

Come & Get It!

WHAT YOU NEED TO KNOW TO SERVE FOOD ON YOUR FARM

2nd
EDITION

WISCONSIN

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

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DO I NEED A LICENSE?

```

graph TD
    A["I want to host a  
POTLUCK"] -- N --> B["I want to feed my  
friends and family"]
    A -- Y --> C((did guests bring  
"ready to serve"  
homemade dishes to share?))
    C -- Y --> D[PROBABLY NOT]
    B -- N --> E[ ]
    B -- Y --> F((did you tell ONLY these people they could come?))
    F -- whole other issue! --> G[ ]
    F -- not really --> H((are you REALLY close friends? or...))
    H -- Y --> I((are you REALLY related to them?))
    I -- Y --> D
    I -- not really --> J((did you put up a flier, post it to social media or otherwise blab about it?))
    H -- not really --> J
    J -- nope --> D
    J -- sorta --> K[ ]
    
```

The flowchart "POTLUCK" provides a systematic approach to deciding whether to host or attend a potluck. It begins by asking if the user wants to host. If yes, it checks if guests will bring ready-to-serve homemade dishes. If no, it asks if the user wants to feed their friends and family. If yes, it checks if they've told only relevant people they can come. If not, it asks if they are really close friends or related. If yes to either, it checks if they're really related. If no to both, it asks if they've posted a flier or blabbed about it. The final outcome is either "PROBABLY NOT" (warning of food poisoning and liability insurance) or "whole other issue!".

**you STILL
need a license**

PROBABLY NOT

But, if you think they will sue you if they get food poisoning... you might want some liability insurance too.

did guests bring "ready to serve" homemade dishes to share?

are you REALLY close friends? or...

are you REALLY related to them?

did you tell ONLY these people they could come?

did you put up a flier, post it to social media or otherwise blab about it?

Y

Y

Y

not really

not really

nope

sorta

whole other issue!

are you thinking about the following menu items?

how about

Wood Fired Pizza Y

OR

Pancake Breakfast Y

OR

Fancy Schmancy Dinner Y

OR

Coffee and Pie Y

OR

Soda and Peanuts Y

YES!

**you need
a license**

MAYBE - MAYBE NOT
but... how is your "on-farm food" experience any different than going to a gas station?

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. Providing a meal on your farm may boost your community image and bottom line. Along with the benefits of such an endeavor come legal risk, however, and farmers will benefit from analyzing the legal aspects of serving food.

Consumer safety has been compromised in the past, and in response 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 consume has been produced in a manner that meets specific standards.

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

The increased public trust does come at some cost to

those preparing the food. Those serving food to the public must spend time understanding and complying with detailed rules and regulations and, in many instances, must pay specific licensing fees in order to serve food legally.

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.)

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. At the risk of over-generalizing, any time 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 rule. The rules are complex and depend on very precise circumstances. Farmers should read this entire

section rather than just individual exemptions to get the full picture.

Specific examples and detailed questions can help illuminate exactly when a farm will need a license. Even after reading this section, some farmers will be disappointed at the lack of clarity. Farmers are very innovative and the law does not neatly and easily address every unique way that farmers are bringing food to guests. Inspection agents, attorneys, and farmers all find themselves scratching their heads from time to time!

Innovation is exciting, but it also brings risks. If, after reading this section, a farmer is still uncertain whether his or her event will require a license, the safest bet is to assume a license is needed. Farmers should start a conversation with their local health inspector as soon as possible.

EXEMPTION 1: Potluck Events

Hosting a potluck is perhaps the easiest way for farmers to create a community food event 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. Farmers need to meet specific conditions.

First, farmers should make certain their potluck events are free to attend and that no one receives compensation for any of the food they provide. Fortunately, potlucks often already follow these guidelines. Churches and social organizations are the most likely organizations to hold potlucks. The law recognizes this tradition by giving religious and social organizations special latitude. Occasionally, a farm may meet this definition if the farm is organized as a nonprofit, sponsored by a nonprofit, or sometimes if it is a Community Supported Agriculture farm where members gather together for the social mission of supporting sustainable agriculture and a specific farm. The laws around potlucks were not written with CSA in mind and it's not entirely clear if and when a CSA farm would meet the social mission obligation.

Farms organized as a nonprofit or with a social mission may host potlucks anytime and for any reason, so long as those attending the event prepare the food.

Farms organized as a for-profit business and without a defined social mission like a CSA should be a bit more conservative when hosting potlucks. For the best chance of avoiding the need for a license, farmers should host

their potluck in conjunction with a celebratory event like an anniversary or harvest party.

Farms wishing to host a potluck “just because” should take an extra risk management step. If there is no broader celebratory event, farmers should limit themselves 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 farmers looking to maximize community spirit and minimize effort, anyway!

Takeaway Point: If a for-profit farm hosts a potluck as part of a celebratory event or only provides 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, farmers 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 farmers should avoid the temptation to make assumptions without asking their local inspector for clarification. Farmers may also serve candies and pastry items such as cookies, muffins, or crackers. However, the pastry items may not include anything that requires refrigeration. For example, a farm could not serve pumpkin pie, lemon tarts, cake with a whipped topping, or anything else that will go bad at room temperature. This exemption only attaches to free items. If the farm sold these items, the farm would need a retail establishment license.

Takeaway Point: If a farm gives 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 begin this chapter by stating that anytime farmers prepare and make food available, they 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?

The difference is twofold. An autumn harvest party is likely a business event centered on the farm as a business, and is open to the public. 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. For farms where personal and business activities merge seamlessly and formal invitations are a thing of the past, the distinction can be difficult to draw.

The distinction between a business and personal event is based on the intent of the event. 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 public can attend even if they don't.

The distinction between a public and private event is somewhat intuitive. 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. A person waits for some form of invitation before attending a personal celebration.

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 three or fewer times in a calendar year, a license is not required. Farms should be cautious about interpreting the definition of an organization too broadly. 4-H groups, Extension, and incorporated nonprofit entities are clearly organizations. Farmers should be cautious about assuming this exemption will extend to "organizations" such as dinner clubs or CSAs organized by the farmer; read the next section in its entirety for more context.

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 the farm itself, the farm must rely on another exemption, such as the one for coffee and pastries above.

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, the farmer 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 moral up to three times in a twelve-month period before the food must be prepared under a license. (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 defined by law as employees. See Farm Commons' webinar on farm volunteers for more information.) Some farmers might want to host daily meals or snacks for

volunteers and employees. In that case, licensing rules would likely apply.

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 the farm only accepts donations or gives away meals for free?

Asking for donations rather than charging a set amount does not make the event exempt from licensing. If a farm is serving food (other than free coffee and cookies in exemption 2 above) to the public, the licensing process applies. The farm may not need to secure a license if one of the exemptions above apply; the point is that the farm cannot assume the licensing process does not apply if 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 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 a farm sells CSA memberships in the spring and then hosts a members-only dinner in the fall. That event isn't open to the public because only members can attend, right? The farmer 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. But on the other hand, if anyone can join the CSA, the CSA is large, or members are still quite anonymous, there's no guarantee in the law that the licensing obligations do not apply to this kind of a situation. A fraternal organization is an organization that recruits members around a common purpose, like the Kiwanis Club or Rotary Club. Because this specific allowance for a fraternal organization hasn't been applied to a CSA specifically, no one knows exactly how a court would interpret it.

For the time being, individuals at the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) 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 interpretations of agency personnel are important but do not have the force of law. A court or higher authority could still find that a license is required according to the letter of the law. If farmers wish to minimize their risk as much as possible, they 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 gets approval for their plan at least every year.

What if the farm organizes a dinner club and sells admission or membership before a meal?

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 getting 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 less than four times annually. But, 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 to farmers 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, a farmer is uncertain whether his or her event will require a license, farmers should start a conversation with their local health department inspector as soon as possible for further information. The next sections discuss the food safety 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 a few government agencies involved in licensing food businesses. Figuring out what license you need and who to get it from takes some patience and diligence.

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.

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. Farmers can help themselves by reading this guide carefully, reviewing the Wisconsin Food Code, and exploring the resources available from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) on food service licensing. Farmers may also need to help educate the inspector who works with the farmer. 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 partner for any farmer pursuing food service. Inspectors see their primary task as education; they wish to help food entrepreneurs understand and meet the regulations. Food safety outbreaks are the real enemy, not inspectors. Inspectors are partners, even though they may need to enforce rules when violations occur.

Farmers should plan to be persistent and assertive, while as helpful as possible, as they work with local inspectors to license an on-farm food service operation. If a farmer finds that an individual inspector is not responsive to the concerns or requests for clarification, the farmer is 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).

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 a farmer's 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, farmers at the beginning of this process should establish exactly what they 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

https://datcp.wi.gov/Pages/Programs_Services/FoodCode.aspx

Restaurant Licensing

https://datcp.wi.gov/Pages/Programs_Services/RestaurantsCatering.aspx

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. Farmers certainly do not have to read the entire Food Code or attempt to understand each

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, https://datcp.wi.gov/Pages/Programs_Services/foodmanager.aspx

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. The Food Code will prohibit any food from being prepared in a home kitchen.

To find the code, search on the Internet for "Wisconsin Food Code." The Wisconsin Department of Agriculture, Trade and Consumer Protection offers a link at their website as well.

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 the grower or may be grown on the farm. 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. A farmer cannot use home-processed pickles or jams in his or her food service operation.

It may be helpful to think about the farm operation as a separate business from the 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.

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

Farmers who cannot, or prefer not to, use municipal or bottled water may be able to use their 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 the farm serves food.

If the farm serves 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. Farmers needing approval as a transient non-community well should begin the process well ahead of time. Farmers can expect that the individual conducting the food license inspection will ask about water supplies. If the right paperwork isn’t in place, the farm’s food service operation may be seriously delayed or in jeopardy altogether.

If fewer than 25 people are served or the farm serves food for less than 60 days in the year, the well must meet private well standards. The DNR guide titled, “You and Your Well” will help farmers understand safe well construction and maintenance. Farmers should work with their inspector or agency staff well ahead of time to make sure they will meet the requirements. Farmers on

private wells 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:
<https://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?

Farmers who are comfortable with the threshold requirements for food service can move on to exploring the various food service license requirements. Every farmer who operates a food service venture for the public 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 one’s 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, entrepreneurs 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. Smaller or temporary operations still need to adhere to high standards for food safety 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. Food service license categories are not arranged according to goals. Instead, they are grouped according to the frequency of operation and the type of product served. Farmers will need to determine how different license categories could mesh with their business goals.

Focusing on establishing a menu at the beginning will reduce time spent navigating the license process. The specific demands in terms of equipment, processes, recordkeeping, and more depend on the menu items. 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 mean 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 seating capacity of 50 or more, a drive-through window, delivery service, cooling or reheating potentially hazardous foods, transporting foods between prep and serving, and 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.

Farmers who serve a menu of pre-prepared items such as grilled hot dogs and packaged cookies will have fewer equipment, process, and serving requirements than items prepared from scratch. Farmers dedicated to making dishes from raw ingredients should be prepared for a longer list of obligations, regardless of the license type. For example, a farmer who serves apple pie made from scratch at a few events under a *Temporary License* will have to follow equipment and service standards comparable to those for a farmer who serves from-scratch apple pie every day of the year under a regular restaurant license. However, if the farmer who serves pie occasionally is willing to serve a commercially made pre-cooked pie, the farmer will have fewer equipment and food handling requirements.

Farmers should consider the farm's 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. This is intended to help farmers determine if the venture is a possibility within the farmer's capital resources and farm situation. Farmers will still need to contact the appropriate regulatory agency and speak directly with an inspector to determine precisely what is required.

The Farmer's 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 Agriculture, Trade and Consumer Protection refers to it as the Temporary Restaurant 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*.

The details of this license are implemented somewhat more consistently across the state. With a *Temporary License* a farmer can serve food at a single event for up to 14 consecutive or non-consecutive days. For example, farmer could host a weeklong harvest festival with a dinner event each evening. These are exactly the situations this permit was designed to accommodate.

When following the checklist for getting a *Temporary License* below, farmers should be thorough in the first few steps: connecting with the right licensing agency and asking for details on their specific procedures and rules.

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 farmers aren't familiar with their obligations. Although a roof and sidewalls aren't required for serving food, 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) as well. 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. Also, if a farmer is 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. Some licensing inspectors may also require that the food not be located within 100 feet of a barn, animal enclosure, or other source of odors or flies. For many more details, farmers should read the Wisconsin Food Code Fact Sheet: Temporary Food Service Guidelines.

The *Temporary License* also requires certain infrastructure standards. If a barn does not have the electrical capacity to operate cooking equipment safely, an electrical fire could result. To prevent this, the *Temporary License* may ask about the site's facilities, including electrical capacity and other infrastructure standards.

To receive a *Temporary License*, applicants must describe the food served and the equipment, service ware, and facilities used to serve it. Food preparation and serving procedures will likely receive the most focus out of the entire application. Agents and inspectors will want to know exactly how applicants plan to hold and dispense food, as well as how utensils and hands will be washed. All food preparation must occur either at the special event food stand or in another licensed facility (never in a home kitchen, as discussed in the threshold requirements). All food must be held, transported and served in accordance with the Wisconsin Food Code. 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: Temporary Food Service Guidelines and speak with an inspector about the full obligations for a *Temporary License*.

Influence of the Menu

The menu will be the single most important element of any farmer's process to receive a *Temporary License*. If a farmer is serving a shelf-stable, prepared food item, little is needed to maintain the item's safety. But, if a farmer is 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. Making a potentially hazardous food product such as a custard pie—which pumpkin pie is ~ increases the facilities

and procedures requirements associated with the license. 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.

That being said, an inspector will naturally allow variation where the basic infrastructure is in place. Farmers need to be clear about their menu categories when communicating with inspectors; in turn, farmers need to be sure they understand the limits of their facilities when planning a flexible menu.

Process Overview

Unlike the process for receiving other food establishment licenses, the *Temporary License* does not require individuals to first submit a plan before submitting an application. Instead, individuals 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.

Farmers may want to consider the *Temporary License*'s fee structure before setting dates if the farm plans to hold multiple events. All *Temporary Licenses* expire on June 30th. The license fee is not prorated, so if a farm hosts one event on June 30th and a second event on July 1st, the farm will need two different licenses with two separate and additional license fees. If the farm plans all event dates for either before or after June 30th, just one fee will be required. Alternatively, some jurisdictions will issue a 15-month license beginning in April. Farmers should check with their local licensing authority for specific details.

Temporary License Process Overview:

- 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. The Wisconsin DATCP publishes a map identifying whether the state or a local health department performs licensing. Where local jurisdictions perform the licensing, farmers may call the Wisconsin DATCP at 608-224-4923 or email the licensing specialist at datcpdfslicensing@wi.gov to ask for the appropriate licensing authority.

- *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.
- *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 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 the Wisconsin Food Code Fact Sheet: Temporary Food Service Guidelines for guidance in assembling a plan that will meet the requirements.
- *Submit the application with the appropriate fee.* Different licensing authorities may charge different fees for the license, or they may assess late fees and expedited processing fees. Every Temporary / Transient License expires on June 30th of each year. If the farm is planning at least two event dates that fall before and after June 30th, the farm may need to file two applications with two fees.
- *Receive the license.* If the application meets the requirements, a license will be issued.
- *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.

Find Your Inspector

Wisconsin DATCP map: <https://datcp.wi.gov/Documents/CountyInspectionMap.pdf>

The Farmer's 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 the food business to handle 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 a Restaurant

For example, if a farmer wants 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, or 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 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. Farmers 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, the farmer 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 farm's infrastructure, farmers may still need to work with regulatory agencies to meet the license requirements.

Although the farmer may be able to offload the lion's share of duties related to the license, all the legal issues detailed in Chapter 4 may still apply when working with caterers and food trucks.

Partnering Process Overview:

1. *Communicate with the caterer or food truck.* Discuss where food prep 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 prep 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.*

The Farmer's 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 jams, salsas, and baked goods on the farm under a *Retail Food Establishment License* but would like to start serving sandwiches to order.
- Opening a retail store to sell farm products but wish to start serving 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*, which is also administered through the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). *Retail Food Establishment Licenses* are not explored in this guide.

If a farm already has a *Retail Food Establishment License*, a new license is not needed. The farmer will contact their current inspector to discuss what needs to be done to add food service under their existing license. If the retail operation is currently very limited; for example, selling only packaged foods, the facility upgrades needed

for food service may be significant. However, if the retail operation is already equipped for processing and packaging foods like salad mixes, or doing repackaging of bulk items, or selling dairy products; much of the equipment needed for food service may already be in place. It all depends on what the farm is currently doing under its retail license.

If a farm is still in the planning stages for a retail operation, the farmer should contact the inspector he or she is 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, the farmer might need to pursue a *Retail Food Establishment License*. If food and beverage service sales are more than half of total sales, the farmer may need a restaurant 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.

If you already have or are considering getting a *Retail Food Establishment License* and want to add food service you should:

1. Call your local inspector to ask how adding food service under your existing or planned *Retail Food Establishment License* will affect your plans.

Find your local 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

The Farmer's Goal - Example 4

I want to serve food to guests fairly regularly – more than the 14 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. There may be opportunities to showcase my farm's products at festivals and other events in nearby towns, in addition to bringing people out to the farm. Which license is the right fit for me?

Answer:

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

Similar examples:

- Using a mobile food truck and partnering with a local hospital to offer weekly picnic lunches to employees and patient families on the hospital campus, using the farm's produce during the growing season.
- Building a mobile, outdoor pizza oven and baking pizzas both at the farm and at weekend open-air concerts in the neighboring town.

Mobile Restaurant License Basics

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 discusses 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 equipment 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.

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

Mobile Food Service and Mobile Retail Food Establishments
Plan Review Components for Operators
<https://datcp.wi.gov/Documents/mobilesplanreview.pdf>

Mobile Food Cart, Public Health Madison & Dane County
<http://www.publichealthmdc.com/environmental-health/licensing-permits/retail-food-establishment-licensing/mobile-food>

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.

Reviewing the Plan

Farmers considering any remodeling or construction for a mobile food unit would be wise to get approval from their 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 the farmer money in the end. If an inspector won't approve the mobile food unit as built, the farmer will have to modify it before a license will be awarded.

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 to modify equipment without compromising sanitation should ask their inspectors about a variance.

The application for a mobile food unit can be lengthy and applicants will want to allow plenty of time to work with their 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 employees accessing 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 food 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.

For more information on preparing a complete mobile food unit application, farmers should review Wisconsin Food Code Fact Sheet #34 “Mobile Food Service and Mobile Retail Food Establishments: Plan Review Components for Operators.” Agency resources such as Public Health – Madison & Dane County’s “Mobile Food Establishment Plan Review Guide” may be helpful. Anyone outside Madison and Dane County should be cautious about relying on anything in the 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 are trained in food safety practices. The manager or operator of a mobile food unit must have a Certified Food Manager’s Certificate. A Certified Food Manager’s Certificate is awarded after the manager or operator submits an application with an official certificate stating that the person passed an approved course. Four companies currently offer approved manager certification courses. In the case of a farmer-operated mobile food unit, the farmer would need to receive the certification within 6 months and have passed an exam within the first 3 months.

More information about the manager certification courses and the *Certified Food Manager’s Certificate* is available on the DATCP website at https://datcp.wi.gov/Pages/Programs_Services/foodmanager.aspx.

Zoning

Operators of mobile restaurants, whether food trucks or trailers, need to be aware of zoning restrictions in areas where they may want to park and serve food. Some local jurisdictions have limitations on where mobile restaurants can locate, or for how long, or how often. Zoning regulations are separate from food safety regulations, and zoning permits are typically handled by a different local agency than food licensing. Checking with the local zoning authority in advance of a planned event and getting the correct permits can help you avoid the unpleasant surprise of a cease and desist order.

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 agency. The Wisconsin DATCP publishes a map identifying whether the state or a local health department performs licensing. Farmers may call the Wisconsin DATCP at 608-224-4923 or email the licensing specialist at datcpdfslicensing@wi.gov to ask for the appropriate licensing authority.
2. *Contact the regulatory agency about the plan review process and application.* Contact the appropriate licensing authority anywhere from one month for a simple push cart to six months for a food truck and ask about their plan review process and application.

Ask to be put in touch with the inspector who will handle your application. Request any resources the agency publishes for Mobile Restaurants such as brochures or checklists.

3. *Complete all elements of the plan review and 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 electrician, plumber or architect may be necessary. 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. A *Mobile Restaurant License* may cost between \$500 and \$2500. *Mobile Restaurant Licenses* expire on June 30th of each year and a renewal application must be submitted annually.
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 mobile food unit meets the license obligations.
7. *Receive the license.* After a successful pre-inspection, the license will be issued.
8. *Check with local zoning* about any needed permitting for the mobile unit.
9. *Begin operations.* After receiving the license, the mobile food unit may be operated.
10. *Get a Certified Food Manager's Certificate.* Within six months of beginning operations, post a *Certified Food Manager's Certificate* on the unit.

The Farmer's 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 food 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 foods prepared on-site.

Restaurant License

If your vision includes regular food service of more than 14 consecutive or 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, farmers will want to make certain that their facility will meet more than just food safety standards.

Building a new restaurant facility or a remodeling

an existing building will likely require a building permit from the local zoning authority, which means complying with the local zoning ordinance. Note local zoning situations can vary widely and will need to be researched. In addition, the blueprints must accommodate all relevant fire, plumbing, and electrical codes before construction may begin. Farmers may find it a bit challenging to meet some of the plumbing, fire code, and water source requirements for a farm kitchen, especially if they 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 developing 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 detailed orientation and engineering skills required. Remember, farmers can always work with a professional who can efficiently design plans that will meet with inspectors' approval.

Considering the wide variety of menu items farmers may want to serve and the spectrum of existing resources on many farms, it's difficult to say exactly what a farm will need to install to get the license. The more menu flexibility that a farm wishes 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. 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 as well. 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: seating capacity of 50 or more, a drive through window, delivery service, cooling or reheating potentially hazardous foods, transporting foods between prep and serving, and banquet facilities.
- An operation with 5 or more points is considered complex, the highest classification.

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 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. Farmers 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, farmers 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, which will then forward it to the Wisconsin DATCP with a recommendation that it be approved or disapproved. Because the local inspection agency can make the recommendation, farmers 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 for storage of raw

produce, 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.

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. The farmer will need to know what he or she intends 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 think they should 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 a farmer has a good idea of what will be served, when, and to how many individuals, a conversation with the correct licensing authority will identify the necessary equipment and space needs.

The *Restaurant License* process is quite similar to a *Mobile Restaurant License*. A farmer 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 Certificate*. The required personnel must simply post the exam certificate, taken within the past 5 years, for review by inspection staff. Small operators must post the course completion certificate

More information about the manager certification courses and the *Certified Food Manager's License* is available on the DATCP website at https://datcp.wi.gov/Pages/Programs_Services/foodmanager.aspx.

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. The Wisconsin DATCP publishes a map identifying whether the state or a local health department performs licensing. Farmers may call the Wisconsin DATCP at 608-224-4923 or email the licensing specialist at datcpdfslicensing@wi.gov to ask for the appropriate licensing authority.*
2. *Contact the regulatory agency about the plan review process and application. Contact the appropriate licensing authority and ask about their plan review process and application at least 3-6 months before the target opening date. Ask to be put in touch with the inspector who will handle your application. Request any resources the agency publishes for Restaurants such as brochures or checklists.*
3. *Complete all elements of the plan review and 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. *Submit the application with the appropriate fee.*
Different licensing authorities may charge different fees that may vary according to the complexity of the operation. A *Restaurant License* may cost from \$500 to more than \$1000.
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 Certificate and post per regulations.* in the establishment.

The Farmer's 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 application 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.

Chapter 2

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.

Variances

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