

ANR Agent & Ag Educator Safety Training Series

Programs

Agritourism Safety and Liability Considerations

Monday, November 7th

4pm-5pm EST

Dr. Brian Schilling, Rutgers University

Vector Mitigation, Illness and Identification

Wednesday, November 30th

4pm-5pm EST

Anna Pasternak, University of Kentucky

Grain & Confined Space Safety

Wednesday, December 7th

4pm-5pm EST

Dr. Sam McNeill, University of Kentucky

Ag Classroom Site Safety Assessments

Wednesday, December 14th

4pm-5pm EST

Dr. Carolyn Oldham & Katie Clontz,
University of Kentucky

Safe Pesticide Handling Practices

Monday, January 23rd

4pm-5pm EST

Dr. Wayne Sanderson, University of
Kentucky

Register at
<https://bit.ly/SCAHIPCE>



SOUTHEAST CENTER
FOR AGRICULTURAL HEALTH AND INJURY PREVENTION

Central
Appalachian
Regional
ERC

RUTGERS

New Jersey Agricultural
Experiment Station

Agritourism Safety and Liability Considerations

ANR Agent & Ag Educator Safety Training Series

**Southeast Center for Agricultural Health and Injury Prevention &
Central Appalachian Regional Education and Research Center**

Brian J. Schilling

Director, Rutgers Cooperative Extension

November 7, 2022

Acknowledgements

- Project funding from:
 - Northeast Sustainable Agriculture Research and Education program
 - New Jersey Agricultural Experiment Station
- Rutgers Cooperative Extension Agritourism Working Group



<http://agritourism.rutgers.edu/training/>
(*Extension Training for Agritourism Development website*)

Topics

- Why agritourism and direct marketing?
- Concept of legal liability
- Agritourism safety risks
- Managing (not eliminating) liability

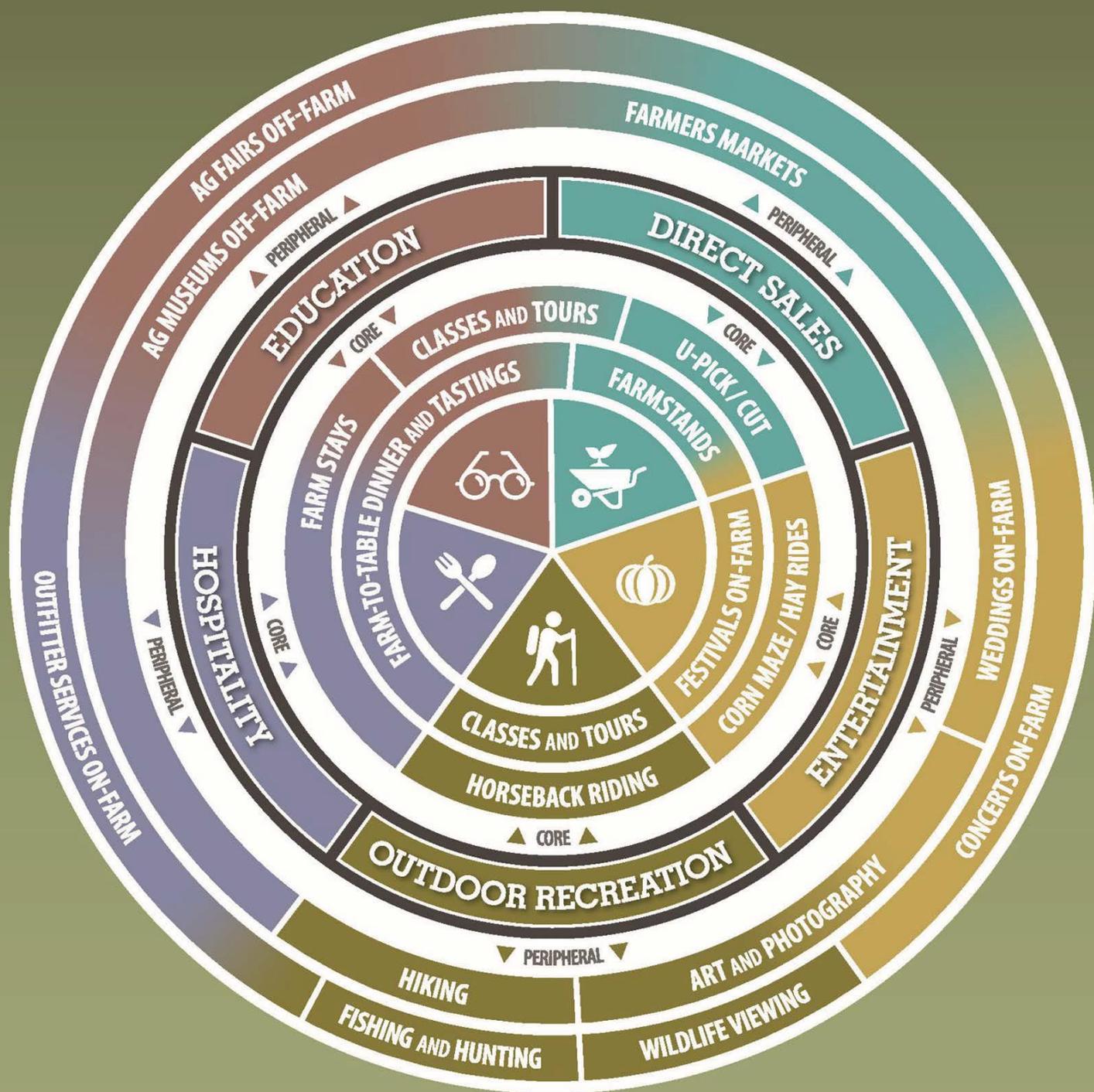


Photo: <http://patch.com/new-jersey/hopatcong-sparta/national-alpaca-farm-days-little-brushwood-alpaca-farm-0>

What is Agritourism?

The business of making farms travel destinations for educational and recreational purposes.

Chase, L., Stewart, M., Schilling, B., Smith, B., & Walk, M. (2018). Agritourism: Toward a Conceptual Framework for Industry Analysis. *Journal of Agriculture, Food Systems, and Community Development*, 8(1), 13-19.



What are agritourism farms selling?

The Tangible Things

Farm products (variety/quality)

Farm activities (e.g., hayrides, mazes, petting zoos)

The Less Tangible Things

Experiences and memories

Beginning or continuing family traditions

Friendliness / knowledge of employees

Aesthetic appeal

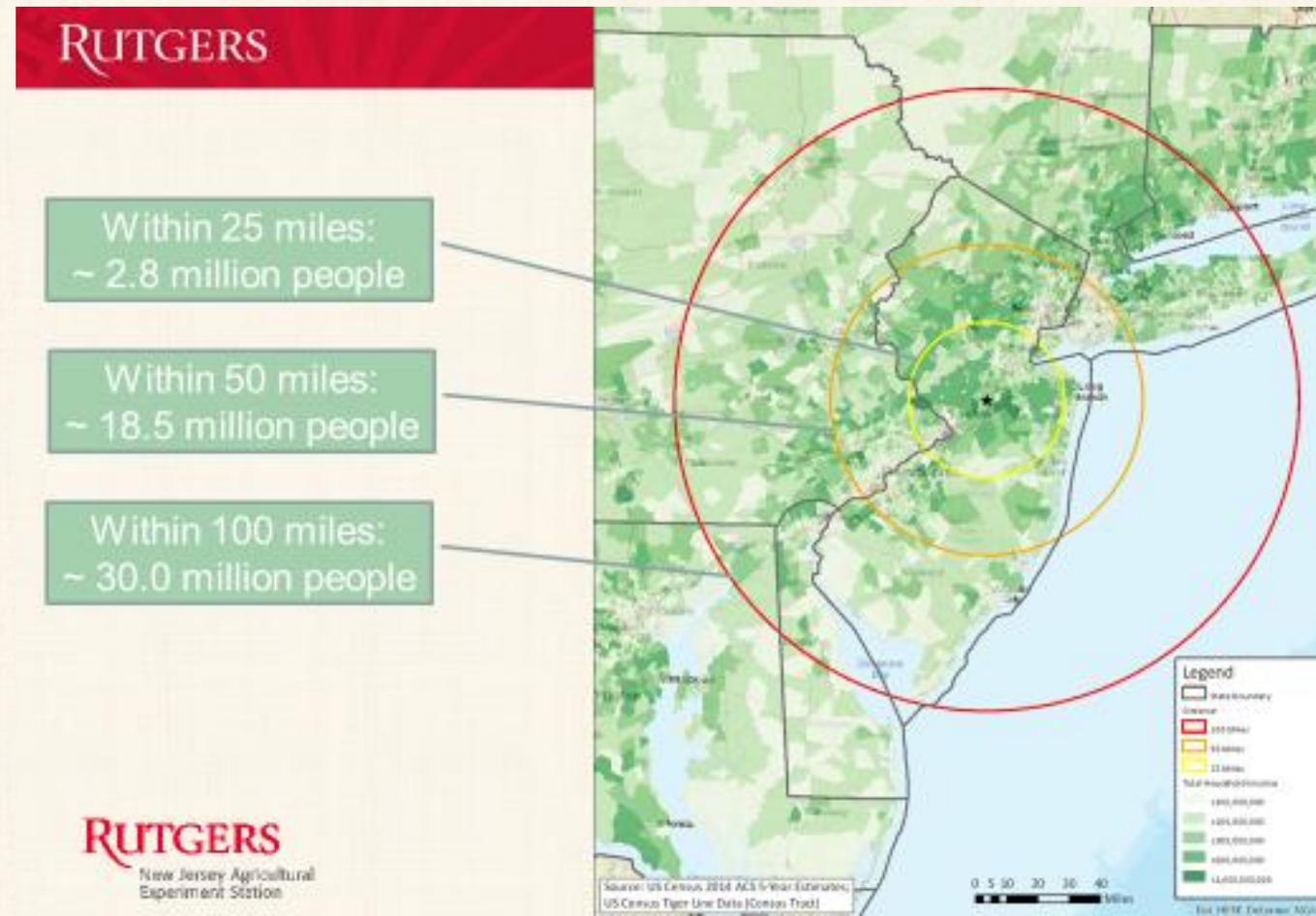
Organization of farm (e.g., easy to get around?)

Safety of the farm



The opportunities for innovative farm marketing and agritourism in NJ

- Additional revenue from farm resources
- Product/market diversification
- Smooth seasonal fluctuations in income
- Employment for family members
- Marketing other aspects of the farm
- Public relations/public education
- Social interactions



IMPORTANT LIABILITY CONCEPTS

DISCLAIMER:

Each farm has its own unique circumstances: safety factors, legal liabilities, insurance requirements, and optimal business organization.

Anyone engaged in agritourism, or thinking about developing an agritourism enterprise, should obtain advice from qualified legal and insurance professionals.

“Anyone can sue anyone, at any time,
for any reason”

- Google “examples of frivolous lawsuits”
- Law firms taking notice of agritourism / farm accidents
- Agritourism accidents (hayrides) are on media’s radar screen

Liability Defined

- Legal liability – “responsibility under the law for your acts or omissions”
 - Product
 - Premises

(Managing Liability: Legal Liability in Agritourism and Direct Marketing Operations by Jesse Richardson)



Managing Liability

Legal Liability in Agritourism and Direct Marketing Operations

Jesse J. Richardson Jr., Associate Professor,
Urban Affairs and Planning, Virginia Tech

Virginia
Cooperative
Extension



VirginiaTech
Invent the Future



Duty of Care – What do you owe to farm visitors?

It depends.

Trespasser

- Unknown (no duty; avoid intentional harm)
- Known (duty to warn of hazards)
- Child (reasonable care to keep kids safe)

Cannot “willfully or wantonly” cause injury or harm to visitor, regardless of their status



A #15 Grizzly Bear Trap (used to be available from Amazon.com for \$169.99)

Duty of Care – What do you owe to farm visitors?

Licensee (e.g., social guest; recreational users that do not pay a fee; someone allowed to cut firewood):

Permit person to be on property that is otherwise not open to public; No business purpose behind invitation.

- **Warn of non-obvious or hidden hazards (e.g., an ornery animal)**
- **Reasonable care to keep visitor safe**
- **Avoid injuring them through willful or wanton conduct**



Photo: U. of New
Hampshire Extension.

Duty of Care – What do you owe to farm visitors?

Invitee (e.g., customer; employee; 3rd party service provider)

Person invited to farm for purpose of doing business with the possessor of the land; their visit benefits the possessor of property

- **The highest duty of care is owed to an invitee**
- **Proactively search for** (discover) potential hazards
- **Eliminate, mitigate** (e.g., establish safeguards) or **warn against hazards**



Photo: Courtesy of Johnson's Corner Farm, Medford, NJ.

Who owes a duty of care to farm visitors?

- **Possessor** of the land (who has possession/control of the property)
 - Operator (including tenants)
 - Landowner

Negligence

A failure to exercise a proper duty of care, based on what a “reasonable person” would do in similar circumstances.

May result in compensatory and/or punitive damages being awarded.

CORN MAZE
\$5.00 per person
If unattended
please pay at Store
When Finished



MAZE RULES
~ ~ ~
(1) NO RUNNING
(2) NO PICKING CORN
(3) NO LITTERING
(4) NO CUTTING THROUGH CORN

Pop Quiz

Q: Why is it important to designate areas of the farm that are open to guests, and those that are “off limits”?

A: The duty of care that you owe to a given individual could change.

COMMUNICATING WITH FARMERS ABOUT LIABILITY

KEY MESSAGES

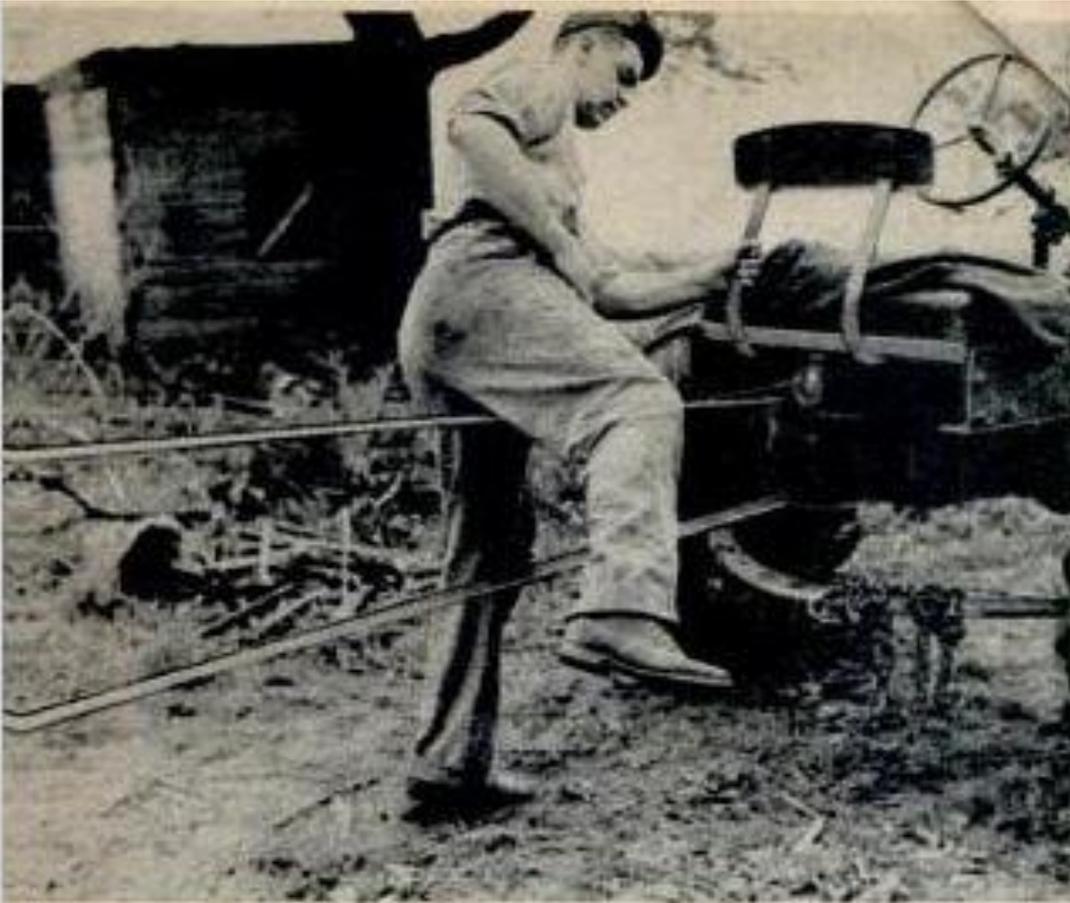
Go into agritourism with eyes open...

- Different business venture (vs. production-wholesale)
 - Different skills/employees
 - Regulations/zoning
 - Neighbors/community issues
 - Lifestyle impacts
 - Farm organization (legal, physical)
 - **New risks; liability issues**
- Accidents will happen (or people may *claim* accidents happened)
- **Agritourism safety issues are increasingly on the radar** (media, law firms, and “watch dogs”)



**EXAMPLES OF AGRITOURISM
SAFETY RISKS**

A Word of Caution for Growers



Farm visitors may:

- Not understand hazards that exist on a farm
- Ignore your instructions
- Trespass on your property
- Encounter unpredictable animals
- Falsely claim that they were injured on your farm
- Be involved in a legitimate accident

Examples of safety/liability concerns on agritourism farms

- Parking & traffic
- Buildings access
- Kids on the farm
- Wagon rides
- Bonfires
- Food
- Wild animals/insects
- Property damage (e.g., cars)
- Tractors & quads
- Chemicals/fuel
- Tripping hazards
- Weather exposure
- Farm equipment & machinery
- Irrigation ponds
- Pesticides/chemical storage
- Dogs
- Manure pits
- Grain storage facilities
- Livestock
- ***What others come to mind?***



Tragedy rides beside this child hitching ride on disk
National Safety Council photo

From January 1947 issue of *Popular Mechanic*

Kids on the farm

- **Remove or properly secure “attractive nuisances”**
 - These are any inherently hazardous object or property condition that can be expected to attract someone, particularly children, to investigate or play
 - Examples: ponds, bee hives, farm equipment, machinery, animals, etc.

A blurred background image of a farm scene. In the center, a tractor is visible, with several people standing around it. The scene is outdoors, likely in a field or farm setting. The overall tone is light and slightly desaturated.

PLANNING FOR THE SAFE ACCOMMODATION OF FARM VISITORS

Farm Safety Planning

Make your farm as safe as possible for visitors & employees!

1. Routine safety inspections – identify potential hazards
 - Designate areas open to the public and off-limits areas
 - Have an eye toward attractive nuisances
2. Detail hazard mitigation strategies—“plans of operation”
3. Employee training
4. Appropriate communication with farm visitors
5. Response plan for emergencies/accidents

Farm Safety Planning - *Identify Farm Hazards*

- Identify hazards that could jeopardize guest/employee safety
 - Look at your farm through the eyes of someone not familiar with farming and its inherent risks
 - What hazards might a child encounter?
 - Invite someone else (an Extension professional, emergency responder, etc.) to walk through the farm with you
- Inspect your farm regularly (daily, before opening)
 - Walk through areas that could be accessed by visitors (even those “off-limits”)
 - Keep a log of inspections
 - Charge employees with being “eyes and ears”

Farm Safety Planning - *Plans of Operation*

- For each attraction or activity, develop a *plan of operation* that:
 - Describes the activity
 - Identifies potential risks
 - Outlines strategies for minimizing risks to guests
 - Identifies the location(s) for posting rules or warnings
 - Identifies staffing requirements
- Evidence of efforts undertaken to protect the safety of farm visitors
 - Aids employee training

Plan Of Operation

Activity (one per page)	Risk	Suggestions to Minimize Risk	Placement of Warning Signs
<p>EXAMPLE:</p> <p>Wagon Ride</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Wagon not stopping <input type="checkbox"/> Wagon becoming detached from transportation vehicle <input type="checkbox"/> Passengers falling out of the wagon <input type="checkbox"/> People standing up while wagon moving and becoming injured <input type="checkbox"/> Passengers dangling hands and legs outside the moving wagon 	<ul style="list-style-type: none"> <input type="checkbox"/> Be sure the tractor is heavier than the loaded wagon for adequate braking ability <input type="checkbox"/> Use a locking coupler and safety chain <input type="checkbox"/> Put front, rear and side walls or rails on wagons to keep people from being jostled off <input type="checkbox"/> Require every passenger to stay seated with no legs or arms dangling over the sides or ends of the wagon <input type="checkbox"/> Require steps and/or sturdy rails for loading passengers onto trailers or wagons <input type="checkbox"/> State the safety rules after everyone is seated <input type="checkbox"/> Travel at speeds safe for the operating <input type="checkbox"/> Use an experienced operator who can start and stop smoothly 	<ul style="list-style-type: none"> <input type="checkbox"/> Place a warning sign at the entrance to the wagon ride.

Plan of Operation Example Form

From Agritourism Plan of Operation, LSU AgCenter



Photo: B. Bruch







A word about farm animals



- Establish acceptable levels of contact between farm visitors and farm animals





Farm Safety Planning - *Educate & Train Employees*

- Make sure all employees are properly educated & trained regarding:
 - The farm / business
 - Employer expectations
 - Farm safety risks
 - Farm safety plans of operation
 - Emergency response procedures
- Have a staff training each year for new employees
 - Staff employment handbook is a good idea
- Have a refresher training each year for returning employees

Farm Safety Planning - *Communicate Risks & Expectations to Visitors*



Visitor Communication

- Explain they are visiting a working farm and that certain hazards exist
- Inform visitors that, by entering, they are accepting these risks and must exercise reasonable caution
- Clearly mark 'off limit' & public areas
 - Important to define areas visitors have permission to use/access (helps determine "status")
- Post rules & expectations

• WARNING •

Under Maine law, there is no liability for injury to a participant in an agritourism activity conducted at this agritourism location if such injury results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for injury if you act in a negligent manner. You are assuming the risk of participating in this agritourism activity.



Release Agreements / Waivers

- Help limit risk – but DO NOT offer 100% protection
 - **Are not protection against farmer negligence**
- Act as a 'reality check' for users/visitors
- Each state treats liability waivers with different legal weight
 - Ask an attorney or insurance provider for specific language
- Key element of any waiver is the '**indemnity by user**' clause
 - Example - 'User agrees to indemnify and hold harmless the landowner from any claims made by the user or their parties arising from the use of the land or activities'

Farm Safety Planning - *Emergency Response Procedures*

- **Have emergency response procedures that are:**
 - Reviewed regularly
 - Posted & shared with all employees
 - Incorporated into employee training
- **Defined emergency response procedures are essential for:**
 - Protecting the welfare of guests and employees
 - Assisting emergency responders
 - Limiting legal liability
 - Minimizing damages (personal, business)

Emergency Response

- Be prepared - Steps to take before an emergency occurs
 - **Invite emergency responders** (fire department, EMS) to tour the farm
 - **Invite other third-party persons to tour farm** (extension, insurance provider)
 - Maintain current emergency contact information (owners, managers, employees) in accessible location
 - Sketch a map of the farm
 - List locations of emergency response equipment (e.g., first aid kits, fire extinguishers, personal protective equipment)
 - Maintain Material Safety Data Sheets
 - Establish visitor capacity limits (buildings, attractions/rides, etc.)
 - Train employees on emergency response roles
 - Post "In Case of Emergency" signs
 - Develop an **incident response form** for documenting accidents/incidents

Incident Report Form

- **Used to document accidents or other adverse incidents**
 - Name, address, and contact information of the injured person
 - A detailed description of the incident
 - What happened?
 - Time and location of incident?
 - What type of injury/harm was incurred?
 - How/why did the incident occur?
 - Visitor's status (e.g., employee, invited guest, trespasser, etc.)
 - Farm conditions (e.g., weather, number of visitors, etc.)
 - Describe any medical assistance provided, or offered
 - Names and contact information for witnesses to the incident
 - Record any accounts of what was witnessed
 - Name, address & contact information of person completing the report

FINAL THOUGHTS



A Perspective on Managing Liability

- Risks and liability exposure will always be present when there are employees or guests on the farm
 - **Laws limiting a farm operators' liability do not provide 100% protection**
- Add "layers" of protection that demonstrate a proactive, responsible, and comprehensive approach to farm safety
- **A lawsuit is a contest in credibility**



Photo: *A Christmas Story* (1983).

Managing Liability

- Organize the business under the appropriate legal structure
- **Farm Safety Planning** - Keep your farm safe for visitors and employees!
- Understand and comply with applicable federal, state and local laws, regulations, codes, and permitting requirements
 - Including applicable Right to Farm protections; “indemnity” laws; recreational use laws
- Maintain appropriate insurance
- Be a good neighbor
- Consider the use of waivers
- Keep good records

Keep Good Records

- Safety & emergency response plans
 - Plan(s) of operation
- Employee training documents (and logs of trainings)
- Log of farm inspections
- Documentation (photographic/video) of farm premises
- Maintain a file of all incident report forms

Rutgers Cooperative Extension

Training for Agritourism Development Resources

<http://agritourism.rutgers.edu/training/>

- Farm evaluation checklists
- Educational modules
- Videos
- Incident response form
- Fact sheets

Considerations for Agritourism Operations During the Covid19 Pandemic [Download](#)

Agritourism Animal Safety Assessment Checklist [Download](#)

Agritourism Emergency Response & Liability Assessment Checklist [Download](#)

Agritourism Employee Assessment Checklist [Download](#)

Agritourism Operation Food Safety Checklist [Download](#)

Agritourism General Farm Safety Assessment Checklist [Download](#)

Agritourism Marketing Assessment Checklist [Download](#)

Agritourism Parking & Traffic Assessment Checklist [Download](#)

Farm Accident/Incident Report Form [SAMPLE] [Download](#)

Contact Information



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