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It's Pumpkin Patch Season and Agritourism is Booming—But What Exactly is Agritourism?

Jessica Guarino, Renata Endres, Tyler Swanson, and Bryan Endres

Department of Agricultural and Consumer Economics
Bock Agricultural Law & Policy Program
University of Illinois

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As methods of agricultural production evolve, so too do our connections to the sources and understanding of where farmed products originate. Agritourism operations offer a unique opportunity to both producer and consumer to participate in local and regional food systems and community development. For producers, adding agritourism components to their farms offers both economic and social advantages. The USDA has promoted agritourism as a diversification practice, finding that it can offer some of the highest income when compared to other diversification practices.¹ For consumers, the invitation to observe and partake in on-farm activities establishes a deeper relationship to agricultural producers and products that so often are integral parts of culture and tradition. But what precisely does "agritourism" encompass? And, in exploring this question, how can agritourism offer diversification and risk management opportunities for farm businesses?

Agritourism operations across the United States have undergone dramatic transformations over the past several years and have especially flourished during the coronavirus pandemic.² With agritourism as one

¹ Faqir Singh Bagi & Richard J. Reeder, *Factors Affecting Farmer Participation in Agritourism*, Northeastern Agricultural and Resource Economics Review 41(2) (2012).

² Karen Ann Cullotta, *As Illinois Agritourism Grows, Farmers Keep One Eye on Corn and Soybean Prices and the Other on the Haunted Hayride*, CHICAGO TRIBUNE (Oct. 28, 2021), <https://www.chicagotribune.com/news/breaking/ct-rural-illinois-farmers-agritourism-20211028-w5cnifodcnhitjf2omzrsn5pdm-story.html>; Maria Kalaitzandonakes et al., *Pumpkin Patches During the Pandemic: How Agritourism Operations in Illinois are Coping with COVID-19*, *farmdoc daily* (10):200 (Nov. 19, 2020), <https://farmdocdaily.illinois.edu/2020/11/pumpkin-patches-during-the-pandemic-how-agritourism-operations-in-illinois-are-coping-with-covid-19.html>.

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of the fastest growing sectors of rural tourism, an increasing number of consumers find themselves more intimately connecting with the agricultural system in the form of plucking apples from high up in trees, wandering through corn mazes and pumpkin patches, and sipping on wine amongst the vineyards the grapes came from. Though these familiar forms of agritourism represent a few of the most common operations, the United States lacks a standardized definition of agritourism defining the breadth and scope of its industry. Consequently, many forms of agritourism (sometimes interchangeably referred to as agricultural tourism or agritourist activity) go unrecognized or may not qualify for legal support offered to similar operations.¹ When considering the legal issues that may impact agritourism operators, risk management is difficult to practice amidst a complex and confusing set of rules and regulations that often require specialized knowledge to navigate. The lack of clarity of the scope and content of legal risk in agritourism presents a larger issue when the activity of agritourism itself is yet to be satisfactorily defined.

Though no cohesive characterization of agritourism exists, some states have attempted to define the practice through legislation. According to a recent report published by the Center for Agriculture and Food Systems at the Vermont Law School

39 states have enacted some form of agritourism law. Eight of these states—Arkansas, Idaho, Missouri, Montana, Nebraska, New York, Oklahoma, and Vermont—have a standalone agritourism law. The remaining 31 states regulate agritourism through secondary laws addressing agriculture, civil liability, land use, zoning, tourism, state culture and history, wildlife, parks and recreation, property, sports and amusement, and taxation.²

In the state of Illinois, “agritourism is defined as any business that brings the public to a farm or rural setting in an effort to market farm raised or produced products or the enjoyment of related outdoor activities.”³ More broadly, however, agritourism is “an enterprise at a working farm, ranch, or agricultural [facility] conducted for the enjoyment of visitors that generates income for the owner.”⁴ Conceivably, any number of on-farm activities may be considered forms of agritourism under these expansive definitions, though some states exclude certain activities.⁵ Thus, agricultural operators considering diversifying their operations through expansion into ranching, aquaculture, forestry, horticulture, or historical/cultural and natural attractions must confront a host of unfamiliar legal issues and should educate themselves to ensure efficient risk management.⁶

Legal issues spanning topics from tort liability to environmental regulations to zoning and food safety apply to agritourism operations, all of which operators must discover and consider to ensure the economic sustainability of the farm. The legal risk landscape for agritourism operators is constantly evolving whether through intentional diversification decisions, uncontrollable environmental challenges, or the possibility of liability for harm caused to tourists. A recent survey found that concerns about liability issues were so widespread that 83% of agritourism operators cited the concern as a main challenge to

¹ Agritourism could be defined as “any recreational, educational, or leisure activity programmed on any working farm or other agricultural operation to attract visitors.” Christine Tew and Carla Barbieri, *A Visitation-Based Profile of Agritourism Farms in Missouri*, Northeastern Recreation Research Symposium (2010), <https://www.nrs.fs.fed.us/pubs/gtr/gtr-p-94papers/18tew-p94.pdf>.

² Defining and Regulating Agritourism, Center for Agriculture & Food Systems, Trends in State Agritourism Legislation 2019–2020, <https://www.vermontlaw.edu/sites/default/files/2021-04/Defining-and-Regulating-Agritourism.pdf>.

³ Bagi & Reeder, *supra* note 1.

⁴ Christine Whitt et al., *Agritourism Allows Farms to Diversify and Has Potential Benefits for Rural Communities* (2019), <https://www.ers.usda.gov/amber-waves/2019/november/agritourism-allows-farms-to-diversify-and-has-potential-benefits-for-rural-communities/>.

⁵ For example, Arkansas excludes roadside fruit and vegetable stands from its definition of agritourism. Defining and Regulating Agritourism, *supra* note 4.

⁶ *Id.*

their operation.¹ Prior research has explored the developing question in agritourism risk management during the coronavirus pandemic,² highlighting just one of the many new considerations agritourism operators face in their efforts to remain economically viable.

Figure 1. Legal Issues in Agritourism



Diversification is, in and of itself, a form of risk management.³ When considering ways to bolster resilience and income, renewable energy installation offers a promising method of spreading risk across a range of farm activities.⁴ On-farm renewable energy production can not only offset on-farm energy use, but can also provide additional income. Therefore, development of on-farm renewable energy and energy efficiency is a topic of great interest among producers.⁵ Some producers, however, have expressed reluctance to implementing on-farm renewable energy.

Recent studies demonstrate hesitancy among agritourism operators to implement certain renewable energy sources such as wind turbines, which may disrupt the rural scenery that is a key factor of the

¹ Lisa Chase et al., *Agritourism and On-Farm Direct Sales Survey: Results for the U.S.* (2021), <https://www.uvm.edu/sites/default/files/Vermont-Tourism-Research-Center/survey/US-Agritourism-Survey-Report-012021.pdf>

² Kalaitzandonakes et al., *supra* note 2.

³ Wyn Morris & Robert Bowen, *Renewable Energy Diversification: Considerations for Farm Business Resilience*, *JOURNAL OF RURAL STUDIES* 80 (2020).

⁴ *Id.*; Forms of on-farm renewable energy include “biomass, geothermal, hydroelectric, solar, and wind power [that] can produce electricity for heating, lighting, and fuel for use on the farm.” USDA, *Energy Farms*, <https://www.nal.usda.gov/afsic/energy-1>.

⁵ USDA, *Renewable Energy Trends, Options, and Potentials for Agriculture, Forestry, and Rural America* (2020), <https://www.usda.gov/sites/default/files/documents/renewable-energy-trends-2020.pdf>. USDA Renewable Energy Program evidences this.

desire for tourists to engage in agritourism.¹ This tentativeness amongst producers interestingly persist even though research indicates renewable energy is attractive to consumers and increases profits. Interest in the implementation of on-farm renewable energy sources and other agritourism diversification efforts here in the United States can be capitalized upon, however, as evidenced by robust international agritourism operations built upon similar foundations. A 2011 study of tourist attitudes towards wind turbines in tourism locations in the Czech Republic found that 65% of tourists would be interested in visiting a wind turbine if there was an information center, and 35% of tourists believed wind turbines could be effectively used to support the development of tourism.² A more local example is the Benton County Wind Farm in Fowler, Indiana, that offers tours for individuals and groups.³ Although on-farm renewable energy may not be a good fit for every operation, future research efforts will explore the rapidly changing landscape of renewable energy incentives and barriers to more wide-spread installation as a viable diversification option, especially in the agritourism context.

¹ Ge, J., Sutherland, L.-A., Polhill, J. G., Matthews, K., Miller, D., & Wardell-Johnson, D. Exploring factors affecting on-farm renewable energy adoption in Scotland using large-scale microdata. *Energy Policy*, 107, 548–560 (2017). <https://doi.org/https://doi.org/10.1016/j.enpol.2017.05.025>; Lisa Chase et al., *Agritourism and On-Farm Direct Sales Survey: Results for the U.S.* (2021), <https://www.uvm.edu/sites/default/files/Vermont-Tourism-Research-Center/survey/US-Agritourism-Survey-Report-012021.pdf>

² Frantál, B., & Kunc, J. (2011). Wind turbines in tourism landscapes. *Annals of Tourism Research*, 38(2), 499–519. <https://doi.org/10.1016/j.annals.2010.10.007>

³ Visit Indiana, *Benton County Wind Farm Tours*, <https://visitindiana.com/things-to-do/57905-benton-county-wind-farm-tours> (last visited Nov. 4, 2021).