

Protecting Your Farm or Ranch Assets

Developing Direct Market Agricultural Enterprises and Understanding Legal Liability in the Inland Northwest

<u>Table of Contents</u>	<u>Page</u>
Introduction	
• Letter from Rural Roots Executive Director	<i>i</i>
• Project Scope and Purpose	<i>ii</i>
• Terms and Definitions	<i>v</i>
• Inland Northwest Focus: Regional Issues of Concern	<i>vii</i>
• “Eight Things That Will (Probably) Get You into Legal Trouble”	<i>vx</i>
Chapter 1: Safety on the Premises	
• Maintaining a Safe Premise	2-6
• Liability for Visitors to Farm Property	7-17
• Safety and Risk Management	18-21
• Sample Hold Harmless Agreements	22-24
Chapter 2: Safe Farm Products	
• Assuring Safe Products	25-28
• Food Safety Begins on the Farm	29-31
• Liability Concerns for Farmers	32-40
• Basic Regulations for Farmers Markets	41
• Produce Dealer Licensing	42
• Chickens & Eggs in Idaho	43
• Idaho Health District Offices	44
• Organic Certification	45
Chapter 3: Employment & Labor	
• Employment & Labor	46-50
• Farm Labor Contractor Licensing	51-53
• Minimum Wage for Farm Workers	54
• In the News	55
Chapter 4: Insurance	
• Navigating the Insurance Maze	56-57
• What Type of Coverage Do You Need?	58-59
• ATTRA Question of the Week	60
• How to Pick an Agent or Broker	61
Chapter 5: Business Structure	
• Farm Business Arrangement Alternatives	62-71
• Small Business Development Center Idaho	72-73
Chapter 6: Resources	
• Inland Northwest Resources	74-86
• Idaho Contacts	87-91

Letter from Rural Roots Executive Director

In summer of 2006, Rural Roots, Inc., based in Moscow, Idaho, received funding from the Western Center for Risk Management Agency to compile educational resources and host two workshops on *Managing Legal Liability on an Inland Northwest Small to Mid-size Farm or Ranch*. The workshops, scheduled for January 12, 2007 in Caldwell, Idaho and February 9, 2007 in Moscow, Idaho were designed to address the legal liabilities and financial risks small farms and ranches undertake as they increase their direct market sales and develop new food and farm enterprises (i.e. processed food products or on-farm events like farm tours, brunches, and hands-on workshops).

Special thanks to the following people and organizations for their support of and participation in the planning and implementation of this project!

Project Team:

Colette DePhelps, Executive Director, Rural Roots, Moscow, ID
Sara Foster, Program Coordinator, Rural Roots, Moscow, ID
Diane Green, Greentree Naturals, Inc, Sandpoint, ID
Cinda Williams, Sustainable Agriculture, University of Idaho Extension, Moscow, ID

Project Collaborators:

Janie Burns, Meadowlark Farm, Nampa, ID
Clay Erskine, Peaceful Belly Farm, Boise, ID
Mary Rohlfing, Morning Own Farm, Boise, ID

Boise Workshop Planning Committee Members:

Jan Book, Noble Foods Farm, Boise, ID
Karen Ellis, Capital City Public Market, Boise, ID
Sheila McGregor, Caldwell Farmers' Market, Caldwell, ID
Lacey Menasco, Idaho State Department of Agriculture, Boise, ID
Todd and Leslie Scott, American National Insurance, Idaho Falls, ID

Moscow Workshop Planning Committee Members:

Melissa Lines, SkyLines Farm, Harvard, ID
Jacie Jensen, Genesee, ID
Tom Kammerzell, Maple K Farms, Colfax, WA

Moreover, thank you, the users of this manual! We, at Rural Roots, appreciate your commitment to local food and sustainable agriculture!

We'd like to hear from you! Please let us know if you found this manual useful and what you would like to see included in any future versions we may produce! Send your comments to: Rural Roots, PO Box 8925, Moscow, ID 83843 or info@ruralroots.org

Sincerely,



Colette DePhelps, Rural Roots Executive Director

Project Scope and Purpose



Production and marketing are just a part of the risks that we face as farmers. One of our main risks is associated with production in the field. We never know what the weather will bring, the pests eternally want to eat our crops, and the weeds always seem to grow better than anything else. We not only have to grow our crops successfully, we have to find a way to get them to the market place and get as much income from them as possible to survive. To do all of this, we need to be aware of the areas of risk associated with marketing, production, employment, insurance, and consider legal issues as well.

There are so many positive aspects of agriculture, people are often uncomfortable talking about the risks and liabilities involved. The fact is, today we live in a litigious society. You are foolish if you do not protect yourself, your family, and your assets. Let's face it; farming is risky business physically, mentally, and financially. As farmers, we need to educate ourselves with as much information that we can to minimize the risks of doing business.

If you have the public coming to your farm to harvest at a U-Pick operation, or CSA customers coming for a farm tour, you have to contend with liability from someone tripping on your property or eating something they should not be eating. If you hire employees and they are driving your vehicles, you are responsible for their actions and accidents. If you have livestock, you must keep them fenced on your property. If you have electric fences, you had better have signs out warning people the fence is hot. If your cow is standing in the middle of the road and is hit by a car, you are liable. Processing berries into your jam adds value to your produce – but increases your liability risk. No matter how careful you are, there are risks to farming. This handbook was created to help you assess and minimize the risks on your farm.



The future for most small scale farmers and ranchers lies in the direct marketing of their product, or at least in reducing the number of costly steps from farm to consumer. Traditionally, the presence of many players in the distribution and marketing of food products essentially removes much of the

liability for harm from the producer. The marketer, processor, distributor and retailer are all parts of an extended food chain, thus dispersing the locus for liability for harm to the consumer. Direct marketing changes this picture. Now the responsibility for harm comes back directly to the farmer/rancher who is the producer, marketer, processor and distributor. The buffer for liability has now evaporated.

Most small farms are sole proprietorships. The farmer/rancher owns and operates the business. The structure of a sole proprietorship is especially suited for farm based businesses but does not supply much protection from debts and liabilities of the operation. If a customer suffers harm related to the farm enterprise and sues for damages, then the owner's assets are not protected simply by the business structure.

Consequently, our "New American Farmer" must take steps to prevent harm and to have appropriate liability insurance in place to protect against potential lawsuits. Understanding insurance coverage and costs is the first step in obtaining appropriate protection. This information also is important for marketing and pricing. Insurance is a necessary cost that must be included in pricing of products much the same as seed, feed, or labor.

There can be considerable apprehension and antagonism in dealing with insurance agents. Some of this concern comes in part from the farmer or rancher's lack of knowledge about insurance and the insurance business, and in part from the limited experience most insurance agents have with small farms. An agent's typical image of a farm is one where a cop is planted, harvested, and taken to the appropriate warehouse or sale yard. Farms that direct market their products are a relative "unknown" to most agents.

Whether you are beginning a new farm business or looking to protect your current farm or ranch assets as you direct market your agricultural products, this handbook explains why insurance is important and offers guidance on how to work with your insurance agent to get the protection you need at the lowest possible cost.

The chapters in this handbook cover the three main things that might get farmers/ranchers into trouble:

- Premise liability
- Product liability
- Employment and labor

These documents present the issues inherent with each area of liability and give ways the farmer/rancher can reduce the possibility of liability for harm to the consumer.

These materials will help to promote direct farm marketing and agritourism and will show why appropriate protection is necessary and helpful in marketing directly to consumers.

These materials will provide a framework for understanding and analyzing potential liability risks including premise and product liability and obligations with respect to employment and labor. Included in these materials are checklists that help to identify and reduce the possibility of harm to consumers.

Information is included on the insurance industry and as well as a list of questions that farmers/ranchers need to consider as they negotiate with an agent/broker on a farm policy. Various elements of a farm liability policy are included as well as how to read a policy to determine what and what isn't included in your policy.

Handbook Objectives

1. Provide a framework for understanding and analyzing potential liability risks associated with direct marketing, farm labor/apprentices, developing value-added products and on-farm events and tools available to manage these legal liabilities.
2. Provide a checklist to help identify and reduce the possibility of harm.
3. Improve understanding of how market assessment, feasibility studies and marketing / business planning can be used to decrease farm financial risk.
4. Provide information on the insurance industry to help negotiate with agent/broker.
5. Provide information of the various elements of a farm liability policy.
6. Improve understanding of risk related to farm labor / apprentices and provide steps to minimize this risk.

In 2005, the community Agricultural Development Center, based in Stevens County, Washington, received a collaborative partnership grant to develop an educational program on "Managing the Liability and Risks of Farm Direct Marketing and Agritourism" from the USDA Risk Management Agency. The Washington State University Small Farms Team and the regional coordinator for RMA worked in partnership on this project by developing a handbook outlining much of the information used in this publication for Idaho farmers.

We would like to thank Al Kowitz and the Washington State University Small Farms Team for giving us permission to use their publication as a template for this Idaho version.

Terms & Definitions

Liability is imposed by law on individuals or corporations to pay for harm done to others. Such law may be common law, statute law or customs which, over a period, have taken on the same status as law. Legal liability may also be assumed under the terms of a contract.

Liability is also defined as being legally responsible or obligated, or exposed to the possibility or likelihood of legal accountability.

A Typical Farm describes an operation where "farming" means the operation of an agricultural, horticultural, forestry or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintained solely for the sale of farm products produced principally by you. Unless specifically indicated in the Declarations, "farming" does not include retail activity other than that described above.

Direct farm marketing is selling food and farm products or services directly to consumers without using an intermediary. These opportunities include roadside markets and farm stands, farmers' markets, u-pick operations, community supported agriculture, direct sales to restaurants and stores, agritourism and education, and on-farm recreation. These efforts attempt to establish personal contact between the people who raise the food and the people who eat or prepare the food. The ultimate result is a shortening of the chain that brings food to the marketplace. Direct marketing sales have substantially increased during the past 10 years. In the State of Idaho, records for agricultural products sold direct to consumers in 2002 exceeded 5.9 million dollars.

Direct farm marketing benefits both consumers and growers. Those purchasing these products can usually enjoy fresher and better tasting foods and both consumers and growers typically gain economic advantages. Farmers receive a greater share of the food dollar and consumers obtain foods that are unique in quality and freshness. Typically, these unique qualities are not found elsewhere in the marketplace such as heirloom varieties, pastured poultry or grassfed beef.

Agri-tourism, as defined by Malinda Geisler, content specialist for AgMRC at Iowa State University, is a popular and growing opportunity for agricultural producers.

There is a growing interest among the public to visit or stay at farms to learn experientially what a farmer/rancher does, including crop production, livestock production and wildlife management. These farm stays typically involve the visitor in some production work, may involve lodging and meals and will likely become a significant opportunity for small and mid-sized farms.

Agri-tourism is generally defined as activities that include visiting a working farm or any agricultural, horticultural or agribusiness operation to enjoy, be educated or be involved in what is happening on the locale.

A few examples of agri-tourism are:

- Farm tours for families and school children
- Day camps
- Hands-on chores
- Self-harvesting of produce
- Hay or sleigh rides
- Overnight stays in a bed and breakfast

Some people have become involved in agri-tourism as a way of supplementing their income, while others desire an opportunity to educate the public and introduce people to farming.

The rural United States is a popular tourist destination. According to a study by the Travel Industry Association of America, nearly two-thirds of all U.S. adults, or 87 million individuals, have taken a trip to a rural destination within the past three years. The study indicated that nearly nine out of 10 of the trips were for leisure purposes. Many producers who are involved in agri tourism note there is synergism in having non-competing agri-tourism enterprises in the area to increase traffic to the area and provide more tourism attractions for customers.

While nationwide statistics on agri-tourism were unavailable at this writing, selected state statistics provide an overview of revenue generated from agritourism activities.



Inland Northwest Focus: Regional Issues of Concern

Two listening sessions were held in December 2005 to obtain from farmers and ranchers their concerns and issues with regard to liability and risk management when direct marketing products. Detailed notes were taken at the sessions (Spokane and Puyallup, Washington) and based on that information, the Community Agricultural Development Center, based in Stevens County, Washington, identified six issues that needed to be addressed in workshops held in the workshops they held in spring of 2006.

1. The assessment of risk by insurance companies seems to be inconsistent or somewhat arbitrary. Are there actions producers can take or discussions producers may have to account for a more accurate assessment of risk?
2. There are issues of liability when the public is invited to the premise for education, to purchase or pick foods/products, or for entertainment and lodging (agritourism). What risks are involved and how does the farmer/rancher manage these risks?
3. There is a potential risk that food products purchased directly from the producer may result in harm. What risks are associated with various types of processed and/or fresh products including fruits, vegetables, dairy, livestock and poultry products? What steps can the producer take to minimize these risks and associated liability for harm?
4. There may be general practices the producer can incorporate to make the premises or product safe. What common practices can the farmer/rancher adopt to reduce risk on the farm and hopefully impact insurance premiums? A possible tool would be a somewhat itemized check list (e.g., with regard to having children on the premises) that would help the producer minimize the potential for harm.
5. Most citizens do not have an adequate understanding of the insurance industry to effectively work with agents or brokers. What language, concepts and practices need to be considered when negotiating with insurance representatives?
6. There are a number of legal structures farmers/ranchers can adopt to manage risk. What are the strengths, weaknesses and costs associated with these legal options?

The importance of addressing these issues in Idaho was confirmed by an online survey of 48 producers and 6 others interested in farming conducted by Rural Roots in the fall of 2006. In this survey, 71% of the respondents indicated legal liabilities related to direct marketing as one of their top three priorities for liability related information, followed by food safety, food processing, food sampling (55%) and business planning to manage legal

liabilities (54%). Respondents also indicated they would like to engage in the following on-farm activities: farm tours / farm walks (67%), on-farm meals (44%), on-farm processing for direct sale (40%), product sampling (31%), and harvest festivals (27%).

Supporting Resources:

The Food Supply Chain

http://www.communityagcenter.org/Risk_Liability/Food_Supply_Chain.htm

Washington State RCW: 15.64.050 Small farm direct marketing assistance program

http://www.communityagcenter.org/Risk_Liability/WA_RCW.htm



Eight Things That Will (Probably) Get You into Legal Trouble

Adapted from *The Legal Guide for Direct Farm Marketing* by Neil D. Hamilton

As you will learn from this workshop, there are many legal issues which direct farm marketers must consider. Another way of thinking about this is to recognize there are many ways you can get into legal trouble. A review of the laws and court cases in this area reveals there are eight common ways a person can get into legal trouble in relation to direct farm marketing.

They are:

1. Selling more products at your roadside stand which were produced by others than you raised yourself
2. Not carrying sufficient liability insurance for your operation
3. Failing to comply with labor rules when hiring employees
4. Conducting a "commercial" business in an area not zoned for such use
5. Allowing unsafe conditions to exist on your property when customers are allowed to visit
6. Selling processed foods which have been produced at an unlicensed facility
7. Failing to observe farmers' market rules designed to protect the safety or quality of food
8. Not complying with recordkeeping and paperwork rules for tax or labor laws

Five General Observations about Direct Marketing and the Law

First, as a general rule, the more your operation begins to look like something other than a traditional farm – for example a recreational venture with a cornfield maze – the more likely you may be to encounter an increasing number of state and local laws and regulations.

Second, the result of this rule is that the less you look like a traditional farm the less likely you are to be protected by many of the special legal rules that have been created to protect farming, such as exemptions from zoning or labor laws.

Third, the reverse of these previous rules is also generally true. The more you look like a traditional farm, the less likely you are to be regulated in the first place and to the extent regulations may apply, there may be special exceptions which apply to your farm.

Fourth, the more you begin to resemble a large-scale or full-service retail foodstore, such as being open year-around, handling a range of processed foods, carrying many non-food items, or carrying more items produced by others than are raised on you own farm, the less likely you are to be treated as a farm – or even a roadside market. The point is that if you become a store

– rather than just selling your own produce – you will probably be treated like a store and a new set of legal issues ranging from employment law to zoning ordinance will be applicable to you.

Fifth, bringing people on to your property – such as workers, tourists, customers, and “u-pickers” – will introduce many legal issues which might not be present when just your family is involved. While the risks or potential liabilities in most of these situations are manageable – such as through insurance and training – there are potential legal challenges and costs you will face when dealing with the public.

One way to avoid possible legal problems is to ask for advice from people who should know the answers to your questions.

The Six Phone Calls to Make Before You Begin Direct Farm Marketing

- The local land use planning authorities
- Your insurance agent
- The state food inspection and licensing officials
- The state labor commissioner
- The state department of agriculture’s marketing & diversification office
- Your attorney

