



FARM COMMONS

# Adding Value to Farm Products: Getting the Legal Ducks in a Row

LAST UPDATED:  
May 7, 2014

FIRST PUBLISHED:  
May 7, 2014

**By: Rachel Armstrong**

Executive Director and Attorney, Farm Commons

[rachel@farmcommons.org](mailto:rachel@farmcommons.org)

[www.farmcommons.org](http://www.farmcommons.org)

This resource is provided by Farm Commons 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 your specific situation.

## TABLE OF CONTENTS

<b>Welcome</b>	<b>1</b>
<b>Checklist of Considerations</b>	
How do food processing-specific regulations, including cottage food regulations, apply to my value-added product?	<b>6</b>
How do federal labeling laws apply to my value-added product, including those produced under state cottage food laws?	<b>11</b>
What if someone gets sick or is injured because of my product? What might happen?	<b>15</b>
Should I be concerned about using my home or farm for my value-added venture, cottage food or otherwise?	<b>18</b>
Are there any concerns with using my current farm employees in the value-added operation?	<b>21</b>
Do I need to collect taxes on value-added product sales?	<b>24</b>



## Welcome

Congratulations on exploring a new idea for your farm. From fermented products, to dried herbs, jams, cheese, and jerky, farmers are creating an incredible array of value-added products. These products can increase farm profitability while creating new products that contribute to a strong local food system- to say nothing of the potential economic development it provides.

After reading this guide, farmers should be able to recognize the typical legal risks that come with adding value to farm products.

But at the same time, the decision to add a value-added line is a serious one, and farmers need to consider the legal effects. But before anyone gets too worried, the legal aspects aren't necessarily a hindrance; they simply require risk management. Farmers are no strangers to assessing risk, so the process should be a familiar one!

After reading this guide, farmers should be able to recognize the legal risks that come with adding a value-added venture to a farm operation. More importantly, farmers should feel empowered to resolve those risks. The next steps provided here are designed to help farmers grow a strong, resilient value-added operation that meets the farmer's goals long into the future.

Farm Commons has other legal resources such as our materials on insurance policies, volunteers, and employees to supplement the info here. Our webinar and audio cast by the same title are also useful compliments to this guide.

### Meet June

June has an apple orchard and she's thinking about adding a line of dried apple rings to her fresh apple sales. She's also discovered that chocolate-dipped dried apples are delicious and people are willing to pay a good price for them. For her third value-added product, June is thinking about what it might take to develop an applesauce line.

Farm Commons understands that most people find regulations and contracts to be boring. We don't take it personally! Instead, we try to make the details more relevant by wrapping them up in a story. The story line is meant to illustrate just one example of how the law might apply to a specific situation. The text may identify differences. Farmers are ready to do, not read more, so each section is followed with action points to help farmers move forward.

For the purposes of this manual, any farmer intending to alter a product beyond its harvested state should use this manual. There is no single set of laws that apply to value-added products and no single definition of a value added product. Instead, each law may have it's own specific definition. For example, halving a melon or trimming the florets from the broccoli stalk is considered "processing" under many food safety laws. Mixing two kinds of zucchini, placing them on a Styrofoam tray, and wrapping the tray in plastic with a label on top causes the product

to fall under labeling laws. Freezing or dehydrating an item, or certainly heading to the stove or oven and producing jams, preserves, pickles, pies, cakes, and baked goods are all adding value. Basically, if we're handling the product beyond taking it out of the field and washing it to make it presentable for sale, we need to pay attention to the legal aspects of adding value.

So, let's get on with it!

What are some of the concerns farmers should pay attention to when adding value?

Here is a checklist of some of the most prominent questions farmers should ask before reaching the production stage. This guide will move through each question one-by-one.

## □ How do food processing-specific regulations, including cottage food regulations, apply to my value-added product?

This is the first thing that comes to most farmers' minds when contemplating a value-added product: What food licenses and permits will I need, and what does it take to get them? It's an excellent first question, as the answer can have the largest impact on the business plan of the legal concerns addressed here.

Each state's food code prescribes a wide range of standards that the facility must meet- from wall surfaces, to sink construction and placement, to rodent and pest control.

Let's start with the background. Back at the turn of the century, buying food in an urban area was a hazardous venture. You never knew what you were getting- flour or sawdust, milk or chalk, pork or... something else. In response, citizens led Congress to pass the Pure Food and Drug Act, which began the regulation of processed food products in the United States. Shortly after, the states passed their own version of the federal law to regulate local sales. The federal government publishes a model food code every few years or so, and the states model their food code after the federal version. As a result, processed food regulations look quite similar from state to state. For our purposes, food processing is regulated primarily at the state level. The code prescribes a wide range of standards that the facility must meet- from wall surfaces, to sink construction and placement, to rodent and pest control. (Cottage food laws have created some exceptions but we'll get to that shortly!)

Within the states, the authority to enforce the food code is generally handed to local authorities such as local departments of health. Inspectors are in charge of touring prospective food facilities and verifying that the facility complies with the code. The inspector's job can be quite challenging, as he or she needs to take sometimes-vague standards and apply them to a huge diversity of food facilities. Different inspectors may have different

interpretations of how a standard is best met. In the law's eyes, this may be a positive thing. Allowing inspectors some level of autonomy in interpretation keeps things flexible as new situations arise. In farmers' eyes, this can create unfair results if two farmers in two different counties are given different specifications for the same production. The law doesn't always offer a firm answer. Instead, farmers, food advocates, and health officials may need to create new forums to generate communication and understanding as new ventures move into production.

---

Minnesota health officials, farmers, and food advocates have created the Local Food Advisory Committee to problem-solve issues that develop under Minnesota regulations. Anyone with a question, comment, or complaint relating to state regulations of local foods can submit it for the Committee's consideration.

Browsing the food code can give a farmer a sneak peak into the inspector's view, and finding each state's code isn't difficult. However, the code itself isn't the best place to determine exactly what a specific farmer needs to do to get a permit. To accomplish that, the only way to get a final answer is to work with an inspector on your project. For many farmers, this causes a problem before we've even begun. Inspectors can only tell producers exactly what they need to do if the farmer knows precisely the product produced and methods followed. Yet, farmers can't choose a product and method without assessing the business plan, and that requires a clear idea of the amount of capital required. While a farmer is still conceptualizing the product and trying to assess capital for the business plan, the farmer may need a more accurate assessment of costs than inspectors can provide. In that case, it may be helpful to contact another farmer- locally or regionally- willing to share his or her costs.

---

Use your internet search browser to find the FDA webpage titled: [State Retail and Food Service Codes and Regulations by State](#). It has pdf links to every state's food code.

Farmers might avoid the uncertainty of capital costs altogether and lease space from a community kitchen or existing facility, at least until the farmer has a better idea of the product's viability. (Extension agents often have great resources on value-added production planning.) With the facility itself already covered, the farmer may only need a certificate or training to utilize the facility.

At this point, many farmers may be feeling frustrated. The capital required to process product is high. Many farmers just want a chance to test out the market without making a huge investment in facilities. Producers might feel the regulations are overblown in comparison to the risk their product represents.

As June is looking at supplying applesauce to local schools, she will likely need to produce the product in a certified kitchen. (Rarely do cottage food laws allow sales to schools.) June might start by calling another farmer in her state that processes something similar- like salsa, sauce, or tomato juice- and asking to stop by their facility. If the farmer is willing to share the expenses incurred, all the better. At a baseline, June can at least write down the equipment installed and facilities used and do some price estimating that way.

Cottage food laws create an exemption from the standard food code regulations for some producers under some circumstances.

In response to these concerns, many farmers and food producers have joined together to convince their legislatures to pass “cottage food laws.” Cottage food laws create an exemption from the standard food code regulations for some producers under some circumstances.

The key phrase for any farmer looking at cottage food regulations is, “for some producers under some circumstances.” Although the intentions of cottage food laws are broad, the results can be narrow. Specifically, farmers need to answer several questions when examining their state’s cottage food laws:

- What products are allowed?



- How much product may be sold?
- Where may the product be sold?
- What permits or processes must be followed?

Cottage food laws vary widely. What may be allowed in one state might be prohibited in another. Perhaps non-intuitively, much of the detail may be found in the definitions section of the law. Let's take jam as an example. Under Washington's cottage food law, jams are permitted products. We all know what jam is, right? It's a fruity spread used on toast. Well, not exactly! In Washington law, "standardized jams" as defined in the federal regulations, are allowed. A quick search of the Code of Federal Regulations reveals that standardized jam is five parts fruit to two parts sugar. Some low-sugar jams would not meet this definition. Thus, they would not be allowed under Washington's cottage food law. The same goes for pickles, baked goods, and more. Refrigerator pickles may not be "pickles," and pumpkin pie, may not be a "baked good" under certain state cottage food laws. Always check the definitions to make sure the product fully complies with the cottage food law.

June is looking at making dried apples, chocolate-dipped apples, and applesauce. First, she might start by looking at her state's cottage food laws, if it has one. June will investigate if her state allows dried fruit under the law. If, for example, June is in Wisconsin, the state's cottage food law does not allow dried fruit production without a food establishment permit. But if June is in Florida, businesses may sell dried fruit, as long as the total sales of all products are under \$15,000 per year and she meet several other requirements.

June should also check into whether candy or chocolate-covered items are allowed under her state's cottage food laws. If they are, she still needs to investigate further. The law may require that she use only ingredients produced in a certified facility, which means she couldn't use her own dried apples for the candy. For example, if June lives in New Hampshire, the state's cottage food law does allow candy, but does not allow dried fruit. June would need to purchase dried apples from an approved source for her candy-making. As for June's applesauce, Wisconsin specifically allows it. However, June can't stop at that. Wisconsin law goes on to say that only goods with a pH under 4.6 qualify. If June is planning to use sweet apples and no added acidity, she may not meet the requirements.

### Next Steps:

To answer the question "How do food processing-specific regulations, including cottage food regulations, apply to my value-added product?" producers should follow several additional steps:

1. Does your state have a cottage food law?
  - If yes, read it in detail, including the definitions, to learn which products are allowed, how much you can sell, where it can be sold, and what the permitting process looks like, if any.
  - Will the requirements work for your plans?
2. If the cottage food law won't work, investigate the standard processing regulations in your state.
  - First, ask around for names of farmers who have installed a commercial kitchen. Inquire with them about the expenses and process. Check with

your extension agent for further resources.

- Or, look around for an existing, licensed facility or incubator kitchen.
3. If a new facility looks like the right path for you, talk with an inspector as soon as possible to keep your plans on the right track.

### How do federal labeling laws apply to my value-added product, including those produced under state cottage food laws?

Making the product is just half the game, of course. Motivating folks to buy it is the other half! People are motivated to buy from local farmers for all sorts of reasons. They like the character of local farms, they think the products taste great, and often, customers feel the product is healthier. What can farmers do to highlight the healthy aspects of their value-added products to consumers?

Federal laws regulate specific health claims in a couple of different ways, and these laws apply to everyone- cottage food producers included. First, a farmer might be interested in pointing out that a product (or an ingredient in it) reduces the risk of a disease or condition. For claims like these, the federal Food and Drug Administration must specifically authorize the statement being made, which the agency does after reviewing all the evidence regarding the claim. Manufacturers and industry groups can advocate for approval of claims in a few different ways. But, petitioning for new health claims requires more time and effort than most farmers probably have to spend. Instead, most farmers will want to stick with the list of pre-approved claims at the FDA's website. Just make sure to follow the FDA's very specific language.

Most farmers will want to stick with the list of pre-approved claims at the FDA's website.

June finds that the FDA has allowed specific statements regarding reduced risk of cancer from eating fresh fruits and vegetables. In reading the details on the FDA website, she finds that the claim must state that only the risk of some cancers is reduced and must highlight that cancer occurrence depends on many factors. She also sees that her product must be low fat and must meet the definition of a “good source,” of fiber. After going through the process to test the nutrition content of her product and confirming that it is a “good source” of fiber, she chooses from one of the FDA’s model phrases for fiber and fruit on her label: “Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer, a disease associated with many factors.”

Farmers might want to use another kind of health claim: the claim of improved function. These are claims that a specific product or ingredient will improve the overall health or function of the body. A classic example is, “calcium builds strong bones.” In short, the FDA will only allow statements related to health or function if there is substantial evidence that the claim is true. “Substantial evidence” can be hard to assess, difficult to measure, and open to interpretation. Producers hoping to make these kinds of claims should consult with an attorney to make sure the evidence will be viewed as substantial in the eyes of the FDA.

Rather than make a specific health-related claim, producers might be interested in highlighting specific nutrient characteristics of their product. These include claims such as “high in Vitamin C.” Any time a product announces that it has “more” of or is “high” in a nutrient, it must meet the specific percentage of the daily recommended allowance of that specific nutrient. Anyone making these claims will need to check the recommended allowances and know the percentage daily value of the nutrient in their specific product. Also, if the product makes a claim, it must carry a nutrition label on the product to back up the claim. Many small producers are otherwise exempt from having to include nutrition labels on

If a product package makes a health-related claim, the package must also carry a nutrition label to back up the claim.

Find the FDA rules by searching the terms nutrient characteristic claims and More, High, Good Source of, Light, Rich in...

- their products; making a claim cancels out that exemption.

If a farmer wishes to use the words organic or the USDA organic label on the value-added product, cottage food and standard processors need to follow the rules. If a farm is already certified for the production of crops and livestock and wants the farm-processed product to also be certified, the business will need additional certification as a handler. Becoming certified as a handler is necessary even if the farm is only repacking product or doing light processing such as halving melons or making carrot sticks. The certification process is designed to verify that organic ingredients and processes are protected from non-organic ones. Inspectors

Knowing that her own children love munching on dried apples all winter, June is thinking about promoting her products to mothers. Perhaps advertising the high fiber content and low calories of her dried apples will help her get a marketing edge. Before she makes either of these claims, June needs to develop a nutrition label that complies with the law. She might send a sample of her apples into a laboratory for analysis or she might rely on nutrition information available in FDA-accepted databases. After she has a label, June will have to check the fiber and calorie content against the percentage daily values and rules set by the FDA to verify that her claims meet the threshold.

will look at ingredient inventories and tracking, where products are stored, the equipment used and cleaning methods adopted, and processing agents used, among other factors. If processing is handled elsewhere, the facility must have an organic handling certification if the farmer wants to use the USDA organic label.

For more information on organic processing, search online for the “Guide for Organic Processors from the USDA, Agricultural Marketing Service.”

But, those aren’t the only options. For farmers not interested in organic handler certification or who can’t locate affordable certified facilities, the law still allows processors to indicate that organic ingredients are used. As long as the package does not display the USDA organic label, it may state, “Made with organic apples,” for instance. The label needs to indicate who certified the product as organic, with the phrase, “certified organic by\_\_\_\_\_.”

### Next Steps

1. If making any health claims, check the FDA’s website for information about the specific claim you want to make and whether any suggested language has been issued.
2. If making any nutrient claims, check that you are meeting the standards and that you have a nutrient label prepared.

June’s apples are certified organic and to create a consistent brand image, she is thinking about certifying her dried apples as well. So, she talks with her certification agent about the requirements to become an organic handler. After realizing that her drying equipment won’t neatly align with the certification standards, she decides against it. Instead, June puts “Made with organic apples,” without the USDA organic label on her package.

## ☞ If my product makes someone sick, what might happen?

Despite the best precautions, accidents still happen. On top of the anguish of having contributed to an illness, farmers can become liable for the injured person's medical bills. A cottage food processor is just as likely to be sued for a food safety breach as any other producer. Occasionally, folks who produce food under cottage food laws believe they are shielded from liability for any food safety incident that may occur, which is not true. Cottage food laws create an exemption to food facility permitting- they do little to affect potential liability for the product. In fact, a cottage food processor might be more likely to face a lawsuit. Because cottage food processors follow different rules than have traditionally applied to food manufacturing, they may be brighter targets. Also, consider the objective of some lawsuits is occur to determine who is responsible when it's not clear who is at fault. Innocent food manufacturers can still be sued.

Insurance policies provide an attorney to defend covered claims and pay on any resulting judgments.

Insurance is an incredibly valuable tool when it comes to food safety liability. Insurance policies will pay on successful, covered judgments, and the insurance company provides an attorney to defend the farmer from the suit. Insurance policies are also available to cover the expenses of a recall, provide for lost income from the event, and pay for remediation efforts, as necessary.

However, understanding what an insurance policy actually covers is far more tricky business than one might wish. This section illuminates the coverage generally provided under common farm policies. Beginning with the most basic farm policy, Farms adding value to their own farm products will likely have a farm liability policy. Although they go by many different names, these policies generally cover damage to property and liability for injury to farm guests. For example, if the barn burns down, the insurance

policy covers the building's value. If a feed delivery-person trips and breaks an ankle, the policy covers any resulting liability for the farm's negligence in causing the injury. The farm liability policy is a lot like a homeowner's policy, except it's for a farm. But here's the catch- it doesn't cover everything that happens on the farm. Rather, a farm liability policy carefully defines the word, "farm," and that definition is generally restricted to activities related to the production of crops and livestock. It will generally not cover equipment and activities dedicated to further processing to those crops (aside from trimming and washing as necessary to make the product marketable) or livestock.

So, what does it mean if the farm liability policy does not cover the value-added processing? Remember how a farm liability policy covers the barn structure and covered contents in the event of fire? The policy would not cover structures and contents devoted to a non-farm business such as value-added production. The same goes for any home-based baking done under cottage food laws- the homeowner's policy likely will not cover any equipment or damages extending from the home business. If customers come to purchase the value-added product and injure themselves, the farm may be uninsured for that injury. If the barn burns down and destroys value-added equipment, their value may not be covered.

Farm liability policies generally cover only injuries from the bacterial contamination of a raw agricultural product, if at all.

A food safety incident from a value-added product is likely not covered under a farm liability policy, either. As a general rule, farm liability will only cover injuries from the contamination of a raw agricultural product, if it is covered at all.

Fortunately, there is a fix for this situation. Unfortunately, the fix is more insurance. If a farm is looking at producing value-added products, a commercial policy can provide a lot of value. A commercial insurance policy covers loss of property and injury liability for value-added ventures. In fact, commercial policies



cover many non-farming activities, such as classes, agri-tourism events, and paid consulting. Commercial policies also provide broader food safety coverage- they may pay some of the costs of a recall, lost income, and remediation efforts, that are all not provided in a standard farm liability policy. The broad coverage of a commercial policy can create a lot of value at a reasonable cost.

June is pretty tired of forking over cash for insurance each year. But at the same time, she doesn't want her value-added apple venture to threaten the entire orchard business that she's worked so hard to build. Currently, June has a farm liability policy with an event endorsement for the orchard tours and a u-pick endorsement for her u-pick venture. She calls up her agent, May, and asks if there might be a more affordable option. June tells May that she is purchasing some expensive dehydrators for use in her barn and that she wants coverage if bacterial contamination causes a customer to become ill. To help May think more creatively about an affordable policy, June suggests a commercial policy rather than the endorsements.

### Next Steps

1. Read your insurance policy or call your agent and ask the following questions:
  - Will accidents to people and their property, in relation to my value-added enterprise, be covered under this policy?
  - What coverage do I have from a food safety outbreak? Is personal injury from eating contaminated food covered? Are recalls or lost income covered?
  - What is the most cost effective way I can cover my farm and my value-added enterprise at the same time?

## Should I be concerned about using my home or farm for my processing activities?

Farmers living in rural areas might be used to giving land-use regulations only the occasional thought. Suburban and urban farmers are more accustomed to land use regulation, but likely don't relish the chance to delve into it again! As it happens, the issue is important for everyone when considering value-added products.

The zoning code is the first place we need to go when researching the land use implications of a value-added product. Although many farms are located in completely un-zoned areas, those within agricultural zones still need to focus on this issue. Naturally, agricultural zoning codes may restrict the use of the land to agriculture only. This may not seem like a problem for value-added production but it can be a barrier. Some agricultural zoning codes are written to define "agriculture" to exclude processing the agricultural product. Others allow processing, but only if the product was grown on the farm in question. This would limit producers who plan to supplement their own production by buying in raw product from their neighbors for the value-added product. Agricultural zone residents need to know how agriculture is defined.

Some agricultural zoning codes define "agriculture" to exclude processing of farm products.

If the farm is located in a residential area, we have even greater concerns about prohibitions on processing. Residential areas often prohibit commercial activities and agricultural activities, so urban farms may be at risk just by producing crops and livestock. Residential areas may even prohibit home-based businesses, which is a barrier for those taking advantage of cottage food laws. Even if the residential area has amended its zoning code to accommodate production agriculture, processing may still be excluded.

Communities pass zoning codes in an attempt to create peaceful neighborhoods that work for everyone. Sometimes, the added traffic (customers, delivery persons, etc.), additional noises, or unsightly appearance of a value-added operation might offend neighbors. If the neighbors make a complaint or a zoning official makes an inspection, the farmer might discover that she is violating the zoning code at a most inconvenient time. At the same time, working with neighbors ahead of time about concerns that could arise may head off any complaints. Good relations certainly don't grant immunity from complaints, but it never hurts.

If the farm is building new value-added facilities, the permitting process is designed to catch any potential problems before they develop. But, if the new enterprise doesn't require a building permit, farmers may miss that opportunity. It's always a good idea to check the zoning code before adding any new activities to a farm.

---

Community members have a few different options if the zoning code doesn't accommodate the farm's plans.

Even if the zoning code does not support the farm's value-added venture, all is not lost. The zoning code is the product of a democratic process, under ideal circumstances. This means each community member may petition to change the zoning code. On an individual level, a person may ask for a variance, which is a one-time exemption from the code granted to a specific person. Usually, the person requires a variance has to make their case before the regulating body, which may choose to grant it. Community members can also choose to change the zoning code entirely to allow everyone to process farm products, where otherwise restricted.

Zoning isn't the only vehicle for land use restriction. Conservation easements are a popular way to keep farmland in production and under the ownership of farmers. Conservation easements achieve this objective by removing certain rights from the

property, such as the right to commercially or residentially develop the property. Depending on the vision of the landowners and easement holders at the time of creation, they may have removed the right to process farm products at the same time. Farms may have historic designations that have a similar affect of removing certain rights in exchange for protection of the land.

Changing a conservation easement is a private negotiation between the stakeholders in the easement. It may be difficult or impossible, and many other factors such as tax law and zoning may come into play. On the other hand, the exclusion of processing might have been an oversight and easily correctable with a conversation. Modifying historic designations may be more complicated as public agencies, ordinances, and other laws may have greater influence.

June's orchard is preserved as a historic site and the local land trust has a conservation easement to protect it. Early on in the business planning process, June checked out the documentation for the conservation easement she sold to the land trust 5 years ago. 53 pages of legal documentation later, June found a clause limiting "commercial" operations on the property, which was defined in the beginning of the document as processing agricultural products, generally. Being concerned about that broad language, June phoned up the land trust and asked for a meeting to discuss it. To put herself in the best possible position, June prepared a little presentation about her value-added proposal, the security it would bring to the orchard, and the community good will it would generate. The land trust agreed that June's processing would fulfill the goals of the conservation easement, and they checked with the relevant government authorities for confirmation. As a final assurance to June, the land trust and June put it in writing that the value-added enterprise was permitted under the conservation easement.

## Next Steps

1. Wherever the processing will occur, check if the area is zoned. If it is, call the local zoning authority and ask if the code allows on-farm processing of agricultural products. If calling isn't the ideal route, consider reading the code. The full text of many codes and the associated maps are often available online from the city or county.
2. If you are talking with an official, make sure the individual clearly understands your planned enterprise. Value-added processing is still quite rare and you may need to educate local authorities.
3. Consider asking for a variance or petitioning to change the code if it prohibits your enterprise.
4. Look into any conservation easements or historic preservation agreements to make certain that your enterprise won't violate the terms.

 Are there any concerns with using my current employees in the value-added operation?

In many states (but not all), farms are allowed to pay less than minimum wage and are not required to carry workers' compensation on employees. Generally, almost every other non-farm business is required to pay minimum wage and provide workers' compensation to all employees. This can be an advantage, especially for start-up farms with limited cash flow. But, it can also create an inadvertent liability. If the farmer doesn't know the precise outlines of the minimum wage and workers' compensation rules, he or she may accidentally violate them as the business grows beyond that allowed by the exception.

Even if minimum wage and workers' compensation are not required for farm labor, they may be required for processing.

Minimum wage and workers' compensation laws can be very complex. This resource is, unfortunately, not the right forum for an extended discussion of when a farm must provide these standards. Farm Commons provides several resources to help farmers understand how these laws work and how to research the laws in each state. Instead, we will have to summarize. The bottom line is that if minimum wage or workers' compensation are not required for the farm labor, either or both may be required for the value-added production tasks. If a farm is legally not providing minimum wage and/or workers' compensation to farm workers, the farm must make certain that the same aren't required when doing the processing activities, either.

As with so many laws pertaining to agriculture, it all comes back to the definition of farming. Agricultural regulations have evolved along with our current system of agriculture that is dominated by larger farms producing corn, soybeans and other commodity crops, which are then sold at the local elevator. In accordance, "farming" is often defined as only the production of the crop, and not the further preparation for market and addition of value. Farming is often defined narrowly to avoid the temptation for commercial processors such as large canneries and packers to claim that their operations are farming.

Although the background behind a limited agricultural exemption from minimum wage and workers' compensation may be sound, it can be a problem for small producers who are trying to figure out how to comply with the law. Because of the complexity, speaking with an attorney may be the most cost-effective way to manage employment law obligations. A qualified attorney should be able to deliver a clear answer in a minimum of time. In the alternative, farmers might consider calling the local enforcement agency for more details.

## Next Steps:

1. Is your farm relying on an exemption from minimum wage and/or workers' compensation that is available to farm businesses only?
  - If so, find out if the exception applies to your value added activities. The answer may change depending on whether the processing activities are full or part time, on your farm or off the farm. Although reading the law is always a good idea, these regulations are incredibly complex. Talking with an attorney or a state agency is the best way to get answers.
2. Paying the minimum wage and providing workers' compensation, whether required or not, are also ways to avoid this legal issue.

June found a community processing kitchen with affordable rates for making her applesauce. Now, she is able to save her seconds-quality apples for annual applesauce production. Near the end of the orchard u-pick season, she has a couple of employees that she wants to keep on the payroll. With tons of apples to process, as well, she simply shifts the employees' duties to applesauce production. The two employees spend the months of November and December processing applesauce at the kitchen all day. Late in the day, near the end of the applesauce season, an employee suffers a serious burn while operating the canning equipment. June was very surprised to receive a phone call from her state department of workers' compensation shortly after the employee's burn. She hadn't been carrying workers' compensation because she wasn't required to carry it as a farm, which she kindly explained to the enforcement officer. The enforcement officer then told June that the farm exemption was only for farm work. Her employees were doing processing- not farming- and that the farm was required to provide them with workers' compensation as soon as their regular job duties shifted. June is now very concerned about fines and liability.

 Do I need to collect any taxes on this sale?

Many farmers are accustomed to not collecting any sales tax on the products they sell. In thirty-one states, groceries (including farm products sold directly to the consumer) are exempt from sales tax. Many other states tax groceries at a lower rate than most consumer products. This is a benefit to the consumer and a convenience to the farmer who doesn't have to track and remit sales tax.

However, once a farm adds a value-added product to the mix, the farmer needs to reevaluate sales tax obligations. Although "groceries" may be exempt, again, we have to consider the definitions. Generally speaking, candy and ready-to-eat foods may not fall under that category, making them subject to sales tax.

On the plus side, sales tax rules relating to food are usually easy to understand. A quick call to the state taxing authority should be enough to determine on which side of the sales tax line a new value added product will fall. Most states also publish easy-to-use guides that outline how sales tax applies to food items.

If a farm must begin collecting sales tax with a new value-added product, the good news is that the process is generally simple. A farm will usually need to apply for a sales tax permit, which involves opening a tax account with the state. Then, the farm keeps sales records for that product and remits the tax on a monthly or quarterly basis, generally through an online portal. If a farm is making only a few taxable sales, the trouble may not be worth the small increase in revenue, especially if the farm does its own accounting.



## Next Steps:

1. Find out if the farm's new value-added products are taxable.
  - Consult the state's guide to sales tax and food products, call the state taxation entity, or contact an attorney.

June's chocolate-covered apple rings are very popular with her u-pick crowds. She has some fun, creative young people managing her sales barn and they come up with all sorts of unique ways to adapt the product. Soon, the farm is selling brightly-colored candy-coated apples with sprinkles in fun paper cones. The festival appearance adds to the farm atmosphere and sales keep rising. But then, June gets a notice from her state department of revenue asking about her sales records. June wasn't used to thinking about sales tax because her fresh apples were not taxable. She forgot to check into the tax rules on her candy- and chocolate-covered apples. The state tells her that those items are taxable for two reasons: they are sold ready-to-eat and they are candy. June now has a sizeable tax bill.

This resource was developed with the Support  
of USDA Risk Management Agency



Do you have questions or thoughts on how to improve this document? Please email us at any time with your thoughts.

[info@farmcommons.org](mailto:info@farmcommons.org)

## CONNECT WITH US!



[www.twitter.com/farmcommons](https://www.twitter.com/farmcommons)



[www.facebook.com/farmcommons](https://www.facebook.com/farmcommons)



[info@farmcommons.org](mailto:info@farmcommons.org)



**RACHEL**  
REPONDS

Was this resource not quite what you were looking for? Do you still have more questions? Send them to Farm Commons and we will do our best to feature an answer in our blog. Read the most recent questions and answers in our “Rachel Responds” column.