

# Center for Profitable Agriculture

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## OLD LAWS AND MODERN AGRICULTURE: AGRITOURISM, CSAs AND DIRECT-TO-CONSUMER SALES

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In many instances, farm innovations, marketing methods and technology have outpaced the language of agriculture-related laws and regulations. Today's agriculture encompasses far more than the generally accepted production practices of 100, 50 or even 25 years ago. Farming today involves much more than the cultivation of land and the production of commodities.

Today's farm is much more than cows and plows. Farming as a full-time or part-time business includes management, production and marketing. And in many instances, it includes labeling, packaging and processing. Today's farmer is involved in many aspects of business. Farmers are entrepreneurs, mechanics, environmentalists, employers, record-keepers, lobbyists and leaders.

Just to give you some idea of the growth in Tennessee's agriculture, from 1997 to 2012, the number of Tennessee farmers with direct sales to consumers increased 36.6 percent, while the value of farm products sold direct to consumers increased 128.9 percent. Over this same time period, the number of Tennessee farms producing and selling value-added products increased by 30.6 percent. The number of farms marketing products through Community Supported Agriculture (CSA) enterprises increased by 5.98 percent.

In only five years, from 2007 to 2012, the number of Tennessee farms with agricultural and recreational sales increased by 20.8 percent, while the value of these sales increased by 83.1 percent. Based on a survey of Tennessee agritourism operations in 2013, the average number of visitors per agritourism farm per year was 1,000, with an average sales per visitor of \$35.12. This means a total statewide economic impact of \$34.4 million per year.

In today's agriculture ...

- Farm equipment is larger, heavier and mobile and on public roads/bridges more often.
- GPS, PCs, UAVs and SUVs are common farm tools.
- On-farm marketing, processing and packaging are part of farm enterprises.
- Entertainment and educational activities generate new farm income streams.
- Volunteers/members provide labor in return for products from the farm.
- Consumers visit the farm to make purchases and to enjoy events and attractions.
- Farms are closer to residential and other non-farm property.
- More farmers are making direct connections with consumers.
- Farming practices and activities are much broader than production practices.

For farmers today, issues such as zoning, property tax classification, liability, sales tax, licensing, permits and processing are not as straightforward as they once were. Farmers, regulators, judges and lawmakers

face many fine lines and gray areas when it comes to considering modern farm practices and activities. Some examples:

- Is sales tax required on the sale of value-added farm products?
- What is the value of a crop lost to chemical drift that would have been marketed direct to consumers in a U-Pick environment?
- Is marketing direct to consumers a generally accepted agriculture practice?
- Are there exemptions for marketing farm-fresh eggs, farm-made sausage, country ham and sorghum?
- Is income from farm tours considered farm income?
- Are food processing and food labeling laws applicable for CSAs?
- What are the legal and tax ramifications of farm shares (cow shares, CSA memberships)?
- Is a value-added farm activity an agriculture practice or a commercial practice?
- Should the land on which agritourism ventures operate be classified as agricultural or commercial?

Traditionally, the primary zoning classifications are residential, industrial, commercial and agricultural. When one considers an agritourism enterprise, most zoning officials rule out residential and industrial and are left to choose between commercial and agricultural. Because many agritourism activities do not fit the traditional definition of production agriculture, then commercial classification is often the default classification selected. With it comes a plethora of commercial zoning requirements ... on a farm. While many agritourism enterprises function as a hybrid of agriculture and commercial businesses, they often face inflexible zoning ordinances and restrictions. When advocating for greater acceptance and flexibility, agritourism operations tend to push for:

- Development of hybrid zoning classifications for agritourism.
- Greater consistency from one county/city to another.
- A more straightforward, less expensive and timely permit process (less bureaucracy).
- Fewer and more flexible regulations (local focus on the opportunities rather than restrictions).

Zoning issues faced by agritourism operations are not the only challenges faced by modern agriculture. Community Supported Agriculture, or CSA, is generally considered a marketing method by which farmers sell shares, subscriptions or memberships to customers where the shares/subscription/membership entitles the customer to certain products from the farm. CSAs are typically used to market fresh produce and shares/subscriptions/memberships may include a box or half-box of products each week for a certain number of weeks. Selling a share/subscription/membership entitling a buyer to certain goods does not conform to traditional farming practices. So, more questions:

- How do sales tax laws and exemptions apply to CSAs?
- How do food processing laws apply to CSAs?
- How do food and meat labeling laws apply to CSAs?
- How do farm labor laws apply to CSAs and volunteer/membership labor?

While very few CSAs in the Mid-South reported using a membership contract or a written agreement in a 2009 survey, observations since then indicate that agreements are being used more often. CSA membership agreements can provide:

- A written description of the terms, price and frequency of delivery.
- A written description of what will or will not be included.
- Instructions for when and where deliveries/pick up will take place.
- Details about how and when payment is due.
- Descriptions of refund policies or “opting-out” of membership.
- Language to limit the farmer’s liability.

## Old Laws and Modern Agriculture: Agritourism, CSAs and Direct-to-Consumer Sales

Many of the traditional laws, regulations and standards guiding agriculture do not fit today's farm marketing methods. Agritourism, CSAs and direct-to-consumer sales often fall into the gray area of zoning, regulatory guidelines, label requirements and taxes. As a result, modern farm marketing practices are often slowed by conforming to requirements that are not directly applicable.

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