

# Assuring Safe Products

## Introduction

“The [food processing] laws may limit what you can sell and to who, they may set minimum guidelines for the steps you must take to prepare and sell certain foods, and they may require you to obtain licenses and have your facilities inspected by state or local officials. Complying with these laws and regulations – most of which are based on the desire to protect the health and safety of our food supply – will be essential to the future of your operation.” (Hamilton, p. 159.)

Product liability is a term that addresses claims of customers who have been injured by a product and a determination of responsibility for those damages on the part of all persons or entities in the chain of custody of the product.

## Foreign Objects in Food Products

The definition of foreign objects hinges on the “consumer expectations test”: “What objects might a consumer reasonable expect to find in the food?” Marketers of food products that are processed or sold as “ready to eat” have a higher responsibility in eliminating foreign objects that may cause harm. A consumer would more likely expect to find a “worm” in a fresh ear of corn still in the husk than in a bag of cut salad greens labeled as ready to eat.

## Regulations and Processed Foods

Processing foods is often a way to increase the value to food items such as jams from damaged fruit, cheese, and baked goods. Direct marketers involved in selling processed products fall under local, state, and federal laws which regulate the foods industry.

Minimally altering food items such as cutting lettuce and mixing it in bags for ready-to-eat salads or juicing apples may be considered processing and subject of food safety laws and regulations. The sale of meats, poultry, eggs, and dairy products are all subject to extensive laws and regulations controlling site requirements, processing procedures, warehousing issues and where these products can be sold.

Farmers that direct market processed products must be familiar with regulations affecting their operation. These regulations specify guidelines for processing practices and requirements for facilities as well provision for regular inspections. Compliance with these regulations assures that proper food safety techniques are in place and reduce the likelihood of products becoming contaminated.

If a claim regarding harm should arise, evidence that these regulations have been followed liability is less likely. Violation of these regulations may result in strict negligence in which the marketer will most likely be liable.

*Definition of “negligence per se”: Negligence that results from violation of a statute or ordinance enacted for the protection of others.*

The guide for the State of Washington is [The Handbook of Regulations for Direct Farm Marketing](http://agr.wa.gov/Marketing/SmallFarm/greenbook.htm) or commonly known as “The Green Book.” The 2005 edition is available from the Small Farm & Direct Marketing Program, Washington State Department of Agriculture. The handbook can be found on the web at: <http://agr.wa.gov/Marketing/SmallFarm/greenbook.htm>

The Handbook includes information on doing business in Washington State, direct marketing strategies, selling specific products such as eggs, milk or poultry, labeling and a list of local health departments. This handbook should be on the shelf of every direct farm marketer and the producer should be familiar with the regulations that affect his or her operation. Questions can be directed to staff at the Small Farm & Direct Marketing Program when ambiguity arises and Program staff can provide guidance on working with local health department officials.

Although local health department officials and WSDA Food Safety officials work for agencies that enforce regulations that may seem onerous to the producer they can just as easily become your allies in solving problems and helping to meet local and state regulations. Building constructive working relationships with these individuals and getting to know them will help direct marketers meet food safety requirements as easily as can be expected.

### **Food-borne Illness**

There are very few court cases on food-borne illness resulting from sales at typical direct farming marketing operations. However, there are legitimate concerns regarding lawsuits when it comes to marketing food products.

There is no way to guarantee everything the direct farm marketer grows is free from harmful microbial contamination. The risk can be reduced if preventative steps are taken before products leave the farm. Direct farm marketers can minimize this risk by knowing the sources of contamination and by adopting practices to minimize pathogen contamination during production, and harvest or processing of fresh products, poultry and animal products. Clean soil, clean water, clean hands and clean surfaces are all important in achieving this goal.

The goal of the Good Agricultural Practices (GAPs) program at Cornell University is to reduce the microbial risks to fresh fruit and vegetable products through educational programs. Their publication “Reduce Microbial Contamination with

Good Agricultural Practices” is included in this manual. Additional information can be found at their website: <http://www.gaps.cornell.edu>

There are additional ways the producers can protect themselves from such claims. The farm can educate customers about the potential for contamination such as salmonella contamination in eggs. Producers can buy labels to put on product packaging that provide information on proper storage, handling, and cooking requirements. Generally, liability is more likely for processed or cooked food products than for those sold raw, because, for example, a consumer should know how to cook meat and poultry products to the required temperature to kill potential pathogens. Complying with local, state, and federal regulations may help to cushion the farmer from liability.

### **Limiting Liability**

- **Educate Yourself.** Obtain training on the types of microorganisms that cause food borne illnesses and ways they may enter the food chain.
- **Educate Your Employees.** Farm employees should be familiar with good agricultural practices regarding hygiene and the production and handling of food products.
- **Educate Your Customers.** Inform your customers of safe handling and preparation practices of food products they purchase from you as well as dangers that may develop if these guidelines are not followed.
- **Know Regulations.** Most regulations affecting the direct marketing of food products in Washington are found in “The Green Book.” Local health districts may have additional requirements and some products (livestock) may be subject to federal regulations. There may be labeling requirements for some products.
- **Know Safe Food Handling Practices.** Handling, storing and preparing your products may require a food handler’s permit. Regardless, it is necessary to know safe food handling practices.
- **Read Pesticide Labels.** If you use pesticides, carefully read and follow label directions and make sure applications are correct. You may be required to keep records of mixtures, date of applications, location, and weather conditions. Make sure employees are closely supervised.
- **Keep Records.** Document any training you have received and training you have provided for your employees. Document good agricultural practices you have followed in educating your customers and in the production, processing and sale of your products.

- Compile a Library. Create a comprehensive library of applicable regulations, good agricultural practices and safe food handling practices.

**Good agricultural practices with regard to clean water.**

- Wells are protected from outside contamination
- Drinkable water supply and/or wells are tested at least once a year
- Water source(s) used for washing produce are located the distance required by local/state regulations from manure storage facility, livestock area, pesticide storage area and/or septic system drainage field
- Records of all water tests on file
- Backflow devices and air gaps installed at appropriate locations

**Supporting resources:**

Liability concerns for Farmers Involved in Direct Marketing of Farm Products  
[follows]

WA Handbook of Regulations for Direct Farm Marketing: "[The Green Book](http://agr.wa.gov/Marketing/SmallFarm/greenbook.htm)"  
[<http://agr.wa.gov/Marketing/SmallFarm/greenbook.htm>]

Cornell University's [Good Agricultural Practices \(GAPs\)](http://www.gaps.cornell.edu) Program Publications  
[<http://www.gaps.cornell.edu>]

"Food Safety Begins on the Farm" and  
"Reduce Microbial Contamination with Good Agricultural Practices"