

AGAINST THE GRAIN: WHY MIDDLE-SIZED FARMERS SHOULD STRAY FROM MASS-DISTRIBUTORS AND SELL DIRECT

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I. INTRODUCTION

Katie Myhre, sits at a stand in downtown Saint Paul, Minnesota watching the usual crowds come in and out of the local farmers’ market. As she helps families, farmers, and community members seek out fresh produce, she stands worried about

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the problems surrounding the Minnesota farming community. More specifically, she worries for the longevity and profitability of middle-size farms. “The problem is that mid-sized farms don’t have the luxury of being able to choose to work with distributors because the margins murder the profitability of small farms.”¹ Myhre said, “[b]ig farms, on the other hand, operate at a scale and efficiency where their volume requires efficiencies on that scale.”²

Myhre’s point is well taken. There are currently nearly 2.1 million farms in the United States.³ As one of the smallest categories of farms, middle-sized farms only account for 6.1% of all farms in the country.⁴ In 2015, 89.7% of the total farms were “small family farms,” and 2.9% of the total farms were classified as “large-scale family farms” or “very large family farms.”⁵ Large family and corporate farms make up 42.4% of the total agricultural production in the country.⁶ Oppositely, small family farms account for nearly 90% of all farms in the United States — making up only 24.2% of the total agricultural production in the country.⁷ The last category, middle-sized farms, only account for 6.1% of the total farms in the country yet provide 22.8% of the nation’s total agricultural output.⁸ What is to become of middle-sized farms that are too small to fulfill mass distribution orders and too large to sell at small direct marketing initiatives (*e.g.*, farmers’ markets, direct-to-schools, direct-to-chefs)? The answer is that the future seems bleak.

As the average size of the farm continues to grow, large farms are starting to consolidate a mass production percentage of the United States’ food.⁹ As these larger farms continue to control a majority of the produce distribution, middle-sized farms struggle to compete with the workload and output of large distributors.¹⁰ These forces threaten the middle class of farmers in the United States that do not have the resources to fulfill the needs of large distributors.¹¹ From a middle-sized

1. Email from Katie Myhre, Chief of Strategy, Red Food, Inc. (Sept. 23, 2016).

2. *Id.*

3. *Farming and Farm Income*, USDA, <https://perma.cc/68ME-2KCH> (archived May 31, 2018).

4. U.S. DEP’T AGRIC., *AMERICA’S DIVERSE FAMILY FARMS: 2016 EDITION*, 3 (Dec. 2016), <https://perma.cc/E3FR-CZGFAA>.

5. *Id.* at 4.

6. *Id.*

7. *Id.*

8. *Id.*

9. Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of “Local Foods”*, 33 *HAMLIN J. PUB. L. & POL’Y* 49, 52 (2011).

10. Frederick Kirschenmann, LEOPOLD CTR. FOR SUSTAINABLE AGRIC., *ARE WE ABOUT TO LOSE THE AGRICULTURE OF THE MIDDLE?*, <https://perma.cc/JF3D-5398> (archived Mar. 21, 2019).

11. *Id.*

farmer's perspective, this can raise an interesting choice between selling directly to consumers through a direct marketing initiative or attempting to boost their workload and production to meet the demands of a mass distributor.

Moreover, how can these farms look to fulfill the needs of orders to a large distributor when their overall resources may put them at a disadvantage? For example, compared to a large farm, "there is no way one farm, with three farmers, can sell 800 pounds of cucumber every week.¹² How do these middle-sized farms thrive in an industry that is largely controlled by sales to mass-distributors? Can these middle-sized farms keep up and compete with larger farms? These are all questions Myhre and her company, Red Market, strive to answer.

Based out of Minneapolis, Minnesota, Red Market looks to find a solution for farmers who are trying to thrive in this competitive farming environment by connecting farmers in Minnesota and Wisconsin to chefs and restaurants.¹³ Red Market acts as a connector between farms and restaurants by delivering their produce directly to chefs and showcasing the chef's dedication to the local food market.¹⁴ As Chief of Strategy, Myhre hopes "to connect these farmers, who struggle to sell at the level of large farming operations, to local opportunities to sell their produce," Myhre said.¹⁵ "Why should these farmers deserve less of a chance to impact the community?"¹⁶ Food hubs, like Red Market, are becoming a great resource for middle-sized farms and have increased in number by 288% nationally since 2007.¹⁷

Currently, farming sales by the use of direct marketing initiatives reached their "peak" with the increasing popularity of consumers wishing to "buy local."¹⁸ Direct marketing initiatives, where farmers sell their produce or crop directly to consumers, are becoming increasingly popular to farmers as an important source of revenue.¹⁹

Farmers who sell directly to consumers, markets, or local school systems can directly impact the local economy and provide numerous benefits to their surrounding area; benefits that are not attainable through the sale to a distributor model. My discussion will focus on the factors that should impact a middle-sized

12. Myhre, *supra* note 1.

13. *About*, RED MARKET, <https://perma.cc/J3VQ-RZW8> (archived May 31, 2018).

14. *Id.*

15. Myhre, *supra* note 1.

16. *Id.*

17. Luke Runyon, *Are Farmers Markets Sales Peaking? That Might Be Good For Farmers*, Nat'l Pub. Radio (Feb. 5, 2015), <https://perma.cc/NF2W-ZJH9>.

18. *See id.* (suggesting the direct-to-consumer economic model has "peaked" and now may be declining).

19. Craig A. Bond et al., *Understanding Consumer Interest in Product and Process-Based Attributes for Fresh Produce*, 24 *AGRIBUSINES* 231, 231 (2006).

farmer's decision to sell local, the types of direct marketing initiatives that the majority of farmers use, and why recent research shows medium-sized farmers should shy away from selling to mass-distributors and experience the potential benefits of selling directly to consumers. This Note will also discuss the costs and benefits of different direct marketing initiatives that allow farmers to make a fully-informed decision. While medium-size farms may struggle to economically compete with other large farms, those same farms still can have a significant impact on the local community and economy in ways large farms cannot.

II. "THE PROBLEM" FOR MIDDLE-SIZED FARMERS

The importance of middle-sized farms to the agricultural community cannot be underestimated. Historically, middle-sized farms have been "the backbone" of the agricultural market for rural and urban areas, as most family-owned farms fit somewhere between large-scale and small-scale farming operations.²⁰ These farms are a vital source of socio-economic growth to their communities, but many factors have hindered their ability to thrive in a market based on large-scale production.²¹

Since 1992, the United States Department of Agriculture (USDA) reported that the number of middle-sized farms has declined by 5%.²² This decline coincides with the amount of farm exits and transitions since 1992, as almost 42% of middle-sized farms transitioned to another size.²³ The amount of these transitions have led the total number of small and large-sized farms to increase drastically, while leaving the middle-sized farms destitute.²⁴ This has led to a separation of farm classes into two different structural paths in the United States food system.²⁵ In the

20. G.W. Stevenson et al., *Midscale Food Value Chains: An Introduction*, 1 J. AGRIC. FOOD SYS. & COMMUNITY. DEV. 27, 28 (2011).

21. *Id.* at 27-29 (stating "Research indicates that sustainable midscale food value chains successfully address the following kinds of challenges: finding appropriate value chain partners and developing mechanisms for value chain decision-making, transparency and trust; determining effective strategies for product differentiation, branding, and regional identity; determining appropriate strategies for product pricing based on understanding true cost structures; acquiring adequate capitalization and competent management; developing effective quality control and logistical systems; and developing economic power for value chain negotiations").

22. *U.S. Mid-Sized Farms Decline, Study Shows*, *Tex. Agriculture Daily*, TEX. FARM BUREAU (Nov. 17, 2016), <https://perma.cc/7J48-5Q78>.

23. *Id.*

24. Heidi Marrtila-Losure, *The Disappearing Middle: Mid-Sized Farms that Once Supported Rural Communities are Fading Away*, *DAKOTAFIRE*, (July 14, 2012), <https://perma.cc/ESN6-85GZ>.

25. FRED KIRSCHENMANN ET AL., *FOOD AND THE MID-LEVEL FARM: RENEWING AN AGRICULTURE OF THE MIDDLE*, 3 (2008) (ebook).

first structural path, small farms thrive by using stable direct marketing initiatives that allow them to sell directly to consumers.²⁶ In the second structural path, large farms thrive by using established supply chains that move mass amounts of crops around the globe.²⁷ Since 1930, the total number of farms in the United States has declined drastically, while the total size of farms overall has increased.²⁸ The result of these farming structural paths have led to the disappearing class of middle-sized farms or, more colloquially, the “phenomenon of the disappearing middle.”²⁹

The problem, sometimes known as the “agriculture of the middle,” is defined as the “disappearing sector of mid-scale farms/ranches and related agrifood enterprises that are unable to successfully market bulk commodities or sell food directly to consumers.”³⁰ Some have further defined this class of middle-sized farms as farmers who utilize between 100 to 500 acres, profit between \$50,000 and \$500,000 in annual sales, and are seen as too large to sell to a direct marketing initiative but too small to compete with a larger industrial food system.³¹ This market structure phenomenon correlates the struggle of middle-sized farms to the separation of two different spheres of farming.³²

The two different spheres are an example of the two structural paths of the agricultural market discussed earlier. The first sphere consists of large, corporate dominated farms with large orders to distributors.³³ The second sphere consists of small, locally owned production farms that sell directly to the community through the use of direct marketing initiatives.³⁴ The divide between these two spheres of the agricultural market makes it difficult for middle-sized farms to recognize their appropriate market outlets.³⁵ This causes middle-sized farms to make a choice between selling directly to a community customer base or expand their operations to a large-scale quantity to compete with the larger market of corporate farms. This is aptly noted by Thomas A. Lyson, who writes:

[M]idsized farms tend to produce volumes too large for direct markets, and cannot compete economically against the coordinated and corporate dominated commodity systems that articulate with national and international

26. *Id.*

27. *Id.*

28. Marrtila-Losure, *supra* note 24.

29. KIRSCHENMANN ET AL., *supra* note 25, at 5.

30. Emily M. Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 J. FOOD L. & POL'Y 17, 50 (2013).

31. *Id.* at 51.

32. KIRSCHENMANN ET AL., *supra* note 25, at xi.

33. *Id.*

34. *Id.*

35. *Id.*

marketing distribution systems. In this sense, midsize farms and ranches are being squeezed out of agriculture through a mismatch with available markets.³⁶

This struggle makes it difficult for middle-sized farms to adequately fit into the market and produce the quality of products demanded.³⁷

One possible — and popular — strategy to combat irrelevancy and this trend by middle-class farmers is the use of direct marketing initiatives.

III. THE GROWING POPULARITY OF DIRECT MARKETING INITIATIVES

Over the last two decades, it has become increasingly popular for farmers to sell directly to consumers.³⁸ In 1978, farms that utilized a direct-to-consumer food sales method represented an average of only 5.5% of all farms in the United States, accounting for only 0.3% of total farm sales in the country.³⁹ After the passage of the Farmer-to-Consumer Direct Marketing Act of 1976, governmental funding allowed for the expanded development of direct marketing and sales initiatives.⁴⁰ The purpose of the Act was to “to promote . . . the development and expansion of direct marketing of agricultural commodities from farmers to consumers.”⁴¹ Eventually, from 1992 to 2007, the government achieved their goal of increasing direct marketing efforts, as the percentage of farmers using direct-to-consumer sales methods rose from 5.5% to 58% with 136,000 farms using direct-to-consumer methods.⁴² These direct initiatives also became popular with organic farmers. In 2014, 22% of organic sales came from direct market and direct-to-consumer initiatives.⁴³ Furthermore, 45% of the current United States organic farms claim to utilize direct-to-consumer initiatives.⁴⁴

According to the USDA, the total revenue of sales from direct-to-consumer techniques continued to grow, eventually rising to \$1.2 billion in revenue in 2007.⁴⁵

36. *Id.*

37. *Id.*

38. SARAH A. LOW & STEPHEN VOGEL, U.S. DEP'T AGRIC., DIRECT AND INTERMEDIATED MARKETING OF LOCAL FOODS IN THE UNITED STATES 2 (Nov. 2011), <https://perma.cc/M64S-LNX8>.

39. *Id.*

40. *Id.*

41. Pub. L. No. 94-463, 90 Stat. 1982 (1976).

42. LOW & VOGEL, *supra* note 38, at 2.

43. U.S. DEP'T AGRIC., CENSUS OF AGRICULTURE: HIGHLIGHTS 3 (Sept. 2015), <https://perma.cc/Q2YE-9ULG>.

44. *Id.*

45. STEVE MARTINEZ ET AL., U.S. DEP'T AGRIC., LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS AND ISSUES iii (May 2010), <https://perma.cc/3PX8-XMAU>.

This rose from just \$551 million in 1997.⁴⁶ As the increase in the total revenue for these types of methods is increasing, so are the methods in which these farmers are choosing to sell their products.⁴⁷

A. Farmers' Markets

Farmers' markets use a market system in which local farmers bring produce to sell directly to the community consumers.⁴⁸ Over the past two decades, these direct marketing initiatives have increased in popularity by 63%.⁴⁹ In 1994, the number of total farmers' markets in the United States was only 1,755 markets nationwide.⁵⁰ Fifteen years later, in 2009, the number of total farmers' markets rose to 5,247 markets.⁵¹ Unfortunately, studies show the expansion of farmers' markets has not yielded a mass economic output.⁵² This is largely linked to the amount of newer markets that are starting to develop every year, along with the growing popularity of this direct marketing technique.⁵³ Newer farmers' markets, categorized as markets less than five years in age, make up to one-third of all seasonal farmers' markets.⁵⁴ From 2000 to 2005, the sales growth for farmers' markets rose to a mere 2.5%.⁵⁵ However, this statistic can be misleading after seeing the exponential growth in popularity from farmers' markets over that time span. In this same period, farmers' markets also grew in popularity by almost 43% nationwide.⁵⁶

Farmers' markets provide a beneficial shopping experience to consumers and farmers. Previous studies have shown that customers were attracted to attending farmers' markets for their pleasant social interaction between farmers and market shoppers, high quality products, and fair pricing of produce.⁵⁷ Additionally, customers are attracted to farmers' markets for the higher quality in

46. *Id.*

47. LOW & VOGEL, *supra* note 38, at 2.

48. O. Onianwa et al., *Consumer Characteristics and Views Regarding Farmers Markets: An Examination of On-site Survey Data of Alabama Consumers*, 37 J. FOOD DISTRIBUTION RES. 119, 119 (2006).

49. *Id.*

50. MARTINEZ ET AL., *supra* note 45, at iii.

51. *Id.*

52. Jason J. Czarnezki, *Food, Law & the Environment: Informational and Structural Changes for a Sustainable Food System*, 31 UTAH ENVTL. L. REV. 263, 269 (2011).

53. *See id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. AMY KREMEN ET AL., U.S. DEP'T AGRIC., ORGANIC PRODUCE, PRICE PREMIUMS, AND ECO-LABELING IN U.S. FARMERS' MARKETS 2 (2004) <https://perma.cc/CFL5-2GPX>.

food products, fair pricing and value, the availability of specialty items, the ability to buy directly from the farmers growing the produce, and for an overall social atmosphere that is different than attending the supermarket.⁵⁸

B. Community Supported Agricultural (CSA) Systems

Community Supported Agricultural (CSA) systems are also seeing a spike in popularity.⁵⁹ A CSA system is a unique local farming initiative where farmers agree to share the risks of farming with the surrounding community.⁶⁰ It consists of individuals in the community who pledge to support the local farming operation so that it may potentially benefit the whole community.⁶¹ The motive behind establishing CSA systems was to “re-establish a sense of connection to the land for urban dwellers,” and to strengthen the connection between these urban dwellers and community farmers.⁶² The economic theory behind a CSA is to use a set price for the community to cover the operating costs for the farmers while still yielding a fair return for the farmer.⁶³ This allows the farmer to provide quality produce to the community while still making a profit. The end goal is that the entire community may benefit from the farming system as the CSA becomes the community’s farm.⁶⁴

CSA systems have become a popular direct marketing initiative for small and large communities. In fact, some have even deemed it to be a “prime vehicle” for reforming the American food economy.⁶⁵ In 1986, only two communities in the United States utilized a CSA model.⁶⁶ This number rose in 2001, as the USDA reported that 761 total CSA systems were in place.⁶⁷ As of 2008, 71,200 farms,

58. Marianne McGarry et al., *A Profile of Farmers’ Market Consumers and the Perceived Advantages of Produce Sold at Farmers’ Markets*, 36 J. FOOD DISTRIBUTION RES. 192, 193 (2005).

59. ERIN M. TEGTMEIER & MICHAEL DUFFY, LEOPOLD CTR. FOR SUSTAINABLE AGRIC., *COMMUNITY SUPPORTED AGRICULTURE (CSA) IN THE MIDWEST UNITED STATES: A REGIONAL CHARACTERIZATION* 5 (Jan. 2005).

60. *Id.*

61. KATHERINE L. ADAM, *COMMUNITY SUPPORTED AGRICULTURE*, NAT’L SUSTAINABLE AGRIC. INFO. SERV. 2 (2006), <https://perma.cc/8VHU-H92B>.

62. *Id.*

63. Cheryl Brown & Stacy Miller, *The Impacts of Local Markets: A Review of Research on Farmers Markets and Community Supported Agriculture (CSA)*, 90 AM. J. AGRIC. ECON. 1296, 1299 (Dec. 2008).

64. See ADAM, *supra* note 61, at 2.

65. Christopher Kaltsas, Note, *Harmony At The Farm: Rediscovering The “Community” In Community Supported Agriculture*, 56 WM. & MARY L. REV. 961, 964 (2015).

66. ADAM, *supra* note 61, at 1.

67. *Id.* at 3.

including farmers' markets, roadside stands, farm stores, and CSA models were being used throughout United States. farming communities.⁶⁸ Additionally, one study smaller farms that utilized a CSA system increased their overall economic growth over the past few decades.⁶⁹

C. Direc-to-School Systems

A direct-to-school system, also known as a "farm to school" system, works to integrate locally grown food into the local school food programs in the area.⁷⁰ Direct farming initiatives like these are very cost effective for farmers and are popular among the students and faculty.⁷¹ According to a 2009 survey by the National Farm to School Network (NFSN), 2,095 schools were devoted to buying produce directly from farmers from the community.⁷² This is a jump from only two schools that chose to adopt such a model in 1996.⁷³ Overall, since 2006, the number of school districts that use a direct marketing outlet for their produce has become wildly more popular and jumped 430%.⁷⁴

The jump in these methods has also lead to increase in legislation encouraging school programs to buy locally. For example, in 2002, the 1946 National School Lunch Act was amended to require the Secretary of Agriculture to encourage schools participating in federal meal programs to purchase locally grown food to the "maximum extent practicable."⁷⁵ Since this Amendment, a 2009 study estimated that forty-one states in the nation now have farm to school programs.⁷⁶ These states are made up of 8,943 schools, with 2,065 schools mandating some sort of local purchasing component.⁷⁷

D. Direct-to-Chef Systems

Another popular way for farmers to sell directly to consumers is to sell directly to local restaurants and chefs. The relationship between a chef and a farmer can serve to further both of their interests, and certain restaurants may only inquire

68. LOW & VOGEL, *supra* note 38, at 3.

69. DANIEL LASS ET AL., *CTR. FOR INTEGRATED AGRIC. SYS., CSA ACROSS THE NATION: FINDINGS FROM THE 1999 CSA SURVEY* at i (Oct. 2003), <https://perma.cc/C3Z9-X4T3>.

70. Betty T. Izumi et. al., *Farm-to-School Programs: Perspectives of Food Service Professionals*, 42 J. NUTRITION EDUC. & BEHAV. 83, 83 (2010).

71. *See id.* at 88.

72. MARTINEZ ET AL., *supra* note 45, at iv.

73. *Id.* at iii.

74. Runyon, *supra* note 17.

75. Pub. L. No. 107-171, 116 Stat. 134, 4303 (2002).

76. MARTINEZ ET AL., *supra* note 45, at 15.

77. *Id.*

as to a limited amount or type of produce placing less strain on the community farmer.⁷⁸ This can help facilitate local produce into the local food market and expand their reach in the community.⁷⁹ Strong relationships between the farmer and the chef can also allow the farmer to distribute new products and receive immediate feedback from the chefs who cook with the produce.⁸⁰

In 2006, it was estimated that 87% of fine dining restaurants served local food items and purchased local foods.⁸¹ In 2010, a survey of chefs found that 88% of chefs bought local produce as it was continuing to be a “hot trend” with customers.⁸² In fact, 90% of those fine dining operators served locally sourced items because they believed this trend would continue.⁸³ This is not only being seen by fine dining establishments but with fast food operations as well. In 2008, nearly 30% of fast food restaurants outsourced items from local farms.⁸⁴

Organizations such as Red Food, Inc.⁸⁵ and Chefs Collaborative⁸⁶ help aid the process of connecting local farmers with community restaurants. A study conducted on restaurants who use a connective service show that 81% of restaurants buy ingredients directly from farmers.⁸⁷ More than half of these restaurants prefer buying from farmers directly than through a market, processor, or cooperative.⁸⁸ Using these “foodhub” organizations can help farmers directly impact the community and sell to the local market.

As these models of direct-to-consumer sales have continued to grow, it is likely direct-to-consumer sales and marketing initiatives will also experience continued growth. Although the statistics show an increase in these types of sales and marketing outlets, many farmers may still wonder about the possible benefits to selling directly to the consumer and why it is important.

78. See TODD M. SCHMIT ET AL., CORNELL UNIV., THE EFFECTIVENESS OF FARM-TO-CHEF MARKETING OF LOCAL FOODS: AN EMPIRICAL ASSESSMENT OF COLUMBIA COUNTY, NY 3, 9 (2010).

79. *Id.* at 3.

80. *Id.*

81. MARTINEZ ET AL., *supra* note 45, at 12.

82. *Id.*

83. *Id.* at 14.

84. *Id.*

85. *About*, *supra* note 13.

86. Chefs Collaborative, <https://perma.cc/2XB4-D23T> (archived May 31, 2018).

87. MARTINEZ ET AL., *supra* note 45, at 14.

88. *Id.* at 11.

E. International Popularity

As most of the literature on this topic shows the benefits of direct-to-consumer techniques in the United States, countries across the world also see benefits for the use of these types of direct marketing objectives. Not only is the use of these objectives seen by domestic farmers and their communities, but the same motivations, benefits, and trends are seen in countries abroad, specifically the United Kingdom and Canada.

1. United Kingdom

The United Kingdom (U.K.) is also seeing a rise in the popularity of the number of consumers who are looking to buy direct.⁸⁹ The first farmers' market in the U.K. was established in 1998.⁹⁰ Just nine years later, in 2006, over 500 farmers' markets spread out through the U.K. and the revenue from these farmers' markets increased to over 200 million Sterling Pounds.⁹¹ The rise in these direct marketing initiatives was believed to be motivated by the increasing popularity for consumers to "localize the food supply chain."⁹² As this a common motivation shared with the United States., these farmers appear motivated by the notion of "taking more control of their market" and having an impact on the local economy.⁹³ Though these farmers are shying away from the majority trend to sell to mass distributors, they are benefitting from community engagement, product management, and overall production.⁹⁴

2. Canada

Farmers' markets have become increasing popular in the western population of Canada, specifically the provinces of Alberta and British Columbia.⁹⁵ There, the farmers' markets operate under an "80/20 Rule," meaning 80% of the farmers' market vendors must sell local products they, a family member, or a member of their cooperative has made or grown.⁹⁶ The remaining 20% can be comprised of

89. Gill Seyfang, *Avoiding Asda? Exploring Consumer Motivations in Local Organic Food Networks*, 13 *LOC. ENV'T INT'L J. JUST. & SUSTAINABILITY* 187, 188 (2008).

90. *Id.*

91. *Id.* at 191.

92. *Id.* at 189.

93. *Id.* at 190.

94. *Id.* at 188.

95. Hannah Wittman et al., *Linking Local Food Systems and the Social Economy? Future Roles for Farmers' Markets in Alberta and British Columbia*, 77 *RURAL SOC.* 36, 40 (2012).

96. *Id.* at 41.

products that may be out of province or non-commercial.⁹⁷ With an eye toward community stabilization, the farmers' markets implemented these types of rules to foster a strong foundation for growth in the future.⁹⁸ As a result, farmers' markets in the Alberta and British Columbia area are steadily increasing the economic impact they have on the surrounding communities.⁹⁹ In 2008, the Alberta Agriculture and Rural Development found a 63% increase in sales at these farmers' markets from 2004 to 2008.¹⁰⁰ Overall, 2008 sales generated a gross revenue of \$1.3 billion in direct sales across the country.¹⁰¹

IV. BENEFITS OF SELLING DIRECT

With the trend of farmers choosing to sell direct, as explained by the former section, much has been discussed on why farmers choose to sell local. For various sized farms, farmers choose direct-to-consumer models for profitability, influence on local the local community, building relationships with buyers, and the ability of the produce to become "flavor-specific." While each farm may be different based on its production, crop, and size, these are just a few factors that have persuaded farmers of all kinds to sell directly to the local community.

A. Profitability

One reason that may incentivize farmers to sell direct could be the rise in profitability of choosing such a model. In fact, some say this has contributed to the rise of direct produce marketing initiatives in the United States.¹⁰² These direct marketing initiatives allow farmers to sell their product directly to consumers at a higher price because consumers are transitioning to a healthier diet.¹⁰³ While some studies tend to show a decrease in profitability for farmers;¹⁰⁴ however, farmers are able to keep a larger portion of the profit or return on the produce.¹⁰⁵

97. *Id.* at 71.

98. *See id.*

99. *Id.*

100. *Id.* at 41-42.

101. *Id.* at 41.

102. *See* Hiroki Uematsu & Ashok K. Mishra, *Use of Direct Marketing Strategies by Farmers and Their Impact on Farm Business Income*, 40 AGRIC. & RESOURCE ECON. REV. 1 (2011).

103. *Id.*

104. LOW & VOGEL, *supra* note 38, at 9. (showing that "farm households that sell local foods earn 17% less, on average, in off-farm labor income than average households that do not sell local foods.").

105. Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7, 13 (1996).

There are various factors that may control the profitability of local produce initiatives, though. First, the location of the farm and its access to an urban market likely impacts its ability to make a profit. As of 2010, there were 115,500 direct-sale farms in or adjacent to metropolitan counties.¹⁰⁶ The sales solely from these farms amounted to 84% of the total farms engaged in local sales initiatives.¹⁰⁷ Additionally, farms further away from metro areas statistically saw a decrease in the amount of profitability when selling directly to consumers.¹⁰⁸ As at least one study has shown, farmers who utilize direct marketing initiatives in urban and metro areas were statistically more likely to achieve higher profits.¹⁰⁹

B. Community Impact and Influence

Another possible benefit for farmers to utilize a direct marketing initiative may be for its community impact. Community relations are symbiotic with farmers as they look to sell their produce to the surrounding community. When it comes to the consumers, direct marketing initiatives are designed to “privilege locality and seasonality over distance and durability.”¹¹⁰ In this specific scenario, when consumers purchase food in the local community or from local farms, sales are more likely to rise with those farmers and businesses based in that area.¹¹¹

Direct selling and marketing initiatives are also able to economically benefit the local community. These types of sales can help stimulate the local economy and increase the popularity of farmers’ markets for the surrounding communities¹¹² by stimulating jobs, generating indirect or direct sales, and having farmers’ products act as a substitute for other consumer options.

C. Building Relationships with Buyers

The trend to sell directly to consumers can positively impact relationships farmers build with the buyers in their community. Consumers, who eat locally form distinct relationships with the farmers who are producing the crop in ways that other consumers do not.¹¹³ It creates relationships with farmers that are not

106. MARTINEZ ET AL., *supra* note 45, at 18.

107. *Id.*

108. *Id.*

109. Ramu Govindasamy et al., *Income of Farmers Who Use Direct Marketing*, 28 AGRIC. & RESOURCE ECON. REV. 76, 82 (1999).

110. C. Claire Hinrichs, *Embeddedness and Local Food Systems: Notes on Two Types of Direct Agricultural Market*, 16 J. RURAL STUD. 295, 297 (2000).

111. MARTINEZ ET AL., *supra* note 45, at 43.

112. *Id.* at 45.

113. Johnson & Endres, *supra* note 9, at 58.

specifically formed around maximizing profits,¹¹⁴ and it opens up the communication between the two parties and allows the farmers to reconnect with their buyers.¹¹⁵ Current trends suggest these direct marketing initiatives will continue to grow in popularity, as producers and farmers who use this model want to personally connect with their consumers.¹¹⁶ As a farmer, this can be a new way to interact with a community that may rarely witness your hard work.

D. Less Legislative and Regulatory Requirements

The increased popularity over the last decade has led to a variety of legislative and regulatory exemptions for direct market initiatives.¹¹⁷ Though limited to direct sales, various states have decreased the labeling requirements and inspection procedures as a result of these initiatives.¹¹⁸

Some states, like Minnesota and Michigan, have also adopted “cottage food production” laws.¹¹⁹ Such laws allow for the production of non-hazardous food products to be processed in home kitchens without manufacturer regulation.¹²⁰ Farmers who benefit from these laws are able to increase production in their home kitchens without being controlled by statutory restraints that govern their production standards adversely.¹²¹

E. Flavor Specific Production

As relationships between farmer and consumer strengthen, the consumer can become attracted to a certain type of produce carried by the farmer. For chefs and restaurants, the attraction may come from the distinct taste of the produce.¹²² In 2009, a survey was conducted to evaluate why buying directly from farmers would be so appealing to restaurants, and the chefs in this study stated that there were two primary reasons for buying local: (1) the overall quality of the product; and (2) the

114. *Id.*

115. *Id.*

116. Dawn Thilmany & Phil Watson, *The Increasing Role of Direct Marketing and Farmers Markets for Western US Producers*, 3 W. ECON. FORUM 19, 24 (Apr. 2004).

117. Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 J. FOOD L. & POL'Y 17, 51 (2013).

118. *Id.* at 51-52.

119. *Id.* at 52 (citing MINN. STAT. § 28A.15(9)-(10) (2012), MICH. COMP. LAWS § 289.4102 (2012)).

120. *Id.* at 53 (citing MINN. STAT. § 28A.15(9)-(10) (2012), MICH. COMP. LAWS § 289.4102 (2012)).

121. See Kynda R. Curtis & Margaret W. Cowee, *Direct Marketing Local Food to Chefs: Chef Preferences and Perceived Obstacles*, 40 J. FOOD DISTRIBUTION RES. 26, 29 (2009).

122. *Id.*

product's taste.¹²³ This result does not come as a surprise as chefs are generally in the business "to provide high quality, tasty dishes."¹²⁴ Moreover, a 2003 study found that chefs were more likely to buy directly from farmers if customers request a certain type of local food because its quality and overall freshness.¹²⁵ In an industry that is based on the customer satisfaction of the quality of the food, taste can be a prime factor to chefs and local food distributors in smaller markets.

While taste may be important to chefs, it has also been a factor to consumers who choose to shop at farmers' markets. When surveying the state of Washington, taste and freshness were deemed as the two most important factors for consumers who choose to purchase food from farmers' markets.¹²⁶ Moreover, some studies have shown the intrinsic properties of food, such as taste, are the most important factor for consumers when choosing to buy produce from farmers' markets and other direct sales outlets.¹²⁷

V. RISKS OF SELLING DIRECT

While there may be various benefits to selling directly to the customer, there are also risks associated with direct sales. Each type of direct marketing initiative brings along its own challenges and difficulties within the direct-to-consumer market.

A. Farmers' Markets

Farmers' markets attempt to differentiate themselves as a viable way for farmers to sell directly to customers. However, most of these markets are seasonal and cannot be utilized by farmers year-round.¹²⁸ This places farmers at a disadvantage by limiting the amount of actual sales time they may need to sell their products. These markets also often include fees to participate in the market, labor costs associated with holding the market, and compliance with an application process to approve farmers as vendors.¹²⁹ Not only can these factors negatively impact the overall profit each farmer, but they may have an adverse-impact on daily production by pulling farmers away from their farming operation, in turn

123. *Id.* at 33.

124. *Id.* at 29.

125. MARTINEZ ET AL., *supra* note 45, at 33.

126. Theresa Selfa & Joan Qazi, *Place, Taste, or Face-to-Face? Understanding Producer-Consumer Networks in "Local" Food Systems in Washington State*, 22 J. AGRIC. FOOD & HUM. VALUES SOC'Y 451, 460 (2005).

127. Bond et al., *supra* note 19, at 237.

128. FARM-DIRECT MARKETING: AN OVERVIEW AND INTRODUCTION, PAC. NW. EXTENSION PUBL'N. 2 (2016), <https://perma.cc/8CR9-E39V>.

129. *Id.*

becoming inherently dangerous for farmers, as some studies have shown such initiatives result in less profits for farmers.¹³⁰

B. CSA Systems

CSA systems can also be troublesome to beginning farmers.¹³¹ For a CSA system to work, there needs to be a cohesive understanding between the farmer and the community about the expectations of both parties.¹³² The compromise of these needs takes time to develop a system that works properly for both parties.¹³³ The needs of the community can also change over time, leading to a sporadic and irregular relationship as it continues to evolve temporally.¹³⁴ To some farmers, this can hinder their ability to meet production requirements. CSA's may also be unpopular to members of the community as they may cause consumers to be uncertain about the amount of produce each season will generate, the limited choices of produce available, and the often higher costs of the produce.¹³⁵

CSA operations are also risk-averse, as they sometimes struggle to deliver a net-profit.¹³⁶ After the community has agreed to a set price, the set price may be inadequate to cover monthly operation costs by the farmers involved, thus some farmers have reported that they are unsatisfied with their ability to cover operating costs and, in turn, struggle to provide for themselves under the CSA agreement.¹³⁷

C. Direct to School Systems

In a system largely based upon communication between farmers and school officials, problems can arise with the administration of the program. School districts may have regulations in place based upon who may pick up the produce, what produce can be accepted from outside sources, and who is conducting the transaction with the school.¹³⁸ Based on these restrictions, the transaction between the farmer and the school may create an additional administrative layer to the

130. See Czarnezki, *supra* note 52, at 269.

131. FARM-DIRECT MARKETING: AN OVERVIEW AND INTRODUCTION, *supra* note 128 at 3.

132. *Id.*

133. *See id.*

134. *See generally id.*

135. See Jack P. Cooley & Daniel A. Lass, *Consumer Benefits from Community Supported Agriculture Membership*, 20 REV. AGRIC. ECON. 227, 229 (1998).

136. See Brown & Miller, *supra* note 63, at 1299.

137. *Id.*

138. Jeri L. Ohmart, U.C. DAVIS AGRIC. SUSTAINABILITY INST., DIRECT MARKETING TO SCHOOLS: A NEW OPPORTUNITY FOR FAMILY FARMERS (2002), <https://perma.cc/V6E3-DFQU>.

process, or create a less direct and personal line of communication between parties.¹³⁹

Possible legal consequences may also arise when using a farming outlet of this nature. Fears about various food liability risks are a reason why some communities do not partake in farm to school programs.¹⁴⁰ Just as with any purchase of food, various food-borne illnesses can be transferred from the produce, in turn resulting in an array of claims brought against the school and the farmer including gross negligence, recklessness, and willful misconduct.¹⁴¹

D. Direct to Chef Systems

In a mutual relationship between a chef and a farmer, dependability cannot be overlooked. Chef preferences in supply and quality show it is important for farmers to be a dependable source of produce before they establish them as a reliable source.¹⁴² Chefs generally try to have information about the farmer, their practice, and the products that they are receiving before electing to use such a model.¹⁴³ In doing so, this reduces the risk of possible liability with the food they are receiving.¹⁴⁴

Additionally, gourmet chefs may be more inclined to know more information about the process, production, and methods used to grow the produce before they establish a standing relationship with a farmer.¹⁴⁵ This information could be valuable to the chef as a way to market a certain dish or entice customers to purchase it.¹⁴⁶

VI. CONCLUSION

The statistics regarding middle-sized farms show that they continue to be placed at a disadvantage when competing with larger competitors. For a farm that cannot afford to keep up with the orders of a large distributor, or the costs associated with these deals, the environment makes it hard for middle-sized farms to thrive in this market. However, direct marketing initiatives look to solve the problem for these farms and provide an outlet for farmers to generate revenue from

139. *See id.*

140. LEGAL ISSUES IMPACTING FARM TO SCHOOL AND SCHOOL GARDEN PROGRAMS IN MINNESOTA, PUB. HEALTH L. CTR. (2011), <https://perma.cc/JYJ7-3Q7H>.

141. *Id.*

142. Curtis & Cowee, *supra* note 121, at 33.

143. *See id.* at 35.

144. *Id.* at 35-36.

145. *See id.* at 33.

146. *See generally id.*

a different source. These initiatives continue to grow in popularity and are utilized by agricultural systems dominantly in the Global North as a key source of revenue for farms in the same position.

Direct marketing initiatives also look to help the longevity of middle-sized farms. In the United States, 97% of all farms are family-run.¹⁴⁷ Of these farms, middle-sized farms make up the largest share of “working farms” in the nation.¹⁴⁸ Of these “working farms,” farming operations are their chief source of income and primary occupation.¹⁴⁹ Without a resolution to the disappearance of middle-sized farms, it is estimated that most will disappear in the next ten years.¹⁵⁰ Groups like Red Foods, Inc.¹⁵¹ and Agriculture of the Middle¹⁵² see this as an imminent threat to mid-sized farms in a growing, diversified, modern agricultural economy. In advocating for direct marketing initiatives, both groups strive to find better ways for mid-sized farmers to implement strategies that can “keep farmers and ranchers on the land.”¹⁵³

Without the use of direct marketing initiatives, the entire middle class of farming operations is threatened by the dispersion between large and small farms. In fact, according to, Frederick Kirschemann, Director of the Leopold Center for Sustainable Agriculture at Iowa State University, “this is very likely to be our last chance to develop effective strategies for regenerating a new agriculture of the middle.”¹⁵⁴ Thus, direct marketing initiatives can potentially save the middle class of farms and provide them with a steady source of revenue.

147. Press Release, U.S. Dep’t Agric., Family Farms are the Focus of New Agriculture Census Data (Mar. 17, 2015), <https://perma.cc/A4GE-LKN8>.

148. Kirschenmann, *supra* note 10.

149. *Id.*

150. Marrtila-Losure, *supra* note 24.

151. *About*, *supra* note 13.

152. AGRICULTURE OF THE MIDDLE, <https://perma.cc/CCE6-RH7Z> (archived May 31, 2018).

153. *Id.*

154. Kirschenmann, *supra* note 10.