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## Food Safety News



*Photo illustration*

# Even a small farm needs a strong food safety plan and legal protection for it

By Cookson Beecher on January 21, 2021

### ANALYSIS

She can grow some mean salad greens. “So healthy for you and your family,” she’ll cheerfully tell the customer who makes regular stops at her booth at the local farmers market.

At another booth, a farmer has some farm-made cheese on display. “Comes from cows that are raised out on grass,” he says to a group of customers wandering through the farmers market and stopping at his booth.

At a restaurant on Main Street, a farmer proudly holds up his strawberries for the chef, who buys his berries on a regular basis. “Real beauties,” he says. “They’re large and red-ripe. Your

diners will love them. Sweet and juicy and no pesticides.”

These farmers have several things in common. They would be identified as small-scale farmers and therefore exempt from many provisions, such as mandatory inspections, in the Food Safety Modernization Act. They primarily sell direct to their customers.

They also have something else that’s even more valuable. Their customers’ trust.

On a business level, that’s of utmost importance, Rachel Armstrong, founder and executive director of Farm Commons, will quickly say. But while knowing how to farm and having a loyal customer base is one thing, knowing how to keep your customers safe from foodborne pathogen problems and your farm safe from lawsuits is another.

Lawsuits? What does that have to do with small scale farms, many of which are organic, some people will ask. But the logic that if you do everything right what can go wrong can be dangerous, warns Armstrong.

Things do happen. Tiny microscopic enemies such as E coli, Salmonella and Listeria can contaminate a crop or farm product and sicken your customers. And even though your customers value you as a farmer, the expenses associated with medical care if a customer comes down with a foodborne illness, especially if it causes life-long health problems or death, can add up to a staggering amount. Sometimes is so high it could even mean the loss of a farm.

“It isn’t the customer who’s pushing this,” Armstrong said. “It’s the health insurance companies. They’re the ones you’ll see across the negotiating table or in court.”

Bottomline, making sure you prevent foodborne pathogens from infecting your customers is a basic business foundation of a farm.

“I see a lot o starry-eyedness,” Armstrong said about dealing with small-scale and organic farmers, especially new ones. “Many think they can rely on common sense and intuition. But some of this in not necessarily intuitive. There’s also the role that expertise, studies, research and scientific inquiry plays in this. It goes further than the common sense that might be used in a household.”

With that in mind, **Farm Commons** offers food safety tips ranging from complying with food safety regulations, including the Food Safety Modernization Act, to getting insurance coverage,

to creating a record-keeping system showing food safety diligence, to implementing a food safety plan, and more. There are checklists, flowcharts, guides and multimedia materials for preventing a foodborne illness incident while building resilience to endure if one occurs.

Joe Bermudez of the Berrian Insurance Group shared this warning about the harm foodborne pathogens can do — no matter how careful a farmer might be.

“... you still can't stop this with some foods,” he said, referring to foodborne pathogens. “The nature of the beast is that it's going to sneak through. Human error is our biggest enemy.”

It could be something as unnoticeable as a n employee coming to work with norovirus or *Listeria monocytogenes* that comes into a food environment on a fork lift or someone's boots.

“Pathogens don't care if the food is local or comes from big ag,” he said.

Armstrong agrees: “There's nothing inherently true that food from small or organic farms is safer.”

In an earlier interview, Cornell food scientist Elizabeth Bihn, who is also director of the Produce Safety Alliance, said that having worked with growers for more than 20 years, she thinks that foodsafety training is really valuable because “I do not think all of this is common sense.”

“Every farmer should understand food safety risks, how to assess their farm risks, and reduce them,” she said. “But how do you know you have the knowledge you need if you've never been exposed to the information?”

### **Legal insurance is more than a money pit**

Of course, the reach of a smaller farm is nowhere near to the reach of a large farm, which often distributes its produce to many outlets, some of them across the nation or even overseas. Large operations have a plethora of regulations to comply with.

But while many small-scale farms are exempt from the provisions of the Food Safety Modernization Act, that doesn't mean they're exempt from being sued.

“Absolutely not,” said Armstrong. “The lack of regulations doesn't mean a small-scale farmer will be able to avoid legal obligations if his or her food gets someone sick.

“Some medical costs can be very expensive. Some expenses could even be needed to cover a lifetime of treatments.”

And, again, she reminds people that it’s not the customer the farmer will be looking at across the table or in court.

“It will be the health insurance companies representing the customers,” she said.

In describing liability insurance, she said it’s more than “shoveling money into a hole.”

And she points out that having it before something happens is definitely better than looking for a lawyer after something happens.

“You don’t want to be on the edge of loss,” she said, referring to the loss of a farm.

### **But why?**

Food safety liability insurance is emerging as one of the latest trends in market-based food safety regulation.

But why? asks John Aloysius Cogan Jr. of the University of Connecticut School of Law and author of “The Uneasy Case for Food Safety Liability Insurance.”

The answer, he says, is simple: food is our most dangerous consumer product, and our federal and local governments do not fully protect us from its perils.

According to the Centers for Disease Control and Prevention, one in six – about 48 million Americans suffer from foodborne illnesses caused by pathogens such as Salmonella, Norovirus, Listeria, and Escherichia coli (E. Coli), each year. Annually, 128,000 Americans require hospitalization and 3,000 die from foodborne illnesses, according to CDC estimates.

Medical expenses, productivity losses, and the economic cost of premature deaths, pain, and suffering in the United States due to foodborne illness have been estimated at \$77.7 billion annually.

### **A sue-happy society**

“We live in a litigious society,” said Troy Smith, director of partnerships for Veracity Insurance Solutions.

Several years ago, Veracity decided it should explore niche opportunities — people or businesses being neglected by typical insurance policies. As a result of the research, the company launched its Food Liability Insurance Program, an insurance policy with 20,000 policy holders to its name.

The program's goal is to be part of a movement to buy food from local farmers, gardeners, chefs and farmers markets.

And it keeps things simple.

“You don't even have to talk with an agent,” Smith said, pointing out that customers can fill out an online applications.

Do some more research about this and then make your own decision about where to go from there.

“If you pull food out of the ground or off a bush or tree and you take it to sell somewhere, and someone gets sick, you definitely want to have some kind of insurance,” Smith said.

Armstrong said that “legal resilience” is of utmost importance. And it's doubly important when considering that many small-scale and organic farmers are involved in doing “bold, creative things the world needs.”

“We need that in our food system,” she said.

### **About Farm Commons**

After earning a bachelor's degree in Wildlife Ecology, Armstrong worked on local farms, managed a community garden, started a nonprofit farm-to-chef program and did everything she could for food and agriculture.

It was through all of these ag-related experiences she began to see that there was a persistent need for legal knowledge.

The solution: “Knowing we couldn't afford legal services as a community, I decided to go to law school,” she said. With that in mind, she built up her expertise in sustainable agricultural law.

From there, she went on to found Farm Commons.

As the founder and executive director of the organization, she is focused on a single thing: building stronger, more legally resilient farm businesses.

“Every day, I get to test, deploy, and magnify strategies that help famers step into their own power to create strong, legally resilient businesses,” she says in a biography summary about herself. “In my mind, justice demands that farm communities have control over the paperwork that shapes their success: farmland leases, operating agreements, sales agreements and more. We help make that happen. “

Farm Commons also offers advice and information about such things as leases, trusts and wills, sales and contracts, workers, and value-added agritourism.

“Strong, resilient farm businesses are built on a solid legal foundation,” says the organization’s banner on [its web page](#).

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