work. For food service at a permanent location for more than 21 days of service during the year, a regular Food Establishment License is typically needed. Also, if you want to prepare very complex dishes, the types of equipment required may not be feasible in a temporary establishment.

The process for planning a licensed on-farm facility

for food service isn't so much difficult as it is time-consuming. You will need to know what you intend to serve and to how many guests, and how frequently. The menu and the scale of your operation will dictate the type of equipment needed, the volume of storage space, and the size of the coolers, countertops, and more. If you think you would prefer to get a kitchen installed first and figure out the menu later, you will find the process frustrating. The process for planning and construction is driven by the menu.

After you have a good idea of what will be served, when, and to how many individuals, your conversation with the local licensing authority will identify the necessary equipment and space needs.

The water source for food service operations will need to be considered. If your food establishment serves at least 25 people on at least 60 days per year, it must use a public water supply. If your water source is a private well, it may be possible to get that well re-classified as a non-community public water supply in order to satisfy the requirement for a public water source. See the sidebar on page 12 for more information.

As a general overview, the following equipment will likely be needed:

- A commercial grade refrigerator or walk-in cooler with enough capacity for your envisioned food service operation. (If your farm's production side is a produce operation with a modified or homemade cooler, that cannot do double duty for the food service operation.)
- A commercial grade stove and oven are necessary for a wide variety of menus, although many a restaurant operates with just a flat-top grill and a fryer.
- If you will hold ingredients for preparing dishes (such as sliced tomatoes for sandwiches or pizza, shredded cheese, spreads, and meats), the ingredients must be held in a refrigerated unit; generally with a roll-top lid and slots for each ingredient container.
- Utensils, food storage containers, pots, pans, and cutting boards must all be made of approved materials.

- The kitchen must have a three-basin sink for washing, rinsing, and sanitizing.
- Countertops, tables, and cabinetry must be made of approved materials and there must be enough space to prepare foods and air-dry equipment.

All equipment must be manufactured for the purpose for which it is used. Homemade and modified equipment is not acceptable. Find more detailed information about construction specifications and equipment requirements in the Minnesota Food Code: Minnesota Rules 4626
www.revisor.leg.state.mn.us/rules/?id=4626

You may find it challenging to meet some of the plumbing, fire code, and water source requirements for a food service kitchen, especially if you are remodeling a farm building. Expensive remodeling might be needed to meet the codes. However, if the remodeling is coupled with development of a new packing shed, employee washrooms, or other upgrades, it might be more cost effective. It may be useful to work with a building contractor who knows the relevant codes already. The process for receiving a Food Establishment license includes most of the same steps as for a Temporary Food Establishment license. The Plan Review Application may request many items such as a copy of the intended menu, detailed blueprints, information sheets on all equipment used, details on construction finishes, and more.

While it can seem overwhelming, it is mainly a matter of going step-by-step through the process. If you are unfamiliar with food service, you may need to seek expert advice to prepare an application that will be approved and that you can abide by. After the plan is approved, construction may begin. After the construction is finished, the facility is inspected. If it passes the inspection, the operator receives the license. Food establishments are inspected on a regular schedule, with the frequency of inspection based on their "risk category" as defined in Minnesota Statute 157.20:
www.revisor.mn.gov/statutes/?id=157.20

Certified Food Manager and Training of Food Service Staff

Minnesota Rules 4626.2010

www.revisor.leg.state.mn.us/rules/?id=4626.2010

Regular Food Establishments have additional requirements beyond those of Temporary Food Establishments to ensure that food service staff are trained in food safety practices. Each Food Establishment must have a Certified Food Manager (CFM) on staff. The CFM doesn't have to be the owner, but it often is. This person is in charge of training staff in food safety and monitoring food safety conditions.

To become a CFM, a person must pass an approved food safety exam and then submit their exam completion certificate to the Minnesota Department of Health. See the sidebar on page 10 for information about available courses. Some of the approved courses are available online, but the test is taken in person at a testing location. Although each establishment needs a CFM, the CFM does not have to be on-site during operation at all times. To ensure the safety of food when a CFM is not present, a Person In Charge (PIC) must be present each time food is served. A PIC is an individual trained by the CFM to know the food safety rules and ensure they are followed.

Steps involved in getting a Food Service Establishment License:

1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place. The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See the sidebars on pages 9 & 11 for information about how to find the right inspector by your location and by food type.
2. Inquire with the regulatory agency about the Plan Review Process. The agency may have a Plan Review Application of their own or they may use MDH's application.
3. Determine if the water source will comply with state drinking water regulations. If the food service enterprise serves enough people on enough days, it must use a public water supply. If

necessary, initiate the process for re-classification of a private well to a non-community public water supply. See page 13 for the section on approved source of water.

4. Prepare all elements of the Plan Review Application. The packet will require blueprints, information sheets on equipment, a menu, and many other elements. It may take some time to assemble an accurate and thorough packet, and working with a professional engineer or contractor may be necessary. If the plan does not meet the regulations, it will be returned for modification.
5. Inquire with the Minnesota Department of Labor and Industry, the local fire marshal, and the local zoning authority as to whether they need to review the plan as well. If a food establishment is being built, it likely needs a building permit and review by these agencies.
6. Submit the completed food establishment Plan Review packet to the licensing authority.
7. Await approval. If the plan meets the regulations, the plan will be approved. If there are problems it will be returned for modification.
8. Do construction. Construction may begin only after the plan has been approved.
9. Get inspected. After construction is complete, the food service facility must be inspected. This process assures everything was installed as planned.
10. Receive the license. After a successful inspection, submit your license fee and the license will be issued.
11. Ensure that food service staff, including yourself, receive the required food safety training and that you have a Certified Food Manager.

Conclusion

Farmers and their customers share an interest in safe food service. To help meet this goal, those who offer food to the public are required to comply with specific standards as to where the food is sourced, how it is prepared, and the conditions under which it is served. By working together with you local inspector, you can integrate food service into your farm safely and efficiently.

Chapter 2

Beyond the Kitchen

Risk Management and Legal Concerns Beyond the Kitchen

Spot ways a farm food service operation might violate the local zoning code.

Understand how farmers might become liable for their guests' injuries.

Determine the best insurance policies to protect against slip-and-fall injuries as well as food safety injuries.

Identify the differences between agricultural labor and non-agricultural labor, including the different minimum wage and workers' compensation laws that apply to the different types of labor.

Be familiar with the farm's obligation to make public services accessible to folks with varying abilities.

Know the role business entities play in protecting personal assets from business liabilities.

Introduction

The decision to integrate food service into a farm business should not be taken lightly. While there may be economic and community benefits, there are also risks and legal concerns that must be considered. Understanding these risks can help guide decision-making so that any plans you make comply with relevant regulations, and steps are taken to make your event safe for guests.

Mitigating risks and complying with laws and regulations will take some time, money, and effort. There will be some things that just cannot be done legally, while others may be too cost-prohibitive to make sense from a business perspective. While an ostrich can bury its head in the sand, the wise entrepreneur will take the time and effort to understand what is involved from

a legal and safety perspective.

This chapter discusses a few significant risks but it is by no means comprehensive. Entrepreneurs should continue their exploration through conversations with insurance agents, local government, business partners, lenders, and experienced food service entrepreneurs.

Zoning

Whether hosting a white table cloth event or a pizza dinner on the farm, zoning may be a significant legal issue. Traditional zoning separates land uses into different geographic regions. For example, residential homes are in a different location than businesses. In theory, separating the two uses will make both homeowners and business owners happier. Neither will have to deal with the concerns of the other.

Minnesota cities, towns, and counties each have the authority to zone lands under their jurisdiction. When a unit of government chooses to zone, it does two things. First, it creates a map that delineates different geographic zones. Then, it writes ordinances describing the uses allowed within each zone. Although the framework of the zoning code is universal, the details within the code vary tremendously from location to location. For example, one county's agricultural zone may allow activities that a neighboring county's agricultural zone does not allow. Zoning is very location specific. You will have a hard time generalizing from the experience of other farmers if you are not located in the exact same zone.

Many communities welcome the increased revenue from farm food service and would love to see an on-farm café or pizza shop in the neighborhood. Other neighbors, though, may not appreciate the increased traffic, noises, or interruption of pastoral views that they expect from agricultural and residential communities. If your farm food venture attracts hundreds of guests, you may become a victim of your own success when the neighbors call the local zoning or law enforcement authorities. The zoning authority, in turn, may decide the event violates the code and order you to stop. This would be a devastating turn of events, especially if you have invested in infrastructure or marketing for an on-farm food service enterprise.

You may ask, why are zoning codes relevant to on-farm dinners, pizza farms, and parties? Your local zoning code may prohibit your farm from hosting a food-related event or starting a food service operation. Admittedly, rare is the zoning code that says something like, "farm dinners are not allowed." Instead, a restriction on food events generally occurs in two ways.

1. Restriction on food service in agricultural zones

Food-related ventures may not be seen as an agricultural use of the land. Many zones define agriculture as the production and marketing of crops and livestock. While a dinner that showcases farm-raised produce may seem like a marketing strategy, that may not be how the local authority defines marketing of crops. That authority may define marketing of crops as the sale of the crop in raw or unprocessed form to a wholesale or retail buyer. Farm dinners and other on-farm food service events may be considered commercial, retail, or restaurant uses rather than

agricultural uses. Zoning restrictions are generally enforced through the building permit process. You should be aware of the use restrictions on your property generally, as zoning agents can and do enforce the rules even when no new construction occurs.

2. Restriction on food service in residential zones

If your farm is located in residential or suburban zone, you may also run into problems. Residential zones are even more likely than agricultural zones to prohibit commercial, retail, or restaurant uses. Even when residential zones allow agricultural uses, the allowance doesn't usually extend to food service. Instead, only the production or marketing of crops and livestock are allowed. F

Farms located in commercial or retail zones are much less likely to run into zoning problems with on-farm food service. It is wise to do your homework ahead of time to learn if your plans fit within current zoning codes.

Determine who has zoning authority over the exact location of your planned food service venture.

To start the process, first determine the correct zoning authority from amongst the city, town, or county in which you are located. This is very important! Some farmers make the mistake of checking with the wrong authority, and that can be a disaster. If your farm is located within a town or township that has elected to zone, asking about the county zoning code will not help.

Many townships and counties have websites with maps and descriptions of their jurisdiction. You can also determine which zoning authority covers your farm by calling the local offices and asking. Zoning offices go by various names such as the Planning and Zoning Office, Building and Zoning Department, or simply the Planning Office. Once you identify the correct office, the staff there should be able to look up your address and determine if it is within their jurisdiction.

Determine which zone your farm is located within.

Some local governments have their zoning maps online. If the map is not online, farmers may need to go to the zoning office to consult a map. Having your street address or the tax identification number of your property can be helpful in looking up what zone your farm is in. The zone designation will likely be a combination of letters and numbers. For example, agricultural zones may be called “A-1” while residential zones generally begin with an R.

Find the allowed activities within that zone.

Many governments have their ordinances posted online and each Minnesota county has a law library which should have local ordinances on the shelf.

While trying to decipher the code yourself is an option, it will likely be easier to call or visit the zoning office, give details of your proposed venture, and ask as to whether it will be allowed. Local attorneys can also offer perspective on how local codes are interpreted or enforced.

Conditional Use Permits

It is useful to know that the zoning ordinance will often prohibit a farm food service venture unless you receive a Conditional Use Permit. Conditional Use Permits may require you to show that you have plans to put the necessary traffic, parking, restroom, trash, and crowd control accommodations in place. The Conditional Use Permit process requires a public hearing where neighbors can voice concerns about a Conditional Use Permit application. There is usually a fee for a Conditional Use Permit, in addition to any building permit fee. The investment of time and energy required to obtain a Conditional Use Permit may be worth it only if you are confident that the food service venture will be financially viable.

Variances

If the local zoning ordinance appears to prohibit farm events entirely, all is not lost. You might ask for a variance, which provides an exception to the rules. Variances are granted for many different reasons.

Changing the zoning rules

If no other options seem to work, and you are very determined, you could consider an effort to get the zoning ordinance amended. Community-based farmers are in a position to make this happen by recruiting neighbors to attend meetings or write letters. Changing the zoning ordinance may seem like an onerous task — but it certainly has happened in the past. Many urban agriculture organizations have advocated for zoning changes to allow food production within city limits. Food truck operators have also managed to change the local ordinances to allow food sales from parking lots and curbsides. As noted earlier, though, not everyone will agree with your proposed changes and you may encounter local opposition as well as support. The experiences of other groups will be valuable if you see a need to change the zoning ordinances before offering on-farm food service. For additional information and an example of a successful effort to change local ordinances, see *A Guide to Regulations for Local Food Entrepreneurs*. Further Resources, below.

Manage Zoning Risk Checklist

1. Investigate your local zoning ordinances, to learn how the zoning authorities will treat a proposed farm food service venture: read the code, call the office, or consult a professional.
 - a. If the venture is allowed, it can move forward within the zone’s constraints.
 - b. If the venture is allowed only with a Conditional Use Permit, determine what you need to show, have, or do to receive the permit.
2. If the venture is not allowed, research the possibility of a variance from the zoning ordinance.
3. As a last resort, if other avenues seem closed, you might consider starting a campaign to change the local zoning ordinance.

Further Resources on Zoning:

Minnesota State Law Library: Minnesota County and Municipal Ordinances Online
mn.gov/lawlib/ordinance.html

A Guide to Regulations for Local Food Entrepreneurs. 2013. Megan O’Hara, Endowed Chair in Agricultural Systems. www.misa.umn.edu

Injuries

After you invite customers onto your farm property, especially if those customers include children, injuries are usually a matter of “when,” rather than “if.” This isn’t to say that your farm is particularly hazardous. Rather, customers’ unfamiliarity with farms in general makes them especially blind to your farm’s natural hazards. Further, hosting a food service event means creating an intimate space where people are encouraged to share in your home and livelihood. That intimacy is exactly what many customers want. But coziness also has a negative side: folks feel more comfortable taking liberties with your farm space, equipment and facilities. To put it another way—visitors do things they shouldn’t. Injuries, no matter how they happen, are a legal concern deserving of close attention.

After spending any amount of time on a farm, a person acquires a kind of sixth sense about farm risks. This keeps you safe but it also makes you conscious of natural hazards. Visitors are much quicker to trip over rough ground, fall into depressions or holes, or fail to recognize the dangers associated with equipment and livestock. You can manage these risks, but the first step is realizing that these risks are real for visitors.

From a legal perspective, you aren’t necessarily responsible every time a visitor trips or falls. The primary (but by no means exclusive) way that you might become legally liable for a guest’s injury is through negligence. Negligence is a complex legal concept but suffice it to say, negligence is the failure to be as careful and prepared as any other farmer would have been under similar circumstances. For example, say a guest falls through rotting floorboards in a barn during a potluck dinner. If most farmers would have roped off the rotting boards, replaced the boards, or held the dinner elsewhere, and you didn’t do those things, you may be negligent. If your negligence led to the guest’s injury, you may be responsible in whole or in part.

As you might guess, using other farmers as a yardstick for anything makes for a very unpredictable measuring device. This is why personal injury lawsuits are expensive and time consuming -- they require detailed analysis on subjects over which reasonable people can disagree. This is also why many businesses exercise an abundance of caution. If negligence is being less

careful than others, the best way to avoid negligence is to be more careful than others. As the bar goes higher, everyone exercises more caution. This can be a good thing for customer safety but it can be hard for you to identify a reasonable limit.

Buy an appropriate insurance policy

When it comes to injuries and negligence, the single most important step you can take is to buy an appropriate insurance policy. When a covered injury occurs, the insurance company steps in to handle the legal matters. If the case comes back with a judgment against your business, the insurance company pays the bill up to the limits of the policy. You might be tempted to think, “I don’t need insurance because I won’t be negligent.” The harsh reality is that you can be sued even if you did nothing wrong. Innocent people can be hauled into court to establish their innocence. That takes time and money, which an insurance policy provides. You need insurance even if you take every precaution to protect guests.

The insurance company will inspect your property in order to protect their ability to defend and win lawsuits. Insurance agents are (ideally) trained to understand where risk exists and to help you minimize it. If they find conditions considered too hazardous (or simply difficult to quantify in terms of risk) the insurance company may choose not to offer or renew your policy. If you have particular risks - including derelict buildings or some types of processing operations - this can present a very difficult situation. Insurance companies will be very hesitant to insure your operation because the conditions will likely be seen as negligence in court. If you have uninsurable conditions, you can ask around to several insurance companies, but you may need to fix the risky situation first.

How can you know if you have the right insurance policy?

Getting the right policy for an on-farm food service venture can be tricky. Most farmers carry only farm liability insurance. Farm liability insurance acts as a homeowner’s policy by covering both your residence and injuries to personal guests. It also acts as a business policy by covering your farm operation’s facilities or buildings and injury to business guests. You might mistakenly think that food service guests will be

covered by a farm liability policy. Unfortunately, this is often not the case. The business portion of a farm liability policy will usually only cover the risks extending from the production and marketing of crops or livestock- not from food service.

If you are relying on a farm liability insurance policy to cover food service events, you are taking a risk: food service-related injuries may not be covered by the insurance company. To resolve this risk, you should communicate in detail with your insurance provider about your food service operations. This communication should be in writing. Communicating over email and maintaining a regular phone log are good ways to create records of important communications.

You should ask your insurance agent the following questions before hosting any type of food service:

1. “Will an injury that extends from my event be covered under my current insurance package?” You should describe the event in detail. For example, it may not be enough to ask, “Is a potluck covered under my insurance policy?” An end-of-season “potluck” party for 200 Community Supported Agriculture members, for example, will be handled quite differently than a potluck with a few volunteers. You should note whether the event is free or for a charge, whether and how alcohol will be available, how many people will be attending, and whether the guests have an existing relationship with your farm or not; for example, whether they are existing farm customers or suppliers.
2. “Do I need an event endorsement or a commercial policy to cover injuries from my food service event?” Very likely, an additional insurance product will be necessary to cover a food service venture. If your food event is only occasional, an event endorsement added to the farm liability policy may be adequate. For more regular events, a full commercial policy is probably necessary.
3. “Does my policy require that I follow any specific procedures for hosting this event?” The insurance policy or event endorsement may set specific conditions for coverage such as posting warning signs or restricting access to certain areas.
4. “Does my policy provide coverage for legal

defense and judgments for potential injuries?” As discussed above, an insurance policy is valuable in part because it pays for a defense in court. Even perfectly safe farms need this kind of protection. Make sure your policy offers it.

Insurance is a worthwhile expense when it covers the risks a farm incurs. Commercial policies can be cost effective as an addition because most of the farm’s risks are still covered under the existing farm liability policy. Farms working with another entity- such as a farm-to-table event management company- have another option. The farm can ask the other company to add the farm as an “additional insured” on the company’s insurance policy. For a one-time event, this may be a more affordable option.

Create a safe on-farm environment

Of course, you do not want an injury to occur even if your insurance policy will cover it. Injuries are sad, bad for your farm’s reputation, and will likely result in higher insurance premiums going forward. Be proactive. Create safe environments and help guests protect themselves. Here are several steps you can take to reduce the risk of injury.

- Clearly communicate with customers about safety procedures to prevent accidents. Use verbal instructions and signage.
- Put hazardous areas off-limits, and make this abundantly clear with physical barriers and signage.
- Assume that guests do not have any basic understanding of farm safety and will not recognize hazards. Just like toddler-proofing a house, you should guest-proof all guest areas. Remove, block, or secure anything that could hurt guests.
- Separate food service and any contamination sources while providing basic sanitation facilities to guests.

Use a waiver as a communication tool

Although enforceability isn't necessarily an efficient goal, waivers may still be worthwhile as a communication mechanism. A waiver demands the kind of attention that signs and verbal instructions can't compete with. Putting a signature on a document might inspire guests to pay more attention to the risks and rules. This can be a positive thing for preventing injuries.

Waivers

Should you be using a waiver to release yourself from liability if a farm visitor is injured? The short answer is that legally effective waivers are difficult to write. The law does not look fondly on the waiver of one's rights and scrutinizes any attempt of a party causing injury to disclaim responsibility. When it comes to youth under 18 years of age, it is highly unlikely that a waiver will be effective at all. Although a parent may be able to waive a child's rights, it isn't easy. If a legally sound waiver is still desired, you might talk with your insurance agent. As the insurance company is familiar with the exact contours of liability for your farm's situation, the company may have a recommended waiver. An attorney is another option for creating a waiver. Attorneys are the best possible source for a specific and legally binding waiver, but the service comes at a cost.

Even if the waiver is legally sound, the farmer will still need to establish in court that the waiver complies with the standards for a legally permissible waiver of liability. For this reason alone, farms still need an insurance policy that covers the food service venture. Insurance will provide a defense in court and will pay on a judgment if the waiver is proved invalid. If legal protection is the goal, waivers are generally not the most efficient way to achieve it.

Manage Injury Risks Checklist:

1. The first line of defense against the legal aspects

of injury is preventing injury itself. Install barriers, repair hazards, and generally adopt high standards for site safety. Use communication tools such as signs and verbal instructions to warn visitors of the farm's safety expectations.

2. As the second line of defense, buy an insurance policy that will cover slip-and-fall type injuries that relate to the farm food service operation. The right insurance policy may be one of these:
 - current farm liability policy
 - current farm liability policy plus an event endorsement
 - inclusion as an additional insured on another enterprise's commercial policy
 - separate farm commercial insurance policy.

Further Resources on Injuries:

Farm Commons Webinar: *Efficiently Manage Your Farm's Risks With Insurance*, available at www.farmcommons.org

Food Safety Incidences

It goes without saying that you will strive to provide safe food to your guests, whether it's a fresh apple or a farm-prepared meal. When you work directly with customers, and especially when you are using the products of your own farm, you feel directly responsible and highly motivated to protect the quality of the food you serve.

But accidents still happen. Even if it's not your fault, a food safety incident is a tremendous liability. From a marketing perspective, even a suspicion that your food is unsafe can damage your business. If it is a situation where you are, in fact, at fault, legal liability can make things much worse. As with slip-and-fall injuries, it is important to be proactive and focus both on prevention and on insuring against such incidences.

Can you become legally responsible for a food safety incident when other people have prepared the food (such as a potluck, a business that implements on-farm dinners, or a food truck offering food on site?) In a word, yes. Although the liability possibilities are multiple, perhaps the most likely avenue for liability is negligence (just as with physical injuries.) If you are negligent in how the event is structured, you may become liable for food poisoning that results.

Negligence

You may be legally negligent if your food service structure makes cross contamination likely. As an example, suppose you are hosting an apple fritter fry-off. To add to the fun, you arrange a goat petting area right next to the fritter sampling station. People, and especially children, may consume harmful bacteria if there is little physical distance and insufficient opportunity to wash up between the goats and the fritters. Individuals who get ill as a result could claim that any reasonable farmer would have provided soap and water or sanitizing gel and would have separated the petting areas from the eating areas.

The same argument could be made if you host a potluck for guests. If your event schedule or set-up fosters unsafe practices, you may be legally liable (in whole or in part) for an injury that results. For example, if guests bring their prepared dishes to a potluck and you have scheduled a three-hour tour of the gardens before the meal on a warm day, dishes that can support rapid bacterial growth may have become unsafe to eat by the time the meal takes place. A reasonable person could argue that you should have been aware of that possibility and scheduled the meal first, tour later.

This isn't to say you are automatically liable for all contamination accidents or that the law prohibits offering food in the vicinity of animals. But, when your actions make it more likely that contamination will occur, you can expect to be held at least partly responsible when it occurs. These are just a couple of examples of the kinds of problems you may be expected to prevent. Even if you aren't supplying the food, it's important to think about event structure and timing to avoid food-borne illness.

Culpability

When you are the one preparing or serving food, the legal landscape changes. Your liability potential is much greater as compared to food supplied by guests or other businesses. You may be responsible for negligently causing contamination while serving the food. You may be responsible for any injury resulting from the product itself. Foreign objects might fall into the food or the items may be contaminated with allergens, chemicals, bacteria, or viruses. The basis for liability under these circumstances is different than

negligence, and simply adopting high standards may not be enough to avoid legal liability. Depending on the exact injury, you may be liable simply because it occurred. The bad news is that legal liability for food products is complex, variable, and far beyond the scope of this resource.

Protecting yourself: food safety and insurance

The good news is that you can protect yourself in two ways. You should learn and implement careful food safety practices. Especially where the applicable food service license requires a procedure, you should make certain the procedure is followed every time. Not following legal obligations might easily be negligent. Going above and beyond the legal standards is always a good idea. You should talk with inspectors and food safety professionals to learn the latest food safety techniques. (See page 10 in the previous chapter for more information about training courses.) Another good resource is the "Minnesota School Garden & Farm to Cafeteria Manual," which outlines basic farm-to-table food safety techniques. Find it on the Olmsted County website: www.co.olmsted.mn.us/OCPHS/reports/Pages/MNSchoolGardenandFarmToCafeteriaSafety.aspx

Insurance is just as important as good food safety practices. Even if you offer perfectly safe food and structure an event to reduce contamination risks, you can still be hauled into court to prove that you did exactly that. Defending yourself is expensive, time consuming, and beyond the skills of most non-attorneys. Insurance addresses this problem by providing a defense as soon as the incident is reported. If a judgment results, you are covered up to the limits of the policy. The peace of mind from a good insurance policy can be worth the cost.

Farm liability policies are not intended to cover food service ventures. Some farm liability policies may offer some protection under very narrow circumstances. For example, it may cover bacterial contamination that results from a tornado. This is not the kind of risk that you will frequently encounter. You should talk with your insurance agent about each of the insurance questions discussed in the above section. Don't be surprised to learn that insurance coverage for farmer-provided food is either non-existent or uncertain. A commercial

restaurant insurance policy is much broader and is intended to cover the many risks unique to a restaurant, such as disease transfer from employees to customers. If you are dedicating resources and effort to building a food service venture, a commercial policy may be a wise investment.

Manage Food Safety Legal Risks Checklist:

1. If you are hosting an event with food supplied and served by others such as a potluck, catering business, or food truck:
 - a. Create a clean environment where sanitation is readily available and cross contamination potential is limited, and
 - b. Contact your insurance company to verify that any liability for food safety incidences will be covered under your farm's current liability policy.
2. If you are preparing or serving food yourself, you should contact your insurance company to purchase coverage for the unique risks of preparing food. You may need to purchase a business endorsement or a full commercial policy for the broadest protection from the increased liability exposure.

Further Resources on Injuries:

Farm Commons Webinar: *Food Safety Liability and Regulations for the Farm*, available at www.farmcommons.org

Host Safer, More Legally Secure Farm Events manual, available at www.farmcommons.org

Employment Law

If you are considering diversifying your farm operation with food service, you should read this section carefully. Different rules affect farm labor as compared to food service labor. The law often treats agriculture differently than non-agriculture. For example, this chapter has already discussed how agriculture and non-agriculture are handled differently under zoning and insurance policies. Employment law is a third area where the rules change as a farm broadens beyond just the production of crops or livestock. If

you are not aware that the rules change once food service operations begin you may expose yourself to enforcement action. This section explores the shifting overtime, unemployment insurance, and workers' compensation requirements as new ventures are added to your farm, such as food festivals, dinners, and pizza nights.

This section does not discuss many important employment law concerns. For the sake of space, a host of other vital concerns are not addressed at all: minimum wage, youth employees, family employees, hiring procedures, and discrimination issues. These issues are very important, but as this resource is specifically intended for the diversifying farmer, the focus is solely on the transition point between farm and food service. It is not a general summary of farm employment laws.

Overtime pay

As a farmer, you may know that you don't have to follow the same overtime rules as non-farm businesses. However, if your farm is taking advantage of any exemption from overtime, you must be very cautious about using the same employees for food service. A farm employee who also does food service work is not eligible for an exemption. Instead, standard overtime rules apply. The standard overtime rules depend on the business size and sales. If your farm's products are sold across state lines or your farm has annual gross sales of more than \$500,000, you must pay overtime for all hours over 40 in one week. If your farm's products are sold entirely within the state of Minnesota and your farm grosses less than \$500,000 annually, you must pay overtime for all hours exceeding 48 in the work week.

There is an agricultural exemption to overtime rules that is based on the farm employee's salary: you are exempt from paying overtime for a work week only if 1) your farm employee is paid the guaranteed salary rate specified by state law; AND, 2) your farm worker performs exclusively agricultural labor in that week. See the fact sheets listed in the Further Resources section below for more detail on the agricultural exemptions.

Labor relating directly to a food service venture is not agricultural labor. If you have been claiming an agricultural exemption from overtime, once you venture into food service you cannot claim those

same exemptions for employees who work in the food service. You should note that careful records are required to demonstrate compliance with the rules. For example, your farm employee timesheet should show more than just the hours worked- it needs to show which tasks were performed as well. Clear, complete records will show regulators that your farm is within an agricultural exemption or that you are properly applying overtime pay to non-exempt employees.

Employment law can be easier to understand with examples. Pretend for a moment that you want to host a pizza night once per month at your vegetable farm. You currently employ two friends to help plant, cultivate, and harvest vegetables at your farm. You have high tunnels and deep winter greenhouses, and operate year-round. You pay them the applicable guaranteed salary rate and you do not pay overtime. If you have these two employees help out with pizza night on your farm, the exemption no longer applies. You must now follow regular overtime rules for all the hours those employees worked during the week of the pizza night. If the friends happened to work a total of 50 hours that week, their pay would be at least time and a half for the overtime hours. The overtime hours total either 10 or 2 hours, depending on where your products are sold and your farm's gross revenue. You cannot say, for example, that the extra hours were for farm labor and avoid overtime. All hours over the threshold must be paid at time and a half if any non-farm labor was performed in that week.

The key question is, does your farm use its regular farm employees for the food service venture?

- If no, agricultural overtime exemptions may apply.
- If yes, regular overtime rules apply.

Note that these categories are only a limited illustration of an on-farm food service venture's effect on overtime. Overtime is a complex legal issue and many other factors are not presented here. See Further Resources on Employment Law to find fact sheets with more detail about agricultural exemptions from overtime.

Unemployment Insurance

As with overtime pay and workers' compensation, you need to be aware of their changing unemployment

insurance responsibilities as you diversify into food service. Unemployment insurance is a state-run system for compensating individuals who, through no fault of their own, are let go from their jobs.

Generally, you must begin contributing to unemployment insurance when:

- Your farm pays \$20,000 or more in wages during any calendar quarter of the year; OR
- Your farm pays wages to 4 or more employees in any 20 calendar weeks of the year.

Two examples may help illustrate these requirements. If four employees work on your farm each Monday for 20 weeks, you must pay into the unemployment insurance program. Alternatively, your farm might hire three employees who earn a total combined payroll of \$22,000 between July and September. Generally speaking, both these situations would be subject to unemployment insurance. As this guide is not a thorough introduction to farm employment laws, you should seek more information to confirm whether your farm must contribute to the unemployment insurance program for non-food service activities.

When you diversify into food service, you may be responsible for unemployment insurance well before your farm meets the above thresholds for payroll and total number of employees. This is because the rules for farms technically only apply when farm labor is performed. Hosting a food service operation has not historically been a farm activity and isn't seen as agricultural labor. For non-agricultural labor, businesses have to register and pay into unemployment insurance as soon as they pay any wages to even a single employee.

What if your farm's employees spend part of their time on farming and part of their time on food service? Does your farm owe unemployment insurance? First, the answer is "yes" if your farm crosses either of the two thresholds above involving 4 employees or \$20,000 in payroll.

If your farm is under both thresholds, whether unemployment insurance is owed depends on the proportion of time an employee spends on agricultural and non-agricultural tasks, per pay period.

- If your farm employee spends less than fifty

percent of his or her time on non-agricultural labor, unemployment insurance tax doesn't apply in that pay period.

- If your farm employee spends fifty percent or more of his or her time on non-agricultural labor, your farm needs to pay unemployment insurance tax on all wages paid to that employee during that period.

Your farm's unemployment tax rate depends on factors specific to your farm, farming as an industry, and on the economy as a whole. Businesses paying unemployment insurance tax for the first time often pay a rate of 2% or less.

If you think you may need to pay unemployment insurance tax, you should contact the Minnesota Department of Employment and Economic Development (DEED), Unemployment Insurance Program for more information. www.uimn.org/uimn/

Workers' Compensation

Workers' compensation is another important focus area for any farmer considering diversification into food service. Minnesota's workers' compensation laws allow some small farm operations to go without workers' compensation if the farm carries a liability insurance policy that covers employees. If your farm is relying on this exemption, you should be cautious as you diversify. The more that your farm is involved in activities that are not the production of crops and livestock (such as food service), the more you should follow the rules for non-farm businesses. Non-farm businesses are required to have workers' compensation when they have one employee.

If you are relying on the small farm exemption from workers' compensation you should know that covering farm employees through a liability insurance policy may require a commercial policy. As with a farm liability policy and injuries to guests, farm liability coverage for workers only extends to farm activities. Food service is likely not considered a farm activity. If your employees are injured while preparing food or running the food service event, your farm liability policy may not cover their injuries. A general commercial policy covers the broader risks of food service, but not all policies will cover employees. Generally, a commercial policy will only cover the risk of injury to a seasonal and temporary employee. If your farm's employees are employed year-round, a workers' compensation policy may be the only

option. If you don't get the right policy, not only does this leave you exposed to liability for the injury itself, but you also may be exposed to a steep fine for violating workers' compensation laws. It is essential to make certain that employee injuries are covered whether you do that through workers' compensation or a commercial policy.

Employment Legal Issues Checklist:

1. Determine the appropriate overtime rate for agricultural and food service workers
2. Determine your obligations for filing and paying unemployment insurance for your workers.
3. Implement careful record-keeping practices to demonstrate compliance with employment laws.
4. Consider an investment in workers' compensation insurance to ensure coverage for employee injuries

Further Resources on Employment Law:

Minnesota Department of Labor and Industry (MN DOLI), at 1-800-284-5005, www.dli.mn.gov

Labor Standards - Agricultural Workers. MN DOLI. www.dli.mn.gov/LS/AgWorkers.asp

Labor Standards - Overtime Law. MN DOLI. www.dli.mn.gov/LS/Overtime.asp

A Guide to Minnesota's Recordkeeping Laws. MN DOLI. www.dli.mn.gov/ls/Pdf/recordkeeping.pdf

Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms. Farmers' Legal Action Group. www.flaginc.org/topic/labor-and-employment/

Making Employment Law Work for Your Farm webinar. Farm Commons. www.farmcommons.org

Minnesota Department of Employment and Economic Development (DEED, Unemployment Insurance Program). www.uimn.org/uimn/

Sales Tax

When you begin a food service venture, you are wading headlong into the issue of sales tax. If you sell only fresh or raw agricultural products, you do not need to collect Minnesota sales tax. That doesn't hold true for prepared food products. Food service is subject to sales tax. The line between "food" and "prepared food" can be thin. Four general guidelines lay out when a food becomes "prepared" and is subject to sales tax.

1. Foods sold with napkins, plates, forks, straws, cups, or other utensils are taxable.
2. Food items that are mixes of ingredients (for example: fruit salad, sandwiches, ice cream on a cone) are taxable.
3. Foods heated by the seller and then given to the customer are taxable.
4. Foods sold ready for display and serving, such as vegetables arranged on a tray, are taxable.

The details certainly add some complexity. As for utensils (the first guideline), simply setting out napkins on the counter is enough to make food taxable. You do not have to go as far as placing a fork in a to-go box for food to be considered "prepared." Regarding mixed ingredients (the second guideline), even salad mix, jam, and cheese are taxable when sold by the same person who made the item. Anything that is a combination of two or more ingredients is taxable when sold by the preparer. If a separate business prepares the food item and you subsequently sell it, the item is not taxable under the second guideline. However, if the fruit salad, sandwich, etc. is sold with a fork it becomes taxable under the first guideline even if it's prepared by a different business. Each of the guidelines above is a separate basis for taxability. For example, if you heat a dish for sale but do not also include utensils the item is still taxable.

You may choose to set up your food event with an admission or cover charge. Even though the sale is for access to an event rather than for an item itself, these sales are subject to sales tax. For example, your farm might host several food trucks on the farm and sell tickets to customers for entry. The ticket sales are taxable.

If you are new to taxable sales will need to apply for

a sales tax permit. The process is quite easy and can be done over the phone or with a paper application. Contact the Minnesota Department of Revenue to begin the process. After the application has been filed, the department will issue your farm a sales tax account number and permit. Sales tax is collected by your business and then reported to the state either by phone or online. The sales tax payment can be sent by check, or paid online by direct withdrawal from a checking account. Your business' average taxable sales for each month in the previous year determine whether you must pay sales tax to the state on a monthly, quarterly, or annual basis. Detailed information on registering for, collecting, and remitting sales tax is at the Minnesota Department of Revenue's website (see below.)

Sales Tax Checklist

1. Determine if your food service operation will be making taxable sales.
2. If taxable sales will be made, apply for a sales tax permit and implement a system to track and remit sales tax.

Further Resources on Sales Tax:

Minnesota Department of Revenue at 1-800-657-3777 or visit their website at www.revenue.state.mn.us

Food and Food Ingredients Fact Sheet. Minnesota Department of Revenue. www.revenue.state.mn.us/businesses/sut/factsheets/FS102A.pdf

Prepared Food Fact Sheet. Minnesota Department of Revenue. www.revenue.state.mn.us/businesses/sut/factsheets/FS102D.pdf

Americans with Disabilities Act

The Americans with Disabilities Act (the ADA) requires that places of public amusement be accessible to those with disabilities. The ADA is a federal law that prohibits discrimination and ensures folks with a range of abilities can participate fully in American life. This law affects farmers, too. If your farm offers events open to the public, you must accommodate disabled individuals as much as is reasonable. For example, a person in a wheelchair may not be able to roll from the parking lot to the meal site if the ground is deeply rutted. If more accessible routes can be reasonably

installed, the law may require it. The ADA does not require that every individual feature be fully accessible, and it does not require that business owners completely remodel at great expense.

Minnesota has also adopted a state law that prohibits businesses from denying protected individuals the same enjoyment of the business' services as are provided to other guests. The Minnesota law is similar to the federal law in many respects. Both laws clearly prohibit places of public accommodation from failing to make reasonable accommodations for disabled persons. "Places of public accommodation" includes farms that offer food service to the public. For example, you cannot prohibit blind or deaf individuals from coming to your on-farm food event if there are safety practices that might easily protect that person.

Generally, the requirements of the ADA are put into place when a business applies for a building permit, whether for new construction or remodeling. Then, the permit-granting agency will check the building plans to see that they meet accessibility standards. However, it is important to note that the law is enforceable even against public farm events that have not done any remodels or gone through the building permit process.

Exactly what your farm should do to satisfy the ADA and Minnesota requirements depends on when you began your food service operation, the nature of the event, and the cost of retrofitting facilities. At a minimum, you should make sure that people in wheelchairs are not prevented from attending the event or using a restroom. Installing smooth, wide pathways accomplishes the first part of this goal. (At the same time, this is also a good practice to avoid injuries to people who are not disabled.) You could consider meeting the second part of the goal by renting at least one handicapped-accessible portable restroom. You can consider other techniques to ensure people of all abilities can enjoy the event. For example, benches or chairs placed throughout the property will allow guests with limited mobility to rest.

Disabilities accommodations are always a good idea. But when does a good idea become a legal obligation? With such uncertain requirements, the starting point is recognizing that the ADA may apply to on-farm events if they are open to the public and it might be useful to do some research. Unfortunately, it can be

hard to figure out exactly what you must do to comply with the ADA. You should review the Department of Justice's "ADA Guide for Small Businesses." You can call the Department of Justice's toll-free hotline at 800-514-0301 or the Minnesota Department of Human Rights with specific questions. The Small Business Administration (SBA) also helps businesses understand how to comply with the ADA. See the "Further Resources on the ADA" section on this page.

ADA Issues Checklist:

1. Consider whether the food service operation is accessible to individuals with a wide range of abilities. If it is not, create a plan to make it more accessible.
2. Contact the Small Business Administration and the Minnesota Department of Human Rights for more information on whether the accessibility plan meets the law's requirements.

Further Resources on the ADA and the Minnesota Human Rights Act:

U.S. Department of Justice at 800-514-0301

ADA Guide for Small Businesses. Department of Justice. www.ada.gov/smbusgd.pdf

Minnesota Human Rights Act. Minnesota Department of Human Rights. 800-627-5329; mn.gov/mdhr/

Small Business Administration, Minnesota District Office. www.sba.gov/offices/district/mn/minneapolis

Business Structure

Choosing the right business entity can help you achieve your risk management objectives as you diversify into value-added enterprises like food service. Across the United States, the majority of farmers organize their businesses as sole proprietorships or general partnerships. Although these entities are easy to establish and have fewer paperwork concerns, they come at a cost. The sole proprietorship and the general partnership both leave your personal assets available to satisfy a business judgment. For example, if you have a sole proprietorship, buy seed on credit, and then fail to pay

your bill, the seed company could demand both your business assets and your personal assets to get paid back (assuming the seed company gets a successful legal judgment against you). By contrast, the LLC (Limited Liability Corporation) and corporation business entity shield your personal assets from business judgments.

The protection offered by LLCs and corporations are important but should not be overstated. In terms of risk management, insurance is far more important than establishing an LLC or a corporation. Even if your business is organized as an LLC or corporation, a disgruntled individual or creditor may still argue that you as the owner are personally liable for the judgment. If you haven't followed best practices in managing the LLC or corporation (including keeping separate bank accounts, following established procedures, fully capitalizing the business, and more), the court may look right past the entity and take your personal assets anyway. When it comes to creditors, many will require a personal guarantee before extending any credit to a farmer. An LLC or corporation provides no protection when a debt has been personally guaranteed. Lastly, some protections for personal assets would be extended to you, even if your farm is a sole proprietorship or partnership, through the bankruptcy process. Some farmers see diminishing value in an LLC or corporation in comparison to the fee and accounting costs.

You should also note that business assets are always available to satisfy business liabilities. Creating an LLC won't protect farm items like tractors, planters, or washing equipment as those items are clearly assets of the business. Successful creditors can get at those assets to satisfy debts.

Organizing as an LLC or corporation may be a smart move for starting a food service venture. An LLC or corporation is an excellent last line of defense. For example, you may not have purchased the correct insurance policy or might have violated terms of the insurance policy, thus losing coverage. If you also lost your case in court, you could be at risk of losing your personal assets. Further, separate entities can help manage risk in diverse enterprises. You can cordon off the risks of the food enterprise to just the food enterprise's assets. As explained above, business assets are always available to satisfy judgments against the business. If your farm creates a separate LLC for a food service venture, only the food service equipment will be available to satisfy the judgment (assuming, of course, that best business practices are followed.) Starting an

LLC or corporation is a straightforward procedure and is quite affordable in Minnesota. The Minnesota Secretary of State's Office handles the paperwork for forming business entities.

If you choose to establish one or more LLCs or corporations, proper management of the entity is essential to maintain the entity's protections. The business should be sufficiently capitalized. You should maintain separate bank accounts and books for each entity. Negotiating, writing down, and following an operating agreement or bylaws establishes legitimacy as well. Keeping up-to-date with annual renewal paperwork through the Minnesota Secretary of State's office is also important to keep the protections of the entity. Consulting with an attorney who has expertise in farms and in small business structures could be very valuable.

Business Structure Checklist:

1. Consider forming an LLC or corporation for your farm's food service operation to further insulate personal assets and farm assets from the food service operation's liabilities.
2. If you organize as an LLC or corporation, do your research and adopt best practices to maintain the entity's protections.

Further Resources

Minnesota Secretary of State. www.sos.state.mn.us

Business Structure Comparison. University of Wisconsin-Madison. www.uwcc.wisc.edu/whatisacoop/BusinessStructureComparison/

Sec. 36. [604A.40] AGRITOURISM; IMMUNITY FROM LIABILITY.

Subdivision 1. Definitions.

(a) For the purposes of this section, the terms in paragraphs (b) to (g) have the meanings given them.

(b) "Agricultural products" means livestock, aquacultural, poultry, horticultural, floricultural, viticultural, silvicultural, or other products of a farm or ranch.

(c) "Agritourism activity" means activity carried out on a farm or ranch that allows organizations or members of the general public, for recreational, entertainment, charitable, or educational purposes, to view, enjoy, or participate in rural activities, including, but not limited to: farming; viticulture; winemaking; ranching; and historical, cultural, farm stay, gleaning, harvest-your-own, or natural activities and attractions. An activity is an agritourism activity whether or not the participant pays to participate in the activity.

(d) "Agritourism professional" means a person who is engaged in providing one or more agritourism activities, whether or not for compensation.

(e) "Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting, or processing of agricultural products.

(f) "Inherent risks of agritourism activity" mean dangers or conditions that are an integral part of an agritourism activity including but not limited to:

- (1) natural hazards and conditions of land, vegetation, and waters including surface and subsurface conditions;
- (2) the behavior of wild or domestic animals; and
- (3) ordinary dangers of structures or equipment ordinarily used in farming or ranching operations.

(g) "Participant" means a person, other than an agritourism professional, who engages in an agritourism activity and who has the capacity to understand the inherent risks of agricultural tourism.

Subd. 2. Liability limited.

(a) Except as provided in paragraphs (b) and (c), an agritourism professional is not liable for injury, damage, or death of a participant resulting from the inherent risks of agritourism activities.

(b) Nothing in paragraph (a) prevents or limits the liability of an agritourism professional if the agritourism professional:

(1) commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death of the participant;

(2) has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity;

(3) intentionally injures the participant; or

(4) fails to comply with the notice requirement of subdivision 3.

(c) Nothing in paragraph (a) affects a claim under chapter 340A, or a claim arising out of the sale or use of alcohol at an agritourism facility.

Subd. 3. Posting notice.

An agritourism professional shall post plainly visible signs at one or more prominent locations in the premises where the agritourism activity takes place that include a warning of the inherent risks of agritourism activity.

EFFECTIVE DATE.

This section is effective August 1, 2015, and applies to actions arising from incidents occurring on or after that date.

References

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- Constitution of the State of Minnesota, Article XIII, Section 7: www.revisor.leg.state.mn.us/constitution/#article_13
- Food, Beverage, and Lodging Establishments – Exemptions. Minnesota Statute 157.22.
www.revisor.leg.state.mn.us/statutes/?id=157.22
- Potluck Events: Safe Food is Good Business. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/food/fs/potluck.html
- FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types. 2009. www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/UCM224682.pdf. Accessed online, 6/12/15.
- Licensing Jurisdiction. Minnesota Department of Health directory to inspectors and delegated authorities.
www.health.state.mn.us/divs/eh/food/license/delegation.html
- Map of inspector territories. Minnesota Department of Agriculture. <http://gis.mda.state.mn.us/food/>
- Certified Food Manager course information. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/food/cfm/
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www.extension.umn.edu/food/food-safety/
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Also available in print (160 pages) from Minnesota's Bookstore: www.comm.media.state.mn.us/bookstore/mnbookstore.asp
Order by phone: 651-297-3000 or 800-657-3757
- Licensing. Food, Pools and Lodging Services. Minnesota Department of Health.
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- Noncommunity Public Water Supply. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/water/ncom/
- Approved Source Requirement (Water). Minnesota Rules 4626.0980
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- County Well Index Online:
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- Serving Locally Grown Produce in Food Facilities. June 2010. Minnesota Department of Agriculture.
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- Approved Sources of Meat and Poultry for Food Facilities. September 2011. Minnesota Department of Agriculture.
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www.mda.state.mn.us/licensing/inspections/~media/Files/food/foodsafety/eggssales.ashx
- Well isolation distances. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/wells/construction/isolate.html
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www.health.state.mn.us/divs/eh/food/license/sefsopcklst.pdf

Sales Contracts for Farm Produce: Why and How. Farm Commons.
www.farmcommons.org

Mobile Food Unit, Seasonal Temporary Food Stand, and Seasonal Permanent Food Stand Construction Guide. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/food/license/mfuseaonguide.pdf

Certified Food Manager Requirements for Food Establishments. Minnesota Rules 4626.2010
www.revisor.leg.state.mn.us/rules/?id=4626.2010

Food, Beverage, and Lodging Establishments -- Inspection; Frequency; Risk Categories; Orders. Minnesota Statutes 157.20.
www.revisor.leg.state.mn.us/statutes/?id=157.20

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mn.gov/lawlib/ordinance.html

Efficiently Manage Your Farm's Risks With Insurance. Farm Commons. www.farmcommons.org

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www.co.olmsted.mn.us/OCPHS/reports/Pages/MNSchoolGardenandFarmToCafeteriaSafety.aspx

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www.revenue.state.mn.us

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Come & Get It!

WISCONSIN

**What you need to know
to serve food on your farm**

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Table of Contents

Acknowledgements	2
License Decision Tree	4

Chapter 1 - In the Kitchen **5**

Managing Legal Obligations within Kitchens

When do I need a license to provide prepared food?	5
Examples to help tease out the differences between public and private events	6
My event will require a license. What now?	9
Requirements for legal food service	10
Minimum standards	11
Temporary Food Stand	13
Partnering with a restaurant	15
Adding Food Service to Retail Sales	16
Mobile Restaurant License	17
Restaurant License	19
Prepackaged Restaurant License	22

Chapter 2 - Beyond the Kitchen **23**

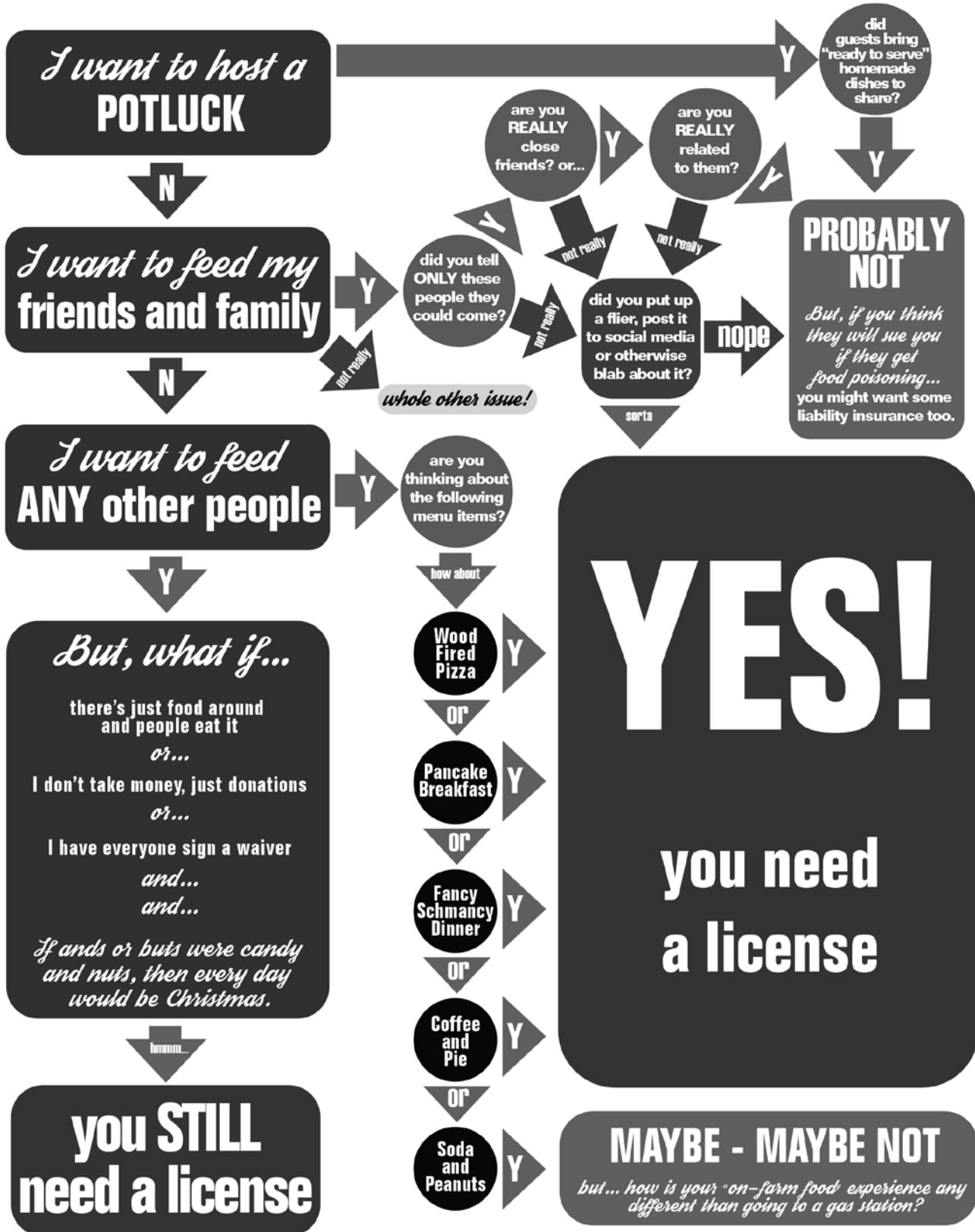
Risk Management and Legal Concerns beyond the Kitchen

Zoning	23
Injuries	26
Food Safety Incidences	28
Employment Law	30
Sales Tax	31
Americans with Disabilities Act	31
Business Structure	32

Come and get it!

DO I NEED A LICENSE?

Before you ring the dinner bell - Let's discuss what you want to do.



Chapter 1

In the Kitchen

Managing Legal Obligations within Kitchens

Understand that almost all food service ventures must be licensed if they serve the public.

Have a grasp of the basic exceptions to the general rule that a food service license is required.

Identify which food service licenses are best suited to accomplish a wide variety of farm goals.

Understand the process a farmer must follow to obtain various food service licenses.

Introduction

There's nothing like gathering around a table to create a sense of community. And while providing a meal on your farm may boost your community image and bottom line, it is critical to understand the pros and cons of such an endeavor.

Because consumer safety has been compromised in the past, national and state lawmakers have created food service standards that are enforced through inspections and documented with licenses. These licenses give members of the public assurance that, even though they cannot watch over the details of each step of production, the food they are about to consume has been produced in a manner that meets specific standards for safety.

Prepared foods today are vastly safer than before food production regulations were passed. In this way, the laws surrounding food production have increased the trust between food producer and customer. Few consumers ever think twice about the safety of prepared foods. This is good for you and your customers alike.

The increased public trust does come at some cost. If you want to serve food to the public, you must spend some time understanding and complying with detailed rules and regulations and in many instances must pay specific licensing fees in order to serve food legally. These are costs of doing business in the food service world, and your business plan should take these costs into account.

When do I need a license to provide prepared food?

A license is always needed to provide prepared food to the public.*

*(*Almost always. See below for exemptions that are available to farmers.)*

Because the shared goal of safe food is so important to public health and economic activity, food production and food service regulations have a very broad reach. Most times that food is made available within a business or commercial context, a license is required. It doesn't matter if the food is free or if customers have signed an agreement.

That being said, there are a few exemptions to the licensing requirement. The regulations are complex and depend on very precise circumstances. You should read this entire section rather than just individual exemptions to get the full picture.

Even after reading this section, you may be disappointed at the lack of clarity. As a farmer, you are likely very innovative and the law does not neatly and easily address every unique way that you may want to provide food to guests. Inspectors, attorneys, and farmers all find themselves scratching their heads from time to time!

If, after reading this section, you still are uncertain whether your event will require a license, the safest bet is to assume a license is needed. You should start a conversation with your local health inspector as soon as possible in your planning process.

EXEMPTION 1 ...Except for potlucks

Hosting a potluck is perhaps the easiest way to create a community food event at your farm without a license or a facility for food preparation. As with all things legal, though, not just any potluck event will be allowed without a license. Potlucks need to meet specific conditions.

Fortunately, potlucks often already follow these guidelines.

The law recognizes tradition by giving religious and social organizations special latitude. A farm organized as a nonprofit or with a social mission falls into this category and may host potlucks anytime and for any reason, so long as those attending the event prepare the food. The laws around potlucks were not written with CSA farms in mind and it's not entirely clear if and when a CSA farm would meet the social mission obligation.

Farms organized as a for-profit business and without a defined social mission should be a bit more conservative when hosting potlucks. For the best chance of avoiding the need for a license, you should host your potluck in conjunction with a celebratory event like an anniversary or harvest party.

If you want to host a potluck "just because," you should take an extra risk management step. If there is no

broader celebratory event, you should limit yourself to providing just coffee, tea, milk, soda, baked goods, ice cream, or candy (see Exemption 2 for more of an explanation). Guests may provide other elements of the meal. A potluck where guests bring the main dishes might be a great option for your farm if you are looking to maximize community spirit

Takeaway Point: *If you are a for-profit farm and host a potluck as part of a celebratory event, or only provide specific items, a license is not required.*

EXEMPTION 2 ...Farm gives away only beverages, candy, baked goods, or ice cream

Farms may offer guests specific beverage and snack items for free without a license. In the beverage category, your farm may serve soft drinks, milk, milk drinks, coffee, and tea without a license. Do not assume that because milk is allowed, juice will be allowed or that because a smoothie contains milk, that it qualifies as a "milk drink." This is not the case. Each category is precise and you should avoid the temptation to make assumptions without asking your local inspector for clarification. You also may serve candies and pastry items such as cookies, muffins, or crackers. However, the pastry items cannot include anything that requires refrigeration. For example, you could not serve pumpkin pie, lemon tarts, cake with a whipped topping, or anything else that will go bad at room temperature. This exemption is only for items that are given away for free. If you sell these items, you will need a retail establishment license.

Takeaway Point: *If you give away only soft drinks, milk, milk drinks, coffee, tea, pastries, or candy, a license is not required.*

EXEMPTION 3 ...The event is personal in nature (as opposed to business in nature) and is private (as opposed to open to the public)

Everyone knows that a family hosting a reunion, wedding, or birthday party doesn't need a license before they invite friends and neighbors over. Yet we began this chapter by stating that anytime you make food available on your farm, you need to go through the licensing process. So, why doesn't a birthday party need a license? Consider the example of a farm family that grills up

burgers to celebrate a child's graduation one week and then grills hot dogs to serve to the farm's autumn harvest party guests the next week.

Perhaps the farm family's relatives are also customers and customers are also friends, and thus the same folks show up to both parties. Regardless, the first cookout doesn't need a food service establishment license while the second likely will. Why?

In closeknit communities, the same people might attend both events. The distinction between a business and personal event, though, is based on the intent of the event. An autumn harvest party is likely a business event centered on the farm as a business. The family is looking to boost the reputation of the farm, advertise their products, and reach a wider audience. That makes the event a business venture. The public can attend even if they don't. The child's graduation party is a personal event centered on the home, and the event is open only to those who have been invited.

Takeaway Point: *If an event is personal and private, no license is required.*

EXEMPTION 4 ...An organization may serve snacks or a meal during a field day, pasture walk, meeting, or other farm event.

Nonprofit organizations, rural development groups, UW Extension, and other organizations often coordinate on-farm events such as tours, meetings, and social events where meals are served. These events may not need a license under specific circumstances. If a fraternal organization, youth organization, service club, or civic organization prepares a meal and serves it to the public no more than three times in a calendar year, a license is not required. You should be cautious about interpreting the definition of an organization too broadly. Extension, 4H groups, and incorporated nonprofit entities are clearly organizations. "Organizations" developed by a farmer, such as dinner clubs or a CSA, may not meet the requirements for this exemption.

Takeaway Point: *If the event is sponsored by another organization, snacks or a meal may be served without a license at no more than three events per year. If the event is sponsored by your farm itself, and the event doesn't fall into one of the other exemptions, you will need a license.*

EXEMPTION 5 ...A farm may provide a meal or snacks to volunteers or workers, occasionally.

Farmers offer volunteers and workers meals from time to time. For example, you might prepare sandwiches and lemonade at the end of a long day as a thank-you gesture. Wisconsin law does not require a license in this case. Employers are allowed to prepare meals for workers for the purpose of expressing appreciation or building workplace morale up to three times in a twelve-month period before the food must be prepared under a license.

Note: For any laws that apply to employees, the farmer playing it safe will assume the law also applies to volunteers. This is because volunteers for a for-profit business are generally considered employees. See Farm Commons' webinar on farm volunteers for more information: *Getting Farm Work Done Legally With Interns, Apprentices, And Volunteers*. 2015. www.farmcommons.org/webinars

Takeaway Point: *Farms may provide meals as an expression of thanks to workers up to three times in a twelve-month period before a license is required.*

Really? I have a few more questions.

What if I only accept donations or give away meals for free?

Asking for donations rather than charging a set amount does not make the event exempt from licensing. If you are serving food to the public, and none of the specific exemptions 1 through 5 apply, then you need a license. You cannot assume there is an exemption just because the product is free. Food service laws apply to those who give away meals for free or a donation, as well as those who charge for a meal. (If free food service is provided as part of a charitable non-profit operation or school, some exemptions may be available that are beyond the scope of this publication.)

Takeaway Point: *A farm that serves food free of charge or for a donation may still need to follow licensing procedures if one of the above exemptions does not apply.*

What if no one actually eats the food?

The license obligations apply to those who make food service available to the public. Even if no one takes advantage of the food offered, the fact that it is offered to the public triggers the licensing obligations. Although this is an unlikely example, it helps illustrate the focus of the regulations.

Takeaway Point: *Even if no one eats any food, the farm will need a license to offer food, unless an exemption applies.*

What if I invite only CSA members to an exclusive meal on the farm?

Things can get a little complicated. Let's say you sell CSA memberships in the spring and then host a members-only dinner in the fall. That event isn't open to the public because only members can attend, right? You would not need a license, right?

Technically speaking, the law could be interpreted in two ways. On one hand, yes, the event is private and personal because CSA farms can be quite similar to a fraternal organization. The law allows members of fraternal organizations to prepare meals for each other. This specific allowance for a fraternal organization hasn't been applied to a CSA specifically, though, so no one knows exactly how a court would interpret it.

For the time being, individuals at the Wisconsin Department of Health Services who handle food licensing have indicated that they don't feel a license would be required for a CSA farm that hosts a meal for farm members. The current interpretation is not a guarantee, however. A court or higher authority could still find that a license is required for a CSA dinner according to the letter of the law. This could be more likely if anyone can join the CSA, the CSA is large, or the CSA members are quite anonymous. If you wish to minimize your risk as much as possible, you should rely on another, more certain exemption from licensing rules, such as a potluck.

Takeaway Point: *Depending on how a person interprets the rules, a farm may not need a license to serve a meal exclusively to CSA members. CSA farmers should talk with a licensing inspector first and get approval for their plan.*

What if I organize a dinner club and sell admission or membership before a meal?

Many innovative folks around the country are offering creative new ways to serve meals to others including ideas such as "dinner clubs." These clubs often invite members of the public to join a club and purchase a ticket to a meal in the same transaction over a website. The organizers of these events are using a variety of models to structure the club and the meal service. Some charge for admission to the club and host free meals, while others offer free membership but sell tickets for admission to individual meals.

Whether or not these clubs need a license is a murky subject. Wisconsin law does allow fraternal organizations to host meals without a license if the organization's members prepare the meal. If members do not prepare the meal, fraternal organizations are still allowed to serve meals so long as the organization hosts the meal no more than three times annually. A dinner club must be considered a fraternal organization to qualify for this exemption from a license. The analysis would depend on exactly how members are admitted, whether the club has any other activities or purpose, and other precise details about the organization's purpose and procedures.

Takeaway Point: *Unless the farm talks with a licensing inspector first, clearly demonstrates that the organization is a fraternal organization, and gets approval for that plan, the farm should rely on another, more certain exemption from licensing obligations, such as a potluck.*

What if the farm asks guests to sign a waiver?

The law applies regardless of whether the guests want it to apply or not. Asking individuals to waive their rights or give the farm permission to serve from an unlicensed facility will not defeat the law. If a license is required, it's required.

I have more questions. Whom should I contact?

As mentioned above, some farmers will be disappointed at the lack of clarity in these rules. Farmers are very innovative and the law does not

neatly and easily address every unique way that farmers are bringing food to guests. If, after reading this section, you are uncertain whether your event will require a license, you should start a conversation with your local health department inspector as soon as possible for further information. The next sections discuss the health department inspector's relationship to your farm and how to position yourself for success.

My event will require a license. What now?

Before we get into the details of what license you need, it is important to know that there are few government agencies involved in licensing food businesses. Figuring out what license you need and whom to get it from takes some patience and diligence.

Many of the rules that affect on-farm food service are inherently complex. Farmers, inspectors, and attorneys can all get confused. Although this guide is meant to help, everyone needs to communicate together as we explore new food service options. You can help yourself by reading this guide carefully, reviewing the Wisconsin Food Code, and exploring the resources available from the Wisconsin Department of Health Services on food service licensing. You may also need to help educate the inspector who works with you. Individual inspectors may not have handled a unique on-farm food service operation before, and may be on a learning path themselves.

Food safety inspectors are an important partners for any farmer pursuing food service. Inspectors see their primary task as protecting public health. Food safety outbreaks are the real enemy, not inspectors. Inspectors are partners in helping food entrepreneurs understand and meet the regulations, even though they may need to enforce rules when violations occur.

You should plan to be persistent and assertive, while as helpful as possible, as you work with local inspectors to license an on-farm food service operation. If you find that an individual inspector is not responsive to questions or requests for clarification, you are encouraged to seek input from the inspector's supervisor. If an interpretation of the regulations seems unworkable or unfair, it's worth asking a higher-up authority for a second opinion or a variance (discussed in the Restaurant License section).

Work with Inspectors Early

Approaching regulators pro-actively with a positive, cooperative attitude is more likely to give you a smoother path towards licensing. Some of the tasks and review processes leading up to a license take time, and starting the process well in advance of when you need the license will likely reduce stress for both you and your regulator.

The rules that affect food businesses are open to interpretation, and different inspectors may interpret the rules in different ways. This can be frustrating. If a farmer in one area is allowed to use equipment that a farmer in another area is denied use of, tensions can rise. Taking an argumentative stance probably won't help; the law is designed to honor your inspector's discretion in most circumstances. This situation can also work in your favor, though. Inspectors take their job as guardians of food safety seriously, so if you show how your plan protects and enhances food safety, your inspector is more likely to agree.

In addition to considering the minimum requirements below, you at the beginning of this process should establish exactly what you would like to serve. The menu drives the licensing process. Overall, farmers who know exactly what foods they will offer and whether those foods are made from scratch or prepared will have a smoother experience.

This chapter will explore the following licenses:

1. Temporary Restaurant License
2. Mobile Restaurant License
3. Regular Restaurant License
4. Prepackaged Restaurant License

Before getting to the specifics of each license, there are a few requirements that adhere to all licenses. If you can't meet the following basic obligations, you won't be eligible for any food establishment license.

Resources:

Wisconsin Food Code

http://docs.legis.wisconsin.gov/code/admin_code/dhs/110/196_.pdf

Wisconsin Food Code Fact Sheets

http://datcp.wi.gov/Food/Food_Code_Fact_Sheets/

Restaurant Licensing

<https://www.dhs.wisconsin.gov/regulations/public-facilities/restaurant.htm>

Requirements for legal food service

All food must be prepared under a license, in accordance with the Wisconsin Food Code.

All food service licenses are issued in accordance with the Wisconsin Food Code, the law that regulates and details the facilities required to serve food to the public. The full Food Code is detailed and extensive, topping out at 148 pages. You certainly do not have to read the entire Food Code or attempt to understand each section, but it is valuable to know what this document contains. The Food Code describes in detail the very specific obligations that each food license must satisfy. This is the document inspectors will be interpreting and applying as they issue a food service license.

To find the code, search on the Internet for “Wisconsin Food Code.” There are links to the Wisconsin Food Code and other related items on the Wisconsin Department of Health Services website: <https://www.dhs.wisconsin.gov/regulations/fsrl/codes.htm>

All ingredients and food items must come from an approved source.

This rule is designed to prevent food service operations from using ingredients that haven’t been produced under the required conditions. It is not meant to restrict food service operations from buying produce directly from farmers, growers, or backyard gardeners, or from using products grown on the purveyor’s own farm.

Fresh, raw fruits and vegetables may be purchased directly from a grower or may be grown on the farm

Safe Food Service: A New Skill Set

Preparation of ready-to-eat foods takes skills and knowledge that are very different from the typical farmer’s production skills.

Some safe food preparation techniques are not obvious to people who haven’t been trained in food service.

Make sure you seek out the training you need to serve food safely to the public!

Food Manager Certification, Wisconsin Department of Health Services <https://www.dhs.wisconsin.gov/regulations/public-facilities/food-manager.htm>

doing the food service. The situation is a little different with animal products. Meat, dairy, and eggs must be processed according to defined regulations if they are to be used in a food service establishment. This is also true for meat, dairy and eggs from the host farm. Likewise, although Wisconsin allows the sale of home-produced pickles and jams, these products are not allowed for use in food service operations. More about the Wisconsin “Pickle Bill:” http://datcp.wi.gov/Food/Home_Canned_Foods/

It may be helpful to think about your farm operation as a separate business from your food service operation. Consider that anything you use from your own farm would need to fit the same requirements as if you were purchasing these ingredients from other sources.

All water used in the food service must come from an approved source.

You have two choices for approved water sources. First, you may use water from an approved public water supply system. The farm may be on a municipal water supply already. If not, you might consider transporting municipal water to the site in containers approved for use with food, or use purchased bottled water.

If you cannot, or prefer not to, use municipal or bottled water you may be able to use your own well. However, the well must be constructed, maintained, and operated according to specific standards set by law. Exactly which standards apply depends on the number of people served and the number of days you serve food.

If you serve at least 25 people on 60 or more days, the well must meet the standards for a transient, non-community well. The Wisconsin Department of Natural Resources (Wisconsin DNR) produces a guide titled “An Owner/Operator’s Handbook for Safe Drinking Water for Transient Non-Community Public Drinking Water Systems,” which provides thorough information on what to expect for monitoring, licensing, inspection and more. If your farm will be needing approval as a transient non-community well you should begin the process well ahead of time. You can expect that the individual conducting the food license inspection will ask about water supplies. If the right paperwork isn’t in place, your food service operation may be seriously delayed or in jeopardy altogether.

If fewer than 25 people are served or you serve food for less than 60 days in the year, the well must meet private well standards. You should work with your inspector or agency staff well ahead of time to make sure they will meet the requirements. If you are on a private well you can expect to be asked for the results of a recent coliform and E. coli test at a minimum. Inspectors may need additional evidence of the well’s safety, such as construction records.

More Resources on Water Supply:

Wisconsin DNR Information for Public Water System Owners and Operators:
<http://dnr.wi.gov/topic/DrinkingWater/owneroperator.html>

Providing safe drinking water for your festival: a guide for event planners:
<http://dnr.wi.gov/files/PDF/pubs/DG/DG0078.pdf>

You and Your Well:
<http://dnr.wi.gov/files/pdf/pubs/dg/dg0002.pdf>

I can meet the minimum standards. What is next?

If you are comfortable with the threshold requirements for food service, you can move on to exploring the various food service license requirements. If you operate a non-exempt food service venture for the public, you will need at least one license. Depending on the scale and type of operation, some farms will need licenses for building facilities and selling product, among other things. Unfortunately, that’s where the simple explanations end! The license options and regulatory authorities can get quite confusing. Especially for farmers in the beginning stages of exploration, a long list of potential licenses and regulators isn’t necessarily helpful. It can make the process seem overwhelming.

The best place to start in exploring licenses is with the farm’s goals in hosting food service. If you can identify clear goals first, it is easier to narrow in on the correct license to accomplish those goals. Putting goals on paper may seem like limiting your options, but when it comes to food service licensing, flexibility is not the name of the game. Although various food establishment licenses do allow some flexibility in meeting the goals of the specific license, you can save time and frustration by choosing the most appropriate license on the first try.

I would like the easiest license. Does that work?

No single license is the easiest or has the fewest obligations (with the possible exception of the Prepackaged Restaurant License). Every license carries the same goal: safe food service. License holders for smaller or less frequent operations shoulder the same responsibilities in meeting that goal as larger or more frequent operations. Although smaller operations may potentially expose fewer people to problems, problems develop in the same exact ways as larger operations. This means that smaller or temporary operations still need to follow strict rules when preparing and serving food.

Farmers may have a wide variety of goals in serving food. Some may have a strong personal interest in cooking, others want to develop a new income stream,

and still others want to find a value-added use for surplus farm products. These goals are good, but food service licenses are grouped according to the frequency of operation and the type of product served. You may need to reframe your goals in terms of a broader business strategy to find the right license.

Focusing on establishing the menu right at the beginning will reduce time spent navigating the license process. The specific demands in terms of equipment, processes, recordkeeping, and more, all depend on the menu items. If you haven't decided on a menu, the inspector will have a hard time guiding you to the best license or in how to satisfy the license obligations.

If you serve a menu of pre-prepared items such as grilled hot dogs and packaged cookies you will have fewer equipment, process, and serving standards than items prepared from scratch. If you are dedicated to making dishes from raw ingredients, you should be prepared for a longer list of obligations, regardless of the license type. Whether it is a temporary event or a regular restaurant, all the same basic principles of food safety need to be met: approved sources of ingredients and water, avoiding cross-contamination, proper cleaning of equipment and utensils, adherence to time and temperature requirements for keeping hot foods hot and cold foods cold, and personal hygiene.

The menu is so important that Wisconsin law sets license fees based on the menu complexity, where specific menu items or practices receive points. The more points a menu earns, the higher the license fee and inspection frequency. Farmers can also assume that more points means greater equipment and procedural standards. Which menu items are considered more complex? Salad and food bars earn a point. Handling raw poultry, meat, or seafood earns another point. If a farmer must chop, boil, cool, or reheat items to prepare a dish, the facility gets another point. Additional points are earned for each of the following:

- +1 Seating capacity of 50 or more
- +1 Drive-through window
- +1 Delivery service
- +1 Cooling or reheating potentially hazardous foods
- +1 Transporting foods between preparation and serving
- +1 Banquet facilities

An operation with 5 or more points is considered complex, the highest classification.

The second factor after the menu is the frequency of food service. The menu and the frequency of the food service together determine which license may work best for a food service operation. The easiest approach may be to consider your overall goals for offering food service. To facilitate that, the next section outlines possible goals and the licenses that achieve them. Then, each section outlines the license's requirements.

The next section is not an exhaustive list of the requirements for each license type, but rather is intended to help you determine if the venture is a possibility within your capital resources and farm situation. You will still need to contact the appropriate regulatory agency and speak directly with an inspector. Depending on the exact circumstances, the inspector may determine that a different or additional license is necessary. Only after speaking with an inspector can you determine precisely what is required.

Goal Example 1:

I'd like to add occasional food service to my farm. I'm thinking of hosting either a one-day harvest festival or doing a series of weekend celebrations for a few weeks in a row. I don't want full-time food service, though. For food, I'm happy with a simple menu. I'd really like to make and serve the food myself rather than hire a caterer or serve packaged food. What license should I consider?

Answer:

A *Temporary License* may be right for these goals.

Similar examples:

- Hosting a picnic with hot dogs and salad after a farm tour.
- Selling sandwiches during an annual barn dance.
- Hosting a pizza night or fancy dinner event several times over the summer.

Temporary Food Establishment

This license goes by several different names. Wisconsin's statutes call it the "Temporary Food Establishment" license. The Wisconsin Department of Health Services refers to it as the "Temporary Food Service Permit." Milwaukee's licensing authority calls it a "Temporary Event Food Dealer License," while Madison uses the term "Temporary Food Stand Permit." For the sake of simplicity, this guide simply uses the term Temporary License.

With a Temporary License you can serve food at a single event for up to 14 consecutive days. The Wisconsin Department of Health Services (DHS) has a policy allowing the temporary license to be used on single events that occur on 20 or fewer non-consecutive days as well. This may give you even more flexibility to host food service. Under this policy, you could host a pizza night on a specific day of the week for up to 20 weeks out of the year. But, because the allowance for 20 non-consecutive days is a state-level DHS policy, not all local licensing agencies may follow the policy. Different licensing authorities may charge different fees for the license, or they may assess late fees and expedited processing fees.

When following the checklist for getting a Temporary License below, you should be thorough in the first few steps: connecting with the right licensing agency and asking for details on their specific procedures and rules. You should verify that the 20 non-consecutive day policy is available. If it is not, you might consider asking your inspection agency to consider adopting it.

As with all food service licenses, the Temporary License requires the licensee to follow high standards for food safety. The Temporary License has the advantage of a streamlined application and inspection process.

Although the process is streamlined, it can certainly be slowed down if you aren't familiar with your obligations. If any food preparation or cooking occurs, the stand needs to be enclosed or screened in some way. Food serving and prep areas must have a floor surface (mats over dirt ground are acceptable). This can be a problem for farmers who may want to host events at locations where they lease or do not have control over buildings. If you are hoping to serve food from a barn or shed, the facility needs to offer

protection from dust and debris. Some farm facilities cannot provide that, even though the building has a floor, walls, and ceiling. Food must not be located within 100 feet of a barn, animal enclosure, or other source of odors or flies. For many more details, you should read Wisconsin Food Code Fact Sheet #23.

You should also consider the plumbing and electrical infrastructure you have available. Toilet facilities are required to be available to the public served by a temporary food establishment. If a barn does not have the electrical capacity to operate cooking equipment safely, an electrical fire could result. Upgrades might be needed to farm infrastructure in order to support even a temporary, occasional food service.

To receive a Temporary License, you must exactly describe the food served and the equipment, service ware, and facilities used to serve it. Keep in mind that the application is a bit like a test. The regulatory authority doesn't just want to know that you have a plan – they want to know that you have a plan that meets the requirements of the Wisconsin Food Code. If the responses don't demonstrate that the food stand will comply with the Food Code, the application may be returned for modification. Ask an inspector early in the process and consult Wisconsin Food Code Fact Sheet #23 for guidance in assembling a plan that will meet the requirements.

The following are a few, select requirements that may be of special interest to farmers considering a temporary event at their farm:

1. Hand washing stations and gloves must be provided.
2. If hoses are used for water, the hose must be food grade.
3. If the location cannot supply water under pressure, disposable service utensils such as plates, forks, and napkins must be used. Farmers may not collect the disposable single-use service items for washing and future re-use.
4. Water and food ingredients or products must be from an approved source.
5. Any potentially hazardous foods must be kept under mechanical refrigeration, unless ice is specifically approved.

6. If non-disposable utensils are used, a 3-basin sink or tub system must be set up or available for use.
7. One toilet facility for each 50 males or 30 females expected must be provided and must be located within 400 feet of the event.

See Wisconsin Food Code Fact Sheet #23 and speak with an inspector about the full obligations for a Temporary License.

More Resources:

Temporary Food Service Guidelines (Wisconsin Food Code Fact Sheet #23) <http://datcp.wi.gov/uploads/Food/pdf/RetailMobileAndTempFoodService-23.pdf>

Temporary Food Service Permit Application <https://www.dhs.wisconsin.gov/forms/f0/f00658.pdf>

Influence of the Menu

The menu will be the single most important element of your process to receive a Temporary License. If you are serving a shelf-stable, prepared food item, little is needed to maintain the item's safety — but those types of items don't do much to showcase the farm's products, which is a frequent goal of on-farm food service. If you are handling potentially hazardous foods that need temperature maintenance, risks rise, along with the equipment and processes necessary to mitigate that risk.

Let's use the example of our farmer at the beginning of this section. Perhaps he is interested in serving pumpkin-themed items at a harvest festival. We know the Temporary License is a good option for him because he is serving for only a few days. Beyond that, we need to know exactly what he wants to serve to fully understand his potential obligations. Let's say he would like to give his pumpkins to a friend who has a commercial bakery. The bakery staff will make pumpkin pie, slice the pies, and put the slices into cartons. Our farmer will simply sell the packaged slices. In this example, the farmer's inspector will want to know how the farmer intends to keep the slices cold up to the point of sale and how eating utensils will be dispensed.

If, on the other hand, our farmer wants to bake the pies himself, the inspector will have many more concerns. How is the pumpkin going to be prepared and held

prior to pie preparations? What type of oven will be used? How will the pies be held before and after slicing? Where will the other pie ingredients come from? As you can see, the demands of the license will be greater for the farmer who chooses to make his or her own items.

You need to understand the limits of your facilities when planning your menu, and need to be clear about your menu categories when communicating with inspectors.

Process Overview

Unlike the process for receiving other food establishment licenses, the Temporary License does not require you to first submit a plan before submitting an application. Instead, you can go straight to submitting the application. This should be done at least 30 days before the event, and it's always wise to allow more time than required.

You may want to consider the Temporary License's fee structure before setting dates if you plan to hold multiple events. All Temporary Licenses expire on June 30th. The license fee is not prorated, so if you host your first event of the calendar year on June 30th and a second event on July 1st, you will need to renew the license and pay the annual fee in time for the July 1st event. If you plan all event dates for either before or after June 30th, those could all go on one year's license. Alternatively, some jurisdictions will issue a 15-month license beginning in April. You should check with their local licensing authority for specific details.

Checklist of steps for Temporary License:

1. **Determine the appropriate licensing authority for the location where the food preparation will take place.** The licensing authority may be the city, county, tribal or state department of health. See the "Find Your Inspector" box on p. 15.
2. **Contact the licensing authority for an application.** At least one month before the event, contact the appropriate licensing authority and ask about their application and any resources they produce, such as brochures or checklists. Make sure to find the appropriate office under step one, as different offices may use different applications

and they are not interchangeable.

3. **Complete the application.** The application will ask many general questions about what you plan to serve, how you plan to serve it, where the hand washing stations will be located, where water comes from, where waste water goes, and much more.
4. **Submit the application with the appropriate fee.**
5. **Receive the license.** If the application meets the requirements, a license will be issued.
6. **Prepare for possible inspection.** An inspector may show up at the event to make sure that the food preparation and serving procedures are consistent with the application and with the Wisconsin Food Code. If the inspector finds violations, the food service may be halted.

Goal Example 2:

I want to serve food, but I don't want to do the cooking and serving myself. I am happy to pay another business to do it. In fact, I'd love if another business could handle as much of the logistics as possible. Where should I start?

Answer:

These situations still require licenses. However, farmers who work with food businesses such as caterers and food trucks to provide the food service may be able to rely on those food businesses to secure the required licenses.

Similar examples:

- Hiring a local company to orchestrate a meal event.
- Working with a local restaurant to host an upscale dinner on the farm.
- Renting the barn or farm facilities out for weddings and receptions.
- Bringing a food truck to the farm for a movie night.

Partnering With Restaurant

If you want to partner with an existing food truck business, the facility should already be licensed as a Mobile Restaurant. Caterers who perform all the food preparations in their licensed kitchen and simply dispense fully prepared, completely assembled, and pre-packaged food at the farm site can rely exclusively on their licensed facility. No additional license is needed in either of these cases. If the food truck does any food prep outside of the truck at the farm or if the caterer/restaurant does any food prep at the farm (which means any cutting, assembly, etc.), the caterer or restaurant will need a Temporary License in addition to their regular Mobile Restaurant License.

Food truck operators, caterers, and restaurants should be very familiar with their licensing obligations, and the ability to handle the licensing process is part of the service these businesses usually provide. Although this is generally true, assumptions aren't a good business strategy. Farmers working with these types of businesses should communicate with the business about who is handling license obligations. As with any important conversation, it's always wise to create a paper trail or email documentation so everyone has a reference after memories fade. You should double-check that caterers and food trucks have secured the necessary licenses before the event actually starts.

Even if the food business handles the license application, you may need to be involved in the process. The food business may need further information on water sources, electrical capacity, or other infrastructure issues to make sure they are compliant. If there are any problems with your infrastructure, you may still need to work with regulatory agencies to meet the license requirements.

Although you may be able to offload the lion's share of duties related to the license, all the legal issues detailed in Chapter 2 may still apply when working with caterers and food trucks.

Find Your Inspector

Wisconsin DHS map: www.dhs.wisconsin.gov/publications/p0/p00537.pdf

Wisconsin DHS directory of local health department contacts: www.dhs.wisconsin.gov/lh-depts/counties/index.htm

Partnering Process Overview:

1. Communicate with the caterer or food truck. Discuss where food preparation will occur and whether the caterer/food truck's existing license will fully cover all preparation and serving activities.
2. Arrange for any necessary additional licenses. If additional on-site or out-of-truck food preparation will occur, arrange responsibility for securing the appropriate license with the caterer or food truck.
3. Determine license obligations. Work with the caterer or food truck on any license obligations that are affected by farm infrastructure such as water sources, electrical supply, or wastewater disposal, among other factors.
4. Before the event, check that the license has been applied for and received.

Goal Example 3:

I already have a Retail Food Establishment License; I just want to add food service to my existing retail operation on a limited basis. Or, I'm on track to get a Retail Food Establishment License. I'm now thinking about serving a few prepared items as a part of my future retail store. Where should I start?

Answer:

Farms with a Retail Food Establishment License should work with their current inspector to add food service to the existing license.

Similar examples:

- Already selling jam, salsas, and baked goods but would like to start serving sandwiches to order.
- Opening a retail store to sell farm products but wish to serve brunch on weekends.

Adding Food Service to Retail Sales

Farms considering a food service operation that's part of a broader retail or grocery operation are in a slightly different licensing position than farms considering solely food service. When an operation is predominantly retail (including bakery and deli operations), the business needs a Retail Food Establishment License. Retail Food Establishment Licenses are administered through the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and are not explored in this guide.

If you currently have a Retail Food Establishment License, a new license is not needed. You will contact your current inspector to discuss what needs to be done to add food service. If your operation is currently very modest, such as a retail operation with only prepared and packaged foods, upgrades may be significant. If your retail operation is already preparing foods like salad mixes, selling animal products, or doing repackaging, the upgrades may be modest. It all depends on what you are currently doing under your retail license.

If you are still in the planning stages for a retail operation, you should contact the regulator/inspector you are currently working with. The inspector will want to know which operation will generate the majority of the revenue – retail or food service. If retail sales will make the most money, you will need to work with Wisconsin DATCP on a Retail Food Establishment License. If the retail sales are less than half of total sales, you may need to work with Wisconsin DHS to obtain a different license. This is one of those areas where the regulations are confusing, so work closely with your inspector and keep good notes.

The details behind a Retail Food Establishment License are beyond the scope of this resource. The objective of this section is simply to underline that farmers with a retail operation should work with their current retail license inspector.

For more information on writing contracts between businesses, such as a farmer and buyer, or farmer and caterer, watch Farm Commons' webinar titled: Sales Contracts for Farm Produce: Why and How, available at www.farmcommons.org

If you already have a Retail Food Handler's License and want to add food service you should:

1. Contact your local inspector about adding food service under your existing license.

Find your local inspector:

Contact the Wisconsin Department of Agriculture, Trade and Consumer Protection's Food Licenses division: <http://datcp.wi.gov/Food/index.aspx>
608-224-4720

Goal Example 4:

I want to serve food to guests quite regularly—more than the 14 or 20 days allowed under the Temporary License. I'd also like to do my own cooking, so I don't want to contract with a caterer. A diverse and perhaps complex menu is important to me, and I would consider making a financial investment in a food truck. Which license is the right fit for me?

Answer:

A Mobile Restaurant License may be right to meet these goals.

Similar examples:

- Preparing and serving picnic dinners using the week's produce from an on-site kitchen facility, regularly, over the course of the summer.
- Building a mobile, outdoor pizza oven and baking pizzas for more than 14 consecutive or 20 non-consecutive days over the course of the summer.

Mobile Restaurant License

Mobile Restaurants are self-contained food preparation units, either motorized or pulled on a trailer. They come in many different shapes, sizes, colors, and capabilities. Different truck owners use their trucks in different ways. Some may do all the cooking inside

the food truck, while others may prepare most of their food at a commissary in advance and do only final preparations in the truck. The confines of a food truck can impose practical limitations on the type and variety of foods that can legally be prepared inside.

A food truck isn't necessarily more affordable or more expensive than building a licensed kitchen on-site. It all depends on the local market, the planned menu's needs, and the truck under consideration. Food trucks are increasing in popularity, so farmers may find local options to purchase or rent a food truck. Food trucks have the added advantage of portability. If several farms wanted to cooperatively purchase and manage a food truck, the costs could be spread across the farms. A cooperatively managed food truck may also boost the visibility of all the farms in an area.

The Mobile Restaurant License is unique because it is actually two permits. Both the mobile unit and the service base must be licensed. The service base is the location where the mobile unit is restocked. All mobile units must have a service base, even if it's just the location where the unit drains wastewater and refills water storage tanks. Most mobile units will need a more elaborate service base where the cook can prepare foods, store back stock, and perform other tasks that the mobile unit isn't equipped to handle. Generally, the service base must be a building such as a kitchen or warehouse. The type of service base needed depends on what the food truck will serve and how it is equipped.

Nature of the Mobile Restaurant License Process

Even if a food truck is currently licensed or has been licensed in the past, if the owner or menu changes a new license is needed. Earlier, this guide discussed how Wisconsin restaurant licenses are issued according to a points system—the more complex the menu, the higher the license fees and the more frequent the inspections. Mobile Restaurant Licenses follow this convention. For example, push carts that sell packaged, precooked foods and beverages in sealed containers have few equipment and procedural standards. On the other hand, a food truck may be fully equipped to cook from scratch items including fish, poultry and meats, do significant preparation, and prepare other more elaborate items. These food trucks have more requirements.

Some licensing agencies use different license names for less or more complex menus. For example, Public Health –Madison & Dane County classifies their Mobile Restaurant Licenses into three categories: Open Air units, Enclosed Limited Service units, and Enclosed Full Service units. Other jurisdictions classify Mobile Restaurant Licenses into Simple, Moderate, and High Complexity licenses. Although the licenses go by different names, the basic concepts remain the same. More complex menu items with a greater chance of causing a foodborne illness come with greater equipment and procedural obligations.

Generally speaking, Mobile Restaurant License applications (along with those for regular Restaurant Licenses in the next section) require more time and preparation than a Temporary License. The timing is also different. Under a Temporary License, the license is issued first and an inspector may or may not come to the event to confirm compliance. For a Mobile Restaurant License, a pre-inspection must occur before the license will be issued. Mobile restaurants may not operate before the license is issued, and a license is only issued after a successful pre-inspection. (It is called a pre-inspection to differentiate it from the annual inspection process.) The process of forwarding application materials to the inspector before the pre-inspection is often called the “Plan Review” process.

If you are considering any remodeling or construction for a mobile unit, it would be wise to get approval from your inspector before beginning any work on the unit. Although it may seem premature to prepare an entire Mobile Restaurant License application before installing anything, it may save you money in the end. If an inspector won't approve the mobile unit as built, you will have to modify it before a license will be awarded.

The application for a mobile food unit can be lengthy and you will want to allow plenty of time to work with your inspector in advance of submitting the application. A complete application will contain several things: a written menu of the specific foods to be served; identification of the service base; a list of equipment, food and activities at the service base; a plan and contract for how potable water will be obtained and where wastewater will be disposed of; a plan for employee access to toilet facilities; and complete descriptions of the methods of food preparation, cooking, handling, holding, and storage.

The application will also require detailed structural plans including plumbing, refrigeration, fuel sources, and structural specifications. If the mobile unit is going to be operated on roadways, the application will need to demonstrate that the unit complies with all applicable rules of the road. Farmers unfamiliar with food service may need to seek expert advice to prepare an application that will be approved. Other mobile food unit or food truck owners, inspectors, and restaurant owners may be valuable resources for preparing a thorough application.

For more information on preparing a complete mobile food unit application:

Mobile Food Service and Mobile Retail Food Establishments
Plan Review Components for Operators
<http://datcp.wi.gov/uploads/Food/pdf/MobilesPlanReview-34.pdf>

Mobile Food Cart, Public Health Madison & Dane County
<http://www.publichealthmdc.com/environmental/food/mobilefood.cfm>

Note: Anyone outside Madison and Dane County should be very cautious about relying on anything from the city- and county-specific guide before checking that the inspection agency in their jurisdiction follows the same specific procedures.

Manager Certification

The law has additional requirements to ensure that food service staff is trained in food safety practices. The manager or operator of a Mobile Restaurant must have a Certified Food Manager's License. A Certified Food Manager's License is awarded after the manager or operator passes an approved course, and then applies for the license. In the case of a farmer-operated mobile unit, you would need to pass the written exam within the first three months of operation, and receive the certification within the first six months.

More information about the approved food manager certification courses and the Certified Food Manager's License is at www.dhs.wisconsin.gov/regulations/public-facilities/food-manager.htm

Mobile Restaurant License Process

Overview:

1. **Determine the appropriate licensing authority for the location where the food preparation will take place.** The licensing authority may be the city, county, tribal or state department of health. See the box on page 15 for information about licensing jurisdictions.
2. **Contact the regulatory agency about the plan review process and application.** Allow plenty of time: anywhere from one month for a simple push cart to six months for a food truck.
3. **Complete all elements of the plan review and application.** If the plan does not meet the regulations, it will be returned for modification.
4. **Submit the application with the appropriate fee.** Different licensing authorities may charge different fees, which may vary according to the complexity of the operation.
5. **Work with the inspector to schedule a pre-inspection.** If the application appears to meet all the relevant standards, you and the inspector will schedule the pre-inspection.
6. **Get pre-inspected.** The inspector will confirm that the mobile food unit meets the license obligations.
7. **Receive the license.** After a successful pre-inspection, the license will be issued.
8. **Begin operations.** After receiving the license, the mobile unit may be operated.
9. **Get a Certified Food Manager's License.** Within six months of beginning operations, post a Certified Food Manager's License on the unit.

Goal Example 5:

My vision is for a more traditional café or restaurant on my farm. I want to be able to serve food frequently, and I don't want to operate out of a mobile unit. I might be interested in serving complex and innovative dishes that require special equipment. What might be the best license for me?

Answer:

A regular Restaurant License may meet these goals.

Similar Examples:

- Hosting pizza nights and farm dinners year-round or multiple times per week over the summer.
- Serving farm dinners that highlight new chefs and challenging or trendy cooking techniques.
- Opening a regular full-time farm café that serves sandwiches and other prepared foods.

Restaurant License

If your vision includes regular food service of more than 14 consecutive or 20 non-consecutive days, a Temporary License won't work. The same applies to fancy or complex dishes – the types of equipment necessary to prepare them may not be feasible in a temporary situation. Many farmers may not be interested in a food truck or won't find a Mobile Restaurant to be affordable. A standard Restaurant License may be the best choice for these farmers. A regular Restaurant License will require a greater level of coordination with different licensing agencies. Before constructing or remodeling anything, you will want to make certain that your facility will meet more than just food safety standards.

Building a new restaurant facility or remodeling an existing building will likely require a building permit from the local zoning authority, which means it must comply with the zoning code. In addition,

the blueprints must accommodate all relevant fire, plumbing, and electrical codes before construction may begin. You may find it a bit challenging to meet some of the plumbing, fire code, and water source requirements for an on-farm kitchen, especially if you are remodeling a farm building. These may necessitate expensive remodeling to meet the codes. (Remodeling might be more cost effective if it is coupled with development of a new packing shed, employee washrooms, or other upgrades.) Some people are willing and able to follow detailed, technical codes when designing their facility. Others will only be frustrated by the detail-orientation and engineering skills required. Remember, you can always work with a professional who can efficiently design plans that will meet with inspectors' approval.

Considering the wide variety of menu items you may want to serve and the spectrum of existing resources on many farms, it's difficult to say exactly what you will need to install to get the license. The more menu flexibility that you wish to have, the more expansive the kitchen must be. Simple, consistent menus require less specialized equipment.

The menu is so important that Wisconsin law sets Restaurant License categories and fees based on the menu complexity. See page 12 for a detailed description of Wisconsin's point system for determining level of complexity of a food service operation.

A regular Restaurant License isn't necessarily more difficult to obtain than a license for temporary or mobile food service. The requirements are about the same from a food safety perspective. The facility will need to be constructed to meet specific standards for wall, floor, and ceiling finish materials; specific types of equipment must be installed; food must be stored in specific types of containers and refrigerators; dishes must be washed and sanitized in approved sinks under specific procedures; and more. Farmers who already have space in a barn or packing shed may find it quite easy to install the necessary equipment and modify finishes.

Consider a Variance

Many farmers will want to operate for more than the 14 consecutive or 20 non-consecutive days allowed by the Temporary License but much less than the 6-7 days per week, year-round schedule of

most restaurants. The licensing process is designed to accommodate differences in menu types, but it is not necessarily accommodating of less frequent operations. You shouldn't hesitate to ask inspectors if license obligations can be modified for less frequent operations.

Farmers with infrequent food service might consider requesting a variance, which is official permission to follow different rules than set out in the Wisconsin Food Code. Alternative procedures or equipment may be allowed when strict adherence to a provision of the Food Code is impractical. To receive a variance, you should prepare a request including an outline of the requirement and its location in the Food Code, an explanation of the proposed modification or waiver, and an analysis of how public health will still be maintained by the proposed modification or waiver. The variance request is sent to the inspection agency, who will then forward it to the Wisconsin DHS with a recommendation that it be approved or disapproved. Because the local inspection agency can make the recommendation, you should work closely with the local agency to gain their support for a variance.

As a general overview, the following equipment will likely be needed:

- A commercial-grade refrigerator or walk-in cooler with enough capacity for the farm's envisioned operation. (If the farm is a produce operation with a modified or homemade cooler, it cannot do double duty for the food service operation.)
- A commercial-grade stove and oven are necessary for a wide variety of menus, although many restaurants operate with just a flat-top grill and a fryer.
- If the restaurant holds ingredients for preparing dishes (such as sliced tomatoes for sandwiches or pizza, shredded cheese, spreads, and meats), the ingredients must be held in a refrigerated unit – generally with a roll-top lid and slots for each ingredient container.
- Utensils, food storage containers, pots, pans, and cutting boards must all be made of approved materials.
- The kitchen must have a three-basin sink for

washing, rinsing, and sanitizing.

- Countertops must be made of approved materials and there must be enough space to prepare foods and air-dry cooking equipment.

For more details: Plan Review Checklist and Guide, Wisconsin Food Code Fact Sheet #29b. <http://datcp.wi.gov/uploads/Food/pdf/PlanReviewChecklist-29b.pdf>

While farmers are geniuses at making or modifying their own equipment, that ingenuity may not be welcomed for food service. The Wisconsin Food Code requires that equipment be certified to meet sanitation standards set by an American National Standards Institute (ANSI) accredited certification program such as the National Sanitation Foundation (NSF). Professional food-grade equipment often bears the NSF symbol and manufacturers will often provide specification sheets that establish certification. Although most businesses rely on pre-manufactured equipment, the Wisconsin Food Code does allow for a variance (official permission to deviate from the rule). Farmers who feel they have the skills (such as stainless steel welding) to modify equipment without compromising sanitation should ask their inspectors about a variance.

The process for planning a licensed farm kitchen for food service isn't so much difficult as it is time consuming. You will need to know what you intend to serve and to how many guests, on average. The menu and the scale will dictate the type of equipment needed, the volume of storage space, and the size of the coolers, countertops, and more. Farmers who prefer to get a kitchen installed first and figure out the menu later will find the process frustrating. The process for receiving the license is driven by the menu, so farmers will need to pick a set menu or install more equipment to cover more menu options. After you have a good idea of what will be served, when, and to how many individuals, a conversation with the local licensing authority will identify the necessary equipment and space needs.

The Restaurant License process is quite similar to a Mobile Restaurant License. You must prepare and submit a detailed Plan Review Application to the correct licensing authority. After the plan is approved, construction may begin. After the construction is finished, the facility is inspected. If it passes the

inspection, the operator receives the license. Food service establishments are inspected on a regular basis thereafter.

As with a Mobile Restaurant, the manager or operator of a Restaurant must have a Certified Food Manager's License. For a new restaurant, the Certified Food Manager must have passed an approved exam within the first three months of opening, and must have applied for and received the license within the first six months.

More information about the manager certification courses and the Certified Food Manager's License: www.dhs.wisconsin.gov/regulations/public-facilities/food-manager.htm

Restaurant License Process Overview:

1. Determine the appropriate licensing authority for the location where the food preparation will take place. The licensing authority may be the city, county, tribal or state department of health. See the box on page 15 for more information about licensing jurisdictions.
2. Contact the correct inspector about the plan review process and application. Allow plenty of time — at least 3-6 months before the target opening date.
3. Complete all elements of the plan review and application. If the plan does not meet the regulations, it will be returned for modification.
4. Submit the application with the appropriate fee. Different licensing authorities may charge different fees that may vary according to the complexity of the operation.
5. Work with the inspector to schedule a pre-inspection. If the application appears to meet all the relevant standards, the farmer and inspector will schedule the pre-inspection.
6. Get pre-inspected. The inspector will confirm that the facility meets the license obligations.
7. Receive the license. After a successful pre-inspection, the license will be issued.

8. Begin operations. After receiving the license, the restaurant may open for business.
9. Get a Certified Food Manager's License. Within six months of beginning operations, post a Certified Food Manager's License in the establishment.

Goal Example 6:

My goals are simple: I just want to heat pre-made, packaged foods for customers. Using my own products and doing my own cooking is not important. My priorities are regular service, speed, and convenience. What might be the best license for me?

Answer:

A Prepackaged Restaurant License may meet these goals.

Prepackaged Restaurant License

The Prepackaged Restaurant License is geared for operations that only prepare frozen pizzas, microwave packaged sandwiches, and otherwise heat items prepared in a different manufacturing facility. The procedures are exactly the same as the regular Restaurant License above. Because the complexity of reheating frozen items is so low, this license receives its own classification.

Conclusion

Farmers and their customers share an interest in safe food service. To help meet this goal, those who offer food to the public are required to comply with specific standards as to where the food is sourced, how it is prepared, and the conditions under which it is served. By working together with local inspectors, farmers can integrate food service into their farm safely and efficiently.

Beyond the Kitchen

Risk Management and Legal Concerns beyond the Kitchen

Spot ways your food service operation might violate the local zoning code.

Understand how you might become liable for your guests' injuries.

Determine the best insurance policies to protect against slip-and-fall injuries as well as food safety injuries.

Identify the differences between agricultural labor and non-agricultural labor and how they affect workers' compensation laws.

Be familiar with your obligation to make public services accessible to folks with varying abilities.

Know the role business entities play in protecting personal assets from business liabilities.

Introduction

The decision to integrate food service into a farm business should not be taken lightly. While there may be economic and community benefits, there are also risks and legal concerns that must be considered. Understanding these risks can help guide decision-making so that any plans made comply with relevant laws and regulations and steps are taken to make your event safe for guests.

Mitigating risks and complying with laws and regulations will take some time, money, and effort. And there will be some things that just cannot be done legally, while others may be too cost-prohibitive to make sense from a business perspective. While an ostrich can bury its head in the sand, the wise entrepreneur will take the time and effort to understand what is involved from a legal and safety perspective.

This chapter discusses a few significant risks but it is by no means comprehensive. You should continue your exploration through conversations with insurance agents, local government, business partners, lenders, and experienced food service entrepreneurs.

Zoning

Whether hosting a white table cloth event or a pizza dinner on the farm, zoning may be a significant legal issue. Traditional zoning separates land uses into different geographic regions. For example, residential homes are in a different location than businesses. In theory, separating the two uses will make both homeowners and business owners happier. Neither will have to deal with the concerns of the other. Wisconsin counties, towns, cities, and villages each have the authority to zone lands under their jurisdiction. When a unit of government chooses

to zone, it does two things. First, it creates a map that delineates different geographic zones. Then, it writes ordinances describing the uses allowed within each zone. Although the framework of the zoning code is universal, the details within the code vary tremendously from location to location. For example, one county's agricultural zone may allow activities that a neighboring county's agricultural zone does not allow. Zoning is very location specific. You will have a hard time generalizing from the experience of other farmers if they are not located in the exact same zone.

Many communities welcome the increased revenue from farm food service and would love to see an on-farm café or pizza shop in the neighborhood. But, other neighbors may not appreciate the increased traffic, noises, or interruption of pastoral views that they expect from agricultural and residential communities. If your food venture attracts hundreds of guests, you may become a victim of your own success when the neighbors call the local zoning or law enforcement authorities. The zoning authority, in turn, may decide the event violates the code and order you to stop. This would be a devastating turn of events for any farm, but especially one that has invested in infrastructure or marketing for an on-farm food service enterprise.

You may ask, why are zoning codes relevant to on-farm dinners, pizza farms, and parties? The zoning code may prohibit a farm from hosting a food-related event or starting a food service operation. Admittedly, rare is the zoning code that says something like, "farm dinners are not allowed." Instead, a restriction on food events generally occurs in two ways.

Restriction on food service in agricultural zones

Farms located in agricultural zones may find that food service is not allowed. Food-related ventures may not be seen as an agricultural use of the land. Many zones define agriculture as the production and marketing of crops and livestock. While a dinner that showcases farm-raised produce may seem like a marketing strategy to you, that may not be how the local authority defines marketing of crops. That authority may define marketing of crops as the preparation of the zucchini for a wholesale or retail market. Farm dinners and other on-farm food service events may be considered commercial, retail, or restaurant uses rather than agricultural uses. Zoning restrictions are generally

enforced through the building permit process. But, you should be aware of the use restrictions on your property generally, as zoning agents can and do enforce the rules when no new construction occurs.

Restriction on food service in residential zones

Farms located in residential or suburban zones may also run into problems. The paragraph above explains that food service may be seen as a commercial, retail, or restaurant use. Residential zones are even more likely to prohibit commercial, retail, or restaurant uses than agricultural zones. Even when residential zones allow agricultural uses, the allowance doesn't usually extend to food service. Instead, only the production or marketing of crops and livestock are allowed. Farms located in commercial or retail zones are much less likely to run into zoning problems.

Learn about your local zoning

The wise farmer will do his or her homework ahead of time to learn if his or her plans for on-farm food service fit within current zoning codes.

To start the process, first determine the correct zoning authority from amongst the city, town, village, or county in which you are located. This is very important! Some farmers make the mistake of checking with the wrong authority and that can be a disaster. If a farm is located within a town or township that has elected to zone, asking about the county zoning code will not help.

Determine who has zoning authority over the exact location of the planned food service venture.

Many townships and counties have websites with maps and descriptions of their jurisdiction. You can also determine which zone your farm is located in by calling the local offices and asking. Zoning offices go by various names such as the Planning and Zoning Office, Building and Zoning Department, or simply the Planning Office. Once you identify the correct office, the staff there should be able to look up a specific address and determine if it is within their jurisdiction.

Determine which zone your farm is located within.

Some local governments have their zoning maps online. If the map is not online, you may need to go to the zoning office to consult a map. Having your street address or the tax identification number of your property can be helpful in looking up what zone your farm is in. Be prepared to write down a combination of letters and numbers. For example, agricultural zones may be called “A-1” while residential zones generally begin with an R.

Find the allowed or disallowed activities within that zone.

You might stop into your local planning office to request a copy. Most of Wisconsin’s counties and municipalities have their code posted online. Farmers with internet access can visit the Wisconsin Law Library’s index of all municipal and county online ordinances at <http://wilawlibrary.gov/topics/ordinances.php>

While trying to decipher the code yourself is an option, it will likely be easier to call or visit the zoning office, give details of the proposed venture, and ask as to whether it will be allowed. Local attorneys can also offer perspective on how local codes are interpreted or enforced.

Conditional Use Permits

It is useful to know that the zoning code will often prohibit a farm food service venture unless the operator receives a Conditional Use Permit. Conditional Use Permits may require that the operator show he or she has put the necessary traffic, parking, restroom, trash, and crowd control accommodations in place beforehand. The code may also require a public hearing where neighbors can voice concerns about a Conditional Use Permit application. The investment of time and energy required for a Conditional Use Permit may be worth it only where a farm is confident the food service venture is financially viable.

Variations

If the local zoning code appears to prohibit farm events entirely, all is not lost. You might ask for a variance,

which provide exceptions to the rules. Variances are granted for many different reasons. If that option doesn’t work, and you are very determined, you might try to mobilize your community to get the code amended. Community-based farmers are in a great position to make this happen by recruiting neighbors to attend meetings or write letters.

Changing the zoning rules

Changing the zoning code seems like an onerous task — but it certainly has happened in the past. Many urban agriculture organizations have advocated for zoning code changes to allow food production within city limits. Food truck operators have also managed to change the code to allow food sales from parking lots and curbsides. The experiences of other groups will be valuable for farmers who need to change the zoning code before offering on-farm food service. (For additional information, see *A Guide to Regulations for Local Food Entrepreneurs*.)

Manage Zoning Risk Checklist

1. Investigate the zoning code to learn how the zoning authorities will treat a proposed farm food service venture: read the code, call the office, or consult a professional.
 - a If the venture is allowed, it can move forward within the zone’s constraints.
 - b If the venture is allowed only with a conditional use permit, determine what you need to show, have, or do to receive the permit.
2. If the venture is not allowed, research the possibility of a variance from the zoning code by talking with someone who has received one or consider starting a campaign to change the zoning code.

Further Resources on Zoning:

Wisconsin State Law Library: Wisconsin County, Town, Village and City Ordinances Online www.wilawlibrary.gov/topics/ordinances.php

University of Wisconsin Stevens Point Center for Land Use Education, Zoning and Zoning Boards Publications: www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx

Injuries

After you invite customers onto your property, especially if those customers include children, injuries are usually a matter of “when,” rather than “if.” This isn’t to say that all farms are hazardous. Rather, customers’ unfamiliarity with farms makes them especially blind to the farm’s natural hazards. Further, hosting a food service event means creating an intimate space where people are encouraged to share in the home and livelihood of the farmer. That intimacy is exactly what many farmers and customers want. But coziness also has a negative side- folks feel more comfortable taking liberties with farm space, equipment and facilities. To put it another way- visitors do things they shouldn’t. Injuries, no matter how they happen, are a legal concern deserving of close attention.

After spending any amount of time on a farm, a person acquires a kind of sixth sense about farm risks. This keeps farmers safe but it also makes them less aware of natural hazards. Visitors are much quicker to trip over rough ground, fall into depressions or holes, or fail to recognize the dangers associated with equipment and livestock. You can manage these risks, but the first step is realizing that these risks are real for visitors.

From a legal perspective, you aren’t necessarily responsible every time a visitor trips or falls. The primary (but by no means exclusive) way you might become legally liable for a guest’s injury is through negligence. Negligence is a complex legal concept but suffice it to say, negligence is the failure to be as careful and prepared as any other farmer would have been under similar circumstances. For example, say a guest falls through rotting floorboards in a barn during a potluck dinner. If most farmers would have roped off the rotting boards, replaced the boards, or held the dinner elsewhere, a farmer who does nothing may be negligent. If the farmer’s negligence led to the guest’s injury, the farmer may be responsible in whole or in part. Likewise, a guest’s own actions can negligently contribute to their own injury. Or, a guest may have done something risky in the first place. The guest’s actions can reduce the farmer’s liability in some circumstances.

As you might guess, using other farmers or guests as a yardstick for anything makes for a very unpredictable measuring device. This is why personal injury lawsuits

are expensive and time consuming- they require detailed analysis on subjects over which reasonable people can disagree. This is also why many businesses exercise an abundance of caution. If negligence is being less careful than others, the best way to avoid negligence is to be more careful than others. As the bar goes higher, everyone exercises more caution. This can be a good thing for customer safety but it can be hard for businesses to identify a reasonable limit.

Buy an appropriate insurance policy

When it comes to injuries and negligence, the single most important step you can take is to buy an appropriate insurance policy. When a covered injury occurs, the insurance company steps in to handle the legal matters. If the case comes back with a judgment against the business, the insurance company pays the bill up to the limits of the policy. You might be tempted to think, “I don’t need insurance because I won’t be negligent.” The harsh reality is that you can be sued even if you did nothing wrong. Innocent people can be hauled into court to establish their innocence. That takes time and money, which an insurance policy provides. You need insurance even if you take every precaution to protect guests.

The insurance company will, to protect their ability to defend and win lawsuits, inspect your property. Insurance agents are (ideally) trained to understand where risk exists and to help you minimize it. If they find conditions considered too hazardous (or simply difficult to quantify in terms of risk) the insurance company may choose not to offer or renew a policy. For farmers with particular risks -including derelict buildings or some types of processing operations- this can present a very difficult situation. Insurance companies will be very hesitant to insure the operation because the conditions will likely be seen as negligence in court. Farmers with uninsurable conditions can ask around, but may need to resolve the risk first.

What about Wisconsin’s agritourism law?

Wisconsin laws were recently changed to modify how legal concepts such as the farmer’s negligence and the guest’s assumption of risk are applied in court. The law allows these special rules only if a farmer posts specific warning language and makes less than \$2000 from agritourism. Having posted a sign is useful but does not change this section’s recommendation. Even

with a sign, you will have to prove that the situation that occurred is the precise situation addressed in the law and that the sign was properly posted. A sign does not prevent a lawsuit. Because you can easily still be sued for injuries, insurance is essential if you are not financially prepared to hire your own attorney to defend the farm.

How do I know if I have the right insurance policy?

Getting the right policy for an on-farm food service venture can be tricky. Most farmers carry only farm liability insurance. Farm liability insurance acts as a homeowners policy by covering your residence and injuries to personal guests. It also acts as a business policy by covering your operation's facilities or buildings and injury to business guests. You might mistakenly think that food service guests will be covered by a farm liability policy. Unfortunately, this is often not the case. The business portion of a farm liability policy will usually only cover the risks extending from the production and marketing of crops or livestock- not from food service.

Farmers relying on a farm liability insurance policy to cover food service events are taking a risk: food service-related injuries may not be covered by the insurance company. To resolve this risk, you should communicate in detail with your insurance provider about your food service operations. This communication should be in writing. Communicating over email and maintaining a regular phone log are good ways to create paper records of important communications.

You should ask your insurance agent the following questions before hosting any type of food service:

1. "Will an injury that extends from my event be covered under my current insurance package?" You should describe the event in detail. For example, it may not be enough to ask, "Is a potluck covered under my insurance policy?" A farmer's end-of-season "potluck" party for 200 Community Supported Agriculture members, for example, will be handled quite differently than a potluck with a few volunteers. You should note whether the event is free or for a charge, whether and how alcohol will be available, how many people will be attending, and whether the guests

have an existing relationship with you or not (for example, whether they are existing farm customers or suppliers).

2. "Do I need an event endorsement or a commercial policy to cover injuries from my food service event?" Very likely, an additional insurance product will be necessary to cover a food service venture. If the food event is only occasional, an event endorsement added to the farm liability policy may be adequate. For more regular events, a full commercial policy is probably necessary.
3. "Does my policy require that I follow any specific procedures for hosting this event?" The insurance policy or event endorsement may set specific conditions for coverage such as posting warning signs or restricting access to certain areas.
4. "Does my policy provide coverage for legal defense and judgments for potential injuries?" As discussed above, an insurance policy is valuable in part because it pays for a defense in court. Even perfectly safe farms need this kind of protection. Make sure your policy offers it.

Insurance is a worthwhile expense when it covers the risks a farm incurs. Commercial policies can be cost effective as an addition because most of the farm's risks are still covered under the existing farm liability policy. Farms working with another entity- such as a farm-to-table event management company- have another option. The farm can ask the other company to add the farm as an "additional insured" on the company's insurance policy. For a one-time event, this may be a more affordable option.

Create a safe on-farm environment

Of course, no one wants an injury to occur even if the insurance policy will cover it. Injuries are sad, bad for the farm's reputation, and will likely result in higher insurance premiums going forward. Proactive farmers will create safe environments and help guests protect themselves. Here are several steps farmers can take to reduce the risk of injury.

- Clearly communicate with customers about safety procedures to prevent accidents. Use verbal instructions and signage.

- Put hazardous areas off-limits, and make this abundantly clear with physical barriers and signage.
- Assume that guests do not have any basic understanding of farm safety and will not recognize hazards. Just like toddler-proofing a house, you should guest-proof all guest areas. Remove, block, or secure anything that could hurt guests.
- Separate food service and any contamination sources while providing basic sanitation facilities to guests. (More later in this chapter.)

Use a waiver as a communication tool

Although enforceability isn't necessarily an efficient goal, waivers may still be worthwhile as a communication mechanism. A waiver demands the kind of attention that signs and verbal instructions can't compete with. Putting a signature on a document might inspire guests to pay more attention to the risks and rules. This can be a positive thing for preventing injuries.

Waivers

Many farmers wonder if they should be using a waiver to release themselves from liability if a farm visitor is injured. The short answer is that legally effective waivers are difficult to write. The law does not look fondly on the waiver of one's rights and scrutinizes any attempt of a party causing injury to disclaim responsibility. When it comes to youth under 18 years of age, it is highly unlikely that a waiver will be effective at all. Although a parent may be able to waive a child's rights, it isn't easy. If a legally sound waiver is still desired, you might talk with your insurance agent. As the insurance company is familiar with the exact contours of liability for the farm's situation, the company may have a recommended waiver. An attorney is another option for creating a waiver. Attorneys are the best possible source for a

specific and legally binding waiver, but the service comes at a cost.

Even if the waiver is legally sound, you will still need to establish in court that the waiver complies with the standards for a legally permissible waiver of liability. For this reason alone, you still need an insurance policy that covers the food service venture. Insurance will provide a defense in court and will pay on a judgment if the waiver is proved invalid. If legal protection is the goal, waivers are generally not the most efficient way to achieve it.

Manage Injury Risks Checklist:

1. The first line of defense against the legal aspects of injury is preventing injury itself. Install barriers, repair hazards, and generally adopt high standards for site safety. Use communication tools such as signs and verbal instructions to warn visitors of the farm's safety expectations.
2. As the second line of defense, buy an insurance policy that will cover slip-and-fall type injuries that relate to the farm food service operation. The right insurance policy may be either: current farm liability policy, the current farm liability policy plus an event endorsement, inclusion as an additional insured on another enterprise's commercial policy, or a separate farm commercial insurance policy.

Further Resources on Injuries:

Farm Commons Webinar: *Efficiently Manage Your Farm's Risks With Insurance*, available at www.farmcommons.org

Food Safety Incidences

It goes without saying that you strive to provide safe food to your guests, whether it's a fresh apple or a farm-prepared meal. Those who work directly with customers feel directly responsible, so farmers are highly motivated to protect the quality of the food they serve.

But accidents still happen. Even if it's not your fault, a food safety incident is a tremendous liability. From a marketing perspective, even a suspicion that your food is unsafe can damage the business. Where the farmer is

at fault, legal liability can make things much worse. As with slip-and-fall injuries, the proactive farmer focuses both on prevention and on insuring against such incidences.

Can you become legally responsible for a food safety incident when other people have prepared the food (such as a potluck, a business that implements on-farm dinners, or a food truck offering food on site)? In a word, yes. Although the liability possibilities are multiple, perhaps the most likely avenue for liability is negligence (just as with physical injuries). If you are negligent in how the event is structured, you may become liable for food poisoning that results.

Negligence

You may be legally negligent if the food service structure makes cross contamination likely. As an example, suppose you are hosting an apple fritter fry-off. To add to the fun, you arrange a goat petting area right next to the fritter sampling station. People, and especially children, may consume harmful bacteria if there is little physical distance and insufficient opportunity to wash up between the goats and the fritters. Individuals who get ill as a result could claim that any reasonable farmer would have provided soap and water or sanitizing gel and would have separated the petting areas from the eating areas. The same argument can be made if you host a potluck for guests. If your event schedule or set-up fosters unsafe practices, you may be legally liable (in whole or in part) for an injury that results.

This isn't to say you are automatically liable for all contamination accidents or that the law prohibits offering food in the vicinity of animals. But, when your actions make it more likely that contamination will occur, you can expect to be held at least partly responsible when it occurs. This is just one example of the kinds of problems you may be expected to prevent. Even if you are not supplying the food, it's important to provide access to sanitation and avoid cross-contamination.

Culpability

When you are preparing or serving food directly the legal landscape changes. Your liability potential is much greater as compared to food supplied by guests or other businesses. You may be responsible for

negligently causing contamination while serving the food. You may be responsible for any injury resulting from the product itself. Foreign objects might fall into the food or the items may be contaminated with allergens, chemicals, bacteria, or viruses. The basis for liability under these circumstances is different than negligence, and simply adopting high standards may not be enough to avoid legal liability. Depending on the exact injury, you may be liable simply because it occurred. The bad news is that legal liability for food products is complex, variable, and far beyond the scope of this resource.

Protecting yourself: food safety and insurance

The good news is that you can protect yourself in two ways. You should learn and implement careful food safety practices. Especially where the applicable food service license requires a procedure, you should make certain the procedure is followed every time. Not following legal obligations might easily be negligent. Going above and beyond the legal standards is always a good idea. You should talk with inspectors and food safety professionals to learn the latest food safety techniques.

Insurance is just as important as good food safety practices. Even if you offer perfectly safe food and structure an event to reduce cross contamination risks, the farmer can still be hauled into court to prove that they did exactly that. Defending yourself is expensive, time consuming, and beyond the skills of most non-attorneys. Insurance addresses this problem by providing a defense as soon as the incident is reported. If a judgment results, you are covered up to the limits of the policy. The peace of mind from a good insurance policy can be worth the cost.

Farm liability policies are not intended to cover food service ventures. Some farm liability policies may offer some protection under very narrow circumstances. For example, it may cover bacterial contamination that results from a tornado. This is not the kind of risk you will frequently encounter. You should talk with your insurance agent about each of the insurance questions discussed in the above section. You shouldn't be surprised to learn that insurance coverage for farmer-provided food is either non-existent or uncertain. A commercial restaurant insurance policy is intended to cover the many risks unique to a restaurant. It's much

broader and covers unique risks such as disease transfer. If you are dedicating resources and effort to building a food service venture, a commercial policy may be a wise investment.

Manage Food Safety Legal Risks Checklist:

1. Farmers hosting food supplied and served by others such as a potluck, catering business, or food truck should:
 - a. Create a clean environment where sanitation is readily available and cross contamination potential is limited, and
 - b. Call their insurance company to verify that any liability for food safety incidences will be covered under the farm's current liability policy.
2. Farmers preparing or serving food themselves should:
 - a. Contact their insurance company to purchase coverage for the unique risks of preparing food. Farmers may need to purchase a business endorsement or a full commercial policy for the broadest protection from the increased liability exposure.

Further Resources on Injuries:

Farm Commons Webinar: *Food Safety Liability and Regulations for the Farm*, available at www.farmcommons.org

Host Safer, More Legally Secure Farm Events manual, available at www.farmcommons.org

Employment Law

If you are considering diversifying the farm operation with food service, you should read this section carefully. Different rules affect farm labor as compared to food service labor. The law often treats agriculture differently than non-agriculture. For example, this chapter has already discussed how agriculture and non-agriculture are handled differently under zoning and insurance policies. Employment law is a third area where the rules change as a farm broadens beyond just the production of crops or livestock. Farmers who are not aware that the rules change once they begin food service operations may expose themselves to liability. This section explores

the shifting overtime and workers' compensation requirements as farms add new ventures such as food festivals, dinners, and pizza nights.

This section does not discuss many important employment law concerns. For the sake of space minimum wage, youth employees, family employees, hiring procedures, discrimination issues, and a host of other vital concerns are not addressed at all. These issues are very important, but as this resource is specifically intended for the diversifying farmer, the focus is solely on the transition point between farm and food service. It is not a general summary of farm employment laws.

Overtime pay

You may know that farm workers don't have to be paid overtime. However, farms taking advantage of any exemption from overtime must be very cautious about using farm employees for food service. Your employee who also does food service work is not eligible for an exemption. Instead, standard overtime rules apply. Wisconsin's standard overtime rules require that employers pay employees one and a half times the individual's hourly wage for any hours worked over 40 in one week.

You should also note that careful records are required to demonstrate compliance with the rules. For example, your employee's timesheet should show more than just the hours worked- it needs to show which tasks were performed as well. Clear, complete records will show regulators that a farm is within an agricultural exemption.

Workers' Compensation

Workers' compensation is another important focus area for any farmer considering diversification into food service. As with overtime, the rules for farm businesses and non-farm businesses are different. Non-farm businesses must purchase workers compensation when they hire their first employee. Farm businesses, on the other hand, must purchase workers compensation after 6 or more people work on 20 or more days in the calendar year.

When a farm uses employees for very untraditional farm activities like hosting food service operations, the farm risks falling under the non-farm business rules which require workers' compensation immediately. Wisconsin

law allows a wide variety of on-farm ventures to use the farm business rules, but food service may be a step too far. The issue hasn't been litigated yet, so legal certainty isn't possible at this time. If you choose to use your regular employees for food service without purchasing workers' compensation you are taking a risk. The safest choice is to assume food service is not a farm activity and to provide workers' compensation for any employees that work on the food service event.

Employment Legal Issues Checklist:

1. Determine the appropriate overtime rate for agricultural and food service workers
2. Implement careful record-keeping practices to demonstrate compliance with employment laws.
3. Consider an investment in workers' compensation insurance to ensure coverage for employee injuries

Further Resources on Employment Law:

For questions on overtime laws or workers' compensation insurance, contact the Wisconsin Department of Workforce Development (Wisconsin DWD). For wage and overtime questions, call Wisconsin DWD's Equal Rights Division at 608-266-6860. For worker's compensation questions, call Wisconsin DWD's Workers' Compensation Division at 608-266-1340.

Sales Tax

If you begin a food service venture, you are wading headlong into the issue of sales tax. If you are selling only fresh or raw agricultural products you do not need to collect Wisconsin sales tax. But, that doesn't hold true for prepared food products. Food service is subject to sales tax. The line between "food" and "prepared food" can be thin. Four general guidelines lay out when a food becomes "prepared" and is subject to sales tax.

1. The food is sold in a heated state.
2. The food is sold with a napkin, straw, fork, spoon, knife, plate, bowl, glass or cup.
3. A plate, bowl, glass or cup is necessary to receive the food by the purchaser.

The details certainly add some complexity. As for utensils (the first guideline), if setting out napkins on the counter is customary, the food is taxable. Each of the guidelines above is a separate basis for taxability. For example, if you heat a dish for sale but do not also include utensils the item is still taxable.

Some farm businesses may choose to set up their food event with an admission or cover charge. Even though the sale is for access to an event rather than for an item itself, these sales are subject to sales tax. For example, you might host several food trucks on the farm and sell tickets to customers for entry. The ticket sales are taxable.

Farms that are new to taxable sales will need to apply for a seller's permit. The process is quite easy and can be done online or with paper application BTR-101. Contact the Wisconsin Department of Revenue to begin the process. Form BTR-101 is the same form used to open a business tax account with the Wisconsin Department of Revenue. If a farm withholds income tax for employees, then the business already has a tax account with the state. Farmers who already have a tax account should use the "My Tax Account" system to add a seller's permit to their profile. After the application has been filed, the department will issue the farm a sales tax account number and permit. Sales tax is collected by the business and then remitted to the state online. Detailed information on registering for, collecting, and remitting sales tax is at the Wisconsin Department of Revenue's website.

Sales Tax Checklist

1. Determine if the food service operation will be making taxable sales.
2. If taxable sales will be made, apply for a sales tax permit and implement a system to track and remit sales tax.

Further Resources on Sales Tax:

For questions on sales tax, contact the Wisconsin Department of Revenue at (608) 266-2776 or visit their website at www.revenue.wi.gov. The resources below also provide further guidance.

Wisconsin Department of Revenue, Restaurants and Bars: How do Wisconsin sales and use taxes affect your operations? <http://www.revenue.wi.gov/pubs/pb236.pdf>

Americans with Disabilities Act

The Americans with Disabilities Act (the ADA) requires that places of public amusement be accessible to those with disabilities. The ADA is a federal law that prohibits discrimination and ensures folks with a range of abilities can participate fully in American life. This law affects farmers, too. If you offer events open to the public, you must accommodate disabled individuals as much as is reasonable. For example, a person in a wheelchair may not be able to roll from the parking lot to the site if the ground is deeply rutted. If more accessible routes can be reasonably installed, the law may require it. The ADA does not require that every individual feature be fully accessible, and it does not require that business owners completely remodel at great expense.

Exactly what you should do to satisfy the ADA depends on when the farm began operations, the nature of the event, and the cost of retrofitting facilities. For example, installing a wide walkway with fine gravel may be rather affordable. With such uncertain requirements, the starting point is recognizing that the ADA may apply to on-farm events if they are open to the public and it might be useful to do some research.

Generally, the requirements of the ADA are put into place when a business applies for a building permit, whether for new construction or remodeling. Then, the permit-granting agency will check the building plans to see that they meet accessibility standards. However, it is important to note (as clarified above) that the law is enforceable even against public farm events that have not done any remodels or gone through the building permit process.

At a minimum, you should check to see that folks in wheelchairs are not prevented from attending the event or using a restroom. Installing smooth, wide pathways accomplishes the first part of this goal. (At the same time, this is a good practice to avoid injuries from people who are not disabled, as well.) You should consider meeting the second part of the goal by renting at least one handicapped accessible portable restroom. You can use other techniques to ensure folks of all abilities can enjoy the event. For example, benches or chairs placed throughout the property will allow guests with limited mobility to rest.

Wisconsin has also adopted a state law that prohibits businesses from denying disabled individuals the same enjoyment of the business's services as are provided to other guests. The Wisconsin law is similar in that it prohibits places of public accommodation (which include farm businesses that provide food service opportunities to the public) from denying service or giving unequal treatment to disabled persons. For example, you cannot prohibit blind or deaf individuals from coming onto the farm if there are safety practices that might easily protect that person.

Disabilities accommodations are always a good idea. But when does a good idea become a legal obligation? Unfortunately, it can be hard to figure out exactly what a farm must do to comply with the ADA. Farmers should review the Department of Justice's guide for small businesses, titled "ADA Guide for Small Businesses." You might also call the Department of Justice's toll-free hotline at 800-514-0301 with specific questions. The Small Business Administration (SBA) also helps businesses understand how to comply with the ADA, and they have offices throughout Wisconsin.

ADA Issues Checklist:

1. Consider whether the food service operation is accessible to individuals with a wide range of abilities. If it is not, create a plan to make it more accessible.
2. Contact the Small Business Administration and the Wisconsin Department of Human Rights for more information on whether the accessibility plan meets the law's requirements.

Further Resources on the ADA:

For more information on complying with the federal Americans with Disabilities Act, contact the U.S. Department of Justice at 800-514-0301 or download their ADA Guide for Small Businesses at <http://www.ada.gov/smbusgd.pdf>

For more information on Wisconsin's law regarding discrimination in places of public amusement, contact the Wisconsin Department of Workforce Development's Equal Rights Division at 608 266 6860.

Business Structure

Choosing the right business entity can help you achieve your risk management objectives as they diversify into value-added enterprises like food service. Across the United States, the majority of farmers organize their businesses as sole proprietorships or general partnerships. Although these entities are easy to establish and have fewer paperwork concerns, they come at a cost. The sole proprietorship and the general partnership both leave your personal assets available to satisfy a business judgment. For example, if a farmer with a sole proprietorship buys seed on credit and then fails to pay the bill, the seed company could demand both the farmer's business assets and personal assets to get paid back (assuming the seed company gets a successful legal judgment against the farmer). By contrast, the LLC and corporation business entity shield personal assets from business judgments.

The protection offered by LLCs and corporations are important but should not be overstated. In terms of risk management, insurance is far more important than establishing an LLC or a corporation. Even if you organized as an LLC or corporation, a disgruntled individual or creditor may still argue that you are personally liable for the judgment. If you have not followed best practices in managing the LLC or corporation (including keeping separate bank accounts, following established procedures, fully capitalizing the business, and more), the court may look right past the entity and take personal assets anyway. When it comes to creditors, many will require a personal guarantee before extending any credit to a farmer. An LLC or corporation provides no protection when a debt has been personally guaranteed. Lastly, some protections for personal assets are extended to the farmer, even those with sole proprietorships and partnerships, through the bankruptcy process. Some farmers see diminishing value in an LLC or corporation in comparison to the fee and accounting costs.

You should also note that business assets are always available to satisfy business liabilities. Creating an LLC won't protect farm items like tractors, planters, or washing equipment, as those items are clearly assets of the business. Successful creditors can get at those assets to satisfy debts.

Organizing as an LLC or corporation may be a smart move for many farmers starting a food service venture. An LLC or corporation is an excellent last line of

defense. For example, you may not have purchased the correct insurance policy or might have violated terms of the insurance policy, thus losing coverage. If you also lost the case in court, you could be at risk of losing personal assets. Further, separate entities can help manage risk in diverse enterprises. You can cordon off the risks of the food enterprise to the food enterprise's assets. As explained above, business assets are always available to satisfy judgments against the business. If you create a separate LLC for a food service venture, only the food service equipment will be available to satisfy the judgment (assuming, of course, that best business practices are followed). Starting an LLC or corporation is a straightforward procedure and is quite affordable in Wisconsin. The Wisconsin Department of Financial Institutions handles the paperwork for forming business entities.

If you choose to establish one or more LLCs or corporations, proper management of the entity is essential to maintain the entity's protections. The business should be sufficiently capitalized. You should maintain separate bank accounts and books for each entity. Negotiating, writing down, and following an operating agreement or bylaws establishes legitimacy as well. Keeping up-to-date with annual renewal paperwork is also important to keep the protections of the entity.

Business Structure Checklist:

1. Consider forming an LLC or corporation for the farm's food service operation to further insulate personal assets and farm assets from the food service operation's liabilities.
2. Farms organized as an LLC or corporation must adopt best practices to maintain the entity's protections.

Further Resources

A Wisconsin business entity is formed through the Wisconsin Department of Financial Institutions. Visit their website at www.wdfi.org.

Farm Commons Webinar: Sole Proprietorships, LLCs, S Corps, C Corps, and Coops: Which, Why, How, available at www.farmcommons.org

LLC Creation Checklist for a Wisconsin Farm Business, available at www.farmcommons.org

