

THE EVOLUTION OF AGRITOURISM

Current Legal Issues and Future Trends

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Ohio State University Extension



CFAES

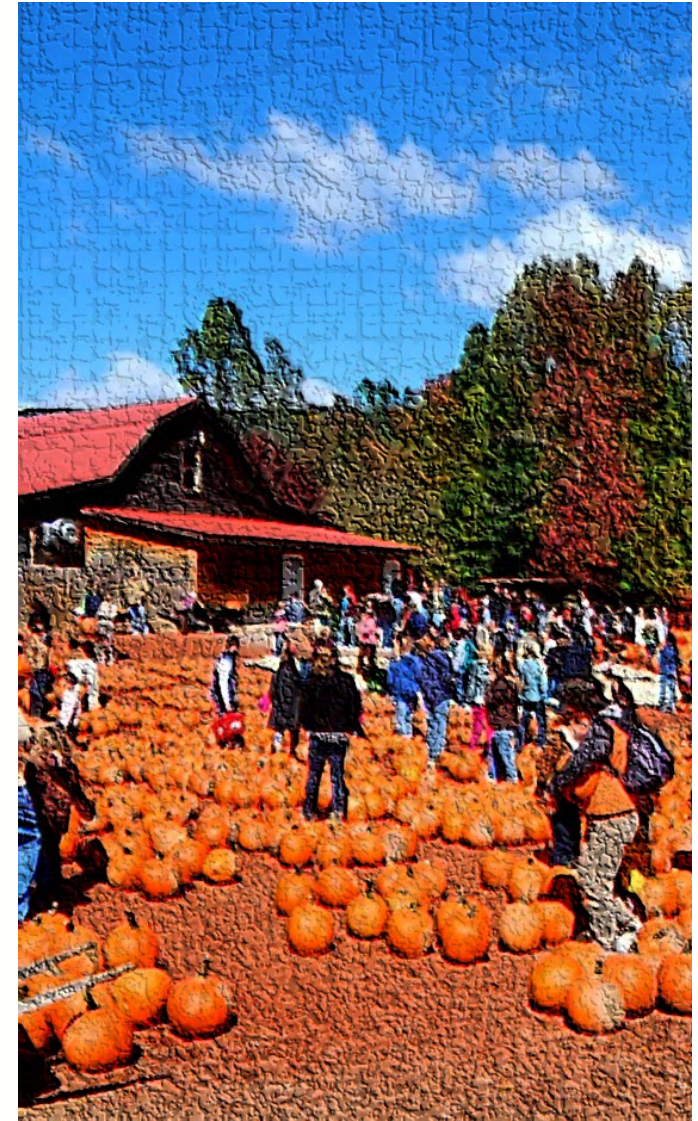


THE OHIO STATE UNIVERSITY

COLLEGE OF FOOD, AGRICULTURAL,
AND ENVIRONMENTAL SCIENCES

WHAT WE'LL COVER

1. Agritourism trends and opportunities
2. Planning agritourism activities
3. COVID-19 issues for agritourism
4. Agritourism in the courts
5. Challenges for the future



Overall Trend

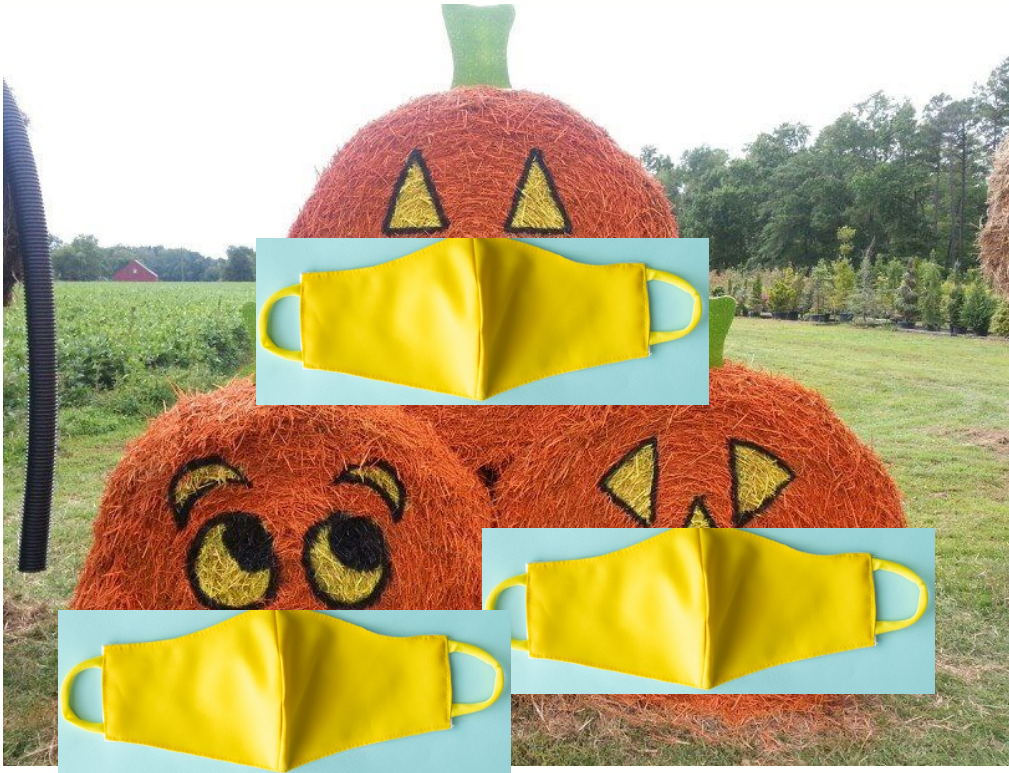
1. **Agritourism 365**
 - a. More than fall!
 - b. Events & activities out of season
 - c. Spread Fix Costs & Financial Risk
 - d. More than revenue – Customer Awareness
 - e. Keep crowds down – Intimate experiences
 - f. Keep ‘best’ staff for all/most of year
2. **Authenticity**




Trends We See...

1. Safe Environment
2. Beer, Wine, Spirits
3. Porch/Field games
4. Weddings
5. Private Events & Photography
6. Culinary
7. Engage with Plants (5 senses)

1. Safe Environment



- Write plan, partnership with health dept.
- Communicate plans
 - Employees
 - Customers
- Determine capacity
- Avoiding crowds
- At-Risk Hours
- Staggering entry
- PPE for all

Activity	Guests that can be in that area at a given time -Keeping people from becoming crowds. -Ensuring social distance in lines. -Allowing adequate time for disinfecting. -Does not include staff numbers	Length of time in area	Turnover within 1-hour period	Guests per 1-hour (Guests x units of time in 1-hour) This is throughput per activity during the 1-hour
Pumpkin Picking	48	30 minutes	2	96
Hayrides	21	15 minutes	4	84
Corn Maze	125	45 minutes	1.33	250
Animal Area	80	20 minutes	3	240
Activity Zone 1	80	30 minutes	2	240
Activity Zone 2	80	30 minutes	2	240
Activity Zone 3	80	30 minutes	2	240
Pumpkin Painting	40	15 minutes	4	160
Market/Shop	10	15 minutes	4	40
Food Service	12	15 minutes	4	48
Total Guests per 1-hour Visit Period (at a socially distanced, 50% capacity)				1638
		Reduce above capacity by another half to further ensure social distancing and to allow time for sanitation		819

2. Beer, Wine, Spirits



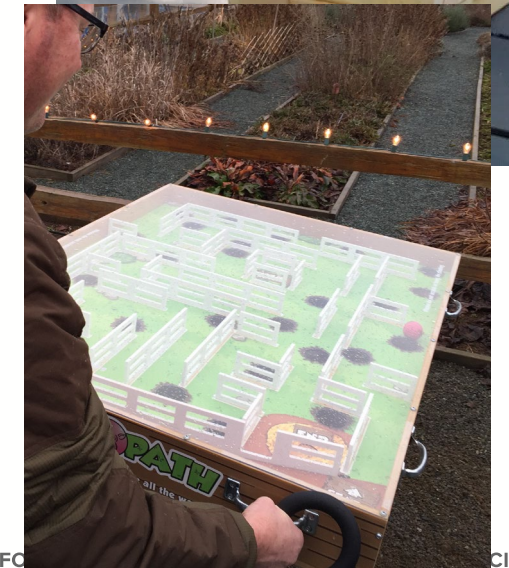
- Always cutting edge!
- Adding more value to crops
- Tastings
- Hard Cider



GOLDRUSH
CIDER

3. Porch/Field Games

- Active/Hands On
- Great Additions to Engage guests
- Used to Extend the activity



4. Weddings



- Zoning
- Pricing
- Add planning services
- Alcohol!?!?
- Rent items
- Being outside...new opportunities

5. Private Events & Photography



- Birthdays
- Engagements
- Showers
- Unsupervised events?
- Contracts, farmstead rules, etc.



6. Culinary

- On-Site Food
- Dinner you do/promote
- Dinner for charity
- Specific, higher value added products
- Cooking classes



7. Engage with plants

- High ability to be social distant, but engaged
- Sunflowers
- Lavender
- Hydrangeas
- Growing experiences
- By spring, we will see a new influx of ideas in this area



Planning Agritourism Activities

Where do we begin?

• Pumpkin Slingshot



How are decisions made?

“It looks fun!”

“It seems to make money for them!”

“I can build that!”

Before planning, everything is exciting!

Decision Making for New Agritourism Activities

What activities worked for you? For others? How do you decide if it will work for your farm?

Decision making for new agritourism activities at the farm are complex. Many farms adopt new activities based on seeing the activity at another farm or venue. While lots of planning goes into the activity, few farms have a comprehensive process they use in developing new activities. The categories below were developed based on reviews of agritourism farms in Ohio to use in selecting new activities.

Enhances My Farm Brand – The farm's brand is its biggest asset. The brand keeps people returning year after year for activities and events. The brand says who the farm is, how they operate and how they treat customers. Reviewing each new activity as a part of the farm's brand helps ensure continued success. Using the mission statement to guide the discussion and talk about how the activity fits within the brand and specific aspects of the farm.

Fits My Target Market – Teenagers are very different from toddlers. Keeping mom and dad or grandma and grandpa engaged during visits to the farm matters. Discuss how the target market will engage with the activity.

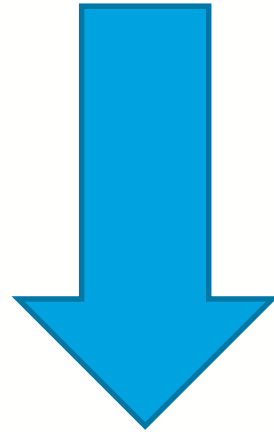
Safety and Insurance Considerations – Begin by researching best practices for the event (if they exist), and think through scenarios of customer use. Review the idea with your insurance company to see what questions or suggestions they might have. Utilize the website safeagritourism.org provides detailed information to plan for new activities and best practices for many common activities on farms in the US. The website includes walkthroughs of activities, safety checklists, and many resources to assist. In addition to using this information for new activities, agritourism farms should utilize this website for reassessing current activities on their farms.

Labor, Expertise and Cost to Build/Install – While farmers love to build things themselves, this is not always the best choice. Some insurance companies require manufacturer's specifications and use requirements. Items such as bridges may fall under county jurisdiction. Make decisions on which parts of the activity can be built versus what should be purchased. Purchasing decisions should pay special attention to quality of products and life expectancy.

Topics to Guide Discussion

- 1. Enhances My Farm Brand**
- 2. Fits My Target Market**
- 3. Safety and Insurance Considerations**
- 4. Labor, Expertise and Cost to Build/Install**
- 5. Labor to Operate**
- 6. Income or Benefit to the Farm**

Activity Idea	Enhances my farm brand	Fits my target market	Safety and Insurance considerations	Labor, expertise and \$ to build/install	Labor to operate	Income or benefit to the Farm	Other
Slingshot	Yes – active, can do with family	Connects parents/kids	Regular safety checks needed New slingshots each season Build is specific due to potential turning of pocket	Est. \$500 per site in supplies	1 person per 2 slingshots. Labor cost would be \$13/hour of operation	Did budget. The farm will net \$10,000 per season	Mom hates this idea. Many accidents on other farms



Liability Risk

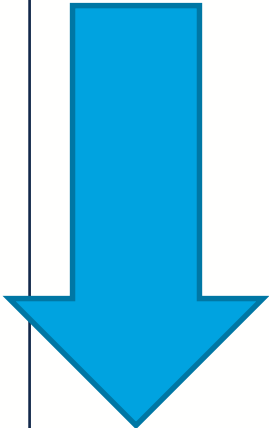
• Combine Slide



Activity Idea	Enhances my farm brand	Fits my target market	Safety and Insurance considerations	Labor, expertise and \$ to build/install	Labor to operate	Income or benefit to the Farm	Other
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Combine Slide	Yes – active, great for small children, Mom and Dad can do if fit	Connects parents/kids	Regular safety checks needed Seasonal maintenance Possible need for rides inspection, buildings plans may be needed.	\$30,000 material and labor to build	1 person per during operation. Labor cost would be \$13/hour of operation	Budget. The farm will net 15,000 \$9,000/year 20,000 \$12,000/year	Dads loves the idea, it's the combine he used in the 80's
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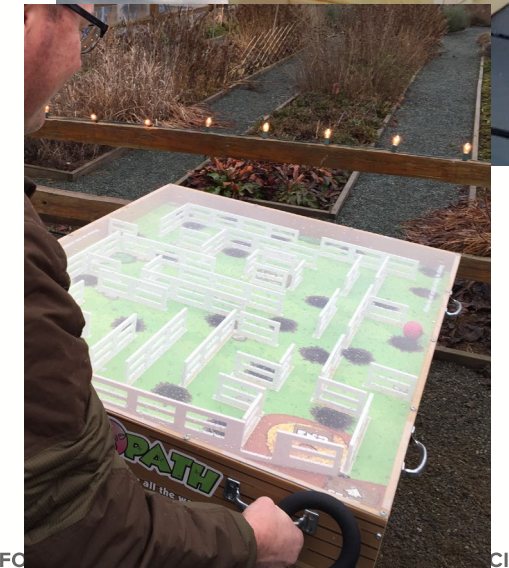
Combine				
Costs				
To Build	30,000	5	6000	\$ 6,000.00
Maitance/Ins	500		500	\$ 500.00
labor	13	30	10	\$ 3,900.00
				\$10,400.00
Income				
Guests	Price/person	alotment	Income/year	
15000	\$ 12.00	0.05	\$ 9,000.00	
20000	\$ 12.00	0.05	\$ 12,000.00	



Financial Risk

3. Porch/Field Games

- Active/Hands On
- Great Additions to Engage guests
- Used to Extend the activity



Activity Idea	Enhances my farm brand	Fits my target market	Safety and Insurance considerations	Labor, expertise and \$ to build/install	Labor to operate	Income or benefit to the Farm	Other
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Slingshot	Yes – active, can do with family	Connects parents/kids	Regular safety checks needed New slingshots each season Build is specific due to potential turning of pocket	Est. \$500 per site in supplies	1 person per 2 slingshots. Labor cost would be \$13/hour of operation	Did budget. The farm will net \$5,000 per season	Mom hates this idea. Many accidents on other farms
Porch/Field Games	Yes – active, can do with family	Engages parents/kids	Normal year no safety risks, High touch games, may be a covid-19 risk	Est. \$1000 per site in supplies	1 person for all games Labor cost would be \$13/hour of operation	Did budget. The farm will net \$2,500 per season	Concerns about Covid-19 risk, may be a 2021 addition



Safety Risk

- **Easter Egg Hunt**



Bauman Farms' Easter Egg Hunt

Check out the most fun, stress-free, and prize packed local Easter Egg Hunt! True fun for the whole family! Bauman Farms in located south of Portland & north...

[YOUTUBE.COM](#)

 Like

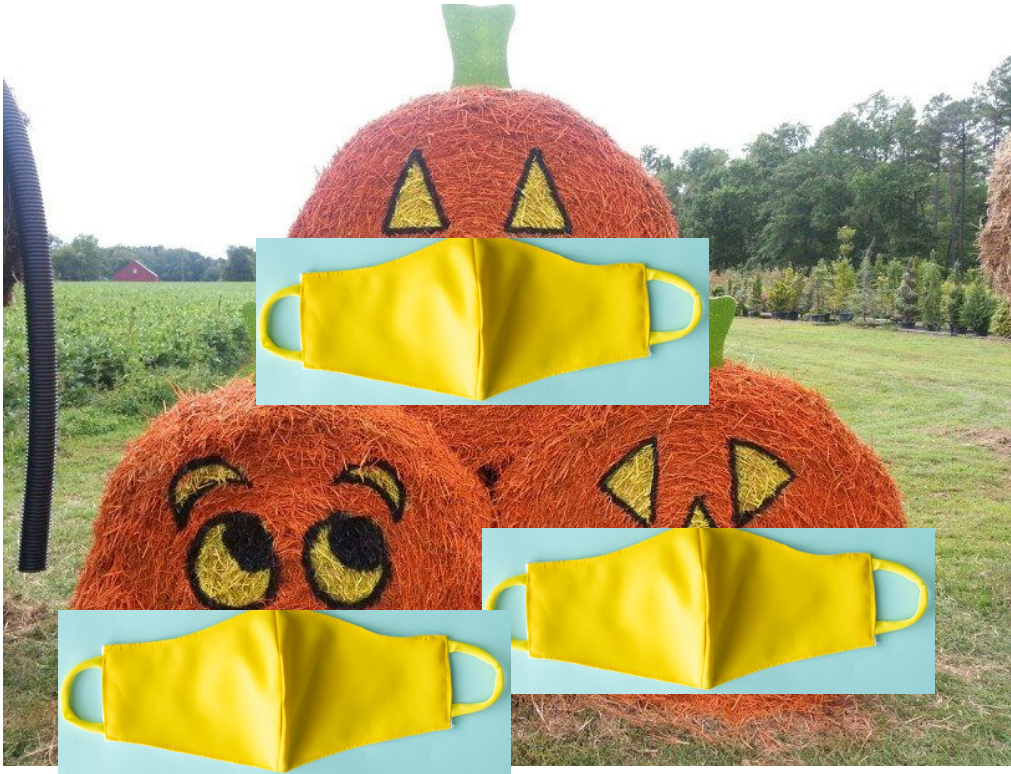
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 Share



7,119,141 Views

Safe Environment



- Write plan, partnership with health dept.
- Communicate plans
 - Employees
 - Customers
- Determine capacity
- Avoiding crowds
- At-Risk Hours
- Staggering entry
- PPE for all

COVID-19 AND AGRITOURISM



The Big Legal Question:

Will an operation be liable if customer or employee claims that COVID-19 was contracted at the operation?

COVID-19 LIABILITY FACTORS

1. What laws apply?

- Tort liability/premises liability duties to visitors, employees
- State and federal COVID-19 safety guidelines
- OSHA workplace protections “planning guidance”
- COVID-19 immunity—federal and state
- Agritourism immunity—state

2. What actions did the operation take?

- “Good faith” or “reasonable” efforts vs. reckless/gross negligence or misconduct
- Documentation can be critical

3. Causation

- Evidence of how/where victim contracted COVID-19

4. Does insurance matter?

- Workers compensation insurance
- General liability insurance

IN THE COURTS

- What litigation has occurred involving agritourism?
- See our review of court cases from 2013 to 2020 on NALC and OSU Farm Office websites.

Two major categories of cases:

1. Land use and zoning
2. Personal injury liability

<https://nationalaglawcenter.org/center-publications/agritourism/>



The National Agricultural Law Center

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Recent Agritourism Litigation in the United States

Peggy Kirk Hall*

Associate Professor, Ohio State University Extension

Ellen Essman

Sr. Research Associate, Ohio State University Extension

There has been significant growth in agritourism entrepreneurship in recent years.¹ "Agritourism," also referred to as "agricultural tourism," and "agritainment," refers to visiting a working farm or an agricultural, horticultural or agribusiness operation to enjoy the rural setting, be educated, or be involved in special activities.² Examples of agritourism activities include corn mazes, hay rides and tours, horseback riding, petting zoos, you-pick operations, farm stays, educational classes, wineries, farm markets, hunting, nature and recreational activities, and wedding and event centers. With the growth of agritourism, however, comes legal issues for agritourism operators.

The National Agricultural Law Center has focused on helping agritourism operators understand legal issues and manage agritourism legal liability risk. To continue our work in this area, we sought to identify litigation across the United States related to agritourism operations. What types of agritourism lawsuits are arising, and how are they resolved? This report summarizes our findings of recent court cases involving agritourism operations, and also highlights legal incidents that occurred but did not produce litigation.

We can classify our findings on agritourism litigation into two major categories: land use and personal injury. Somewhat surprisingly, there are more cases in the land use category than in the personal injury category. Land use cases center on issues of zoning compliance, interpretations of "agritourism," "agriculture," and related terms, and relationships between agritourism and nuisance laws. Personal injury cases involve incidents of physical injuries to agritourism participants. We expected to find a higher number of these types of lawsuits, but two factors might explain why we did not. One is the continued adoption of immunity statutes that grant agritourism providers immunity from personal injury liability in more than half of the states in the U.S.³ Another explanation could be that personal injury cases are more likely to involve insurance policies and settlements rather than litigation that results in a court decision. For this reason, we include in our findings on reported personal injury incidents on agritourism operations that did not result in court decisions.

* The authors thank Jahnathan Cottingham, OSU student intern, for his able assistance with this publication.

LAND USE LITIGATION

- Many states and local land use laws don't specifically address agritourism.

Problem area:

- Weddings and events
 - More cases **rejected** these types of land uses than allowed them, on the basis that they are “commercial” and are not “agriculture” or “agritourism.”
 - Michigan: *Nixon v. Webster Township* (Jan. 21, 2020)
 - Several hundred acre grain, pumpkin, hay farm in agricultural district used existing barn for wedding venue.
 - But Township adopted new ordinance to preserve community's agricultural history; allowed “seasonal agri-tourism”—including, hay rides, pumpkin patches, corn mazes and Christmas tree farms.
 - Zoning board decided “event barns” are not “seasonal agri-tourism.”
 - Challenged but upheld by Court of Appeals: excluding wedding barns was consistent with legislative intent of ordinance.



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LAND USE LITIGATION

<https://nationalaglawcenter.org/center-publications/agritourism/>

Other litigated issues

- Hosting events at a vineyard in a new building with a tasting room, limited service restaurant and commercial kitchen in an “exclusive farm use” zone.
- Adding fee-based activities to a farm stand in an “exclusive farm use” zone.
- Whether nighttime culinary workshops with for adults at a historic farm barn in a “farm residential” district are “educational.”
- Wedding barn as an accessory use to a residence.
- Wedding barn or winery as primary use?
- Whether weddings and events are “agricultural operations” protected by Right to Farm Act.
- Whether “agritourism” is within definition of “agriculture.”
- Hunting preserve and shooting range are not “agritourism.”
- Music concerts on a farm are not “agriculture” for Right to Farm nuisance protection.



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PERSONAL INJURY LIABILITY

1. Adult customer broke leg while trying to cross flowing water to exit corn maze as directed by an employee during a rain storm.
 - “Effectively unavoidable dangers” are an exception to “open and obvious” dangers: was the flowing water “effectively unavoidable” by the customer?
2. 8 year old trip-and-fall over a fallen corn stalk in a corn maze path.
 - No liability: stalk was “open and obvious” and not inherently dangerous; but is inherent to the nature of a corn maze; owner had no notice of the condition.
3. Child contracted kidney disease from touching cattle, goats and manure on pumpkin farm petting zoo.
 - Liability: Farm had duty to minimize risk from exposure to E. coli; but offset by caretaker’s negligence of not having child wash/sanitize hands.
 - \$7.55 million verdict.
4. Adult customer injured when church bus hit drainage berm on farm’s gravel driveway.
 - Church liable but farm protected. Immunity statute still required determination of farm’s fault (85%) in order to allocate share of liability to church (15%).

PERSONAL INJURY: NON-LITIGATED INCIDENTS IN THE NEWS

- Haunted hayride accident
 - Brakes failed on vehicle pulling hay wagon, killing 17-year old.
- Pumpkin patch injuries
 - Customer broke elbow after caught up in baling twine when jumping from hay wagon.
 - Customer broke wrist due to cow train ride tip over.
- Inflatables
 - 59 mph wind gust tore inflatable from moorings—one child death, one child injury.
 - Two children injured (broken bones and potential brain injury) when wind lifted bounce house.

*Consumer
Product Safety
Commission:*

*18,000+ bounce
house accidents
in 2018.*

FUTURE LEGAL CHALLENGES FOR AGRITOURISM?

How do new activities fit into the definition of “agritourism” or “agriculture”?

- Land use laws
- Immunity statutes
- Right to farm/nuisance laws
- Insurance coverage





Publications: Agritourism

Ten Legal Issues for Farm Stay Operators

*Peggy Kirk Hall, Associate Professor- Agricultural and Resource Law Program; Ohio State University Extension
Abigail Wood, Research Assistant; OSU Agricultural and Resource Law Program*

For farm and ranch owners, offering a farm stay accommodation can generate a new stream of revenue, and many appear to be recognizing and capitalizing on this opportunity. As with any new business idea, operators will benefit from a careful examination of legal requirements and legal risks in addition to determining the physical, economic and management needs for the farm stay endeavor. This article reviews the top ten potential legal issues operators may face when considering adding a farm stay business to the farm or ranch and illustrate the connection between the type of farm stay and resulting legal risks and requirements. It also includes a checklist to assist with the process of considering and managing farm stay legal issues. [Download](#)

Recent Agritourism Litigation in the United States

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Reducing Risk in Agritourism: Factsheet Series

*Peggy Kirk Hall, Associate Professor- Agricultural and Resource Law Program; Ohio State University Extension
Evin Bachelor, Law Fellow- Agricultural and Resource Law Program; Ohio State University Extension*

The number of farms receiving income from agritourism in the U.S. expanded from 23,350 in 2007 to 33,161 in 2012. Research suggests that agritourism operations will continue on this track in the future due to consumer interest in food and farming coupled with an economic need to augment farm income through diversification. Running an agritourism business is not without its challenges, however. This series of factsheets discusses legal issues essential to reducing risks on potential agritourism operations. Each factsheet will identify questions to consider, and will also include a checklist or tips for operators to consider in reducing risk.

- [Farm Animals and People: Liability Issues for Agritourism](#)
- [Food Sales at Agritourism Operations: Legal Issues](#)
- [Agritourism Immunity Laws in the United States](#)
- [Agritourism Activities and Zoning](#)
- [Agritourism and Insurance](#)

States' Agritourism Statutes

A National AgLaw Center Research Publication

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AGRITOURISM RESOURCES

nationalaglawcenter.org

farmoffice.osu.edu

[u.osu.edu/
agritourismready](https://u.osu.edu/agritourismready)

This work is supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture



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- [RISK MANAGEMENT](#)
- [EMERGENCY ACTION PLANS](#)
- [NATURAL DISASTERS](#)
- [MAN-MADE DISASTERS](#)
- [SECURITY EMERGENCY](#)
- [RECOVER PRACTICES](#)
- [IMPROVE PRACTICES](#)
- [ADDITIONAL RESOURCES](#)
- [FILL-IN WORKBOOK](#)

Agritourism Ready

A One Stop Shop for preparing your emergency management plan

Ohio State University Extension is excited to bring this curriculum to farm families in Ohio and across the nation. This project is the result of two grant projects, focusing on the unmet need for emergency preparedness materials within the agritourism industry in Ohio.

The curriculum focus is seven units, comprised of chapters specific to Risk Management and addressing potential emergencies. Chapters within each unit strive to educate the farm management team to develop their plan, including the details needed to print a detailed emergency preparedness plan for use in their business. Part of this plan will be a posted flip-chart for hands-on access to employees and others who will assist with the response to and mitigation of the emergency.

This optimized website was developed for use by the management team in preparing the plan and to educate employees on how to deal with specific emergencies. It can also be used by educators to teach this curriculum.

This project aims to increase the overall emergency preparedness capacity of agritourism and direct marketing enterprises, which in turn increases the preparedness of the communities in which they exist.

Follow us at u.osu.edu/directmarketing, and click follow button at the bottom of the screen.