



FARM COMMONS

Food Safety Module:

Legal Curricula for Beginning
Sustainable Farmer Education

| www.farmcommons.org

This resource is provided for educational and informational purposes only and does not constitute the rendering of legal counseling or other professional services. No attorney–client relationship is created, nor is there any offer to provide legal services by the distribution of this publication. Always consult an attorney regarding a specific situation.

TABLE OF CONTENTS

Objectives	6-3
Information Outline	
Injuries to People	6-4
Contract Damages	6-7
Recalls	6-10
Regulatory Violations	6-11
Slides	6-13
Video	6-18
Activity	6-20
Discussion	6-27
Further Resources	6-33

Objectives for the Food Safety module

Beginning farmers should know the following:

1. The basis for liability from a food safety outbreak is negligence, and negligence is difficult to define precisely
2. Along with high production standards, insurance is the best risk management strategy against the legal ramifications of a food safety incident
3. Indemnification clauses and contract terms can dramatically increase the financial consequences of a food safety incident
4. Recalling potentially contaminated product may be a wise legal strategy and authorities may compel it
5. Failing to follow food production regulations can result in fines

Beginning farmers should be able to do the following:

1. Look up product-specific regulations
2. Purchase the right insurance policy for the food safety risks they wish to cover

Injuries to People

“I might be sued if someone gets sick.”

This is the first thing that comes to mind when farmers think about the legal implications of a food safety incident. In the legal lingo, this type of case is often called a “personal injury” case. If folks have seen billboards advertising the services of lawyers by screaming out the phrase, “Have you been injured?” that’s the kind of lawsuit advertised. Their clients may have slipped on an icy sidewalk, suffered an auto accident, or lost a finger in a farm implement, or many other types of injuries.

Perhaps because of those dramatic advertisements and the media stories of million-dollar pay-outs, personal injury lawsuits (also called “tort claims”) don’t have the finest reputation. That may not be entirely deserved. The premise behind a personal injury lawsuit is this: if one person does something wrong and hurts a second person, the first person should compensate the injured person for their damages. The premise seems fair. The same applies to property damage. If we buy a toaster that malfunctions and burns our house down, we’d like the toaster manufacturer to pay us back for our loss.

The concept of negligence in personal injury suits

Of course, not every person who suffers an injury gets money for it. Although the line between eating contaminated food and becoming sick may be straightforward, the line between getting sick and winning a lawsuit against the source is not. In the case of food poisoning, the source may have to be at fault before the court will order them to pay up. Fault is determined in many different ways. For our purposes, we’ll be focusing on just one way that farmers might find themselves at fault: negligence. Negligence is a legal concept that basically says this: If you act with less care than the average person in your circumstances would act, then you are negligent. Of course, that begs the question, “How does an average person act in these circumstances?” Untold time and money is spent sorting out the answer and in determining whether the individual in question met that standard. When a negligence lawsuit ends in favor of the plaintiff, the injured person may receive money for their medical bills, lost wages, future loss of earning potential, among other losses.

For the sake of space, our summary is ridiculously simple. In reality, the details of a negligence lawsuit are incredibly complex. We might need to assess the negligence of the injured person. Did they contribute to their own injury? This might lower the damages awarded, along with many other contingencies. Negligence isn't the only way a farmer might find him or herself at fault. It's possible in some cases that simply having sold a contaminated product is enough to bear responsibility for the injury that follows. The point is simply this: A personal injury lawsuit is a risk that all farmers face, and it's a complex, unpredictable risk. If all this sounds truly fascinating, you might want to think about a career in law as well as farming! But, if it's not your cup of tea, we have other options.

Role of Insurance in managing the risk of personal injury suits

When it comes to personal liability suits, the best risk management option is insurance (assuming farmers are following the best food safety practices already). Insurance is important for two reasons. First, the insurance company will provide an attorney to defend the insured person or business against the claim. The attorney will know all the ins and outs of personal liability and should provide expert representation. Second, if the farmer is at fault, the insurance company should pay the resulting liability up to the coverage limit.

With the knowledge that insurance companies defend lawsuits and pay on successful covered claims, the whole ordeal of buying insurance makes a little more sense. Insurance agents make inspections to verify that unreasonable risks don't exist on the property. The policy may also impose requirements on insured businesses to protect the company's ability to win cases. On the other hand, this is also why some farmers have trouble getting insurance at all. If a company thinks a certain type of operation is more risky (as happens with some value-added and agri-tourism operations), the company may refuse coverage. The farmer may be stuck without any insurance to buy. It's cold comfort, but it helps a little to realize that the cost or unavailability of insurance may be a proxy for how legally risky the operation is viewed to be.

Buying the right policy to protect from personal injury lawsuits

All this is very useful information, but most farmers already have insurance, right? Can we move on? Not so fast. Each farmer needs to make certain that their specific policy covers the contamination risks experienced by that farm. This isn't

as easy as it sounds and here's why. Most farmers carry liability insurance for the farm- it goes by the name "property and casualty insurance," "farm liability insurance," and a host of other names. Farm Commons tends to use the phrase "farm liability insurance" but differences abound. Basically, these policies cover damage to farm property from covered risks (fire, tornado, etc.) and injury to farm guests. However, the devil is in the details. Most farm liability policies will cover a food poisoning injury under select circumstances. Some policies only cover injuries that occur on the farm. This means if the contaminated product was purchased from a wholesaler, the farmer is not insured. Some policies cover food poisoning injury only if the contamination was the result of a fire, tornado, or other natural risk, but not farmer negligence. Farmers never intend to be negligent but accidents happen. An insurance policy that doesn't cover negligence has a significant gap. Generally speaking, farm liability coverage will not extend to contamination of value-added products or those occurring at an agri-tourism event.

Instead, many farms will need to modify the standard farm liability policy to address food safety incidences. A "business endorsement" may do the trick if the farm wants coverage for a small value-added operation or a few agritourism events. If the farm wants broader coverage, a commercial liability policy may be the best choice. Commercial policies provide coverage across many marketing channels- wholesale, value-added, processing, and direct-to-consumer- the latter three of which are not covered by farm policies. These are general guidelines only. In Farm Commons' experience, many policies are different. (And, some even contradict themselves as to whether food safety outbreaks are covered.)

The hard reality is that it can be difficult to determine if a specific insurance policy will cover a specific risk. Naturally, farmers might go straight to the source and read the policy document. But, this can be quite intimidating. The actual policy language may not have been delivered. Farmers may have to call the agent, who contacts the underwriter, and a long game of phone tag develops. Even after getting a copy of the policy, farmers may be stumped as to what it means. Many attorneys are stumped as to what insurance policies cover.

A shortcut is simply to ask the insurance agent whether specific risks are covered. Admittedly, this is not a bullet-proof strategy. The agent may not have an accurate impression of how the policy applies to a non-traditional farm operation. (In other

words, the agent might be wrong.) Finding an insurance agent familiar with diverse farms is an excellent first step to getting good coverage. As a secondary strategy, it's always a best practice to get things in writing. When talking with an insurance agent about whether a risk is covered (or when talking with a bank about a loan, a credit card company about a payment plan, or any other conversation with serious implications), create a paper trail. Communicating via email is one way to establish a written record. Where that isn't possible, an office log containing the time of the call, identity of the person called, and the content of the discussion can go a long way towards establishing potential recourse if you are misinformed.

Dealing with uninsurable situations

A second hard reality is that insurance may not be available for certain farms as discussed previously. If the insurance industry sees a specific practice or production method as exceptionally risky, they may refuse coverage. When one insurance company turns a farmer down, many others are likely to follow suit. This puts farmers in a very difficult position. In the short term, the best answer is to ask with other farmers for a reference to an amenable agent. When that comes up short, farmers may need to adapt their operation to become insurable. Over the long term, advocates and farmers need to work together to convince the insurance industry to cover more novel farm operations. It's a slow process, but hopefully worth it in the end.

Contract damages are owed

In the previous chapter, we talked about potential ramifications from customers who become ill as a result of contaminated produce. Although that is a common point of reference for food safety liability, it's not the only legal action that can result. Contract laws also play an important role in the legal effect of a food safety incident. We are going to discuss just two of the potential ways contracts can come into play: indemnification clauses and agreements to maintain specific standards.

Indemnification

Indemnification is a legal concept that basically means if Person A does something that harms Person B, Person A will pay Person B back for their damages. It's similar to the negligence concept discussed in the previous chapter. One big

difference centers on how a person becomes liable. Negligence relies on an implicit societal responsibility to meet unspoken but commonly accepted standards. For example, I can sue someone for negligence even though they never agreed to be responsible for their negligence. Society assumes we all have that responsibility. Indemnification is a contractual obligation. I am responsible to indemnify someone if I agreed to indemnify them. (Of course, there are always exceptions. In the interest of space, this is a basic distinction.)

Indemnification is a part of many business relationships. Folks all along the supply chain jockey to avoid indemnifying others while securing indemnification from others. When it comes to food, many people may become potentially responsible for a contaminated product- from producer to warehouse to distributor to retailer- so businesses are especially keen on protecting themselves. Businesses do this by requiring their business partners to sign an agreement with an indemnification provision. The indemnification provision may be restricted to specific circumstances (such as negligence of the farmer) or specific claims (such as personal injury lawsuits). Or, indemnification provisions may be very broad by covering all damages, lost sales, damage to reputation, and more.

Indemnification can quickly come into play during a food safety incident involving a grocery store or other retailer. A grocery store may suffer loss of sales from all products of the type (all spinach, or all apples) regardless of the source. The grocery store's reputation may be damaged. The store itself may be sued for negligence- perhaps for negligently working with a farmer who did not meet standard safety protocols. If the farmer agreed to indemnify for these damages, the farmer would then have to pay the grocery store back for all these things. Indemnification can pile up fast and put a farmer out of business in a hurry.

Managing the risks of indemnification

Fortunately, many insurance policies will cover liability incurred by indemnification of others. Commercial policies often provide this coverage. As always, though, the devil is in the details. The precise language of the insurance policy may limit the types of indemnification. Folks need to read both the insurance policy and the sales agreement closely to make sure the indemnification offered to the buyer is the type covered through the insurance policy.

Contract breach risks

When one party violates a term of a contract to which they have agreed, they have “breached” the contract. The other party can then bring a lawsuit to force the breaching party to pay for damages the non-breaching party suffered. Contract breach is another way farmers may end up with legal consequences from a food safety incident. By contrast, indemnification (discussed just prior to this section) is an example of becoming responsible by agreement without breaking the contract.

Write down the sales agreement

Contracts are incredibly flexible. The law gives contracting parties plenty of leeway to come to an agreement that works for them. Many buyers and sellers agree on which damages are available for specific breaches and describe the procedure for recovering from other parties. By writing it down ahead of time, folks know exactly what they agreed to do and how to handle problems. If the contract doesn't spell out everything, the court will rely on state law to fill in for missing details. Of course, that can be unpredictable. So, the best way to manage contracts and control breaches is to write a detailed sales agreement ahead of time. A good sales agreement clearly lays out responsibilities and a procedure for handling problems.

In terms of food safety, many sales agreements obligate farmers to adhere to specific food safety practices or standards. Buyers might want farmers to maintain GAP (Good Agricultural Practices) certification, buy specific levels of liability insurance, follow specific sanitation practices, offer broad indemnification, or even do vague things like follow the “highest” food safety practices. These provisions seem innocuous enough. Small breaches fly under the radar and no one cares. But, when bad things happen and bills start to pile up, everyone starts looking around for ways to reduce the damage. Even small breaches can end up leading to large damages. When things are already going wrong, farmers don't need yet another penalty because they didn't follow the terms of a contract. It's important to understand and follow the terms of any agreement.

Understand the contract terms

The reality is that from email services, to software, insurance, banking, health care, and nearly every other facet of life, we are presented with contracts that we have no opportunity to negotiate and must sign to utilize the service being offered. Despite their ubiquity, it's a mistake to assume these contracts aren't binding. A court will enforce many of these contracts. Even if the pages are filled with legal "boilerplate," we may be held to our agreement.

At the risk of stating the obvious, farmers should take some time to thoroughly review the terms of any important sales agreement. Even if it seems like an exercise in futility, farmers may have more opportunity to negotiate than they realize. Farmers have product that grocery stores and institutions want to purchase. Many buyers truly want to build effective relationships with farmers. Understanding shared responsibility for food safety is an important part of that relationship. If a farmer thinks proposed sales terms are unfair, farmers should feel comfortable bringing it to the buyer's attention. As with any negotiation, having an alternate proposal in one's back pocket can boost confidence and help everyone find a resolution, quickly.

Product is Recalled

When a food safety incident does occur, one of the primary ways to control the outbreak is to recall all the potentially affected products. An effective recall removes the product from the shelves and instructs those who purchased the affected product to throw it away. Naturally, this requires some form of an identification and tracking system. Especially when it comes to products with a long shelf life, an efficient tracking system is a legal necessity. Even if a recall isn't required, performing a voluntary recall may be the wisest decision. If a farmer does not take steps to control the outbreak and more people get sick, the farmer may appear more negligent. As we discuss above, being found legally negligent can require the farmer to pay extensive damages to the injured person and to indemnified parties.

The tracking should be narrow enough to order as narrow a recall as necessary. An ideal system would track product by location of harvest/production and date of harvest/processing. The tracking code would then be stamped on wrapping, bags or cases so consumers can check whether

their item is included. The ability to perform a recall effectively is a key way to manage the potential liability of a food safety outbreak.

Recalls are usually voluntary but can be required under some circumstances. As food safety incidences appear to become more serious around the country, federal and state governments are increasing their ability to mandate recalls of fresh fruits and vegetables. Even very small farmers who sell distribute their own product locally may be required to do a recall. If a farmer is required to perform a recall and cannot, several things may happen. The law may impose a fine. Or, the producer may be forced to destroy all products to be on the safe side.

Managing the financial risks of a recall

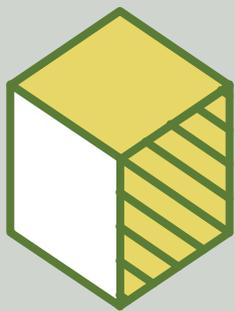
Recalls are generally very expensive to perform. The logistics of getting product off the shelves and communicating the recall to the public are very complicated. Aside from carrying out the recall itself, the farm suffers a loss of reputation, lost revenue from not being able to sell, and if the indemnification dominoes fall, the damage quickly escalates.

Insurance is available to protect against the expense of a recall. Generally, farm liability policies do not often cover the losses from performing a recall or losing revenue. Commercial policies are much more likely to cover the broad risks of a recall. However, even commercial policies may only address voluntary recalls and not government ordered ones. A full product liability policy covers the widest breadth of risk from a food safety incident. Many cover product recall expenses, lost revenue, and more. These policies can be quite expensive, though.

Regulatory Violations

This resource has addressed legal risks that are purely business-to-business or business-to-customer. However, there are avenues for government involvement in this kind of legal incident. If the farmer has not adhered to all applicable state and federal rules designed to protect food safety, the farmer may face an investigation and fines for any violations. Two Illinois resources outline the product-specific rules in detail: 1) the Illinois Stewardship Alliance provides an approachable overview of

product rules and 2) the Direct Farm Business Guide provides a detailed overview of state and federal obligations. Both are available online. Farmers should make sure to read these guides in detail before beginning production. Regulations may change at any time, and both resources are not updated immediately. As with any law, farmers should double check that the rule is up-to-date before relying on anything in either guide. State and federal agents are able to answer questions and help farmers identify their specific obligations if the regulations are unclear. Both resources contain contact information for state and federal regulatory agencies.



Food Safety Module Powerpoint Slides

These slides may be used as a template for a presentation on food safety liability for beginning farmers.

Injuries to People

- The person causing the injury may be liable if that person is “negligent”
 - Negligence is failing to be as careful as the average person would have been
 - Difficult to predict or measure
- Liability through negligence is complex

Injuries to People

- Insurance is the best risk management tool when it comes to personal injury lawsuits
 - Provides an attorney for defense
 - Pays resulting judgment, if lawsuit is successful
- Farm liability insurance is potentially good enough if the farm does not do value-added or agritourism
 - Commercial policy is an alternative

Liability via Contract

- Indemnification:
 - Agreeing to indemnify another party can cause huge financial losses from a food safety incident as effect snowballs
 - Insurance often covers indemnification damages, may require a written agreement

Liability via Contract

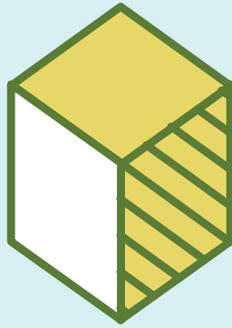
- Contract breach:
 - If a farmer fails to follow food safety practices that were required in a contract, the farmer may owe damages- often, the loss the other party suffers as a result
- Farmers should read the contract and negotiate as necessary to make sure each term is do-able

Product Recalls

- May be government-ordered or voluntary
- Necessary to protect public and avoid farmer negligence
- Insurance coverage may be available

Regulatory Violations

- Read and understand the product specific regulations
- May be federal and state rules
 - All rules must be followed; this means the most stringent rule is the most relevant

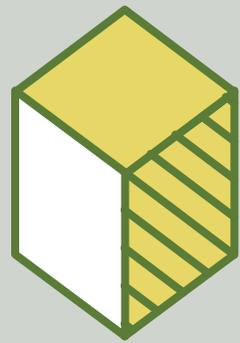


Food Safety Module Video

This video discusses the Food Safety Modernization Act and its implications for direct to consumer farmers.

Food Safety Modernization Act Video

[Follow this link](#) to a 26 minute video discussing the Food Safety Modernization Act (FSMA). This video segment will become obsolete as soon as the FDA publishes the final rules under the FSMA. But, until that time, this video explains the types of farms and operations that will need to make changes under the FSMA. Farm Commons will publish information on the exact contours of the regulation as soon as the final rule is published.



Food Safety Module Activity

This homework activity is designed to give farmers practice in reading regulations and applying the regulations to diverse farm situations.

Activity: Facilitator's Guide

Objective

Regulations can be very confusing. The language of the regulation may not reflect the way farmers think or speak about their operations. The regulations may draw a bright line between two situations that appear very similar to farmers. Adding to it, when both state and federal regulations apply, farmers have to consider both and comply with all the regulations. The situation becomes complex. Even where a regulation appears quite simple, the incredible diversity and innovation of farmers makes tough work of applying even a simple regulation to a variety of situations.

Illinois farmers have an advantage over many surrounding states because two organizations have already summarized the regulations for direct-to-consumer farmers. This activity asks beginning farmers to explore the resources. Naturally, the two resources take a different approach and the editors made different decisions about what items were most relevant. They are most useful together.

The objective of this activity is to give beginning farmers practice applying regulations to farm practices. Because regulatory violations can be financially devastating, not to mention harmful for the farmer's reputation, it's important that farmers become comfortable reading and understanding regulatory details.

This activity also demonstrates the inflexibility of regulations. The point isn't to convince farmers that the regulations are onerous, however. Rather, the objective is to help farmers see that a rule is based on a strict outline of facts and not on a subjective comparison of whether two situations embody the same level of safety or caution. A situation either satisfies the letter of the regulation or it doesn't. Whether the situation is "just as good" as another

situation is not relevant when determining if a license is needed.

Ways to use this activity

- **Homework:** This activity is easily a homework assignment. Beginning farmers can do the investigation on their own using the print resources provided in the Further Resources section. This allows each person to take the time and approach that works for the individual.
- **In-Class Activity:** Although less ideal, facilitators can convert this activity to an in-class event. It will likely work best as a quiz. The facilitator could allow 15 minutes or so to complete the quiz during the session.
- **Group Activity:** This specific activity may not be well suited to group work. It is reading-intensive and each individual may approach the process in a different way. If the group is tight knit and has similar learning styles, it may work well to ask small groups to work through the problem.
- **Connect it to policy:** On a personal level, Farm Commons feels it's important to connect the letter of the law to policy. The regulations are the way they are for a reason: policy makers thought it was a safe, reasonable way to protect the public while allowing farmers their enterprise. If anyone disagrees, they have the power to let their local and state governments know. These rules can be re-written at any time. When farmers understand what the rules are, they can be effective advocates for reasonable, safe regulations.

Facilitator's Answer Key

The following are potential responses to the activity questions.

1. You have a produce stand on your property and the neighbor asks if you will consider selling her eggs at your produce stand. She has 5 laying hens. Can you sell her eggs without a license? Can she sell her eggs at your stand without a license?

No. Illinois and federal law allow a farmer to sell only eggs from his or her own flock without a license. No, she can't sell them on

your site either- she can only sell them from her farm.

2. You are thinking of selling eggs from your own laying hens. You want to sell them at your produce stand and at the farmers' market. Can you sell at both those places without a license?

No. Illinois and federal law allow a farmer only to sell eggs at the place of production- the farm- without a license. Federal law does have a small allowance for the farmer to also sell at the farmer's off-site location such as a farmers' market. This is referred to as a "place of business away from the production site" in the direct farm business guide, but the actual regulations are more complex than the phrase implies. Regardless, farmers must follow all regulations. Since Illinois does not allow farmers' market sales without a permit, the federal allowance becomes irrelevant.

3. You decide to sell eggs only on your farm. You believe you don't need a license, but you aren't sure if you need to put a sticker with the "safe handling instructions" message reminding customers to cook the eggs thoroughly. You don't want the sticker. Do you have to put it on your egg cartons?

Yes, even if federal inspection isn't required, the safe handling instructions label is required.

4. You sell eggs only on your farm. A chef comes by and asks you if you'd be willing to increase production so he can reserve 10 dozen eggs per week, which he will pick up on his way into work. Can you do that without a license?

No. Illinois requires an egg license for sales made to anyone other than the consumer for use in the consumer's household. Selling eggs to an individual for use in the individual's business makes the farmer a "producer-dealer," and a producer dealer needs a license.

5. You sell eggs on your farm and customers are asking if you can start sorting eggs in sizes. Can you sort eggs by small, medium, large, and jumbo without getting an Illinois egg license?

No. Sorting eggs by size is grading, and a producer who grades eggs must have a license.

6. You decide to grade your eggs and sell them at the farmers' market with an Illinois egg license. You have 50 laying hens. What will the license cost and what do you need to show to be awarded the license?

Farmers with fewer than 3,000 hens may apply for a limited license at \$15 per year. The farmer will need to show that the facility keeps out rodents, is reasonably clean during the day, and is thoroughly cleaned at the end of the day. The farmer will also need to show that the eggs are kept in clean coolers maintained at 45 degrees or less. The farmer must have a warm water mechanical egg washer. The farm site will be inspected for these and other conditions before a license is granted.

Activity Handout: Deciphering Egg Regulations

Reading and deciphering regulations is tricky. Even when the regulation appears straightforward, all sorts of questions pop up as farmers try to apply the regulation to their specific circumstance. This activity gives you the chance to read the basic Illinois rules regarding egg sales and apply them to hypothetical situations. Two sources are recommended for reading. Both take a different approach and provide different levels of detail.

Read Section 2, Chapter 2 of the Illinois Direct Farm Business Guide and pages 18-19 of the Guide to Illinois Laws Governing Direct Farm Marketing. Focus on pages 111-115 of the Illinois Direct Farm Business Guide.

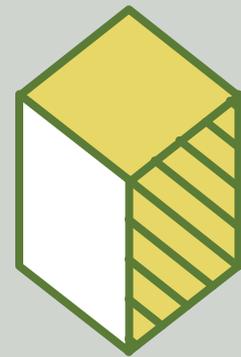
After reading the material, answer these questions:

1. You have a produce stand on your property and the neighbor asks if you will consider selling her eggs at your produce stand. She has 5 laying hens. Can you sell her eggs without a license? Can she sell her eggs at your stand without a license?
2. You are thinking of selling eggs from your own laying hens. You want to sell them at your produce stand and at the farmers' market. Can you sell at those places without a license?
3. You decide to sell eggs only on your farm. You believe you don't need a license, but you aren't sure if you need to put a sticker with the "safe handling instructions" message reminding customers to cook the eggs thoroughly. You don't want the sticker because you feel it implies your eggs are unsafe. Do you have to put it on your egg cartons?
4. You sell eggs only on your farm. A chef comes by and asks you if you'd be willing to increase production so he can reserve 10 dozen eggs per week, which

he will pick up on his way into work. Can you do that without a license?

5. You sell eggs on your farm and customers are asking if you can start sorting eggs in sizes. Can you sort eggs by small, medium, large, and jumbo without getting an Illinois egg license?

6. You decide to grade your eggs and sell them at the farmers' market with an Illinois egg license. You have 50 laying hens. What will the license cost and what do you need to show to be awarded the license?



Food Safety Module Discussion

The objective of this discussion is to acknowledge the sometimes antagonistic relationship between farmers and food safety regulators.

Discussion: Facilitator's Guide to Farmers and Food Safety Regulators

Objective

This curricula module does not go into extensive detail on exactly what farmers need to do to host food events or to produce product on their farm. There are a couple of reasons for this. These rules are incredibly complex and this curricula is not itself a comprehensive legal resource. Also, the application of the food safety rules to a specific farm is the purview of the inspector. Farmers should work directly with the local inspector to determine exactly what should be done. Reasonable inspectors may disagree on precisely how a farm must comply. Instead, this module sticks to identifying the legal nature of food safety liability. Hopefully, this will enrich farmers' perspectives as they work with local regulators.

Many of us in the direct-to-consumer farming community see an opposition between regulators and farmers. Stories about regulators shutting down farm operations cross email lists, coffee shops, and social media sites with outraged commentary. Like always, there are two sides to every story. Many farmers feel the rules are too stringent. But, the rules are the rules. In the middle of these two simple statements, there is much to discuss.

The objective of this discussion is to acknowledge and discuss the sometimes antagonistic relationship between farmers and food safety regulators.

Ways to use this activity

- This discussion is quite basic as it's just a news story and a few questions designed as food for thought. It's entirely open to the facilitator's preferences.

Facilitator's Discussion Points

The following are a few potential discussion points for facilitators.

1. How would you describe the perspective of the regulators? of the farmers?

From the regulator's perspective, serving food to the public requires a food service permit. The farmers agreed at first, but then did not meet the requirements to get the permit- the food wasn't at the proper temperature or properly labeled. Finding that the permit conditions weren't met, the farmers then argued that they didn't need a permit at all because the event wasn't public. From the regulator's perspective, selling tickets to eat on a farm is no different from selling a meal in a restaurant. If the rules apply to public food service establishments equally, no one should get an exemption simply because the diners are still willing to eat the food. Also from the regulator's perspective, pouring bleach on food that does not meet license requirements is a standard procedure in every similar instance around the country.

From the farmers' and author's perspective, this type of event isn't the same as a restaurant and even if the rules apply, the rules simply shouldn't be enforced in this situation. When the rules become out of date and fail to achieve their original intention, regulators owe it to the public to stop enforcing the rules. Rather than simply enforce against everyone, regulators should choose the most egregious violations to enforce. The farmers and author might also argue that working to change the system won't happen unless farmers can share their products with customers. Farmers have to create the experience first to motivate everyone to support their cause. Farmers and regulators may also disagree on the responsibility for a food safety incident. The author of the article suggests that diners are supposed to rely on their own discretion in determining whether food is safe to eat.

Discussion Handout: Farmers and Food Safety Regulators

Read the news article below is from the Las Vegas Sun, Saturday, November 12, 2011.

1. What are your initial thoughts on the news article?
2. How would you describe the perspective of the regulators? of the farmers?
3. Which of their perspectives is most persuasive to you and why?
4. What about the perspective of the diners? How would you describe them? Who do you think they would blame if they got sick?
5. How might this conflict be resolved over the long term?

J. Patrick Coolican:

Farm-to-table event turns sour when health inspector crashes party

By [J. Patrick Coolican](#) 

Saturday, Nov. 12, 2011 | 2 a.m.

They don't make it easy for those of us who believe in vigorous government, the kind that built the Interstate Highway System, put a man on the moon and invented the Internet.

By "they" I mean our public employees, who we want to believe in but who sometimes leave us shaking our heads.

The most recent example: [Quail Hollow Farm](#) in Overton had — or tried to have, anyway — a "farm-to-table" dinner last month. This is when a chef takes vegetables and freshly butchered meats and serves them up right there at the farm to fancy food types — "locavores" — who like their food really fresh. Sounds pretty great, right?

Well, someone at the [Southern Nevada Health District](#) saw an ad for the event and decided to get on the case.

The health department called farm owners Laura and Monte Bledsoe and said they'd need a special-use permit because it was a "public" event. They complied, or tried to at least.

The night of the event, the guests arrived at the farm, and so did the food inspector. Here were the issues, according to Laura Bledsoe: Some prepared food packages had no labels; some of the meat was not USDA certified; some food was prepared in advance off-site and not up to proper temperature; vegetables were declared unfit; and there were no receipts for food.

(Um, do you not get the whole farm-to-table thing?)

The Bledsoes asked the inspector if they could make the meal a private event, thereby eliminating the health department's jurisdiction. A church, for instance, can have a pancake breakfast for its congregants, without health department oversight. And for locavores, this meal was to be something like a religious experience.

Nope.

In the end, the health inspector demanded that bleach be poured on the food, including vegetables, to ensure it was not consumed. Bleach really ruins a meal, I gotta tell you.

Of course, the health department and its 50 inspectors do good work in a very challenging environment that includes more than 17,000 permitted food establishments in Clark County. Our own food critic John Curtas said, "I think they do a great job. They have a huge responsibility. If one buffet, one restaurant has an outbreak of food poisoning, and it gets to be national news, think of the impact on our economy."

Bledsoe said she understands the need for reasonable regulations to protect the public, but added that it seemed the health department was obsessed with shutting down the event. "There seemed to be no solution other than destroy food and destroy everything that had been done," she said.

I talked about the Quail Hollow incident with Susan LaBay, an environmental health supervisor with the district. She conceded the department hasn't inspected an event on a farm like this, but said, "We have to

6/13/2014

Farm-to-table event turns sour when health inspector crashes party - Las Vegas Sun News

apply the law equally.”

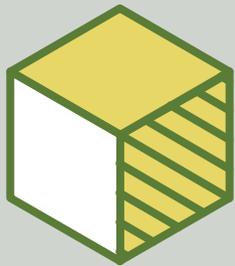
She said if there had been an incident of food-borne illness at the event, we'd be asking different questions, like, where were the regulators?

I, for one, wouldn't be asking that. If some gourmands go out to a farm and someone gets food poisoning, I'm pretty sure I know what the public reaction — including my own — would be: Too bad. You knew what you were getting yourself into. And that's that.

Strangely enough, LaBay acknowledged that farm-to-table meals will often be safer than a store-bought one, because fewer hands touching the food usually makes for a safer meal. And she said she's sympathetic to the idea of legislation that would help farmers host these events while still complying with the law. The problem is that the regulations were written for the era of industrial food production and often don't allow for freshly butchered meat, raw milk and homemade items like pickles.

Until the law is changed, LaBay said, “We don't have an option.”

Actually, though, they do. Just as prosecutors use discretion to push some cases harder than others, the department could have seen the ad for the uppity food event, pushed it aside and moved on to the next dodgy Chinese, Mexican or burger joint.



Food Safety Module Further Resources

Food Safety Further Resources

Guide to Illinois Laws Governing Direct Farm Marketing:
For farmers and other food entrepreneurs

This guide is developed and distributed by the Illinois Stewardship Alliance. It summarizes a wide variety of legal issues faced by the direct-to-consumer farm operation. This resource is more concise than the direct farm business guide below.

www.ilstewards.org

Illinois Direct Farm Business Guide

The Illinois Direct Farm Business Guide is a comprehensive resource discussing the laws that affect farms who sell directly to consumers. The second half of the guide goes into extensive detail on the Illinois and federal laws affecting farmers. The chapters discuss dairy, honey and maple syrup, eggs, fruit and vegetables, grains, and meat and poultry.

www.directfarmbusiness.org

Farmers' Guide to Reducing the Legal Risks of a Food Safety Incident

Food sold directly from the farmer to consumers may be safer for many reasons. But, bad things happen to even the best farmers. When it comes to food safety, even a single mistake can have devastating consequences. Although growing safe food is the number one risk prevention strategy, understanding the legal aspects of food safety are also important. This guide will help farmers understand some of the many risks that exist, how to reduce the likelihood of the risks materializing, and how to position the farm for recovery if the risks do materialize. After reading this guide, farmers will know how personal injury lawsuits function, how contracts can create additional liability, the legal aspects of a recall, and the potential for government involvement in a food safety outbreak. Action steps conclude each section, enabling the farmer to move forward with protecting the farm.

www.farmcommons.org

Food Safety Liability and Regulations for the Farmer Webinar

We've been hearing all about the upcoming regulations under the Food Safety Modernization Act. But, as important as it is, farm liability for food safety goes beyond this new law. Learn all the latest on how farms can comply with the FSMA as it goes into effect and how they can protect their operations from liability in general.

www.farmcommons.org

**End of Food
Safety Module**
