



FARM COMMONS

Farmers' Legal Guide to On-Farm Events

LAST UPDATED:
June 7, 2014

FIRST PUBLISHED:
January 13, 2013

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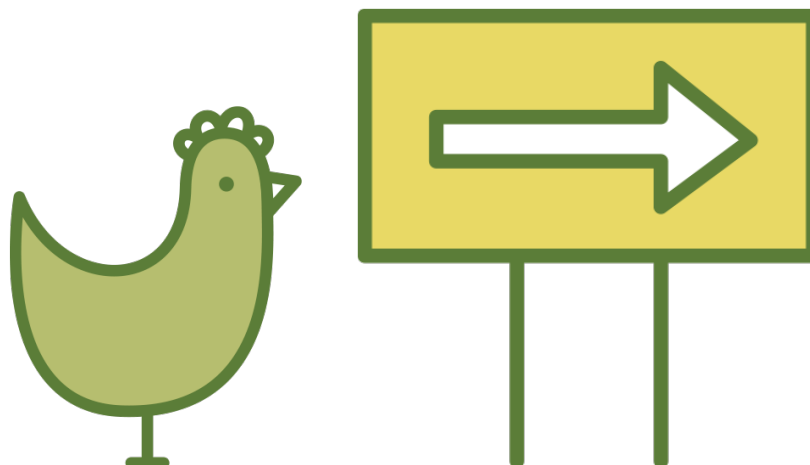
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Introduction

Events are a wonderful way for farmers to deepen their connection with customers. After visiting the farm, customers walk away with a deeper understanding of sustainable agriculture, farm life, and the source of their food. At the same time, events make business sense; they build customer loyalty and sell product. To meet these goals, farmers must minimize the increased legal liability of hosting events. If things go wrong, on-farm events can be create a cascade of legal problems. Farmers reading this guide will learn about various ways things might go wrong, techniques to address problems, and insurance policies to cover risks. Specifically, farmers will learn about potential problems with zoning codes, disability accommodations, food service regulations, tax permits, insurance, and injuries.

Often, it's easiest to understand the law through stories. So, this guide follows one mythical farm, Rachel's Green Acres, on its path to hosting a safer, more secure on-farm event. After laying out Rachel's event, the guide explains a potential legal problem that Rachel might run into. Then, the guide discusses management techniques to help Rachel address the issue ahead of time.

This guide is not an exhaustive discussion of the legal issues with hosting events, by any means. This resource is only an introduction to a select range of issues that farms may encounter. Farmers should take steps to learn more by discussing their situation with an attorney and an insurance agent. Farm Commons also provides an On-Farm Events Legal Issues Webinar and 5-minute Guide to Legal Issues in Hosting On-Farm Events.

Zoning codes, including agricultural zones, may prohibit farm events.



Meet Rachel. She owns Rachel's Green Acres- a small, 2-acre vegetable farm that grows exclusively for a 150-member CSA. The farm is perfect for CSA because it's located in a residential area and Rachel's members love the easy access to the farm. A local charity organization has arranged a tour of several farms in the local area as part of a harvest festival and Rachel's Green Acres is one of the first stops. Rachel is expecting about 100 folks over a 2-hour time frame. If it goes well, she hopes to host farm tours and other events like potlucks, movies, and barn dances a couple of times per month.

Understanding Zoning

Farm events, such as tours, may not be allowed under the zoning code. If neighbors- even someone one mile down the road- gets upset with the increased traffic, noise, litter, parking on the roadway, or other inconveniences, they may complain to the local zoning authorities. If that happens, the zoning authorities may scrutinize whether the event is permitted under the zoning code. Even if agriculture is allowed under the zoning code, farm events may not be allowed. Farm events may be specifically excluded both from residential and agricultural zones. In part, the event may be considered commercial rather than agricultural. Farm tours may be more like a commercial event because farms have historically been places where crops are produced, not where events are held. Many areas have not updated the zoning code, so agri-tourism activities are still left out. Although the exclusion of farm events from zoning codes may be an oversight, it might also be intentional. Rural, suburban and urban residents alike may want to exclude the increased traffic, noise, and parking problems that accompany many on-farm events. Neighbors facing these side effects of a successful event may complain to the local zoning authority (which may be the zoning commission, county board, municipal department or otherwise). The zoning authority, in turn, may decide the event violates the code and ask the farmer to stop.

Even if agriculture is allowed under the zoning code, farm events may not be allowed.

Most, but not all, areas of the United States are zoned. Zoning is a system

of land use regulation that regulates specific activities and where they may or may not occur in the community. Local municipalities, counties, and townships write and enforce the zoning code. Zoning codes are highly local and vary tremendously across the United States.

Take Action on Zoning:

Farmers should check the zoning code of the farm before hosting on-farm events. This is the case even if the farm is located in an agricultural area because, as we discussed above, “agriculture” may not include events. Determining the correct zoning authority can be difficult- start with the most local unit of government and ask who the authority is for your specific address. Then, a farmer may be able to call the authorities to ask directly if a specific event will be allowed. If a farmer prefers not to ask directly or doesn’t have a specific event in mind, farmers might consider reading the code. Many local entities have the zoning code online. First, determine the name of the zone in which the farm is located- zones are usually drawn on top of a map. Then, the farmer needs to find the allowed or disallowed activities within that zone- this is called the “code.” Some codes state only the allowed activities. Others list only the disallowed activities. After reading the zone’s accompanying allowed and disallowed activities, farmers should make sure to look up the definition of words like “farm” or “agriculture.” This might be located at the beginning of the code. If an agricultural zone permits agriculture, defined as “the production and marketing of crops,” for example, events where crops are not sold may not be allowed. However, if the definition of agriculture is more broadly worded or if it directly references farm events, festivals, or tours, those events may be allowed. Zoning codes vary tremendously so generalizations are difficult. For help interpreting zoning language, zoning office staff and attorneys are excellent resources.

Make sure to look up the definition of words like “farm” or “agriculture.”

If the code appears to prohibit farm events, all is not lost. Farmers may talk with neighbors about their concerns to see if they can be resolved ahead of time. For a more formal approach, farmers might ask about a “conditional use permit.” These are permits that allow for variation from the code. Farmers might also ask for a variance, which is a similar form of permission. If those options don’t work, farmers might think about mobilizing the community to get the code amended. Community-based farmers are in a great position

to make this happen! An attorney is an excellent resource before seeking a variance or advocating for changes to the code. An attorney can provide insight into local politics and how the code has been enforced, for example.



Rachel is very excited to host the tour group, and she wants to support the charity organization. Rachel could ask the charity to check into the zoning code, as they want to use her farm. But, since Rachel is treating this as a trial run for a diversity of future events, she decides it's worthwhile to look at the zoning code herself. First, she finds out that, because her farm is in a municipality, the city zoning office is the place to start. Her municipal website has a handy map online, so she locates her farm. It's in an agricultural zone, but events with over 100 guests are only allowed if she applies for a conditional use permit. Her permit application must include the locations of restrooms, entry and exit plans, fire and emergency access, and much more. Rachel decides to talk with the charity about working together to apply for the permit.

Farm events may need to improve accommodation for people with disabilities



Now, let's say Rachel's Green Acres is an apple orchard and Rachel hosts a fall festival - folks can pick apples, buy donuts, picnic, and go on a hay ride. Rachel charges a fee for admission because the income makes up for the fact that many guests don't buy apples- they come for the atmosphere and picnicking. The event is very popular. Rachel advertises in the local paper and the neighbors think of her fall festival as a special tradition. The local chamber of commerce helps promote the event to surrounding communities and the event continues to grow.

Understanding the ADA

Folks with disabilities may not be able to participate in the fall festival if Rachel hasn't put any accommodations in place. This is a legal problem, as well.

The Americans with Disabilities Act (the ADA) requires that places of public

The starting point is recognizing that the ADA may apply to on-farm events if they are open to the public and then doing more research.

amusement make themselves accessible. The ADA is a federal law that prohibits discrimination and ensures folks with a range of abilities can participate fully in American life. This law affects farmers, too. If a farm offers events open to the public, the farm may need provide access for disabled individuals. For example, a person in a wheelchair may not be able to roll from the parking lot to the site if the ground is deeply rutted. If more accessible routes can be easily installed, the law may require it. The ADA does not require that every individual feature be fully accessible, and it does not require that business owners completely remodel at great expense. Exactly what a farm should do to satisfy the ADA depends on when the farm began operations, the nature of the event, and the cost of retrofitting facilities. For example, installing a wide walkway with fine gravel may be rather affordable. With such uncertain requirements, the starting point is recognizing that the ADA may apply to on-farm events if they are open to the public and doing more research. States sometimes have a similar state law that may lay out additional rules or standards.

Take Action on the ADA

At a minimum, farmers should check to see that folks in wheelchairs are not prevented from attending the event or using a restroom. Installing smooth, wide pathways accomplishes this goal. (At the same time, this is a good practice to avoid injuries from people who are not disabled, as well.) Farms should also consider renting at least one handicapped accessible restroom facility. To avoid ADA issues, the farmer might do some extra research to see what else may be required. Options include searching online for the Department of Justice's guide for small businesses, titled "ADA Guide for Small Businesses." Farmers might also call the Department of Justice's toll-free hotline at 800-514-0301. The Small Business Administration (SBA) also helps businesses understand how to comply with the ADA, and they have offices throughout every state. (Find one near you at www.sba.gov.) The SBA is an excellent resource for learning if additional state laws set out standards for access by disabled persons.



After learning that the ADA may apply to her fall festival, Rachel feels nervous. She certainly wants people of all abilities to be able to come to her farm. But at the same time, she doesn't have the capital to install significant upgrades. Her festival is the only public event, and it's only open occasionally. Rachel

calls the ADA hotline and talks to an employee of the US Department of Justice. The individual identifies some basic accommodations that the agency has required of similar businesses, and tells Rachel about a grant and loan program to help her pay for the upgrades. Rachel feels better knowing her event will be more accessible to the community as she moves forward.

Farm events may create food safety and sanitation concerns.



For this story, we'll return to the example of Rachel and her fall festival at the orchard. We mentioned previously that Rachel serves fresh donuts. Rachel herself fries them up in a mobile food truck and serves them at the end of the orchard tour. When folks get off the hay wagon, they are greeted with an apple donut and the opportunity to visit the farm's pet goats- Bessie and Nellie. Families often gather near the goats to open up their picnic baskets and eat a meal. Rachel encourages this, and the children love to pet the goats while eating their lunch.

Understanding Negligence and Liability

Farmers may have a legal situation on their hands if the event structure makes it likely that someone will become sick from cross contamination. In the example above, many small children might play in the dirt by the goat pen and then eat a donut. This makes it more likely that a child will consume harmful bacteria. It's sad whenever a child gets sick, but this can be a legal problem as well. The child's parents may bring a lawsuit against the farmer, claiming that the farmer was negligent in serving food so close to animals. Or, the parents might claim that any reasonable farmer would have provided soap and water or sanitizing gel so that guests can wash up before eating. This isn't to say farmers are automatically liable for all contamination accidents. Farmers are expected to follow basic, common steps to protect the safety of guests. The law doesn't necessarily prohibit offering food in the vicinity of animals. But if they do, farmers should give guests the opportunity to understand and follow proper sanitation. This also applies to potlucks. Even if the farmer isn't

Farmers should give guests the opportunity to understand and follow proper sanitation

supplying the food, it's important to give guests proper sanitation resources.

Take Action on Food Safety Liability

Farmers might do a number of things to limit the risks of contamination. A sign may be placed near the animals instructing children and adults to wash their hands as soon as they leave the area. The farmer might rope off the area near the goats and put hand sanitizer at the exit as an additional reminder. Farmers may also increase the distance between animals (or raw compost, dirt, etc) and food to limit the chances that cross contamination will occur. Farmers should give the same consideration to the eating areas for potlucks or other meals supplied by guests.

Preventing contamination is one part of addressing the potential for food safety incidents, but it's not the only element. Despite everyone's best efforts, contamination can still occur. This is where insurance is important. If a farmer has an insurance policy that covers farm events, the farm will be supplied with an attorney to defend against liability suits, and the policy will pay a successful judgment (up to the limit of the policy). Not all farm insurance policies cover farm events, so farmers may need to do a little investigation. Farmers should communicate with their insurance agent about the event and get confirmation that guest injury from bacterial contamination is covered under the policy. An event endorsement or rider often provides this coverage. A commercial policy (in addition to a farm liability policy) is another frequently used option. Insurance companies may impose requirements such as posting signs; make sure to follow those.

Not all farm insurance policies cover farm events, so farmers may need to do a little research.



In looking at the structure of her orchard tour, Rachel realized she had safer options. Rachel puts up a specific goat petting area, stocks it with hand sanitizer, and a few signs reminding guests of the need for good hygiene when interacting with animals. Rachel also moved the picnic tables farther from the goat area, and set up the donuts away from the goats as well. Lastly, Rachel sent an email to her insurance agent checking to see that bacterial contamination injuries would be covered under her insurance. The agent sent her a copy of the event rider, and Rachel confirmed that it covered such things.

If the farm is serving food, a food service permit may be required



In this story, Rachel is simply running a small vegetable farm. She doesn't currently have any on-farm events. However, the farm-to-table trend has inspired Rachel to have guests out to Rachel's Green Acres over Valentine's Day weekend. If she were to charge folks for the meal, Rachel knows she would need a food service permit. Rachel doesn't want that hassle and she doesn't have a commercial kitchen it would require. Rachel has heard from folks in other parts of the country that clubs don't need food service permits. So, she decides she will set up the event as a club. People will pay to join the Green Acres Dinner Club and then receive a free meal as a benefit of membership. If the event is a success, Rachel hopes to offer weekend dinners regularly.

Understanding Food Permits

Although each state is different, many state food codes do in fact allow clubs to serve food without carrying a food establishment permit. In addition, individuals who host parties for friends are not required to prepare the food in a certified kitchen. This seems quite logical. But, the catch is that a farm has to actually be operating a real club or hosting a real private party. The event can't simply have "club" in the name. The agency in charge of enforcing food safety regulations (generally, the local department of public health) will look at the actual arrangements to determine if a food service permit is required.

Generally, a club is an organization with restrictive membership criteria and common group activities. If anyone can buy a ticket to Rachel's dinner club, with no restrictions, and there is no other common events or purpose for the club, regulators will likely find it's a club in name only. They can require Rachel to get a permit or stop hosting dinners. The same goes for a private party. If Rachel tried to argue that her dinners were just parties, regulators would point out that we generally host parties for only people we know, and we don't charge our friends to attend. When it comes to the law, the substance is important, not the title. This can quickly get complicated, however. What if a farm offers a free light meal to employees or sets out snacks during a meeting of CSA members?

Generally, a club is an organization with restrictive membership criteria and common group activities.

Food for people we know, without charge, is easier to construe as a party.

Take Action on Food Permits

The best way to get answers on these complicated questions is to call the local food service inspection agency and talk with an inspector. Generally, the local department of public health performs this service. Inspectors want to know exactly what a person will be serving, how, and to whom, so they can offer the most accurate opinions. If a farmer doesn't want to talk with the enforcement agency, he or she might try talking with a farmer who has done something similar. However, just because someone hasn't been shut down for operating a club or party, doesn't mean it's actually allowed. Rather, talking with others might help farmers understand the risks involved and who to contact. Attorneys are excellent resources for these kinds of questions. An attorney can help farmers understand how the rules have been enforced in the past and navigate local politics or trends in enforcement.



If Rachel's club does not have membership criteria, membership duties, and the other characteristics of a club, Rachel will likely need a food service permit. Depending on the state laws and the local inspector, Rachel may need to prepare her food in a commercial kitchen and hold it at approved temperatures, among other conditions, to receive the permit. But, can Rachel call this a private party? If Rachel knows everyone who attends her meal personally and it's offered for free, a permit may not be required. But, that isn't exactly what Rachel had in mind. Instead, Rachel decides to investigate the costs of installing a certified kitchen on her farm.

Selling hot, prepared, or value-added food may require collecting sales tax



Going back to our previous story, Rachel wants to host farm dinners on weekends. Realizing that she needed a commercial kitchen to offer farm-to-table dinners in her barn, Rachel made a huge investment and installed one. Now, she needs to get as much value out of the kitchen as possible. Rachel is looking at baking bread, slicing cheese and mixing up salads, and selling the combo as a picnic kit. She's going to sell the kits at her weekly CSA pick-up so farm members can stick around for a picnic before heading home. Rachel is an experienced farmer and she's been selling produce for many years. She's never collected sales tax before, and she feels confident that farm is exempt. She doesn't plan on collecting sales tax for her dinners or for her picnic kits.

Understanding Sales Tax for Farms

Farmers may need to collect taxes on farm meals and value-added farm products (such as picnic kits) even if raw farm products are exempt from sales tax. Most states exempt raw agricultural products, but the exemption may not extend to anything cut, cooked, or prepared, especially if the ingredients aren't from the farm. Selling salad kits is especially complex. Other sales tax exemptions, such as those for food items, depend on whether the food is sold for immediate consumption (often defined as food sold with plastic utensils) or whether it is intended to be eaten at home. As for hot meals, some municipalities and/or states collect tax on them and some do not.

Some sales tax exemptions for food depend on whether the food is sold for immediate consumption, such as with utensils or sold hot.

Take Action on Sales Tax

A farm needs to check into sales tax obligations before selling hot food, prepared food, or value-added products. States often publish a sales tax guide for farms and one for food service establishments that will explain the exemptions in detail. Farmers should also call their state and local taxing authority for more information. At the state level, the department of revenue is generally the place to start. Some cities also collect their own tax on prepared and hot foods, so farmers need to check with the city as well. (It may be just as easy to call.) After a farmer understands when sales tax must be collected, performing the actual withholding

of sales tax is not necessarily complicated. Generally, a farm first applies for a permit or opens a tax account. Then, the farm deposits the withheld taxes into the account on a regular basis. Accountants are a terrific source of information on tax obligations and on setting up a system for collecting and remitting sales tax.



Rachel downloads her state guide to collecting sales tax and consults the table of contents for the sections on taxation of ready-to-eat, hot, or prepared foods. She discovers that both her on-farm dinners and her picnic kits will be subject to sales tax. Just to check, Rachel puts in a call to her state and local tax agencies. Having to collect sales tax makes the new venture look like a lot of additional work. To help make the process go smoothly, Rachel meets with an accountant about setting up the right procedures.

Injuries during farm events may not be covered by farm liability policies



For this story, let's take Rachel's farm back to the basics. Rachel just has a CSA farm- no on-farm food service and no certified kitchen. In this situation, Rachel wants to offer an on-farm class where she teaches people about Italian cuisine. The class will last three months, be held one night per week, and will cover Italian heirloom vegetables, traditional preserving techniques, and traditional recipes. Rachel will charge about \$300 for this class. Rachel hopes this will turn a decent profit, taking into account her time and supplies. If it goes well, Rachel plans to expand the class. Although she still loves farming, Rachel wants to ease into retirement and this may be a good way to cut back while still making money. At the same time, it might help boost sales at her farmers' market stand by cultivating a loyal customer base.

Understanding Liability for Injuries

Most farmers carry only farm liability insurance. Unfortunately for those planning on-farm events, farm liability policies generally only cover injuries that guests suffer as a result of the farm operations. If you read the definition

of a “farm” in a farm liability policy, it probably says something about the production and marketing of crops. Educational classes are not part of the “farm” because classes do not relate to the production and marketing of crops. Instead, it is the sale of an educational opportunity. Educational events that make a profit on their own (as opposed to simply driving more sales of agricultural products) are likely commercial events that require a commercial policy. If the event is free, it’s more likely to be a marketing event and thus be considered agricultural, but it all depends. The reason no solid answer is available is because insurance companies write different policies, and may interpret their policy in divergent ways. Whether coverage for an event-related injury is provided might depend on many detailed factors. The case law and the courts may also influence whether coverage applies to a specific situation.

Do not assume that a farm liability policy will cover injuries related to farm events, especially if the event is a profit-generating venture unrelated to the production and marketing of crops.

The bottom line is that a farmer cannot assume that a farm liability policy will cover injuries related to farm events, especially if the event is a profit-generating venture unrelated to the production and marketing of crops.

Take Action on Liability Insurance

The first step is to determine if the farm’s current policy covers the planned event. Talking with the insurance agent is one good option. In that case, it’s a good idea to document the communication. For example, if a farmer has a phone conversation about her event with the agent, she should record the conversation in a log book. In the alternative, she can send an email to the agent thanking her or him for clarifying that the event is covered. This creates a paper trail. Then, if the agent is wrong about what a specific policy does or does not cover, the farmer may have some recourse. A second option is to try and read the insurance policy currently in place. This can be challenging. To begin, farmers often don’t have a copy of the full policy language. The full policy is generally 30-40 pages long, and is different than the few sheets identifying covered structures. The insurance agent should be able to provide a replacement copy of the full policy. Doing the reading is difficult, but by no means impossible. Make sure to check the definition of farming, as well.

If a farmer learns that the farm’s current insurance policy does not cover the planned event, purchasing an additional, commercial policy might be the

right next step. A commercial insurance policy is designed to cover injuries extending from the business as a whole, not just the farm operation. Farmers can often add a commercial policy to their farm policy at an affordable rate. Call around for quotes, and the rates might be a pleasant surprise.



Rachel calls up her insurance agent and explains that she's looking to host some classes, as part of a long-term transition to reduce her physical workload. Rachel specifically asks if students who might experience burns, falls, or other injuries will be covered under Rachel's insurance policy, especially if a lawsuit results. Rachel's insurance agent needs a little time to look into it, but eventually decides that the farm liability policy won't extend to a regularly held, for-profit activity like classes. The insurance agent offers Rachel two options: 1) an event rider for the farm liability policy or 2) a commercial policy in addition to the farm liability policy. The agent explains that the commercial policy is more expensive, but that it's broader and would more easily allow Rachel to expand into other non-farm ventures without needing to change insurance again. Considering her long-term plans, Rachel goes with the commercial policy.

U-Pick Opportunities may need an endorsement for insurance coverage



In this story, Rachel offers u-pick opportunities to her CSA members and to farmers' market customers around autumn. Folks love to pick their own pumpkins and apples, and it's a great opportunity to build customer relationships. Rachel doesn't advertise the event broadly, but she still has a couple hundred people attend. She charges them for the items picked but admission is free.

Understanding U-Pick Liability

Farmers need to be sure they have insurance coverage for u-pick activities. Many farm liability policies require a special u-pick endorsement for these situations. Without the endorsement, a farmer may not have coverage for u-pick, even though injuries to other farm visitors are covered.

Letting folks out into the orchard and fields on their own increases the chances that someone will get injured so this is especially important.

Take Action on U-Pick Liability

Farmers should talk with their insurance agent to determine if adding a u-pick endorsement (the words endorsement and rider are often used interchangeably) to a farm policy will provide the best coverage. If the event has an admission charge instead of a per-pound or per-item charge, farmers should communicate that. Each of these things may affect how the event is classified and whether it is covered. A good relationship and clear communication with an insurance agent is key to addressing farm risks. Farmers should also communicate with agents about ways to reduce their premium. For example, farmers may get a discount for restricting access to specific areas of the farm, prohibiting certain activities, or requesting a liability waiver from customers. (Please note that a liability waiver may not be effective. Talk with your insurance agent about whether a waiver is a useful tool for your farm.) If an agent does not communicate clearly or seem willing to negotiate, shop around for another agent. Ask neighboring farmers for a referral. When it comes to something as vital and as expensive as insurance, it is worth looking around until you find an agent you are happy with.



Rachel checks her insurance policy, but she doesn't see any mention of u-pick activities. Wanting to be sure, Rachel calls up her insurance agent to ask about coverage. The agent tells Rachel that she needs to add a u-pick endorsement, and that it will significantly increase the cost of her policy. This is disappointing. Thinking about her farming neighbors down the road, Rachel decides it's time to do a little shopping around. Fortunately, she's able to find a different company with a more competitive quote. Checking around with other farmers in her area, it looks like the new company has good customer service and handles claims efficiently. Rachel decides to make the switch.

Conclusion

Although this guide may seem overwhelming at first, it helps to break things down into a few simple tasks. First, check your zoning code. You will find all sorts of other interesting information about farm buildings, residential requirements and more in there, so it's well worth your time. Second, talk with your insurance agent. Be prepared to discuss the events you offer and ask about endorsements or adding a CGL policy. Third, be cautious about farm-provided meals at events. If you want to open on-farm food service, be prepared to make a significant investment of time, energy, and money to stay on the right side of the law. When all is said and done, the financial returns of on-farm events can be well worth the effort to put a solid legal structure in place sooner rather than later.



This resource was developed with the support of the USDA Risk Management Agency.

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<http://farmcommons.org/survey>

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RACHEL
REPONDS

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