CHAPTER 1
Introduction to Direct Farm Marketing and Risk Management

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Consumer Buying and Eating Habits are Changing

An increasing number of today’s consumers are actively seeking out locally grown, fresh, and distinctive food products. The public is coming to understand the social, economic, and environmental contributions that local farms and food production systems provide for both rural and urban communities.

The 2002 National Agriculture Census reported approximately 82% (20,506) of Idaho’s farms are less than 500 acres and 72% (18,152) have sales less than $25,000 per year. The Census also reported 6.5% of Idaho farms (163) were marketing their products direct to individuals for human consumption. The value of these direct market sales was $5,889,000. This is a 16% increase in the number of direct marketing farms and a 78% increase in the value of direct sales since 1997. Just look at the rising popularity of farmers’ markets across the United States. According to the Idaho State Department of Agriculture’s Marketing Division, the number of farmers’ markets in Idaho continues to increase, with 33 markets registered with the state in 2007. Direct sales to restaurants and public institutions have also been on the rise in Idaho. Programs linking universities and public schools to local farms are emerging as another strategy provide fresh, nutritious food to students, while supporting local agriculture. Community Supported Agriculture (CSA) programs, in which households purchase a share of a farm’s harvest at the beginning of the season and receive weekly food deliveries, have experienced growth similar to farmers’ markets. Since the first CSA farm was established in 1985, CSA’s across the US have increased to approximately 1200 (http://www.wilson.edu/wilson/asp/content.asp?id=804).

Farmers Can Step Up to Meet this Growing Demand

Many believe that the future for most small to mid-size farmers and ranchers lies in direct marketing their product to consumers, or at least in reducing the number of costly steps from farm to consumer. Here are some excellent reasons why direct marketing can be valuable to you as a farmer:

- Direct sales to the consumer encourage “marketing relationships” between buyer and seller, which boosts opportunities for repeat sales and increases opportunities to connect with new buyers. Working directly with the consumer allows the farmer to be responsive to consumer needs and wants. In addition, farmers have more control over their product, thus maintaining quality until it reaches the customer.

- By becoming both producer and seller, the farmer can retain more of the retail food dollar.

- Serving niche markets such as restaurants through semi-direct sales has major benefits: It can

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1 This figure only includes the value of human food items directly marketed to individuals and does not include the value of animal feed, fiber, flowers, bedding plants or other non-food farm products sold directly to individuals. Nor does the figure include the value of food and non-food items sold via semi-direct marketing to restaurants, grocers, caterers or processors.
increase community awareness of your farm, add credibility to the farm’s products, and thus increase demand in the community. In addition, local farms can offer restaurants smaller quantities or unusual products not generally available through wholesale channels.

- **Direct marketing relationships** educate the consumer about the needs of the farmer. The more people understand about the nature of local food production, the more likely it is they will want to protect the health of local agriculture.

- **Consumers respond positively** to knowing the person who produced their food.

**Managing Your Farm’s Legal Liabilities is Critical for Direct Marketers**

While direct marketing can be a great way for small-to-medium sized farms to attain economic sustainability, it comes with additional responsibilities. As direct-marketers, farmers not only have to grow the crops successfully, they also have to find a way to get them to the retail marketplace and generate as much income from them as possible. To do this successfully, farmers need to be aware of the potential risks associated with marketing and selling directly to the public. Direct marketers also need to know about legal issues such licensing, labeling, taxation, employment, insurance, etc.

In a nutshell, we need to educate ourselves with as much information as possible in order to minimize the legal liabilities and risks of doing business.

**How to Use This Book**

This handbook is designed to help farmers and ranchers become familiar with Idaho regulations governing direct marketing of farm products. It also provides a framework for understanding and analyzing potential liability risks associated with direct marketing, including premise and product liability and obligations with respect to employment and labor. Included are checklists that will help to identify and reduce the possibility of harm to consumers.

General information on the insurance industry is included, along with a list of questions that farmers/ranchers need to consider as they negotiate with an agent/broker on a farm policy. The basic elements of a farm liability policy are included as well as guidelines on how to read a policy to determine what is and what is not covered by the policy.

While this handbook describes the most common successful direct marketing strategies, it is designed to serve simply as a reference. A tremendous number of resources are available to help small and medium-sized farmers successfully direct market their products and many of these are listed in the Appendix. Sources and contact information are included at the end of most topic sections.

The provisions summarized in this handbook are found in state law and are current at the time of publication. However, it is to be used as a guideline and is not intended to be inclusive of all applicable laws. Please refer to the contacts listed throughout the handbook for the most up-to-date information.
on requirements and fees. If there is a conflict between this information and any federal, state, or local laws or ordinances, the applicable laws or ordinances will prevail.

All fees quoted in this handbook are for 2008 and producers should check with the appropriate agency to determine if fees have changed.

Also throughout the handbook, when we say “farm” or “farmer” we are using the term broadly (for simplicity); it includes “ranch” or “rancher” as well.

**Risk Management - An Important Part of Direct Farm Marketing**

Risk has always been a part of agriculture. But farming in America is a ball game that has changed dramatically over the past few years. Increasingly, farmers and ranchers are learning that it is now a game with new rules, new stakes and, most of all, new risks.

The nation’s most successful farmers are now looking at a deliberate and knowledgeable approach to risk management as a vital part of their game plan. For them, risk management means farming with confidence in a rapidly changing world. It is the ability to deal with risks that come with new, attractive farming opportunities.

This handbook is part of a campaign to improve the risk management skills of American farmers and ranchers. The urgent need for this campaign stems from many changes in a producers business environment. In this environment, opportunities have increased, but so have the risks. Some of the more important changes affecting a producer’s risks include:

- **A changing government role:** Increasingly, government policy makers are placing greater confidence in the ability of producers to make sound business decisions. They have passed market-oriented farm legislation and crop insurance reforms that allow producers to be more active in managing their profit opportunities and risks.

- **Outside forces:** Many factors are forcing producers to make risky, but potentially profitable, decisions regarding their businesses. These factors include increased global competition, rapid changes in the structure of production agriculture, changes in the marketing of agricultural products in the farm supply sector, new technology, and more volatile weather patterns.

- **Risk connections:** Increasingly, decisions in certain risk areas are affecting the riskiness and profitability of other aspects of farming. For instance, more lenders are now requiring sound business plans before approving credit. Thus, good management of marketing risks can lower borrowing costs and result in long-run financial stability. As farmers become more aware of the many such connections between their risks, the need for effective risk management will increase.

![Tour at Canyon Bounty Farm, Nampa, ID](image-url)
The USDA Risk Management Agency (RMA) promotes, supports, and regulates sound risk management solutions to preserve and strengthen the economic stability of America’s agricultural producers by providing crop insurance to American producers, developing the premium rate, administering premium and expense subsidies, approving and supporting products, and reinsuring companies.


Risks Involved in Direct Farm Marketing

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. The Legal Guide for Direct Farm Marketing, by Neil D. Hamilton provides a review of the laws and court cases in this area and reveals there are eight common ways a producer can get into legal trouble in relation to direct and semi-direct farm marketing. These 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.

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 which have been created to protect farming, such as exemptions from zoning rules or specific 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 your farm.

Kootenai County Farmers’ Market, Hayden, ID
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 products – you will probably be treated like a store and a new set of legal issues ranging from employment law to zoning ordinances 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 (to consider some of the people you should call before beginning a direct farm marketing business see the box below.)

### Six Phone Calls to Make before You Begin Direct or Semi Direct Marketing

1. Local land use planning authorities
2. Your insurance agent
3. State food inspection and licensing officials
4. State labor commissioner
5. State department of agriculture’s marketing and diversification office
6. Your attorney

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

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**Definitions and Terminology**

**Agritourism** refers to the act of visiting a working farm or any agricultural, horticultural or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation.

**Broker:** Any person engaged in the business of soliciting or negotiating the sale of any product.

**Commission merchant:** Any person who receives on consignment, or solicits from the producer, any farm products for sale on commission on behalf of the producer for the purpose of resale, or who sells or offers for sale on commission, any farm products, or who in any way handles for the account of or as an agent any farm product of the producer.

**Dealer:** Any person other than a commission merchant or cash buyer, who for the purpose of resale, either obtains from a producer the possession or control of, or contracts for the future delivery of any farm products, without paying the producer at the time the full agreed-upon price.

**Direct farm marketing** is selling food and farm products or services directly to consumers without using an intermediary. These opportunities include direct to consumer sales through roadside markets and farm stands, farmers’ markets, u-pick operations,
community supported agriculture, and semi-direct sales to restaurants, caterers, grocers, and specialty food stores. Other paid services often offered by farms and ranches who direct market their products include agritourism/on-farm recreation and on-farm educational programs such as tours and workshops.

**Direct to consumer sales** such as farmers’ markets, subscription (CSA) services, on-farm sales, and farm stands and, to a lesser degree, semi-direct sales to retailers, restaurants or food processors, generally result in producers receiving a higher price for their crops than sale through wholesale markets.

**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 your insurance policy declarations, “farming” does not include retail activity other than that described above.

**Farmers’ market vendor:** Typically a farmer, artisan or market gardener who grows and sells garden produce, plants, trees, shrubs, flowers, fruit, bulbs, tubers, honey or eggs at the farmers’ market.

**ISDA:** Idaho State Department of Agriculture

**Liability** is imposed by law on individuals or corporations to pay for harm done to others. Such law may be common law, state 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.

**Retail sales:** Products sold by the farmer to the end user. This includes farmers’ markets, CSA’s, on-farm sales, Internet sales and farm stand sales.

**USDA:** United States Department of Agriculture

**Value added** refers to the increased value of your products due to further processing (freezing, drying, canning, baking, juicing, etc).

**Wholesale sales:** Sales to produce companies, processors, packing houses, or brokers who process, pack, store and/or distribute your goods before reselling them to retail markets. It is important to note that depending upon the relationship between producers and processor, sales to processors are sometime considered semi-direct marketing (see direct farm marketing above).

**Boundary County Farmers’ Market, Bonner’s Ferry, ID**