



## Managing the Liability and Risks of Farm Direct Marketing & Agritourism

*In all its forms, direct farm marketing in an effort to establish personal contact between the people who raise the food and the people who eat it.*

—NEIL HAMILTON

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## Why is this project important?

The future for most small scale farmers and ranchers lies in the direct marketing of their product, at least in reducing the number of steps from producer to consumer. Traditionally, there are many players in the distribution and marketing of food products so that the liability for harm is pretty much removed 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 by themselves. This structure is especially suited for this type of business but there is no protection from debts and liabilities of the business. If a customer does experience harm related to the farm enterprise and seeks damages, then the owner's assets are not protected 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, labor or fertilizer.

There is considerable apprehension and antagonism in dealing with insurance agents. Some of this concern comes in part from the farmer/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 crop 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. This material explains why insurance is important and how to work with your insurance agent to get the protect you need ant the lowest possible cost.

Information on the various elements of a farm liability policy is included as well as how to read a policy to determine what and what isn't included in your policy.

### **What will I learn from viewing the site?**

These documents cover the three main things that might get farmers/ranchers into trouble: premise liability, product liability, and 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.

When viewing this sight you will observe that direct farm marketing and agritourism are integral components of agriculture in Washington. These materials will help to promote these trends 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.

### **Program Objectives**

- Encourage the development of Direct Farm Marketing.
- Provide a framework for understanding and analyzing potential liability risks.
- Provide a checklist to help identify and reduce the possibility of harm.
- Provide information on the insurance industry to help negotiate with agent/broker.
- Provide information of the various elements of a farm liability policy.

### **Some Things That Will (Probably) Get You into Legal Trouble\***

- Not carrying sufficient liability insurance for your operation.
- Failing to comply with labor rules when hiring employees.
- Allowing unsafe conditions to exist on your property when customers are invited to visit.
- Selling processed foods that have been produced at an unlicensed facility.

\*"The Legal Guide for Direct Farm Marketing" Neil D. Hamilton

## **Issues of Concern**

Two listening sessions were held in December 2005 to obtain from farmers/ranchers their concerns and issues with regard to liability and risk management when direct marketing products. Detailed notes were taken at these sessions (Spokane and Puyallup, Washington) and based on that information we identified six issues that needed to be addressed in the March workshops or through legislation.

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?

## **Supporting Resources:**

### [The Food Supply Chain](http://www.communityagcenter.org/Risk_Liability/Food_Supply_Chain.htm)

[[http://www.communityagcenter.org/Risk\\_Liability/Food\\_Supply\\_Chain.htm](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)

[[http://www.communityagcenter.org/Risk\\_Liability/WA\\_RCW.htm](http://www.communityagcenter.org/Risk_Liability/WA_RCW.htm)]

## **Definitions**

### **What is Direct Farm Marketing?**

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 now exceeding \$50,000,000 in Washington State.

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 features. Typically, these unique qualities are not found elsewhere in the marketplace such as heirloom varieties, pastured poultry or grassfed beef.

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.

### **Liability**

Liability 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 of time have taken on the same status as law. Legal liability may also be assumed under the terms of a contract.

Being legally responsible or obligated, or exposed to the possibility or likelihood of legal accountability.

### **Typical Farm**

"Farming" means the operation of an agricultural 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.