

## Chapter 8

# Regulations

### Disclaimer

The information contained in this chapter is deemed correct and accurate to the best of the ability of the authors, based on information utilized at the time of their review. Not all regulations governing agritourism enterprises are discussed, however. This chapter is for educational purposes only and is not an interpretation of any laws.

### Chapter Overview

**A**gritourism enterprises may be affected by a wide variety of regulations depending upon the type of attractions offered, location of the enterprise, whether employees are hired and a number of other factors specific to each enterprise. These regulations may be imposed at the federal, state and local levels of government. It is important to investigate all regulations applicable to your agritourism enterprise in order to avoid penalties, fines or interruptions to your business.

This chapter provides an introduction to a number of regulations that may impact agritourism operations. Regulations discussed in this chapter have been organized into three categories:

1. General regulations — regulations that likely impact a majority of agritourism enterprises
2. Employment regulations — regulations that impact enterprises employing personnel
3. Permits and licenses for specific attractions — regulations specific to certain types of attractions

### General Regulations

**N**early all agritourism entrepreneurs must comply with several general regulations, which include, but are not limited to, zoning ordinances, business licenses, sales tax collection and remittance, and the Americans with Disabilities Act.

### Regulations Checklist

The following list of regulations is discussed in this chapter. You should check each regulation that applies to your operation and then become familiar with the details of those regulations. You are also encouraged to contact the appropriate governing agency for more information on how the regulations may directly impact your agritourism enterprise.

#### General Regulations

- Zoning Regulations (county, city)
- Business License and Taxes (county, city)
- Sales Tax Collection and Remittance (state, county, city)
- Americans with Disabilities Act (federal)

#### Employment Regulations

- Fair Labor Standards Act (federal, state)
- Child Labor Act (federal, state)
- Occupational Safety and Health Act (federal, state)
- Workers' Compensation (federal, state)
- Unemployment Taxes (federal, state)
- Income Tax Withholding (federal)

#### Permits and Licenses for Specific Enterprise Types

- Food Service Permits and Inspections (state, county)
- Retail Food Store Permits and Inspections (state)
- Animal Exhibitor Licensing (federal)
- Nursery Licensing (state)
- Winery Licensing (state)
- Fee-fishing Regulations (state)

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## Zoning

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Zoning ordinances regulate the use of land in a specific area. According to Tennessee law, zoning is regulated either by the city, if within city limits, or by the county, if outside city limits. Some cities and counties do not have zoning ordinances.

Zoning ordinances may dictate

- The location, height and size of buildings and other structures
- The percentage of a lot which may be occupied
- The size of yards, courts and other open spaces
- The density and distribution of population
- The uses of buildings and structures for trade, industry, residence, recreation or other purposes
- Use of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes
- Regulations for signage and parking

Violation of zoning ordinances is a Class C misdemeanor in Tennessee. Each day of violation is considered a separate offense. Government officials or neighbors may ask a court to impose an injunction to stop or correct a violation. An injunction could interrupt your business or force you to close your agritourism operation.

A 2003 survey of 210 agritourism entrepreneurs found that 27 operators (12.8 percent) had at least “some difficulty” with zoning for their enterprises.<sup>1</sup> The addition of structures, increased traffic, type of activities offered, length of season, operating hours and feelings of neighbors may all be impacted by zoning regulations.

Some areas in the United States are amending agricultural zoning ordinances to allow some value-added agricultural activities, including agritourism.<sup>2</sup> The ordinances may specify requirements for access from various road types, parking area surfaces or bus parking. Special- or temporary-use permits are used in some areas to authorize agritourism activities.

Traditional farm operations are typically zoned specifically for agriculture. While agritourism retains some characteristics of agriculture, it may go beyond what are thought to be traditional production agriculture activities. A bill giving a definition of “agriculture” that includes recreational and educational activities was signed into Tennessee law as of April 2005. According to Tennessee Code Annotated Title 43, Chapter 1, Part 1,<sup>3</sup> “agriculture” is defined as

1. The land, buildings and machinery used in the commercial production of farm products and nursery stock
2. The activity carried on in connection with the commercial production of farm products and nursery stock
3. Recreational and educational activities on land used for the commercial production of farm products and nursery stock

You should consult the appropriate zoning authority for your location before investing in an agritourism operation or adding additional activities to an existing one. If your plans are not consistent with current rules, you may need to seek a change in zoning status for your land or a portion of your land.

## ***Business Licenses and Taxes<sup>4</sup>***

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The state authorizes counties and cities to levy a privilege tax for operating a business in their jurisdictions. If your agritourism operation is located within city limits, you may need to obtain both a county business license and a city business license. County and city business licenses must be renewed annually. Temporary vendors may obtain daily business licenses.

As of May 2005, the minimum privilege tax is \$15 with an additional recording fee. City and county governments may also collect business taxes based on a percentage of gross sales and the assigned business classification. Tax rates range from  $\frac{1}{10}$  of 1 percent of gross sales for small retail

<sup>1</sup>Bruch, Megan and Rob Holland. *A Snapshot of Tennessee Agritourism: Results from the 2003 Enterprise Inventory*. University of Tennessee Extension publication PB1747. Available online at <http://cpa.utk.edu/pdf/files/PB1747.pdf>. Accessed May 25, 2005.

<sup>2</sup>Retzlaff, Rebecca. “Agritourism Zoning Down on the Farm.” *Zoning Practice*. The American Planning Association. March 2004.

<sup>3</sup>Tennessee Code Annotated, § 1-3-105 and Tennessee Code Annotated, Title 43, Chapter 1, Part 1. Information found online through <http://www.legislature.state.tn.us/>. Accessed May 25, 2005.

<sup>4</sup>Tennessee Department of Revenue. *Business Tax – Business License*. Available online at [http://www.state.tn.us/ecd/rg\\_ch3.htm](http://www.state.tn.us/ecd/rg_ch3.htm). Accessed May 25, 2005.

stores to  $\frac{3}{80}$  of 1 percent of gross sales for food wholesalers. Businesses with less than \$3,000 in annual sales may be exempt from paying business tax.

Contact your city clerk and/or county clerk for specific information on local business license and tax requirements.

### **Sales and Use Taxes**

Sales and use taxes are imposed by state government and often by county and city governments. Sales and use taxes are imposed on the retail sale, lease or rental of tangible personal property, the gross charge for specified taxable services and the gross sales for amusements. Although the tax is imposed on the purchaser, the seller is liable for collecting and remitting the taxes.<sup>5</sup>

Your agritourism enterprise may be responsible for sales and use taxes depending upon the types of activities and services sold. You may, however, benefit from sales tax exemptions for the sale of farm products grown or produced on the operation. Some generic agritourism circumstances and corresponding sales and use tax liability are described below.

### **Admission Fees<sup>6</sup>**

- Admission fees or other charges for any activity that can be described as recreational, entertaining or for amusement are subject to sales tax under Tennessee Code Annotated 67-6-212. Most agritourism activities, such as corn mazes, hayrides, trail riding and festivals would, most likely, be considered recreation, entertainment or amusement.
- If your operation offers strictly educational tours of your farming operation without any activities that could be described as recreation, entertainment or amusement, the fees or charges may be sales tax exempt.

### **Farm or Nursery Product Sales<sup>7</sup>**

- If more than 50 percent of the farm or nursery products you sell in a calendar year are grown or produced by your operation, then sales of all farm or nursery products sold by your operation are exempt from sales and use tax.
- If more than 50 percent of the farm or nursery products you sell in a calendar year are not grown by your operation and instead purchased from others, then tax must be collected on the sale of the products that were purchased from other producers.

In most cases, sales and use taxes are a combination of state taxes (7 percent) and a local option tax from city and/or county governments (up to 2.75 percent).<sup>8</sup> Local option tax rates are listed on the Tennessee Department of Revenue Web site at <http://www.state.tn.us/revenue/pubs/taxlist.pdf>.<sup>9</sup>

You are required to register your business with the Tennessee Department of Revenue if your enterprise will conduct activities necessitating sales tax collection and remittance. Registration can be done in person at Department of Revenue offices, or applications can be submitted by mail. Registration forms are available on the Department of Revenue Web site at [http://www.state.tn.us/revenue/forms/general/f13005\\_1.pdf](http://www.state.tn.us/revenue/forms/general/f13005_1.pdf).<sup>10</sup>

Once you have registered, you should notify the Department of Revenue if your business is sold or closed, ownership or partners are changed, or if the structure of the business is changed to require a new charter. The department should also be notified if the location of your business changes.<sup>11</sup>

Sales tax and use regulations are very complex. It is important to take time to learn how the laws specifically affect your agritourism enterprise. Although some circumstances are described here, you should contact the Tennessee Department of Revenue at (800) 342-1003 or refer to their Web site at <http://www.state.tn.us/revenue> to address your specific situation.

<sup>5</sup>Tennessee Department of Revenue. *Sales and Use Tax Guide*. June 2003.

<sup>6</sup>Todd, Ray. Tennessee Department of Revenue. Personal Correspondence. September 2, 2004.

<sup>7</sup>Tennessee Department of Revenue. *Sales and Use Tax Exemptions and Benefits for Farming and Nursery Operations*. November 2002.

<sup>8</sup>As of May 2005, these are the effective state and local option tax rates.

<sup>9</sup>Tennessee Department of Revenue. *Sales and Use Tax Guide*. June 2003.

<sup>10</sup>Tennessee Department of Revenue. Available online at <http://www.state.tn.us/revenue/forms/general/regbusn.pdf>. Accessed May 25, 2005.

<sup>11</sup>Tennessee Department of Revenue. Available online at <http://www.state.tn.us/revenue/didyouknow/closebiz.htm>. Accessed May 25, 2005.

## **Americans with Disabilities Act<sup>12</sup>**

All businesses are required to comply with the Americans with Disabilities Act (ADA). The ADA ensures equal opportunity in employment as well as accommodation in public places, commercial facilities and transportation for persons with disabilities.

Title I of the ADA prohibits discrimination against persons with disabilities in employment by businesses having 15 or more employees or by state and local governments.<sup>13</sup> Title I, with respect to private employers, is enforced by the Equal Employment Opportunity Commission (EEOC). For employment issues related to the ADA, contact the Equal Employment Opportunity Commission at (800) 669-4000 or <http://www.eeoc.gov>.

Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and places of public accommodation.<sup>14</sup> Commercial facilities include office buildings, factories and warehouses. A place of public accommodation is a facility whose operations affect commerce and fall within at least one of the following categories:

- Place of lodging
- Establishment serving food or drink
- Place of exhibition or entertainment
- Place of public gathering
- Sales or rental establishment
- Service establishment
- Public transportation terminal, depot or station
- Place of public display or collection
- Place of recreation
- Place of education
- Social service center establishment
- Place of exercise or recreation

Public accommodations and commercial facilities must<sup>15</sup>

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity

- Eliminate unnecessary rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation
- Make reasonable modifications in policies, practices and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in a change to the nature of the goods and services provided
- Ensure effective communication through the use of auxiliary aids and services when necessary, unless an undue burden or fundamental alteration would result
- Remove architectural and structural communication barriers in existing facilities where readily achievable
- Provide goods and services through alternative measures when removal of barriers is not readily achievable

When private owners of places of public accommodations or commercial facilities design and construct new facilities or alter existing facilities, they must comply with the ADA Standards for Accessible Design, a handbook available online at <http://www.usdoj.gov/crt/ada/adastd94.pdf>.

Title III is enforced by the U.S. Department of Justice. More information may be obtained from the ADA Web site at <http://www.usdoj.gov/crt/ada> or by calling the Department of Justice ADA Information Line toll free at (800) 514-0301, voice; and (800) 514-0383, TDD.

## **Employment Regulations**

**I**f you employ personnel for your agritourism enterprise, you will be affected by several employment regulations. These employment regulations vary according to the type and size of your enterprise, the nature of an employee's job and the number of employees you employ.

<sup>12</sup>U.S. Department of Justice. *ADA Guide for Small Businesses*. Available online at <http://www.usdoj.gov/crt/ada/smbusgd.pdf>. Accessed May 25, 2005.

<sup>13</sup>Equal Employment Opportunity Commission. *Disability Discrimination*. Available online at <http://www.eeoc.gov/types/ada.html>. Accessed May 25, 2005.

<sup>14</sup>U.S. Department of Justice. *ADA Regulation for Title III*. Available online at <http://www.usdoj.gov/crt/ada/reg3a.html>. Accessed May 25, 2005.

<sup>15</sup>U.S. Department of Justice. *ADA Title III Highlights*. Available online at <http://www.usdoj.gov/crt/ada/t3highlight.htm>. Accessed May 25, 2005.

## ***The Fair Labor Standards Act***<sup>16</sup>

The Fair Labor Standards Act (FLSA) of 1938, as amended, establishes standards for minimum wage, overtime compensation, equal pay, child labor and certain mandatory record keeping affecting your full- and part-time workers.

Minimum wage rates are set by the U.S. Congress and are periodically adjusted by statute. As of May 2005, the minimum wage rate is \$5.15 per hour.

Overtime pay is set at a rate of not less than one and one-half times the regular rate of pay. Overtime pay is required after an employee works 40 hours during a calendar workweek.

Specific provisions apply to agricultural operations. Employees who are employed in "agriculture" are exempt from overtime pay provisions. The FLSA<sup>17</sup> defines "agriculture" as farming in all of its branches including

- Cultivation and tillage of the soil
- Dairying
- Production, cultivation, growing and harvesting of any agricultural or horticultural commodities
- Raising of livestock, bees, furbearing animals or poultry
- Any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations including preparation for market, delivery to storage or to market or to carriers for transportation to market

"Agriculture" does not include work performed on a farm that is not incidental to or in conjunction with the farmer's agricultural operation.

"Agriculture" also does not include operations performed off a farm if performed by employees who are employed by someone other than the farmer whose agricultural products are the basis of the work.<sup>18</sup> Any employee who falls under these two sets of circumstances must be paid overtime when the proper conditions are met.

Equal pay requirements prohibit differences in wages based on gender. Men and women employed in the same establishment, doing jobs that require equal skill, effort and responsibility and which are performed under similar working conditions must be paid similar wages.

Records should be kept on employees' wages, hours worked and other information (such as age, gender, entrance pay and job duties) as specified by the Department of Labor record keeping regulations available online at <http://www.dol.gov/esa/regs/compliance/whd/whdfs21.htm>.

It should be noted that the FLSA does not regulate the following areas (i.e. as the employer, you determine):

- Vacation, holiday, severance or sick pay
- Holidays off or vacations
- Premium pay for weekend or holiday work
- Pay raises or fringe benefits

You can find additional information on wage rates and benefits prevalent in your geographic area by contacting the Tennessee Department of Employment Security Labor Market Information Field Office at (615) 741-1729 or visit their Web site at <http://www.state.tn.us/labor-wfd/lmi.htm>.

## ***Child Labor Act***<sup>19</sup>

The Child Labor Act prohibits the employment of minors in certain occupations and in particular working conditions that may be hazardous. In Tennessee, a minor must be 14 years of age to be employed. Child labor regulations differ depending on a youth's work activities and the type of agritourism enterprise providing employment.

- A minor must have a thirty-minute unpaid break or meal period if scheduled to work six consecutive hours.
- Breaks cannot be scheduled during or before the first hour of scheduled work activity.

<sup>16</sup>Tennessee Department of Economic and Community Development. *Business Services: Business Regulations*. Available online at [http://www.state.tn.us/ecd/rg\\_ch4.htm](http://www.state.tn.us/ecd/rg_ch4.htm). Accessed May 25, 2005.

<sup>17</sup>*The Fair Labor Standards Act of 1938 as Amended*. Available online at <http://www.dol.gov/esa/regs/statutes/whd/FairLaborStandAct.pdf>. Accessed May 25, 2005.

<sup>18</sup>Thilmany, Dawn, M. Miller, and J. Tranel. *Overtime Pay*. PB 09161. Colorado State University Cooperative Extension. Aug. 2002. Available online at <http://www.ext.colostate.edu/pubs/consumer/09161.html>. Accessed May 25, 2005.

<sup>19</sup>Tennessee Department of Labor and Workforce Development. *Child Labor Act*. Available online at <http://www.state.tn.us/labor-wfd/childlab.html>. Accessed May 25, 2005.

- Minors 16 and 17 years of age may not be employed<sup>20,21</sup>
  - During the hours the minor is required to attend classes.
  - Between the hours of 10:00 p.m. and 6:00 a.m. on Sunday through Thursday evenings preceding a school day, except with parental or guardian consent. Even with consent, the minor may work until midnight no more than three nights Sunday through Thursday.
- Minors 14 and 15 years of age may not be employed
  - During school hours.
  - Between 7:00 p.m. and 7:00 a.m. if the next day is a school day.
  - Between 9:00 p.m. and 6:00 a.m.
  - More than 3 hours a day on school days.
  - More than 18 hours a week during a school week.
  - More than 8 hours a day on non-school days.
  - More than 40 hours a week during non-school weeks.

Note: The U.S. Department of Labor does not allow 14- and 15-year-old minors to work past 7:00 p.m. from Labor Day to June 1.

In farm work, permissible jobs and hours of work, by age, are as follows:<sup>22</sup>

- Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours.
- Youths 14 and 15 years old may perform any non-hazardous farm job outside of school hours.
- Youths 12 and 13 years old may work outside of school hours in non-hazardous jobs, either with a parent's written consent or on the same farm as the parent(s).
- Youths under 12 years old may perform jobs on farms owned or operated by parent(s). With a parent's written consent, they may work outside of school hours in non-hazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by the parents.

The Child Labor Act is enforced by the Division of Labor Standards. For more information, call the Division of Labor Standards at (615) 741-2858 or visit their Web site at <http://www.state.tn.us/labor-wfd/lstdiv.html>.

### **Occupational Safety and Health**<sup>23</sup>

The Occupational Safety and Health Administration (OSHA) works to ensure a safe and healthy workplace for all citizens, regardless of age. All employers are covered by the provisions of federal and state OSHA regulations. If you employ eleven or more employees, you must maintain records in accordance with OSHA rules.

OSHA requires the employer to

- Provide a safe working environment
- Inform employees of safety regulations
- Warn employees of existing hazards
- Supervise employee activities
- Supply and maintain necessary equipment inherent in the workplace

Records should be kept on any hazardous materials that may be encountered or used by employees. In addition, records should be maintained on any injuries or illnesses that may have occurred during employment or on the job.

To find more information on the guidelines regarding OSHA and how they may apply to you, contact the Tennessee Department of Labor and Workforce Development at (615) 741-2793 or visit their Web site at <http://www.state.tn.us/labor-wfd/tosha.html>.

<sup>20</sup>Consent forms are available from the Tennessee Department of Labor and Workforce Development's Division of Labor Standards by calling (615) 741-2858 or at <http://www.state.tn.us/labor-wfd/forms/pconsent.pdf>.

<sup>21</sup>Forms shall remain valid until the end of the school year in which it is submitted or until termination of employment, whichever occurs first.

<sup>22</sup>Department of Labor. *Handy Reference Guide to the Fair Labor Standards Act*. Available online at <http://www.dol.gov/esa/regs/compliance/whd/hrg.htm#11>. Accessed May 25, 2005.

<sup>23</sup>Tennessee Occupational Safety and Health Administration. Available online at <http://www.state.tn.us/labor-wfd/tosha.html>. Accessed May 25, 2005.

## **Workers' Compensation**<sup>24</sup>

If you have five or more full- or part-time employees, you are required to obtain workers' compensation insurance for your employees. This insurance protects a business from lawsuits filed by an injured employee and provides insurance benefits to employees injured while on the job. Family members who work for your agritourism enterprise are considered employees. Businesses are responsible for obtaining coverage from a licensed insurance carrier.

All employers are required to display the Tennessee Workers' Compensation Insurance notice. The notice is available at [http://www.state.tn.us/labor-wfd/forms/WC\\_Certificate.pdf](http://www.state.tn.us/labor-wfd/forms/WC_Certificate.pdf).

For more information about workers' compensation, contact the Tennessee Department of Labor and Workforce Development at (615) 741-2395 or visit their Web site at <http://www.state.tn.us/labor-wfd/wcomp.html>.

## **Unemployment Insurance Taxes**<sup>25</sup>

Unemployment insurance taxes provide benefits to unemployed workers who have lost their jobs through no fault of their own. The Tennessee Division of Employment Security administers the Unemployment Insurance Program in Tennessee.

All employers doing business in Tennessee are subject to the provisions of the Tennessee Employment Security Law and Regulations. As an employer, you are liable for unemployment insurance premiums if you meet one of the following conditions:

- You have a total payroll of \$1,500 or more in any calendar quarter of the current or preceding calendar year.
- You employed one or more people during some part of a day in each of 20 weeks in the current or preceding calendar year.
- You are liable under the Federal Unemployment Tax Act and have at least one employee in Tennessee.

<sup>24</sup>Tennessee Department of Labor and Workforce Development Worker's Compensation Division. Available online at <http://www.state.tn.us/labor-wfd/wcomp.html>. Accessed May 25, 2005.

<sup>25</sup>Tennessee Department of Economic and Community Development. *Unemployment Insurance*. Available online at [http://www.state.tn.us/ecd/rg\\_ch3.htm](http://www.state.tn.us/ecd/rg_ch3.htm). Accessed May 25, 2005.

<sup>26</sup>Kenkel, Phil L. *Tennessee Farm Labor Regulations and Legal Issues*. University of Tennessee Extension publication *AE&RD #75*. Available online at <http://economics.ag.utk.edu/pubs/resource/ae&rd75.pdf>. Accessed May 25, 2005.

As an employer, you are not liable for unemployment insurance premiums if you are self-employed and also the sole employee, a sole proprietorship without employees, general partners without employees, or general partners in a limited liability company without employees. Wages paid to workers under the H-2A Temporary Agricultural Worker Program are not subject to unemployment insurance since these workers are not eligible for unemployment benefits.<sup>26</sup>

Employers must pay federal unemployment taxes if they pay cash wages totaling \$20,000 or more in any calendar quarter to an employee or employees or if, in each of 20 different calendar weeks in the current or preceding calendar year, there was at least one day in which they had 10 or more employees performing service in agricultural labor. The 20 weeks do not have to be consecutive weeks, nor must they be the same 10 employees, nor must all employees be working at the same time of the day.

Your local Employment Security Office may be contacted for a helpful booklet titled *Handbook for Employers*, which provides more information in the area of unemployment insurance. To find your local Employment Security Office, contact the Division of Employment Security at (615) 235-4809 or visit their Web site at <http://www.state.tn.us/labor-wfd/Employers/taxoffices.html>.

## **Income Tax Withholding**

All employers are required by the federal Internal Revenue Code to deduct and withhold taxes on wages paid to their employees. You may need to use either the tax guide for agricultural employers or the tax guide for small business entrepreneurs depending upon whether your employees are involved with the agricultural activities or other activities of your operation. It may be important to contact your personal accountant for more information on these taxes.

The IRS provides the *Farmer's Tax Guide* (Publication 225) for agricultural employers. It

includes the necessary information and forms to withhold federal income taxes. The *Farmer's Tax Guide* can be found online at <http://www.irs.gov/publications/p225/index.html> or by contacting your local IRS office.

The IRS also provides a similar tax guide for small business entrepreneurs (Publication 334) found online at <http://www.irs.gov/publications/p334/index.html> or by contacting your local IRS office.

### ***Forms and Additional Resources about Employment Regulations***

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The Tennessee Department of Labor and Workforce Development Web site has forms related to unemployment, workers' compensation and OSHA regulations. You can find these forms at <http://www.state.tn.us/labor-wfd/mainforms.html>.

### **Permits and Licenses for Specific Attractions**

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**Y**ou may be required to obtain a special permit or license for your agritourism operation depending on the type of activities being conducted on your enterprise. There are several permits and licenses that are required for only specific types of attractions.

#### ***Food Service Permits and Inspections***

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The Tennessee Department of Health and local health departments are responsible for issuing permits and inspecting food service establishments, bed and breakfasts, organized camps and other establishments serving food. Several types of permits are offered for food-service establishments including full-service, mobile-unit and temporary-unit permits.

Tennessee requires a permit to operate a food service establishment in the state.<sup>27</sup> Applications for the permit must be submitted to the local Department of Health with an initial permit fee at least 30 days before the establishment begins operation. The amount of the initial fee will depend upon how many seats will be available in the establishment and the date of application. An inspection will also be conducted before a permit

is issued. Renewal of the permit must be made before July 31 of each year.

You must submit plans for the construction or remodeling of a structure for a non-temporary food service establishment to the Department of Health at least 15 days in advance of starting the work. Once construction is complete and before operation of the facility begins, the Department of Health must complete a pre-operational inspection.

Food service establishments are required to follow regulations to ensure proper sanitation. Facilities will be inspected to ensure compliance. A permit may be revoked for serious or repeated violations.

A temporary food service permit is required to operate a temporary food establishment for an event lasting two or more days, such as a fair or special event.<sup>28</sup> A temporary food establishment may include tents, open booths, mobile units or permanent structures. Permits valid for up to 14 days of operation at a single location are available for a \$30 fee.<sup>29</sup> Health regulations for food preparation and service must be followed.

To learn more about specific health regulations that may affect your food service establishment or to obtain a permit, contact your local health department. A list of local health departments is available at <http://www2.state.tn.us/health/LocalDepts/index.html>.

#### ***Retail Food Store Permits and Inspections***

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The Tennessee Department of Agriculture Division of Regulatory Services Food and Dairy Section is responsible for issuing permits and inspecting retail food stores. According to the regulations, a retail food store is defined as,

any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term does not include establishments which handle only prepackaged, non-potentially hazardous foods;

<sup>27</sup>Rules of Tennessee Department of Health, Bureau of Health Services Administration, Division of General Environmental Health. *Chapter 1200-23-1 Food Service Establishment*. November, 2000 (Revised).

<sup>28</sup>Tennessee Department of Health, Division of General Environmental Health. *Requirements for Temporary Events*.

<sup>29</sup>Permit fee price based as of May 2005.

roadside markets that offer only fresh fruits and fresh vegetables; food and beverage vending machines; or food service establishments not located within a retail food store.<sup>30</sup>

Additional permits and inspections are required for establishments selling potentially hazardous food. Potentially hazardous food is defined as,

any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods that have a pH level of 4.6 or below or water activity (aW) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.<sup>31</sup>

All new retail food businesses must submit plans to the Tennessee Department of Agriculture Regulatory Services Division for approval before building and operating the business. Plans for changes to an existing business must also be approved. The Regulatory Services Division must be notified if a business changes ownership or location.

Retail food stores must follow sanitation guidelines as outlined in the Rules of the Tennessee Department of Agriculture Division of Regulatory Services Food and Dairy Section. These rules are available online at <http://www.state.tn.us/sos/rules/0080/0080-04/0080-04-09.pdf>.

Contact the Food and Dairy Section at (615) 837-5103 with questions regarding these regulations or to obtain a retail food store permit.

The University of Tennessee Extension has developed a publication titled *Adding Value to Tennessee Agriculture through Commercial Food-Processing Enterprises*. It is a useful guide providing basic information on requirements and regulations for value-added food businesses; and it also provides information on construction, quality

control, marketing, cost analyses and assessing the feasibility of a commercial food business. The publication is available from your county Extension office or online at <http://www.utextension.utk.edu/publications/pbfiles/pb1710.pdf>.

### ***Animal Exhibitor Licensing<sup>32</sup>*** ***(Petting Zoos)***

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Petting zoo owners or operators are required to obtain an animal exhibitor license under the federal Animal Welfare Act (AWA). The regulations state that “anyone exhibiting farm animals for nonagricultural purposes (defined in the regulations as exhibition at carnivals, circuses, animal acts, petting zoos and educational exhibits) must be licensed.” The Animal Care Division of the USDA Animal and Plant Health Inspection Service (APHIS) is responsible for the licensing and enforcement of the laws under the AWA.

According to AWA requirements, animals must be exhibited for no longer than set periods of time and under conditions consistent with their health and well being. Exhibitors must handle animals carefully and humanely to prevent unnecessary stress or discomfort. Animals must also be protected from rough handling during public contact sessions. Young and immature animals should be limited to shorter exhibition and contact periods.

Anyone who arranges and takes part in showing farm animals at state and county fairs, livestock shows, rodeos, field trials, and any other fairs or exhibitions intended to advance agricultural arts and sciences is exempt. However, anyone exhibiting farm animals for nonagricultural purposes (defined in the regulations as exhibition at carnivals, circuses, animal acts, petting zoos and educational exhibits) must be licensed.

Exhibitors of foreign farm animals (including camels) not commonly kept on American farms must be licensed. Petting zoos with regulated animals must be licensed and are subject to special regulations protecting animals and the public.

<sup>30</sup>Rules of the Tennessee Department of Agriculture, Division of Food and Dairy. *Chapter 0080-4-9 Retail Food Store Sanitation*. Available online at <http://www.state.tn.us/sos/rules/0080/0080-04/0080-04-09.pdf>. Accessed May 25, 2005.

<sup>31</sup>Rules of the Tennessee Department of Agriculture, Division of Food and Dairy. *Chapter 0080-4-9 Retail Food Store Sanitation*. Available online at <http://www.state.tn.us/sos/rules/0080/0080-04/0080-04-09.pdf>. Accessed May 25, 2005.

<sup>32</sup>USDA, Animal Plant Health Inspection Service, Animal Care. *Licensing and Registration under the Animal Welfare Act*. Available online at <http://www.aphis.usda.gov/lpa/pubs/awlicreg.html>. Accessed May 25, 2005.

Licensed exhibitors must maintain on their premises accurate records of the animals in their possession and of the veterinary care the animals receive. This information must be made available to APHIS during inspection.

Before APHIS will issue a license, the applicant must be in compliance with all standards and regulations under the AWA. To ensure that all licensed facilities continue to comply with the act, APHIS inspectors may make unannounced inspections. Traveling exhibits are required to submit their performance schedules to APHIS in advance so that APHIS inspectors may regularly inspect their premises at any location. APHIS officials also conduct inspections of exhibitors in response to public concern about possible animal welfare violations.

Animal exhibitor license fees are dependent upon the number and species of animals you have on hand for exhibition and the annual income you expect to receive from exhibiting those animals. You must obtain an application kit from APHIS for licensing and registration. You may request an animal exhibitor license application kit online at <https://web01.aphis.usda.gov/ApplicationKit.nsf/application?OpenForm>.

You may contact the Eastern Regional Animal Care office for more information about licensing and fees pertaining to your agritourism enterprise at (919) 855-7100.

### ***Nursery Licensing***<sup>33</sup>

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The Tennessee Department of Agriculture Division of Plant Industries oversees the licensing and certification of nurseries. A Nursery Certificate is required on any grounds or premises on or in which nursery stock is grown, kept, or propagated for sale or distribution. If you have a nursery that is smaller than 600 square feet, you will need to obtain a Hobbyist Certificate.

You will need to apply for nursery stock certification by or before June 1 of each calendar year. Applicants are required to furnish information as to the amounts and kinds of stock for which application for certification is made and locations where such stock is being grown or held. In the case of native wild plants, applicants are required to furnish information as to the kinds to

be collected and the area from which collections will be made.

As of May 2005, the Nursery Certificate fee was \$200 while the Hobbyist Certificate fee was \$100. The applications for both certificates can be found online at [http://www.state.tn.us/agriculture/regulate/permits/app\\_general.pdf](http://www.state.tn.us/agriculture/regulate/permits/app_general.pdf).

You may contact the Division of Plant Industries at (615) 837-5130 or visit their Web site at <http://www.state.tn.us/sos/rules/0080/0080-06/0080-06.htm>.

### ***Winery Licensing***

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The Tennessee Alcoholic Beverage Commission (ABC) regulates the production, sale and transport of wine through Chapter 0010-7 of the ABC rules. In order to operate a winery in Tennessee, a winery license must be obtained. As of May 2005, a winery license fee was \$150 in addition to a \$300 non-refundable application fee.<sup>34</sup> License and application fees are subject to change on July 1 of each year.

For questions about the rules and regulations of the Alcoholic Beverage Commission or to obtain an application for a winery license, call the commission headquarters at (615) 741-1602 or visit their Web site at <http://www.state.tn.us/abc/>.

The University of Tennessee Extension has developed a publication titled *Starting Your Own Wine Business*. It provides basic information on regulatory approval needed at the county, state and federal level. This publication also provides information on equipping a winery, chemical analyses and some common mistakes and misconceptions about wineries. The publication on starting your own wine business is available from your county Extension office or online at <http://www.utextension.utk.edu/publications/pbfiles/PB1688.pdf>.

<sup>33</sup>Tennessee Department of Agriculture Division of Plant Industries. *Regulations Governing Nurseries Dealers and Agents*. Available online at <http://www.state.tn.us/sos/rules/0080/0080-06/0080-06-01.pdf>. Accessed May 25, 2005.

<sup>34</sup>Tennessee Alcoholic Beverage Commission *Annual Liquor-by-the-Drink License Fees*. Available online at <http://www.state.tn.us/abc/licensefees.html>. Accessed May 25, 2005.

## ***Fee-Fishing Regulations***<sup>35</sup>

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Fish farming and fee-fishing or catch-out operations are regulated under the rules of the Tennessee Wildlife Resources Agency (TWRA). Fish farming is defined as “the business of rearing for sale legal species of fish and other aquatic life or the selling of legal species of fish and other aquatic life reared in private facilities. Selling may be by direct purchase or by catch-out operations.” A catch-out operation is defined as “the business of making legal species of fish placed in a pond, tank, or other constructed container available to persons wishing to purchase them after catching them by legal sport fishing methods.”

According to the regulations, catch-out operations must apply for a Fish Dealer License from TWRA and pay an annual license fee. As of May 2005, the fee was \$250 per year. The license can be obtained from TWRA. Customers of catch-out operations are not required to have sport fishing licenses. State creel and size limits do not apply for these operations nor are these operations limited by a season.

Fee-fishing operations are limited in the species that may be offered. TWRA-approved species include all species of native catfish; all species of trout, salmon and common carp; and buffalo and other legally obtained native non-game fish.

Additionally, the TWRA regulations address invoicing and record-keeping requirements. The rules state,

Whenever the owner or operator of any catch-out facility shall sell, donate, deliver or otherwise dispose of any game fish, alive or dressed, he shall immediately issue to the person receiving such fish an invoice signed by him or his agent, and such invoice shall be consecutively numbered and must contain the name and location of the catch-out facility, the date of sale or delivery, and the species and number of fish delivered. The name and

address of the person receiving the fish must also appear on the invoice. One copy of the invoice shall be retained by the owner or operator of the catch-out facility issuing same for an inspection by any representative of TWRA at all times. Any person transporting or possessing game fish obtained from a catch-out facility must have a copy of the invoice on their person. A catch-out operator shall make his records available for inspection by TWRA personnel. A catch-out operator shall make available to TWRA personnel any specimens needed for laboratory analysis.

For questions about catch-out operations, contact TWRA Fisheries Management Division at (615) 781-6575 or online at <http://www.state.tn.us/twra/fish/fishmain.html>.

## **Chapter Review**

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This chapter provides a brief introduction to the numerous regulations that could affect your agritourism operation. Regulations vary depending upon the type of enterprise operated and where it is located as well as a number of other factors specific to your particular activities. It is very important to investigate applicable regulations in order to avoid penalties, fines or obstacles that could interrupt your business.

Many of the regulations covered in this chapter are very complex, and it is impossible to cover every regulation that might affect an agritourism operation. This chapter is not a complete listing of all such regulations and is not intended as legal advice. You need to take time to learn how laws and regulations will affect your enterprise. Contact the appropriate government agency for more specific information on fees and to obtain the most current regulations.

<sup>35</sup>Tennessee Wildlife Resources Agency. *Rules and Regulations for Fish Farming, Catch-Out Operations, and Bait Dealers*. Chapter 1660-1-26. Available online at <http://www.state.tn.us/sos/rules/1660/1660-01/1660-01-26.pdf>. Accessed May 25, 2005.

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