



PUTTING  
LOCAL FOOD  
ON THE MENU



## CHALLENGES AND

## SOLUTIONS TO SUSTAINING

## THE LOCAL FOOD SECTOR

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**T**here is no denying that local food is trendy. From the Oxford University Press proclaiming “locavore” word of the year in 2007, to news outlets crediting millennials with driving demand for local food in a quest not only for health and sustainability, but also authenticity and convenience, local food has become a convergence point for the overlapping goals of environmentalism, economic development, and food security. Consumers commonly identify supporting the local economy as the primary motivating factor for purchasing local food, followed by the quality and healthfulness of local products, concerns about food miles and carbon footprints, and the desire to support organic and sustainable farming practices. Meeting that demand for local food requires financially viable farm businesses and the infrastructure to get local products. Public policy and accessible and affordable legal services can play an important role in sustaining the local food sector and supporting innovations along the supply chain.

## FARMING OPERATIONS

According to the most recent US Department of Agriculture Census of Agriculture (USDA Census), there were more than 2 million farms in the United States in 2017, a decreasing trend. Mirroring this trend, the amount of land in farming has *decreased* in the last five years from 914 to 900 million acres. The average farm size, however, has *increased* from 434 to 441 acres. The agriculture industry consolidating is not a new phenomenon, but it is striking: only 5 percent of farms now generate 75 percent of all agricultural sales.

The USDA Census confirmed the trend of an aging farm population continues; the average farmer is now 57.5 years old. The number of beginning farmers (those with fewer than 10 years of experience farming) has increased to roughly 25 percent, but they tend to operate smaller farms in terms of both acreage and sales. Fewer than half of all farmers surveyed identified farming as their primary occupation. More than a third work off-farm more than half the year. This is unsurprising given how modest farm incomes can be: the national average in 2017 barely exceeded \$43,000, and fewer than half of all farms reported a profit. Meanwhile, the price of farmland has steadily increased.

This data paints a bleak picture of the future of agriculture, particularly for small and mid-sized farms. Can local food provide a solution to keeping more farms viable and more farmers on the land?

## THE LOCAL FOOD SECTOR

The local food sector (i.e., farms selling their products directly to consumers, retailers, institutions, or food hubs) reveals significant growth opportunities. Although local food sales are still a tiny fraction (3 percent) of total agricultural sales, this sector has grown dramatically in recent years, and is now an \$11.8 billion industry.

Approximately 130,000 farms engage in direct-to-consumer sales, generating \$2.8 billion in sales. This figure doubled between 2012 and 2017, but direct-to-consumer sales still account for fewer than one-quarter of total local food sales; the remainder is generated through sales to retail (e.g., restaurants, small grocers), institutions (e.g., schools, hospitals), and food hubs, which serve as market intermediaries between local farms and larger, often wholesale buyers by providing aggregation and distribution services. Fewer than 30,000 farms participate in food hubs, but they realized \$9 billion in sales in 2017. Sales in this category will likely continue to grow as demand for local food on college campuses, at hospital cafeterias, and in restaurants and major grocery chains continue to grow.

Within the context of this market opportunity, we may be reaching a saturation point with some of the most popular direct-to-consumer market channels, like Community Supported Agriculture (CSA) and farmers' markets. CSA farms can take many forms, but they originated as a risk-sharing business model between farmers and consumers. CSA consumers, who are often

described as “members” or “subscribers,” purchase in advance a share of the harvest that they receive throughout the growing season. The USDA has estimated that there are more than 7,000 CSAs nationwide, and there may be more than 100 CSAs in some single states alone. On average, there are more than 150 farmers' markets per state. This number increased dramatically over the past 25 years (from 1,755 in 1994 to 8,771 in 2019), though growth has slowed.

There are significant efforts underway to connect local producers with institutional and wholesale buyers. Nonprofits, businesses, and institutions are leading much of these efforts; governments at all levels are also exploring ways to utilize law and policy to encourage more local purchasing. Local public institutions like schools, colleges and universities, hospitals, and correctional facilities are purchasing local food through innovative strategies promulgated by state governments. Supporting local production, marketing, and distribution is also getting a boost at the federal level through a range of grant programs and Farm Bill programs. These efforts are likely because of (1) the recognition of the potential for direct-to-consumer market saturation, and (2) increased demand from chain grocery stores, food delivery services, and institutional cafeterias (e.g., hospitals, universities) for local food.

## FARM TO SCHOOL MOVEMENTS

One popular way to increase local food purchasing is through farm to school movements that promote local food procurement, school gardens, and agriculture and nutrition education in K-12 schools and early childhood programs. The most recent USDA Farm to School Census identified 42,587 schools (23.6 million students) participating in farm to school activities, including by spending \$789 million on food from local farmers. Vermont Law School's Center for Agriculture and Food Systems (CAFS) found that state policy plays a significant role in advancing these efforts. According to CAFS' research, between 2002 and 2018, 453 farm to school bills were introduced, and nearly half were successful. More than 80 farm to school bills were introduced in 2017 and 2018 alone; more than half (50) related specifically to local food purchasing.

There are challenges to increasing the amount of local food that schools purchase: (1) public schools have limited budgets; and (2) the



majority of public schools' food dollars come from federal Child Nutrition Programs. Schools receiving these funds must follow federal purchasing requirements in securing bids from potential suppliers, which limits schools' ability to purchase smaller quantities from local producers, or pay more for local products. Some schools receive additional funding through state programs to purchase local food. Schools in Michigan receive a 10-cent match under Michigan's 10 Cents a Meal Program to purchase and serve Michigan-grown fruits, vegetables, and legumes. Schools in Maine receive \$1 for every \$3 spent on Maine produce (up to \$1,000) under. Schools in New Mexico are incentivized to purchase locally grown fruits and vegetables through a reimbursement program. Schools in New York whose budgets contain at least 30 percent of food produced or processed in New York will receive up to 25 cents more per meal served.

## COLLEGE AND UNIVERSITY PROCUREMENT POLICIES

Preference policies encourage and incentivize institutional purchasers like colleges and universities to prefer locally produced food over products grown outside the state. Colleges and universities are not bound by the same federal purchasing requirements as K-12 schools. State purchasing requirements apply, however, and the practical realities of the contracting process may impact these institutions' ability to maximize local food purchasing. Preference policies may direct an institution to purchase local if the local option is within a certain percentage of the non-local option or may create a general preference for local businesses. These policies can be challenging for institutions to implement because the statutory language is often nonspecific (e.g., purchase local "to the extent possible" or "when comparable to the prevailing market price"), leaving the purchaser to interpret these terms. Purchasers may be unaware of purchasing preference policies, or do not utilize them in making purchasing decisions, signaling a need not only for clearer language, but also for stronger evaluation and enforcement mechanisms for these types of policies.

Another common tool is the small purchase threshold. Public institutions must follow specific purchasing requirements designed to ensure a fair and competitive bidding process. While procurement regulations may create a more equitable process for participating bidders and enable purchasers to access goods at lower costs, they can also be more time- and resource-intensive. A small purchase threshold allows institutional purchasers to modify or forgo standard procurement requirements for purchases under a certain dollar amount. These modifications (e.g., not having to solicit multiple bids before making a purchase), can make it easier for purchasers to buy from local producers.

State small purchase thresholds can be more restrictive than the federal threshold, or so small that they are underutilized because it is inefficient for an institution to purchase in those small quantities. Some states have remedied this issue by aligning their small purchase threshold with the federal threshold or avoided it by simply not enacting a separate small purchase threshold.

## SUPPLY CHAIN INNOVATIONS CAN SUPPORT LOCAL PRODUCERS

The lack of aggregation and distribution infrastructure limits local producers' ability to compete with larger food distributors in the institutional bidding process. According to the USDA, many farmers and ranchers—especially smaller and midsize operations—cannot access the fastest growing segment of the local food market because they often lack the capacity to access retail, institutional, and commercial foodservice markets on their own.

Food hubs are essentially mission-driven food distributors.

As the USDA notes, food hubs offer a combination of aggregation, distribution, and marketing services at an affordable price, making it possible for many producers to enter new larger-volume markets that boost their income and bring opportunities for scaling up production. A recent survey of 119 food hubs (there are estimated to be more than 350 food hubs nationwide) conducted by the Wallace Center and Michigan State University's Center for Regional

Food Systems, found that more than 90 percent of hubs surveyed identified improving human health, helping small-scale farmers access markets and receive fair prices, and promoting environmentally sensitive production practices as values central to their operations. In this way, food hubs help combat some of the more troubling Census trends in terms of an aging farm population, decreasing farm income, and the loss of midsize farms: on average, 46 percent of the producers selling into food hub are beginning farmers, and nearly all hubs surveyed (89 percent) source primarily, if not exclusively, from small- and midsize farms.

These hubs are not without their own challenges. Balancing consistent supply with steady demand, negotiating prices across the supply chain, and accessing capital are all challenges that stem from their unique role as a market intermediary often structured as a social enterprise or nonprofit. Another commonly noted challenge in local producers' ability to access larger institutional and wholesale markets is food safety. Particularly with the enactment of the Food Safety Modernization Act, there is more pressure on farmers to show proof of compliance with established food safety standards.

Interestingly, the percentage of food hubs surveyed that identified food safety as a top challenge has decreased, suggesting that food hubs' ability to meet food safety requirements is



increasing. Some food hubs work directly with producers to help them meet food safety certification or audit requirements through training, technical assistance, and even cost-sharing. Others centralize the food safety process management for farmers in their network through an innovative approach to food safety certification called GroupGAP. This food safety support is another service food hubs can provide to assist local producers in accessing new markets.

## ATTORNEYS HAVE A ROLE IN SUPPORTING THE LOCAL FOOD SECTOR

Attorneys have a role to play in supporting the local food sector, aside from adding to consumer demand for local products. They can assist in farmland transfer and succession planning as more farmers retire and new farmers seek to acquire land. They can help farmers market managers draft and review vendor contracts and establish nonprofit status. They can work with produce farms, on-farm processors, and food hubs to navigate the maze of local, state, and federal food safety regulations. For young attorneys, the field is ripe with opportunity to develop a specialized area of practice in food and agriculture law. Given the slim profit margins many farmers and small food businesses face, directing a firm's pro bono program or an individual's pro bono hours toward these businesses can be an excellent way for a young

attorney to develop skills and expertise advising one of the fastest growing sectors in agriculture.

For attorneys in New England, the Legal Food Hub, a project of Conservation Law Foundation, connects income-eligible farms and food clients with attorneys willing to provide free legal services. The Legal Food Hub currently operates in Maine, Massachusetts, Rhode Island, and Connecticut, and will soon open its doors in Vermont in partnership with CAFS. Since launching five years ago, the Legal Food Hub has placed nearly 400 pro bono food and farm cases, leveraging more than \$2.5 million in pro bono legal services.

## LOOKING AHEAD

State policy, food hubs, and legal hubs offer creative ways to tackle the challenge of getting local products to more menus, grocery store shelves, and homes nationwide. Whether these efforts alone will be able to turn around some of the most troubling trends in agriculture remains to be seen. From my vantage point (training the next generation of food and agriculture attorneys and policymakers in a state where one-third of the farms have a beginning farmer at the helm and more than 35 percent of farms are engaged in local food sales), it is hard not to be optimistic.

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