Direct Marketing
By Farmers To Consumers:
Some Legal Implications

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University of Illinois at Urbana-Champaign
College of Agriculture
Cooperative Extension Service
Circular 1195
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By Farmers To Consumers:
Some Legal Implications

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Small and part-time farmers have found that direct marketing of their fruits and vegetables to consumers is an important way to supplement their income. Twenty-five to 30 percent of the horticultural food crops grown in Illinois for the fresh market is sold by direct marketing. Nearly a million Illinois consumers patronize direct markets each year. The number of farmers’ markets has grown rapidly, increasing sixfold from 1973 to 1979.

The increase in direct marketing means that more and more farmers face new, practical legal problems. For example, farmer-retailers of fruits, vegetables, and other commodities face additional liability for sales taxes, social security taxes, and unemployment compensation taxes. Hiring labor for direct marketing also creates many new legal issues regarding the employment relationship, which is perhaps the most legislated and regulated in existence. Farmer-retailers face legal issues ranging from the need to license a business to rights and liabilities involving criminal acts of employees and customers.

The law also imposes new legal responsibilities on farmers toward the consumers of goods. To some extent producers guarantee the quality of goods sold. Producers might be sued for injuries allegedly caused by food of poor quality. Some produce must be of a standard size or grade. Signs to advertise the marketing may be subject to county or municipal sign ordinances, while structures erected for sales activities may also be subject to zoning requirements.

Because of the number and complexity of legal issues in the direct marketing context, we cannot summarize the regulations precisely but will illustrate the issues to the extent practical. Farmers who engage in direct marketing should consult legal advisers as to how the various regulations apply to their individual circumstances. Thoughtful planning can protect a grower from civil suits and even criminal prosecution.

The sales activity itself is sometimes forbidden. Although Illinois farmers have broad rights to sell produce of their farms in any place

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or market where goods are usually sold, cities and municipalities can regulate the sale of all beverages and food for human consumption and can prohibit obstruction of streets and alleys by farmers' markets. In addition, under “home rule” powers in the Illinois constitution, certain cities can prohibit the selling, packing, and storing of produce on a public way. Whether sales are forbidden in a community is strictly a matter of local law, and a grower of fruits, vegetables, and other agricultural commodities must contact an attorney or local city officials to learn whether sales are permitted.

Tax Considerations

Farmers who sell fruits, vegetables, and other commodities directly to consumers are required to report income from such sales on state and federal tax returns, just as revenue from other farmer sales must be reported. Direct marketers may also be liable for state sales tax, unemployment compensation contributions, employee social security tax, and employer self-employment tax. These farmers may also be required to withhold appropriate income tax and social security amounts from payments to employees and to remit these amounts to state and federal agencies.

Income tax

Although farmers who engage in direct marketing are required to report income on state and federal income tax returns, the deductions possible in computing taxable income depend to a major extent on the individual circumstances of the farmer. The Internal Revenue Service provides several free publications that will help in determining tax liability: Publication 225, “Farmers’ Tax Guide”; Publication 17, “Your Federal Income Tax”; Publication 525, “Taxable Income and Nontaxable Income”; Publication 529, “Miscellaneous Deductions and Credits”; Publication 535, “Tax Information on Business Expenses and Operating Losses”; Publication 583, “Record-Keeping for a Small Business”; andPublication 587, “Business Use of Your Home.” For copies of these publications and for assistance on income tax liability and deductions, a farmer should contact a tax counselor, an attorney, or the local Internal Revenue Service office, or call the toll-free Internal Revenue Service number.
Sales tax

Farmers normally are not required to pay sales tax on sales of grain and livestock since these sales are not to persons who actually consume the items, but farmers who market directly to consumers must remit sales tax on those sales. Direct marketers must obtain a certificate of registration (permit) from the Illinois Department of Revenue after filing an application and bond, and the permit must be displayed by the farmer at sales outlets. In addition to state sales tax, most municipalities and counties in Illinois have levied a 1-percent sales tax, which is collected and remitted along with the state sales tax. Questions about the Illinois sales tax should be directed to the local Illinois Department of Revenue office.

Federal and state unemployment compensation tax

Farmers are usually not required to pay federal or state unemployment compensation tax since agricultural (as contrasted with retail) labor is exempt from coverage in most small- to medium-sized farming operations. However, farmers who engage in direct marketing are required to remit unemployment compensation tax on wages paid to employees involved in nonagricultural (retail) activities. Agricultural labor includes work of various types before actual retail sales, but work performed at a roadside stand or other sales facility is retail labor subject to the tax. Any farmer required to make unemployment compensation payments to the federal government (the basic rate was 3.4 percent in 1980, applied to the first $6,000 in wages paid each employee) also must remit sums to the state of Illinois under the Illinois Unemployment Insurance Act. The sums required to be paid federally are reduced by sums required to be remitted to the state of Illinois. The Illinois rate in 1980 was 2.7 percent for new employers.

The amount of tax to be paid for state coverage varies since it is established in reference to several factors, including a wage-benefit ratio (based on amounts paid as wage benefits during preceding years) and a statewide ratio (based on the overall condition of the state fund).

1 Nonagricultural employers must pay wages of $1,500 during any calendar quarter of the current or preceding year or employ one person for some portion of at least 20 days in any such quarter in order to be subject to the tax. Currently the excise tax imposed is approximately 3 percent of wages paid and must be paid together with social security taxes and contributions paid by employees. As of 1981, employers who paid cash wages of $20,000 or more to agricultural workers in any calendar quarter in the current or preceding year or who employed ten or more agricultural workers in 20 different weeks in the current or preceding year were subject to the Federal Unemployment Tax Act (FUTA).
Higher emergency rates may be imposed if the state fund sinks below a certain level. If a farmer is subject to coverage under the Illinois act, the farmer must notify the Illinois Department of Labor after operations begin. A quarterly return and tax payment (called "contributions") must be filed. Questions regarding provisions and coverage under the Illinois act should be directed to the Illinois Department of Labor, 910 S. Michigan, 15th Floor, Chicago, Illinois 60605 or the local Department of Labor office.

**Social security and self-employment tax**

In addition to income, sales, and unemployment compensation taxes, farmers (regardless of any involvement in retail activities) are generally required to withhold an employee’s portion of social security tax¹ and remit this amount and the employer’s portion to the Internal Revenue Service. Employer and employee rates are based on wages paid and both are scheduled to go from 6.65 percent in 1981 to 7.65 percent in 1990. The maximum wage base to which these rates apply will also increase over time. The farmer should watch for changes in the schedules. Of course, farmers must also pay self-employment taxes on their own self-employment income.

**Other withholding requirements**

Farmers generally can avoid withholding income taxes owed by employees so long as the employees engage in agricultural tasks and do not specifically request that income tax amounts be withheld. Farmer-retailers, on the other hand, cannot avoid withholding income tax amounts from wages paid to employees working at roadside stands or in other nonagricultural capacities. As a result, farmer-retailer employees may or may not be subject to income tax withholding, depending on whether their employment is agricultural or nonagricultural. The answer to this question is not always clear.

A farmer remains liable for social security and income tax withholdings even though the farmer did not withhold them. The liability is the same as for evasion of personal income tax and may be enforced in the same manner. In addition, substantial fines and penalties may be assessed on a farmer who does not accurately comply with the provisions. Due to the complexity of the regulations and the possible liabil-

¹ The tax must be withheld for agricultural labor if the farmer pays the employee $150 or more for agricultural labor during the year, or if the employee performs agricultural labor on 20 or more days during the year. See: Regs. §31.3401(a)-1; CCH ¶4934.1803.
ties, a farmer should contact a tax counselor, attorney, or the local Internal Revenue Service office for appropriate forms or for questions about the farmer’s individual status.

**Employee Concerns**

In addition to tax consequences that may arise when a farmer sells directly to consumers, a farmer-retailer may be required to comply with laws regulating the farmer’s role as an employer. Once the farmer-retailer has decided to hire employees to assist in the farming operation and to promote sales of goods, these laws should be analyzed. The number and variety of these issues indicate that this aspect of a direct marketing program may indeed be the most complex from a legal standpoint. The following brief discussion does not indicate the many “gray areas” of laws and regulations involved. Prudent farmers will contact an attorney to learn how these issues apply to their own retail operations. Such foresight when coupled with preventive measures can significantly reduce potential liabilities and protect a farmer-retailer’s individual rights under the law.

**Employment and dismissal regulations**

As a general rule, farmers may hire and dismiss farm employees without legal restrictions, so long as no contract exists between farmer and employee to alter their relationship. This typical rule applies regardless of the size of a farmer’s operation. However, a farmer with a retail operation will be limited in retention and dismissal of retail employees by the provisions of the Illinois Fair Employment Practices Act if the farmer employs 15 or more such employees during 20 or more calendar weeks in any one year. If the act does apply, the farmer-retailer will be subject to standards of the act for all employees in the retailing (nonagricultural) portion of the farmer’s business, such as those working at a roadside stand. The act declares that an unfair employment practice will result when any employer subject to the act refuses to hire or otherwise discriminates against any individual because of race, color, religion, sex, national origin, ancestry, unfavorable military discharge, or mental or physical handicap unrelated to ability.

Employees working in agricultural labor are exempt from coverage. Agricultural labor generally involves cultivation and harvesting of various agricultural commodities, and packaging or delivering commodities to a sales facility or roadside stand.

The regulation for dismissals follows discrimination guidelines sim-
ilar to those for hiring. In general, an employee must be paid all wages he or she is entitled to upon dismissal or within a reasonable time thereafter. Dismissal of an employee because his or her wages have been garnisheed is unlawful.

**Common law liability for injuries to employees**

A farmer (whether engaged in retailing or not) is generally required by the law to exercise ordinary care for the safety of employees. Failure to exercise ordinary care (called “fault”) may lead to liability for injury to an employee — usually termed “common law liability.” Several factors must be found to exist in order for a farmer to be liable for such an injury, unless the provisions of the Illinois Workers’ Compensation Act apply:

1. The person injured must be an employee of the farmer, or a different set of legal precepts will apply.
2. The farmer must have been negligent in causing the injury of the employee. Failure to furnish the employee with a reasonably safe place in which to work would constitute negligence.
3. The farm employee must not have “assumed the risk” of the situation in which the injuries arose.

The fact that the injured party is also negligent is no longer a complete bar to recovery because Illinois has adopted the doctrine of “comparative negligence.” If the injured person is partly at fault, the injured party can still recover part of his or her injuries or damage, the part attributable to the other person’s fault.

These basic elements in prosecuting a successful common law claim against a farmer-retailer show that the farmer is subject to great uncertainties regarding liability. A farmer should consult an attorney about ways to handle this risk. Two possibilities include: (1) obtaining broad agricultural liability insurance; and (2) electing coverage under the Illinois Workers’ Compensation Act and obtaining compensation insurance.

**Occupational injuries and diseases: statutory liability**

**Illinois Workers’ Compensation Act.** Farmers are generally required to obtain coverage under the Illinois Workers’ Compensation Act if they employ 500 or more worker-days of employment during any calendar quarter. Smaller farmers not automatically within the scope of the act may voluntarily elect to be subject to coverage, a decision which depends on the individual circumstance of the farmer.
Unlike typical farmers, farm operators who employ labor in the direct marketing phase of their operations may be subject to mandatory coverage under the Workers’ Compensation Act. Sales activities of employees working at roadside stands and other marketing facilities are not clearly agricultural in nature. The issue has not been resolved in Illinois. As a result, direct marketers may not be able to use the agricultural exemption of the act. Farmers who are not involved in direct marketing, however, may qualify under the exemption so long as labor employed is “agricultural.”

Whenever a farmer is subject to coverage under the act, several obligations are imposed. The farmer must be insured and must post notices of the insurance in and around work areas, including a notice of procedures an employee must follow to claim compensation under the act. Any farmer subject to the act must maintain accurate records of work injuries, forwarding reports of all accidents to the Illinois Industrial Commission. Self-insurance is possible for producers who have sufficient assets to convince the Commission that they can pay all potential liabilities. Most producers who are subject to the act carry insurance coverage with a reputable insurer of their choice. It should be noted that farmers who are subject to coverage under the act are relieved from personal tort liability to injured employees.

For questions about coverage or applications, a farmer should contact an attorney or the Illinois Industrial Commission, 160 N. LaSalle Street, Chicago, Illinois 60601.

**Occupational Diseases.** When coverage exists under the Illinois Workers’ Compensation Act, the direct marketing business will be subject to coverage under the Illinois Occupational Diseases Act.

The act provides for specific sums to be paid to injured employees for damages sustained from an “occupational disease.” The term generally includes diseases arising out of, or aggravated and rendered disabling by, employment. The disease need not be caused by exposure during employment since aggravation of an ordinary disease due to employment exposure establishes a right to compensation. Many possible compensable diseases may arise around a farm operation where goods are sold directly to consumers. These might include diseases of the skin associated with dust, produce, or meat, diseases associated with pesticides or insecticides used to protect commodities, diseases associated with livestock, and so on.

Although many diseases will be contracted by employees, the act imposes liability on the farmer-retailer only for diseases which disable, impair, disfigure, or result in death. Diseases that result only in minor discomfort are not compensable.
Amounts of compensation are those provided under the Illinois Workers' Compensation Act and generally are based on medical expenses, salary of the injured employee, and nature of the disease.

For questions regarding coverage or an application for election to coverage, a farmer should contact an attorney or the Illinois Industrial Commission, 160 N. LaSalle Street, Chicago, Illinois 60601.

**Safety and health laws and regulations**

**Federal Standards.** All farmers generally, including those engaged in direct marketing of agricultural commodities, are subject to federal and state regulations governing safety and maintenance of work places and equipment. Every farmer-retailer who employs a person other than a member of the farmer's immediate family is subject to the federal standards.

**Illinois Health and Safety Act.** All farmers generally, including farmer-retailers, engaged in occupations in Illinois must comply with the provisions of the Illinois Health and Safety Act.

The act requires a farmer to reasonably protect the safety and lives of employees, and to provide them places of employment reasonably free from recognized hazards that might cause serious physical harm or death. In that regard the act specifically embodies all federal health and safety regulations while imposing additional requirements. These rules relate to keeping records of work-related injuries or deaths. One significant section of the act frees farmers from liability in situations in which they have in good faith rendered first aid to an employee. The section applies only to injuries that may arise in rendering the assistance and not to the original cause of the accident, for which the farmer may still be liable.

For questions regarding the application of the Illinois Health and Safety Act, a farmer should contact the Illinois Industrial Commission, 160 N. LaSalle Street, Chicago, Illinois 60601.

**Child labor regulations**

Farmers who employ minors (persons under age 18) in some phase of their direct marketing activities may find that it is their duty to abide by child labor regulations at both the federal and state levels. These regulations prohibit employment of child labor in some cases, and regulate hours and times of day during which minors may work.

**Federal Regulation.** Farmers typically avoid sanctions imposed under the federal Fair Labor Standards Act by employing only their
own children or by employing other children as necessary only in agricultural tasks outside normal school hours. However, farmers who employ children to operate or assist at roadside stands (or other marketing facilities) must comply with the act for those children, although agricultural exemptions may be used to avoid sanctions of the act with respect to other children engaged in agricultural labor.

Several agricultural exemptions exist to benefit farmers generally and farmer-retailers by allowing them to avoid compliance with the Fair Labor Standards Act with respect to children performing agricultural tasks. These exemptions are subject only to the limitation that a child under 16 years of age cannot engage in extra-hazardous activities (as defined by the U.S. Secretary of Labor). Although farmer-retailers may qualify some child laborers as agricultural workers, children (other than the farmer's own children) employed at retail facilities and roadside stands are not engaged in agricultural tasks and are within the coverage of the act.

Employment that is not exempt from the provisions of the act falls within general child labor regulations. Briefly, those regulations provide that employees between 14 and 16 years of age may only work outside of school hours not more than 18 hours per week and 3 hours per day. When school is not in session, the number of hours employed may be increased to 8 per day and 40 per week. Employees over 16 years of age are not subject to regulation so long as they are not engaged in activities defined as extra-hazardous or nonagricultural. Violations of federal child labor provisions may be enjoined by the federal courts, and willful violations are subject to a fine of not more than $10,000, or imprisonment for not more than six months, or both.

In order to obtain some degree of protection from unintentional violations of the act, farmers may file an age certificate with the U.S. Secretary of Labor on forms provided by the Secretary, showing the age of the minor. The certificate should be filed whenever the child claims to be one or two years older than the age required for the particular job, or when the child states his or her age to be greater than the child's appearance suggests.

For questions regarding application of federal child labor regulations or for copies of certificates of age, a farmer should contact an attorney or the U.S. Department of Labor, Regional Information Office, 230 S. Dearborn Street, Chicago, Illinois 60604.

Illinois Child Labor Laws. The federal Fair Employment Practices Act specifically provides that to the extent that state law established more strict criteria for employers, those state criteria remain
effective. As a result, farmers subject to coverage under the federal act will find that in certain situations Illinois law controls the hours that their minor employees may work and tasks they may perform. So long as a farmer is located in Illinois, the farmer must comply with the provisions of Illinois law regulating child labor or be exempt from coverage.

Although a wide variety of agricultural labor is exempt from regulation, farmers who employ minors under 16 years of age in retail stands and other nonagricultural pursuits must comply with the provisions of the act. For example, minors under 16 years of age may be employed only from 7:00 a.m. to 7:00 p.m. from Labor Day to the following June 1 and from 7:00 a.m. to 9:00 p.m. from June 1 to the following Labor Day. Also, a lunch break of at least 30 minutes is mandatory under Illinois law.

Violations of Illinois child labor laws are classed as "misdemeanors," and each day during which any violation of the laws continues constitutes a separate crime. Unlike federal regulations, a farmer may not be insulated from liability through the filing of an age certificate. Under Illinois law a certificate must be obtained for all minors under 16 years of age who do work other than agricultural work. Certificates are issued on forms provided by the Illinois Department of Labor.

Questions regarding application of Illinois child labor laws to a farmer's operation should be directed to an attorney or the Illinois Department of Labor, Labor Law Enforcement, 910 S. Michigan Avenue, 19th Floor, Chicago, Illinois 60605.

Minimum wages, maximum hours, and overtime pay

Federal Regulations. Most farmers are exempt from federal regulations on minimum wages, maximum hours, and overtime pay so long as their farming operations are relatively small and only agricultural laborers are employed. Farmers with relatively large operations, such as those employing more than 500 worker-days during any calendar quarter, are subject to minimum wage requirements, but avoid maximum hour and overtime pay regulations if agricultural labor alone is employed. However, farmers who engage also in retail activities will be subject to minimum wage, maximum hour, and overtime pay regulations. This rather complicated set of rules arises from an array of

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1 One important exception exists. Minors under ten years of age may not be employed unless they are members of a farmer's immediate family and residing with the farmer. Agricultural labor (although unidentified in the act) generally includes operations in connection with planting and harvesting crops, fruits, and vegetables, and the raising of animals.
agricultural exemptions which does not appear to benefit farmer-retailers with respect to employees engaged in retail sales activities, such as sales at roadside stands.

A farmer-retailer who is not exempt from the regulations, is required to maintain accurate records of payments and hours for all employees. Provisions for maximum hours and overtime pay apply to nonagricultural employees; farmers cannot employ these workers longer than the average workweek unless overtime compensation ("time and a half") is paid.

In 1981 the minimum wage was $3.35 per hour. However, farmer-retailers should watch for changes in these rates since the minimum wage law may be amended soon.

Farmers are also required by statute to pay equal wages for equal work on jobs requiring equal skill, if the jobs are performed under similar working conditions. Payment may vary if the farmer has a bona fide seniority or merit system.

Penalties for violating federal minimum wage provisions include liability to the employee for the amount of unpaid wages and an additional amount equal to the unpaid wages. Willful violation of the standards may lead to a fine of not more than $10,000, imprisonment, or both.

Farmers with questions should contact an attorney or the Wage and Hour Division, U.S. Department of Labor, Regional Information Office, 230 S. Dearborn Street, Chicago, Illinois 60604.

**Illinois Minimum Wage Standards.** Illinois minimum wage standards will not apply to farmers generally or to farmers who engage in retail activities if the federal minimum wage is higher. However, where the Illinois minimum wage exceeds federal guidelines, the state statute regulates the amount to be paid as a minimum wage. Since in 1981 the Illinois standard was only $2.30 an hour, the federal standard applies. Illinois does not regulate hours and overtime wages.

The Illinois Department of Labor can approve minimum wages and investigate employers to determine compliance. If the Department has reason to believe noncompliance exists, it may summon a farmer to appear and explain the farmer's position. If indeed the farmer was wrong, the farmer's name may be published publicly as failing to pay the proper wage. In addition, failure to pay the wage and failure to maintain accurate and complete records constitute crimes.

Questions regarding coverage under the Illinois minimum wage law or regarding current minimum wages should be referred to an attorney or the Illinois Department of Labor, Wage Claim Service, State Office Building, Room 705, Springfield, Illinois 62704.
Liability for injuries to customers and others

A wide range of possible liability for injuries to others faces the farmer who decides to engage in direct marketing. Unlike a typical farmer who normally does not have a number of strangers entering the premises, the farmer-retailer encounters many visitors when selling directly to consumers. These people may be injured as a result of their own acts or omissions or those of the farmer, the farmer's employees, or others. The farmer's liability for injuries depends ultimately upon the circumstances of the individual accident. However, general legal principles and cases give some indication of steps that may be taken to lessen potential loss substantially.

As a general rule, one who owns, occupies, or is in charge of property is bound to use reasonable or ordinary care and prudence to keep the property reasonably safe for the benefit of those who come upon it as "invitees." A person who comes on the farmer-retailer's premises (or the area under the farmer's control) to transact business is an invitee. The farmer-retailer will be liable for injuries to these people so long as an act of negligence is the farmer's own or that of an employee. Although generally not liable for injuries inflicted on a customer by other customers, a farmer will also be liable in these cases if an accident could reasonably have been foreseen. Additionally, a farmer who is aware that a danger exists is under a duty to warn customers.

Because so many things can happen, most farmers who engage in direct marketing carry some form of agricultural accident insurance in an attempt to insulate their personal liability. Whether an insurance policy governs injuries received by customers depends entirely on its specific provisions. It is usually a good idea to ask an attorney to analyze the coverage of the policy.

For questions about possible liability for injuries to customers, a farmer-retailer should contact an attorney and an insurance carrier.

Employee contracts

In the hiring of employees for retail marketing activities, general principles of contract law apply. As a result, the amount of wages to be paid, specific tasks to be performed, and duration the employee may work are all subject to agreement between the farmer and the employee. Principles of contract law indicate several general rules the farmer-retailer should follow in arranging the terms under which employees are hired. Following these rules religiously will protect the farmer to some extent from civil liability to an employee for contractual disputes arising out of mere misunderstanding.
1. If an employee is to work for less than one year, the employment agreement is fully enforceable whether it is written or oral so long as sufficient evidence of its terms exists. If the time agreed upon is a year or more, a written employment contract will be required or else the terms of the agreement will not be enforceable in court.

2. If no writing is required, the employee is hired at will and generally may be dismissed or may quit at any time regardless of the circumstances.

3. If a simple contract must be written, it should at least specify the length of time for which the employee is hired, whether notice must be given by the employee a specified time before quitting, amounts of wages to be paid, and general tasks to be undertaken.

4. In some cases the farmer may want to employ persons on a bonus or commission basis to attempt to increase their motivation. If so, the plan should be specifically stated in the contract, and an accounting procedure set up to determine sales and bonus money or commissions owed.

For questions about employment contracts, a farmer should consult an attorney.

Farmer-retailers and criminal actions

Farmers who engage in direct marketing may encounter several problems when dealing with what they perceive to be criminal acts by their employees or customers. In most situations the criminal acts will involve stealing of inventory (produce, meat, and the like) or cash received from the sale of inventory, although more serious offenses may arise. Farmers must be aware of the legal rights that protect both their interests and those of the suspect in these situations. Failure to respond in an organized manner to possible criminal activity may lead to injuries to innocent parties for which a farmer can be held liable.

One rule must be emphasized: The law does not favor a party exercising private control in the investigation and apprehension of suspected criminals. A strong emphasis must be placed on trained enforcement officers so that injuries to innocent citizens can be avoided. As a result, a farmer-retailer who suspects criminal activity of any sort by an employee or customer should immediately contact proper local law enforcement officials.

Illinois criminal statutes protect the farmer-retailer by establishing that removal of inventory or cash proceeds may constitute several crimes. Separate categories of crimes exist for theft of property less than and in excess of $150 in value. Also theft from a roadside stand or
other retail outlet may constitute the crime of "retail theft," for which parents of a minor who commits such theft are also liable to the retailer for amounts up to $1,000 for stolen inventory. An employee or customer who threatens the use of imminent force and takes goods, commits "robbery," or if armed, commits "armed robbery." An employee or customer who knowingly damages inventory of a farmer commits "criminal damage to property." Such a situation might arise if a person entered a farmer's field at night and destroyed produce growing on it.

When a farmer has reasonable grounds to believe that one of the above offenses has been or is being committed either by an employee or a customer, two provisions can protect the farmer from civil liability in restraining the action. Illinois law provides that a farmer who reasonably suspects "retail theft" may detain a suspect for a reasonable length of time to request and verify identification, to inquire whether the suspect has unpurchased goods, and to inform officers. A farmer can detain a suspect off the premises only if the farmer immediately pursues the party. Reasonable delay perhaps is no longer than it takes to determine the ownership of specific goods; however, the farmer should call police if ownership of goods remains in doubt after a period of time.

A farmer may arrest another person when there are reasonable grounds to believe that an offense is being committed. Certainly suspecting a theft and verifying the theft by reasonable inquiry would constitute reasonable grounds for arrest. If in doubt, the farmer should be reluctant to exercise arrest powers because of potential civil liability, and instead seek the assistance of officers. The farmer must be careful. If wrong, the farmer may be liable to the suspect for trespass or false imprisonment, and criminal liabilities might arise for "unlawful restraint," a felony punishable by a fine of $10,000 and imprisonment from one to three years.

In addition to regulations that govern actual theft and apprehension of the offender, actions in restraining a suspect could result in some type of conflict. In some situations a farmer may be justified in using force, but if force is used in an unjustified manner, both civil and criminal liabilities may arise for assault, battery, and so on. Use of force against the suspect will be justified only when the farmer reasonably believes that force is necessary to defend himself or another from attack by the suspect. Deadly force is authorized only when the farmer believes that such force is necessary to prevent death or great bodily harm to the farmer or another. Use of nondeadly force to protect property may
be justified if the use is necessary to prevent trespass or other criminal interference with property (such as theft).

This outline of legal rights and liabilities indicates the dilemma facing a farmer who decides to engage in direct marketing. Although the law protects the farmer’s conduct in dealing with some suspected criminal acts, the degree of protection cannot be stated clearly. For this reason a farmer is encouraged to contact local enforcement officials as early as possible in a suspected theft. A farmer should also develop, with the assistance of an attorney, a stated company policy for crime prevention and control. The policy should be designed to make it easier to apprehend an offender without undue exposure to civil or criminal liability.

Direct Marketing and the Customer

Complex legal regulations protect the rights of the consumer who purchases products directly from a farmer-retailer. In turn, these regulations impose duties on the farmer which, if sufficiently performed, protect the farmer to some degree from liability. Where full protection cannot be obtained, steps may be taken to limit the liability as much as possible. Many of the farmer-customer regulations discussed in this section are clear responses to issues which promoted a growing concern for consumer well-being in Illinois and the nation as a whole. Because the farmer may want to protect the investment from others (including customers) who might attempt to use the good will of the business to their own advantage, our discussion will also consider whether a farmer can protect a trademark or tradename by legal methods at the state or federal level.

The body of law that governs a farmer’s rights in many of these areas is the Uniform Commercial Code (U.C.C.), adopted in Illinois in 1961. The U.C.C. provides rules concerning a wide variety of legal issues involving the sale of goods (goods generally include all movable items). The broad quality of this definition encompasses almost every conceivable item that a farmer would want to sell at retail. As a result, the U.C.C. directly regulates legal rights involved in sales of products by farmers to customers. Such rules are quite uniform from state to state because similar provisions have been adopted in virtually all states.

Express or implied warranties in direct marketing

The U.C.C. provides several specific rules regarding statements or representations made about goods being sold. Careful analysis and
planning with knowledge of the substance of these provisions can pro-
tect a farmer from legal liability for breach of warranty or failure to
provide a customer with a specific product.

Unless a warranty is excluded or otherwise modified as specified
below, a farmer may be bound by express or implied warranties made
about the product. An express warranty is one that is actually stated,
either orally or in writing; an implied warranty is one that is not actu-
ally stated but reasonably assumed. These warranties may relate to
wholesomeness of the product or to its suitability for use in the cus-
tomer’s individual circumstances. The express warranty can be created
by the farmer or employee simply describing the goods or showing the
buyer a sample to which the product should conform.

Under certain circumstances every farmer is deemed by law to war-
rant in an implied manner that the product being sold is “merchant-
able.” Merchantable goods must be at least of fair average quality and
fit for ordinary purposes, and be adequately packaged if packaging is
called for in the purchase agreement. This rule is intended to protect
customers who justifiably rely on the fact that a product they purchase
will be of average quality for a product of that type.

An implied warranty of “fitness for a particular purpose” may be
imposed if at the time of contracting, a farmer has reason to know
any particular purpose for which the goods are required, or knows
that the customer is relying on the farmer’s skill to select the specific
product purchased. One can imagine many illustrations of this rule.
For example, a farmer-retailer is approached by a woman who wants
to buy a large quantity of apples for use in baking pies for a large
family reunion. Not certain what apple is best for baking in mass
quantities, she asks the farmer, who suggests the Golden Delicious. The
farmer has clearly warranted that the Golden Delicious is suitable for
baking and may have warranted it over other types of apples. Since
the Golden Delicious is actually not well suited for baking, the farmer
could be liable for damages.

In order to avoid unnecessarily stumbling into these warranties, a
farmer may limit liability under specific circumstances. Express war-
ranties may be eliminated only by revoking them with the customer’s
knowledge, before purchase is made. As a result, a farmer should
analyze the product and coach employees on exactly which express
warranties may be made if any. Implied warranties of merchantability
and fitness for a purpose may be eliminated by specifically informing
customers that purchases are “as is” or “with all faults.” A sign
conspicuously posted will suffice. The U.C.C. suggests the following lan-
guage to eliminate the implied warranty of fitness: “There are no war-
ranties which extend beyond the description on the face hereof.” Inter­

Interestingly, when a customer examines the product as fully as he or

she wishes before purchase, any implied warranty is eliminated as to
defects which should have been evident under the circumstances. An
implied warranty can also be excluded or modified by course of deal­
ing, course of performance, or usage of trade.

It is obvious that the legal issue of express or implied warranties
is complex. Farmer-retailers must master the basics of this area of law
and analyze their individual positions with respect to these. Assistance
of an attorney is suggested in determining which express warranties (if
any) a particular farmer can make, whether the farmer should limit
liability for various implied warranties, and the most expedient method
of limiting implied warranties. Proper analysis of this issue before
undertaking a direct marketing operation will protect the interests of
farmers and the expectations of customers.

**Liability for adulterated or misbranded foods**

A farmer engaged in direct sales to consumers faces possible liabil­
ities in addition to civil suits from purchasers. Both federal law and
state law have sanctions against sales of adulterated or misbranded
foods. It is significant that proof of a violation of these standards in
Illinois does not automatically allow recovery by consumers who pur­
chased adulterated or misbranded foods. These persons must prove
negligence, breach of warranty, or liability under strict liability in tort,
as indicated below.

The Food, Drug, and Cosmetic Act authorizes the U.S. Secretary
of Health and Human Services to establish reasonable standards of
quality, identification, and fill of container for any food. The depart­
ment has the power to regulate and control adulterated and misbranded
foods, including the power to develop exceptions from federal sanctions.
Illinois law provides that all federal regulations will be effective in
Illinois, but the Illinois Department of Public Health may develop
standards for fruits, vegetables, and other goods where no federal regu­
lations exist.

As a general rule, all farmers who sell adulterated or misbranded
food violate federal and state law. Unsafe pesticides used in or on raw
agricultural commodities will render the foods adulterated if enough
of the pesticide remains in or on the food at time of sale. However,
specific pesticides recognized as safe by experts may be used without
violating the act. And even though experts may not recognize a particu­
lar pesticide as safe, the chemical may be used if the amount used does
not exceed a level set by the Environmental Protection Agency (EPA). It should be noted that these two exceptions dealing with pesticides apply only to commodities in their raw states, which do not include, for example, apple cider. Adulterated foods include foods derived from any animal that has died otherwise than by slaughter or is diseased. Extensive regulations also govern quality of substances which may be sold.

Some labeling standards are important to farmer-retailers. If the substance being sold is in a package form, it must bear a label containing the name and place of business of the farmer and an accurate description of quantity of the contents. No false container or labeling is allowed. If any artificial flavoring (not including single spices and the like), coloring, or chemical preservatives is used, that fact must be stated. The label must be large enough to accommodate all mandatory information. If a fill requirement exists and proper fill is not made, the label must indicate that the requirement has not been met. Of particular significance to farmers who sell raw agricultural commodities is the requirement that a label bear the name of any pesticide used on the commodities after harvest. However, if such a commodity is being held for sale outside the container (for example, vegetables placed on tables and not in packages) or if the pesticide is applied before harvest, the name of the pesticide need not be stated on the label.

Several items sold at retail are exempt from various labeling requirements imposed by federal or state legislation. Open containers of fresh fruits and vegetables of not more than one dry quart need not contain a name label; however, if two or more containers are enclosed in a larger crate a label must be attached showing the number of the containers and the quantity of contents of each. Cartons of twelve eggs designed to be broken in half to allow half-dozen purchases need carry only one label. Since there are not many exemptions available, most farmers will be subject to at least a few of the quality and quantity regulations.

Several enforcement methods may be used against a farmer who fails to comply with a particular aspect of the state or federal acts. Injunctions may be issued restraining further violation; any article of food that is mislabeled or deficient in quality may be seized. The Illinois Director of Public Health and the U.S. Secretary of Health and Human Services are authorized merely to serve a written warning if either believes the public interest can be adequately served by a warning. A grower who violates the federal act may be imprisoned up to one year and fined $1,000. Illinois law provides for imprisonment up to 30 days and a fine of $1,000.
No brief discussion can accurately relate the degree of complexity of these regulations as they may apply to different farmers. A farmer in order to fully comprehend an individual legal position with respect to these regulations should consult with an attorney, the Department of Health and Human Services, 300 S. Wacker Drive, Chicago, Illinois 60606, and the Illinois Department of Public Health, Division of Food and Drugs, 535 W. Jefferson Street, Room 350, Springfield, Illinois 62700.

Product liability in direct marketing

Possible liability for breach of express or implied warranties in the sale of a product or in sale of adulterated or mislabeled food has been discussed, but a farmer may also be subject to an action in negligence or an action based on what is called “strict liability in tort” for injuries resulting from food the farmer has sold to consumers. Although these causes of action are separately stated, a suit against a farmer who sells a product to a consumer who is injured will most likely be based on warranties, negligence, and strict liability in tort.

Negligence for the Sale of Unwholesome Food. Farmers who sell fruits, vegetables, dairy products, and other items at retail are required to discover such defects in the products as may be discovered by reasonable inspection, and must exercise reasonable care to inform users of the dangers. If a farmer-retailer fails to do so and a customer is injured after consuming a product, the negligent act will result in liability so long as it caused the injury. It should be noted that violations of the federal or state pure food regulations do not in and of themselves equal negligence.¹

Defenses do exist to a products liability claim grounded in negligence. A grower of perishable commodities who markets those directly to a consumer does not warrant that no adulteration or tampering will occur to the goods after they leave the grower’s control. A customer cannot base a negligence case on a purchased product which spoiled after he or she held the goods for an unreasonable time. In some sales situations, the duty to inspect meat or other inventory will be limited, based on the individual product being sold.

A customer whose unreasonable actions contribute to his or her own injuries may be allowed partial recovery. The doctrine called “comparative negligence” was recently adopted by the Illinois Supreme Court. For example, a customer who develops trichinosis from eating

¹ Rost v. Kee and Chapell Dairy Company (1920), 216 Ill. App. 497.
raw pork purchased from a producer would be partly responsible because of failure to properly cook the meat. If a jury found the customer to be 30 percent at fault and the producer-retailer to be 70 percent at fault, the customer could recover 70 percent of the damages. Also, a consumer who discovers a defect and proceeds to use a product with full knowledge and appreciation of the dangers of the defect may be assuming the risks in the food, which will completely bar recovery under a negligence theory. For example, a customer who notices an unusual odor and taste in a product purchased from a roadside stand and believes the product might be spoiled would assume the risks of injury from the food by continuing to eat it.

**Strict Liability in Tort.** Not only may a grower of fruits, vegetables, and other goods be held negligent for selling a product in an unwholesome condition, the doctrine of “strict liability in tort” may apply, rendering the farmer liable without showing a negligent act. The doctrine as it applies in Illinois provides that a farmer is liable if the product sold is in a defective condition unreasonably dangerous to the user or consumer. The theory is based on the public policy that one who creates the risk and reaps the profit from unwholesome food should bear the burden of liability for damages caused by the product.

“Unreasonably dangerous” products need not be ultrahazardous (like dynamite) or be placed for sale negligently. The term refers to a dangerous condition to an extent beyond that which would be contemplated by the ordinary purchaser, using ordinary knowledge common to a community. Injury must be shown to be caused by the product. In most cases this may be easily shown. However, many suits involving food products fail because customers cannot prove their injuries were caused by the food product.

Even though a customer receives injuries as a result of an “unreasonably dangerous” product, the customer will not recover damages if he or she has misused the product or assumed risks associated with it. An act of contributory negligence will not bar recovery under strict liability in tort in Illinois, although misuse of a product is a defense. Misuse of a product involves its use for a purpose neither intended nor foreseeable by a producer. For example, a customer who drinks milk knowing it has been left unrefrigerated for 12 hours would not be able to sue the farmer in strict liability in tort. A farmer who sells milk in bottles will not be strictly liable for injuries a customer receives attempting to hammer a nail with an empty bottle, since the bottle is being misused.

Possible negligence and strict liability in tort as they relate to
quality of products raise innumerable potential liabilities for farmers and retailers. Although careful examination of the quality of products being sold will alleviate possible liability to some extent, a grower of fruits, vegetables, and other foods can never be fully protected. Examples of possible liabilities include: (1) spoilage of fruits, vegetables, beef, pork, poultry, and dairy products; (2) injuries resulting from pesticides or herbicides on fruits or vegetables or from preservatives or medicines used in connection with beef, pork, or poultry; and (3) disease-related injuries from products sold. These potential liabilities are increased by the fact that product liability insurance is not common for retail sales by farmers. As a result, a farmer should consult an attorney seriously regarding steps to minimize these liabilities to any extent possible.

Grading and standardization of direct marketing products

In addition to the requirements for branding, labeling, and filling of containers just discussed, federal and state laws regulate inspection and standardization of farm products and the weights and measures used in sale of the products. Failure to comply with these regulations could lead to criminal or civil liability for the violating farmer.

Inspection and Standardization of Farm Products. The Illinois Inspection and Standardization of Farm Products Act generally empowers the Director of the Department of Agriculture to establish official standards for grading agricultural products grown in Illinois and for containers of those products. Agents of the department are to inspect products for grading. Some producers may be exempt from these requirements. For example, farmers who sell on their premises eggs produced on their own premises need not candle or grade the eggs.

In addition to these regulations, standards exist for marking containers and labels on containers of fresh fruits and vegetables. Generally these standards mandate that a description of the contents conform to the appropriate grade for the contents, the container be marked as to grade, size, and classification, and the container be marked with the name and address of the packer, the true name of the product, and the net weight. However, a farmer who sells his own produce at retail may avoid the necessity of complying with these regulations so long as the products are unmarked as to grade or description. A farmer who sells a wide variety of items may want a grade and then must comply with the fruit and vegetable standards.

Several violations of the act may occur. If the Illinois Department of Agriculture has inspected and graded a product, it is unlawful to
use any other name or grade in describing that product (for example, Grade A small eggs may not be called large eggs). A farmer-retailer may not use oral or written descriptions of fresh fruits or vegetables that are false, deceptive, or misleading in any way. Selling deceptive or mislabeled packs of fresh fruit and vegetables is also prohibited.

In enforcing the provisions of the act, agents of the Department of Agriculture may seize any product they believe to be sold in violation of the provisions specified above. Also, persons may be arrested who are operating in violation of provisions of the act. Entry into places where packing occurs is specifically allowed in investigation of violations. Violations are subject to fines of $500 and imprisonment for up to 30 days.

Questions about grading and labeling standards should be directed to an attorney or the Illinois Department of Agriculture, Division of Agricultural Industry Regulation, Emmerson Building, Illinois State Fairgrounds, Springfield, Illinois 62700.

Regulation of Weights and Measures. Illinois law protects consumers from fraud in the sale of products by regulating to some extent the weights and measures at which particular goods may be sold. Some of the Illinois regulations overlap the federal labeling standards, but the Illinois standards for weights and measures apply to all transactions conducted or completed in Illinois. Farmers who retail fruits, vegetables, and other commodities should closely analyze the requirements specified below to determine whether compliance is necessary and if so, what steps are required for compliance.

The regulations under the Illinois Weights and Measures Act deal generally with labeling requirements, weight requirements, and measuring devices. Measuring devices may be used by a farmer in the sale of many commodities by weight, standard bushel, and so on. It is a violation of the act to use or possess an incorrect measuring device or a device intended to falsify weights. The Illinois Department of Agriculture is charged with inspecting and testing at least annually all weights and measures used in a commercial manner. In larger cities, however, there may be appointed a city sealer with authority to perform the investigating function (and who is in turn examined by the Department of Agriculture). The Department of Agriculture or city sealer also has authority to investigate complaints of use of illegal measures. Upon investigation, agents of the department may mark packages in violation of standard weights, restrain the sale of these packages, and issue removal orders for faulty weights and measures. In pursuit of
the investigation, agents are authorized to enter premises without a warrant, and to stop any person and require him to proceed with the agent to another specified location. Violations of the standards include using or possessing an incorrect measure or an untested measure. A fine of $500 and imprisonment for six months may be imposed for violations.

Several labeling requirements imposed by the act are of interest to farmer-retailers. Although vegetables in small containers are exempt from federal labeling standards, Illinois standards still apply. Unwrapped loaves of bread need not be labeled. Sales of meat, dairy products, and products in package form (or with a price marked and based on weight) require a label. The marking must be conspicuous and identify the commodity and the net quantity of the package in terms of weight, measure, or count. Price of a unit must be listed if the package contains commodities of random price per weight. The label cannot establish weight on a packing amount by saying “when packed.” It should be noted that compliance with Illinois requirements for labeling may not suffice for requirements of the federal Food, Drug, and Cosmetic Act, explained on page 19. Violations of the labeling standards occur when a package is so wrapped that it might mislead the consumer as to the quantity of the contents or when a package is sold or offered for sale at less than the quantity represented on the package. Violations are subject to a fine of $500 and imprisonment for six months.

The Illinois Weights and Measures Act also regulates the method of measurement for products to be sold, together with sizes for various commodities. As a general rule, commodities not in liquid form may be sold only by weight. However, vegetables sold by a farmer need not be weighed if they are sold by the “head” or “bunch,” and other commodities need not be weighed if there is a common practice to express the quantity in some other manner (for example, strawberries by the “peck”). Meat must be sold by weight. All fluid dairy products must be packaged for sale only in specified units — one gill, one-half pint, ten fluid ounces, one pint, one quart, one-half gallon, three quarts, one gallon, one and one-half gallons, two and one-half gallons, or other multiples of one gallon. Violators of weight requirements are also subject to $500 fine and six months imprisonment.

Questions regarding weight and measure standards should be directed to an attorney or the Illinois Department of Agriculture, Division of Agricultural Industry Regulations, Emmerson Building, Illinois State Fairgrounds, Springfield, Illinois 62700.
Protection of trademarks and tradenames

In many ways a farmer-retailer develops a personal connection with the business more than almost any other businessman. As a result, the extreme effort the farmer puts into the business develops good will in customers who learn to rely on the farmer's reputation for growing and selling fine products. In this situation the farmer may want to protect his or her name from use by other less scrupulous businessmen who might seek to profit from the good will associated with the name. State and federal tradename or trademark legislation may provide this needed protection.

Registration of Trademarks With the U.S. Patent and Trademark Office. Federal legislation provides that the owner of a trademark may seek to register the mark with the U.S. Patent and Trademark Office under certain specific circumstances. As a general rule, no distinguishing trademark can be denied registration unless the mark so resembles one currently used in the United States that confusion is likely to occur, or unless the mark is merely descriptive of goods or primarily only geographically descriptive of goods. If a farmer is able to illustrate substantially exclusive and continuous use of a mark for the past five years, the office may accept the mark as distinctive even if it merely describes goods or a region where they are grown.

Once a trademark is established, the farmer must register it by filing an application and supplying drawings of the mark to the Patent and Trademark Office. Each registered mark has a life of 20 years. However, a farmer must file with the office every six years an affidavit showing that the mark is still in use, or it may be cancelled. After 20 years it can be renewed if an application in proper form is filed within six months before the end of the registration period.

Interferences with trademarks are adjudicated in an established procedure by first referring the question to a trial and appeal board and then to a court. An infringement occurs when any person counter-

1 In Cooperative Quality Marketing, Inc. v. Dean Milk Company (1963), 314 F.2d 552, the mark “Country Charm” in association with the head of a cow was held not to cause confusion when compared with “Dairy Charm” and “Dairy Charm From Farmer to Consumer.” Also, the terms “Sunkist” and “Sun-Kist” were approved for use in fruit and vegetable juices as distinctive of a particular trademark. California Growers Association v. Gorska (1943), 58 F. Supp. 499. However, “Old Meadow” as a trademark for dairy products was not registerable due to existing “Meadow Gold” mark. Abell v. Beatrice Creamery Company (1935), 79 F.2d 751. Also, the plain figure of a cow for butter, cheese, and dairy products was not distinctive and could not be registered in Lawrence v. P. E. Sharpless Company (1913), 202 F. 762.
feits or copies a trademark to be used in commerce without permission of the owner. Remedies for infringements include any profits made by the infringing party, damages sustained by the producer, and costs of suit. However, the producer cannot recover lost profits or other damages unless the producer can prove that the infringement was undertaken with intent to deceive.

For questions regarding the possible registration of a trademark, a farmer should contact an attorney. The U.S. Patent and Trademark Office by policy will not give information regarding availability of a certain mark for registration.

Registration of Trademarks and Tradenames in Illinois. Illinois law also provides for registration of trademarks and tradenames. In this respect Illinois law provides an avenue of protection that federal law does not supply, as names themselves cannot be trademarks under federal law. The requirements of distinctiveness for registration of a mark in Illinois mirror those required under federal law. A registration application is required that describes the mark or name, states when it was first used, and verifies that the applicant believes it is distinctive. In Illinois marks are effective for ten years and renewable by filing a renewal application within six months of expiration of the term. The Illinois act also classifies marks for administrative purposes. Virtually all growers who seek to register will be in Class 46, "Foods and Ingredients of Foods."

Infringement in Illinois involves the use or reproduction of a mark or name to be used in connection with sales in Illinois. A farmer whose mark is being infringed may seek an injunction and can recover profits of the infringing party together with damages other than lost profits.

For questions about the registration of a tradename or trademark, a farmer should contact an attorney or the Illinois Secretary of State, Index Division, State House, First Floor, Springfield, Illinois 62756.

Signs, Zoning, and Business Registration

Growers of fruits, vegetables, and other commodities may want to advertise a roadside stand or other facilities from which products will be sold. Depending on the type of advertising undertaken in a specific

instance, a farmer may want to erect a sign. The farmer needs to be aware that state and local laws and ordinances regulate sizes and locations of signs that may be erected.

**Highway Advertising Control Act of 1971**

As a general rule, no signs are allowed to be erected or maintained along primary or interstate highways unless specifically provided by law. The rule applies to everyone regardless of profession or the activity to be advertised. Farmers engaged in direct marketing may erect signs on the property where the selling takes place. No sign, however, advertising a roadside stand can be located in a business area, only one sign can be located more than 50 feet from the activity, no sign can be more than 20 feet long, wide, or high or 150 feet square, and a sign cannot be lighted unless the light is directed away from traffic and does not flash.

In addition to these signs, signs of specific types may be located in areas near interstate highways and zoned for business or commercial uses (called “business areas”). Signs that provide information about food may be erected within 12 miles of the area. No sign can be erected near an interchange. Only six food signs can be erected within two to five miles approaching an interchange or 1,000 feet beyond an interchange, only one sign per mile can be erected outside five miles of an interchange, and no two signs can be less than 1,000 feet apart.

No sign except those advertising activities on the property may be erected without a permit from the Illinois Department of Transportation. Owners of registered signs are issued tags which must be affixed to the sign in a conspicuous place. Signs erected in violation of the act are classed as public nuisances and must be brought into compliance with the act after notice of noncompliance is sent by the Department of Transportation. Signs that remain in noncompliance may become the property of the state of Illinois and may be destroyed, just compensation being paid to the property owner.

Questions regarding application of the act or filing requirements should be addressed to the Illinois Department of Transportation, Dirksen Parkway, Springfield, Illinois 62700.

**Local sign regulation**

In addition to regulations for signs in or about interstate highways, many localities (counties and cities alike) impose zoning regulations which specify proper sizes, locations, and types of signs which may be
used. The exact regulations differ to a degree from county to county and from city to city.

Sign ordinances generally prohibit all signs not expressly allowed in the ordinance, specify requirements for removal of prohibited signs, require a permit to be issued in most cases before a sign is installed or altered, and establish enforcement provisions for the regulations. The major purpose of the ordinances is to promote public health and safety by reducing traffic dangers associated with distracting signs. The ordinances also seek to promote the public comfort and welfare by reducing the number and density of signs.

While prohibiting signs that are not expressly permitted, the ordinances require that approved signs comply with applicable building and electrical codes. Regulations defining zoning areas (for example, "B-1 Neighborhood Business") specify allowable signs.

Because of the complexity and variety of these regulations, farmers who want to put up signs in connection with their direct marketing should find out from an attorney or the local zoning administrator (a county or city official) the requirements for a sign.

**Zoning and direct marketing activities**

Zoning ordinances affect the retail marketing activities of a farmer-retailer in ways other than signs. Structures that may be erected to market fruits, vegetables, and other goods, and even the activity of marketing itself, may be prohibited or regulated under certain zoning ordinances.

State statutes authorize counties and municipalities to restrict the location and use of buildings and other structures in order to promote the public health, safety, and general welfare.

Ordinances basically prohibit erection of structures, relocation or alteration of structures, or establishment of uses unless in compliance with specified requirements. Regulations define zoning areas (for example, "agricultural") and specify structures and uses that may be undertaken in those areas.

Obviously the variety of these regulations indicates that a farmer wanting to erect a structure for direct marketing or even to undertake the activity itself should consult an attorney or local zoning officials about specific requirements.

In addition to zoning regulations specifying uses that may exist in various districts, ordinances usually provide developmental regulations specifying building size. Ordinarily these qualifications regulate building height, lot area and width, floor area, and yards.
Typical zoning ordinances also establish requirements for parking. For example, in one ordinance, vegetable and meat markets must have one parking space per 150 or so square feet of lot area.

Farmer-retailers should be aware of how zoning requirements are usually enforced. The owner of any property must obtain a building permit from a local zoning official before constructing or altering any structure in a zoned area. The permit is obtained by filing an application for a permit on forms provided by local zoning officials. If the proposed construction and use are found to meet zoning requirements, a permit will be issued. A copy of the permit must be exhibited for public inspection on the premises where work is undertaken. At the same time, the owner must file an application for a certificate of occupancy, estimating the approximate time for completion of the work. The certificate will be issued when construction is completed.

For questions or applications, a farmer should contact an attorney or local county or municipal zoning officials.

Registration requirements

Specific exemptions and regulations govern the registration and licensing of meat and poultry farmers who might engage in direct marketing. As a general rule, all producers of meat and poultry who slaughter or otherwise prepare stock for consumption and sale must be licensed by the Illinois Department of Agriculture. A specific exemption exists for animals slaughtered by any producer on the farm but not for animals for which the actual slaughter does not take place on the premises. The Director of the Department of Agriculture has ruled that poultry breeders who slaughter or process not more than 250 turkeys or 1,000 fowl or rabbits (solely on their own farms) can be exempt from licensing requirements. However, such an exemption must be requested from the department in writing. The director is authorized to seize and condemn meat and poultry produced by a marketer not exempt or licensed. Failure to obtain a license could result in imprisonment for less than a year and a fine up to $1,000. For questions regarding registration or for an application, farmers should contact the Bureau of Meat and Poultry Inspection, Division of Meat, Poultry, and Livestock Inspection, Illinois Department of Agriculture, Emmerson Building, Illinois State Fairgrounds, Springfield, Illinois 62700.

Breeders of quail to be sold at retail should be especially aware of licensing requirements for persons raising certain game mammals, game birds, or migratory birds. Game mammals include cottontail, swamp, and jack rabbit, deer, fox squirrel or gray squirrel, and groundhog.
Game birds include bobwhite quail, pheasants, grouse, wild turkeys, and prairie chickens. Migratory birds include ducks, geese, and the like. Any farmer who plans to hold not more than 100 of these specified mammals or fowl need only obtain a noncommercial business permit. If the farmer holds more than 100 and wants to sell them for food, a commercial breeder's permit must be obtained from the Illinois Department of Conservation, Division of Wildlife Resources, 100 E. Washington Street, Springfield, Illinois 62700.

Farmers who slaughter animals or poultry on the farm and retailers who sell directly to customers meat which is merely cut up (after having been inspected) are free from inspection. However, canning, curing, pickling, salting, and so on not on the farm is not exempt. The Director of the Department of Agriculture is authorized to exempt certain producers.

Dairy farmers who operate pasteurization facilities must secure certificates of approval for a facility from the Illinois Department of Health. A facility includes any apparatus for the heating of milk that is designed to render the milk more fit for human consumption. After receiving an application for a certificate, the Department inspects the facility to ensure compliance with basic requirements. For questions about those requirements or for an application, a farmer should contact the Division of Milk Control, Illinois Department of Public Health, 525 W. Jefferson Street, Springfield, Illinois 62700.

In general, Illinois statutes dealing with pasteurization of milk and milk products require all milk to be pasteurized before sale. However,

1 Ill. Rev. Stat., Ch. 56½, §§301 et seq.
2 The following regulations detail available exemptions: “The provisions of the Meat and Poultry Inspection Act requiring inspection to be made by the Director of Agriculture do not apply to animals or poultry slaughtered by any producer on the farm, nor to animals or poultry slaughtered on the farm for the owners for the personal or family use of such owner, nor to retail dealers or retail butchers with respect to meat or poultry products sold directly to consumers in retail stores; provided, that the only processing operation performed by such retail dealers or retail butchers is the cutting up of meat or poultry products which have been inspected under the provisions of the Act and is incidental to the operation of the retail food store. Meat or poultry products derived from animals or poultry slaughtered by any producer on the farm which are canned, cured, pickled, frozen, salted, or otherwise prepared at any place other than by the producer on the farm upon which the animals or poultry were slaughtered are not exempt under the producer's exemption herein provided. Any person who sells or offers for sale or transports meat or poultry products which are unsound, unhealthful, unwholesome, adulterated, or otherwise unfit for human food, or which have not been inspected and passed by Department, federal, or recognized municipal inspection, knowing that such meat or poultry products are intended for human consumption, is guilty of a Class A misdemeanor.”
3 Ill. Rev. Stat., Ch. 56½, § 220.21 et seq.
farmers engaged in the production of milk may sell milk produced on the farm without pasteurization provided: (1) all of the cows producing such milk have been tested for bovine tuberculosis and brucellosis and are free therefrom, (2) the average bacterial plate count of the milk as delivered to the consumer does not exceed 50,000 per milliliter and the average methylene blue reduction time for such milk is not less than seven hours, (3) such milk or milk product is free from sediment, and (4) the milk otherwise complies with the provisions of the law and the applicable regulations of the Department of Public Health.

If the milk is sold on the farmer's own premises, only provisions 1 and 3 must be complied with. Thus compliance with Public Health regulation can be avoided.

Concluding Observations

When agricultural producers expand their operations to include the direct sale of agricultural products to consumers, a number of new legal considerations are created. These include new tax considerations, additional labor regulations if the farmer-retailer utilizes hired labor in retail activities, potential liability to customers because of unsafe premises or the sale of unwholesome food, regulations concerning the grading and packaging of products, registration of a trademark or tradename, additional land use regulations, and new licensing requirements.

Although these new legal considerations seem burdensome and complex, they are actually no more complicated than those facing most small businesses throughout the state. The very fact that Illinois farmer-retailers market a significant portion of their horticultural food crops directly to consumers clearly indicates that direct marketing is a viable possibility for many farmers.