

Legal Guide to Farm-direct Marketing

Legal considerations for farm-direct marketers come in all flavors. Although some general legal risks apply to all farm businesses, the farm-direct business faces some special challenges. Legal rules and risks differ depending on where you sell your products, who is buying them, and what you sell. Understanding legal rules helps farmers make informed decisions about the risks that come with different marketing channels. Farmers can then take steps to either avoid or reduce the risk of liability.

In this publication, we cover the risks associated with direct sales of farm products. Be aware that there are other risks and regulations associated with any agricultural operation that are not discussed here, such as taxes, employment law (see *Farm-direct Marketing: Personnel Management* [PNW 205]), relationships with neighbors, environmental impacts and regulations, fence laws, and other livestock regulations.

Know Your Business: The legal side of starting up and operating your farm-direct business

Choosing and registering a limited liability business entity

There are many details involved in starting any small business. One detail you should complete before you make your first sale is to choose a **business entity** that protects your personal assets from business liability and provides the best tax treatment for your business. An attorney, accountant, or business advisor can help you choose the best business entity based on the complexity of the business you wish to operate.

Flexible business entities with limited liability and favorable tax treatment exist in each of the PNW states. The Limited Liability Company (LLC) and S-Corporation are common choices for small businesses. Forming an LLC or other limited liability business entity requires registering your business with the Secretary of State's office in the state in which you are doing business. In addition to attorney fees (ask for an estimate), each state charges a fee for registration and requires that you file an annual report with the Secretary of State.

Registering as a business entity with limited liability is a small up-front investment that can reduce your risk of personal liability in the future. If you operate as a sole proprietorship or a general partnership by simply running a business and you are unable to pay a business account, or someone is injured in the course of doing business, your personal assets can be taken to pay a debt or judgment. If you register as a business entity with limited liability, such as

The Farm-direct Marketing Set

A farm-direct marketing business provides both attractive opportunities and unique challenges to farm families. The farm-direct marketing series of Extension publications offers information about establishing and developing a range of farm-direct enterprises.

Other publications in the series are:

- An Overview and Introduction (PNW 201)
- Costs and Enterprise Selection (PNW 202)
- Merchandising and Pricing Strategies (PNW 203)
- Location and Facilities for On-farm Sales (PNW 204)
- Personnel Management (PNW 205)
- Financial Management (PNW 206)
- Food Safety and Product Quality (PNW 687)

To learn more, consider one of the online courses offered by Oregon State University, Washington State University, and University of Idaho:

In Oregon—Growing Farms: Successful Whole Farm Management <https://pace.oregonstate.edu/catalog/growing-farms-successful-whole-farm-management>

In Washington—Cultivating Success™ Sustainable Small Farms Education Program: <http://cultivatinguccess.wsu.edu>

In Idaho—Cultivating Success™ Sustainable Small Farms Education Program: www.cultivatinguccess.org

A Pacific Northwest
Extension Publication

Oregon State University
Washington State University
University of Idaho

an LLC or S-Corporation, then only business assets can be used to pay a debt or judgment against the business.

Operating as a limited liability business entity requires proper accounting to keep personal and business assets separate, along with keeping up with any reporting required by the state. If you do not keep clear accounts showing that the business is a separate legal entity, your personal assets could still be at risk if you owe a debt or judgment.

State laws also require every business to operate under its “true” name and to register any “assumed” business name with the Secretary of State. Business names must be filed so that the public can determine who is responsible for the business if there are any problems. For example, if you create an LLC or corporation to run your business, name your business Happy Farm, Inc., and file this name with the Secretary of State, then that name is its “true” name. You do not have to also register Happy Farm, Inc. as an assumed business name with the Secretary of State.

Likewise, if the name of your business includes the “real and true” name of each owner, then you don’t have to register an assumed business name either. If your name is John Smith and your farm name is John Smith Orchards, then you do not have to register an assumed business name with the Secretary of State. However, if John Smith Orchards uses a different business name for marketing or trade purposes, that other business name must be registered as an “assumed” name with the Secretary of State.

If you do business in any state other than the one where you are registered, you may be required to register as a “foreign” business in that state as well. The registration requirement may vary depending on how much business contact you have with the state. If you have any doubts about whether you should register in another state, an attorney can help you determine whether registration is required.

Other business licenses may be required depending on your activities and products. Washington State has additional Specialty Business licenses for certain activities and a Master Business license if you meet the requirements. Check with the Washington State Department of Licensing for other business licensing requirements, or see the *WSDA Handbook for Small and Direct Farm Marketing* for more details.

If you are operating within city limits in any state, also check with local government to find out if local business licenses are required. See “Processed foods,” page 5, regarding food-handling licenses.

Insurance

Maintaining appropriate business insurance is essential for protecting your business from liability in case your products cause injury or illness to a consumer or if anyone is injured while you or your employees are carrying out business activities.

The type(s) of insurance you buy will depend on the farm-direct marketing business you operate. Insurance policies that cover normal farming activities or basic property insurance may not cover other direct-marketing activities. In that case, you may also need a comprehensive business policy or commercial business policy. If customers are coming to your property to buy products or if you are doing value-added food processing, you will need insurance that covers those kinds of risks. It is important to tell your insurance agent exactly what you are doing in your business to get the right insurance coverage. If your policy excludes the types of activities you are doing and someone is hurt, then **you** rather than the insurance will have to pay.

State laws cover most of the issues discussed in this and other publications in the Farm-direct Marketing set, and each state’s laws are unique. See “For more information” (pages 12–13) to find resources for the Pacific Northwest states of Idaho, Oregon, and Washington. For legal advice, always check with an attorney licensed to practice in your state.

Some farm-direct marketing venues require you to carry a minimum level of insurance (for example, farmers markets and institutional buyers such as hospitals or universities). Some retailers or restaurants may also require proof of liability insurance, particularly if farm-direct marketing continues to grow and become an established practice for those buyers.

Farm-direct marketers also need insurance on vehicles for farm operations and deliveries and Workers' Compensation insurance to cover injuries to employees in the course of doing business. Your insurance agent can ensure that you have all the insurance coverage you need to cover any injuries caused to others in the course of carrying out your farm-direct business.

Taxes

Along with registering your business with the Secretary of State, you will also need a tax identification number through the Internal Revenue Service (IRS), called an Employer's Identification Number (EIN). Some businesses, such as a corporation, are taxed on business profits and then distribute after-tax revenues to owners who pay personal taxes on the dividends. Other businesses, such as an LLC, sole proprietorship, or general partnership, "pass through" their profits to owners before paying taxes. Owners then pay personal taxes on their share of profits received. But even if your business will not be taxed at the business level, you will need a tax identification number for any other taxes, such as employment tax or sales tax.

All farm businesses and owners must properly account for their costs and revenues to accurately calculate taxable income and file income taxes. Although most farm-direct sales are done on a cash basis, all income must be claimed to avoid tax liability problems. Your accountant or attorney can advise you on selecting the appropriate business entity to receive the best tax treatment for your business.

Sales tax must be collected on all retail sales in Idaho, which is an issue for farm-direct sales there. You must get the proper permit, collect sales tax from all sales, and remit the taxes to the Idaho Tax Commission.

Washington State has a sales tax, but most food sales are not taxed. You only have to collect sales tax if you are selling "prepared food," which is generally defined as food that is heated by the seller for immediate consumption or if the seller provides utensils for immediate consumption of the food (bakery items are generally exempt unless the "provides utensils" criteria is met). Washington also taxes the sales of nursery plants, starts, and floral items. Tax information for Washington farm-direct marketing is discussed in the *WSDA Handbook for Small and Direct Farm Marketing*.

Oregon does not have a sales tax, so it is not an issue for farm-direct sales there.

If you are selling products outside of your home state, you may have to comply with the sales tax laws in the state where your buyers reside whether you are physically selling your product in that state or selling via mail or the Internet. Your accountant or business advisor can help you understand your tax obligations when selling to customers across state lines.

Record keeping

Record keeping and accounting are essential for the financial success of your farm-direct business, and they are also an important protection against legal liability. Many legal issues require documentation, and if there is ever a problem or question you

Insurance policies that cover normal farming activities or basic property insurance may not cover other direct-marketing activities. In that case, you may also need a comprehensive business policy or commercial business policy.

will be thankful that you have good documentation of your business practices. For example:

- Regulatory agencies responsible for food handling and safety may inspect records periodically or in the event of a food safety incident.
- Financial records are essential for properly preparing tax returns and in the event of an audit.
- Payroll records can prove that you paid employees minimum wage and for overtime hours.

Private liability issues can also be avoided by keeping good records, such as showing that you made payments on a loan or contract. If you have established your business as a limited liability entity, such as an LLC or S-Corporation, you will have to show that you have kept business and personal accounts separate at all times. This is an extremely important point to remember, because you can lose your limited liability status if you have comingled personal and business funds.

Once you have a system for keeping your business records complete and current, determine how long you must keep various types of records. A good guideline is to keep most business records, such as receipts for purchases and sales, for at least 3 years; employee and insurance records at least 10 years; and tax returns, financial reports, business organization formalities, real estate documents, and other important records should be kept permanently.

Transportation

Federal and state regulations apply to farm vehicles used to transport farm products, either across state lines or within your state. Check with your state department of transportation to be sure your vehicles are registered and employees have the proper licenses and training to operate them.

Farm-direct businesses typically have more frequent delivery of products to urban areas, which raises additional liability risks. Driving to and from restaurants and farmers markets, for example, puts delivery trucks in busier traffic with more bicycles and pedestrians. Be sure that you have adequate insurance coverage for delivery of your products. The farm business is responsible for any damage caused by delivery drivers in the course of making deliveries.

Know Your Products: Food licenses, permits, and certifications

Food safety is a top priority for all farm-direct sales. If your foods cause illness or injury to your customers, you can be held directly responsible. In addition to using good agricultural and handling practices at your farm, state and federal regulations may require licensing and inspection if you are selling anything beyond your farm-grown fresh produce.

The Food Safety Modernization Act of 2010 (FSMA) created new legal authority for FDA to regulate farm products. The Produce Rule applies to farms that grow, harvest, pack, or hold produce that is normally consumed raw **and** that have produce sales over \$25,000 per year (over a 3-year average). The food handling requirements depend on what you grow, whether it will be processed before consumption, and your total sales. The law is complicated and the rules are new, so always seek out

Find general food safety guidelines in *Farm-direct Marketing: Food Safety and Product Quality* (PNW 687).

technical assistance to determine if your farm is covered by the law and which requirements apply.

The FSMA Preventative Controls Rule applies if you manufacture, process, pack, and/or hold any kind of food for human consumption. Again, the legal requirements for food handling differ depending on whether the activities happen on- or off-farm, the type of processing, the type of foods that you produce, and how much you sell. Always seek technical advice to be sure that you are in compliance.

Generally, if you are selling only fresh fruits and vegetables grown on your own farm directly to individual customers, the PNW states do not require state licenses or inspections. That said, Washington state law generally requires inspection of fresh apricots, Italian prunes, peaches, cherries, apples, pears, potatoes, and asparagus, but has exemptions for direct sales at farmers markets and produce stands within specified zones of production, with daily sales limits. The *WSDA Handbook for Small and Direct Farm Marketing* contains details on inspections of specified produce.

Once you move beyond selling your own fresh produce, most states require some level of licensing, inspection, or recordkeeping. This is an area that can change periodically for farm-direct marketers, so always check with your local health department or state department of agriculture to get the most up-to-date information.

Consignment sales or sales on behalf of another grower to restaurants, retailers, and institutions

If you sell products on behalf of another farmer as resale or consignment, or you sell another farmer's products to restaurants, retailers, or institutions that will resell the products to individual customers, you may be required to get a Produce Dealer or Produce Peddler license (names vary by state). Check with your state department of agriculture if you are selling products grown by another farmer.

If you handle products from other growers to sell to restaurants, retailers, or institutions, you may be classified as a wholesaler or handler for the purposes of other regulatory programs. Wholesalers or handlers may be subject to warehouse licensing, marketing orders, marketing agreements, or inspections for certain commodities defined in law at the federal or state level. Check with your state department of agriculture if you are selling produce on behalf of other farmers.

Oregon's Farm Direct Marketing Bill allows you to sell another farmer's fresh fruits and vegetables, honey, and unshelled nuts on consignment if they are from the same or a neighboring county, you label the product with the original farm's name, and you are selling directly to customers. Check with the Oregon Department of Agriculture for details on this exemption to the Produce Peddler license.

Processed foods

If you process any of your foods before sale, you will likely need a food processor license. In [Oregon](#) and [Washington](#), state agencies issue licenses, while in [Idaho](#) you apply to your local health district. Processing is defined in all states as any actions that prepare food for consumption or storage: cutting, mixing, milling grains, drying, freezing, cooking, smoking, packaging, etc. You can think of "processing" as anything that you would do in a kitchen or indoors. Other post-harvest steps, such as separating grains or curing onions or potatoes, may not be considered processing. Your state

For the latest information on the Food Safety Modernization Act and its associated Food and Drug Administration rules, see:

U.S. Food and Drug Administration

- [FSMA Final Rule on Produce Safety Fact Sheet](#)
- [FSMA Final Rule for Preventive Controls for Human Food Fact Sheet](#)

National Sustainable Agriculture Coalition

- [What is the Food Safety Modernization Act \(FSMA\)?](#)
- [Am I affected by new food safety rules under the Food Safety Modernization Act? A flowchart for farmers and food businesses](#)

Oregon Small Farms

- [New Food Safety Regulations: Food Safety Modernization Act \(FSMA\)](#)

Washington State Department of Agriculture

- [FAQ on the Food Safety Modernization Act](#)

department of agriculture can provide guidance on whether your post-harvest food handling qualifies as processing and whether you need a food processing permit.

Other value-added food processing, such as making jams, pickles, salsas, or baked goods, also requires that the foods be prepared in a licensed commercial or domestic kitchen. Licensing your own space requires a permit and inspections; you may also rent time in a licensed commercial kitchen to do value-added processing. Local health departments administer the food processing permits and inspections.

Oregon and Washington have passed laws that change or exempt some food processing from the licensing requirements discussed above. These “cottage food laws” allow the production and sale of low-risk processed foods from your own home without a commercial or domestic kitchen license. Low-risk or non-potentially hazardous foods are those that do not need to be refrigerated to be safe, although each state has its own rules for different products.

For example, **Oregon’s Farm Direct Marketing law** allows farmers to dry, freeze, and package food, in addition to making acidified canned products such as jams, pickles, and sauerkraut. The law requires that only food grown on the farm may be processed (plus a small list of additions, such as salt, sugar, spices and pectin). Sales are limited to \$20,000 each year; if you sell more, you must make the products in a licensed kitchen. Foods must have a specific label stating that the product was made in a home kitchen. You must keep records showing that you used approved food processing methods.

Washington’s law has a different list of allowed foods and creates a new **Cottage Food Operations Permit** allowing you to sell foods produced in your home to customers within the state. It requires an initial application and annual renewal. It limits annual sales to \$25,000, adjusted annually for inflation.

Rules for specific products

Each PNW state has specific regulations for certain products. They apply to potentially hazardous foods that require special handling (such as temperature control). Particular regulations apply to foods such as:

- Eggs
- Honey
- Mushrooms
- Dairy products
- Meat or poultry
- Fish or shellfish
- Alcohol

If you are producing and selling any of these foods, check with your department of agriculture or local health department for specific licenses, permits, or inspections.

Some rules vary for direct sales to individual customers. For example, Oregon’s Farm Direct Marketing bill exempts some small-scale honey producers and egg producers. Check with your department of agriculture for these exemptions.

Certifications and other labeling

People are increasingly interested in goods that are produced using environmentally sustainable methods. When you sell directly to customers, you have the opportunity to talk about your production practices and build trust in your products even if the customers never visit your farm to see for themselves. Statements about your products and practices are a promise or **warranty** you are

For more information on the food processor license in your state, see:

In Oregon:

<http://www.oregon.gov/ODA/programs/FoodSafety/FSLicensing/Pages/AboutLicenses.aspx>

In Washington:

<http://agr.wa.gov/Marketing/SmallFarm/greenbook/docs/19.pdf>

In Idaho:

<http://www.agri.idaho.gov/AGRI/Categories/Marketing/Documents/StartSpecialtyFoods.pdf>

giving your customers about your product. A warranty is a statement of fact about a product that is made before someone buys the product. If you make untrue claims and your customers find out, they will stop buying your products and could have a legal claim for breach of warranty for past purchases.

“Organic” is the most common certified label and the only one defined by federal law. Certifiers in the PNW include Oregon Tilth and each of the state departments of agriculture, among others. Each certifier charges fees for first-time certification and renewals and requires an application, documentation of organic practices, and on-site inspections.

It takes 3 years of using organic practices before your operation is certified organic. Until you are certified, you cannot use the “USDA Organic” label or claim that your products are organic. While you are in transition to organic certification, you can tell your customers that you are using organic practices or that your products are “transitional,” which can also be certified while you are in the process. To keep your organic certification, you may not use any substances prohibited by the USDA Organic Standards as defined in the National Organic Program (NOP). Both good record keeping and renewal of your certification are essential to maintain your investment in organic certification.

Other certifications or labels are not regulated by law. Many production claims are not regulated, such as “grass-fed,” or “no-spray.” Private organizations offer labels and certification for using particular sustainable practices. They require an application, fees, inspections, and record keeping in exchange for the right to use their label. “Salmon-Safe,” “Animal Welfare Approved,” “Non-GMO Project Verified,” and many others are available.

If you are selling to retail, restaurants, or institutions, your customers may also require voluntary certification of Good Agricultural Practices (GAP) and Good Handling Practices (GHP). These are food safety audits conducted periodically on your farm to show that you are following food safety procedures. You can find information on certification from your state department of agriculture or through USDA.

All certifications and labels have a cost associated with them, but they may not justify a higher price for your products if your customers do not recognize them. If you are selling directly to individual customers, carefully evaluate whether labeling will help you connect and convey your practices and values, and whether that will let you charge a higher price.

Institutions, restaurants, and retail buyers may appreciate third-party certifications because they can use those labels when they sell your products. In fact, some buyers may require certifications or labeling because their customers expect to see them, and keeping your certifications may be a requirement for ongoing sales. The bottom line is to know your market before you invest in certification and labeling.

Statements about your products and practices are a promise or warranty you are giving your customers about your product. If you make untrue claims and your customers find out, they will stop buying your products and could have a legal claim for breach of warranty for past purchases.

Know Your Place: How and where you connect to your customers

There are many ways to sell your products directly to customers: U-pick operations, farm stands, farmers markets, and even Internet sales. Many fresh, farm-direct products are sold by weight at the point of sale. Oregon, Washington, and Idaho all require annual inspection and licensing of scales used for weighing products before sale. Inspection and licensing are administered by each PNW state's department of agriculture.

If you don't want to sell by weight, you can sell larger items one by one, or use containers to sell by volume. It is common to sell smaller items, such as berries or cherry tomatoes, by the pint or quart. If you use this method, state laws require honest dealing with customers. For example, a pint container must not be deceptively packed, such that damaged fruit is on the bottom and fresh fruit on the top. State departments of agriculture or university Extension services publish standard weight ranges for various containers, fruits, and vegetables.

No matter where you sell, the direct relationship with your customers makes you directly liable for any harm that comes to them due to your products, processes, or property. Product liability insurance is essential to protect your farm-direct business in the event that a customer suffers a foodborne illness after eating your products. Other legal issues vary depending on where the sale takes place and what products you sell. Some considerations for mitigating legal risk with direct sales are discussed below.

Farmers markets: Direct sales to the public and legal relationship to market

Farmers markets are organized gatherings of farmers at a time and place that allows the general public to buy the farmers' products directly from them. They can be organized by a group of farmers, a government body, or a civic organization. As such, they may have a governing board or a market manager (or both) that is either hired or volunteer. Farmers markets can be held in public spaces like a park or street, or on private land such as a parking lot or church grounds. They vary in size, frequency, and season. Although farmers have traditionally focused on selling fresh produce, many farmers markets now feature processed foods, meats, grains, and dairy products.

Most established farmers markets have their own application process, fees, and rules for vendors. Many require vendors to provide proof of product liability insurance or general liability insurance that covers the farmer if any harm comes to a customer as a result of the farmer's participation in the market. Some markets also require the farmers to cover or indemnify the market as well, while other markets carry their own liability insurance that is funded from vendor fees.

Many markets also require vendors to prove that they hold the appropriate local or state licenses for handling the foods that they sell, and may require vendors to follow safe food handling procedures for samples.

Even if it is not explicitly stated in the market rules, participation in the market is a **private contractual relationship**. Farmers receive the right to a space at the market in exchange for a vendor fee and their agreement to follow all market rules. If a vendor violates market rules, the vendor is in breach of their contractual relationship with the market and can be expelled. Sophisticated markets set up a

The law of contracts governs private contractual relationships. A contract is formed when two or more persons or business entities voluntarily enter an agreement with specific obligations for both sides. If one side of the contract does not fulfill his or her obligations (breaches the contract) and a binding contract exists, a court can enforce the contract and require the person in breach of the contract to pay any damages caused by their failure to perform as promised.

process for handling vendor violations, and in extreme cases the market can bring legal action against a vendor who fails to pay required fees, violates the market rules, or causes harm to the market or other vendors.

Customers at your farm: U-pick, farm stand, agritourism

Inviting customers to your land can be an attractive way to connect with the public and sell your products. It can simplify your transportation and packaging, and provide an outlet for products you have not sold through other channels. You will have the same general legal considerations, such as weights and measures, taxes, and food safety, discussed in other sections of this publication.

The main legal concern with U-pick, farm stands, and agritourism activities is the potential liability associated with having people on your property. When members of the public are on your land, their safety is your responsibility. Inspect your land frequently for any obvious or hidden dangers, and either eliminate the risks or put up clear warning signs. Fill in slippery tire ruts, post signs to keep the public away from equipment, keep equipment locked when not in use, post clear and conspicuous signs for electric fences and other hazards, and keep any potentially aggressive animals away from public areas.

Remember that families with small children particularly enjoy farm tours, U-pick, and other farm events. Small children will be attracted to anything that they can climb. Children do not recognize the danger of many hazards, and it is in your best interest to avoid any potential injuries by keeping hazards out of sight. Planned interaction with animals may require additional insurance and county health department rules.

Of course, you will never be able to eliminate all dangers, so complete insurance coverage is essential. To get the right coverage, be sure your insurance agent knows that the public will be invited to your property and the kinds of activities you are offering.

State and local regulations may apply depending on the kinds of activities you have on your farm. Farm stands are generally allowed on land zoned for agriculture in the PNW states, particularly if you are selling your own products. If you plan to build new structures for your business, local building codes may apply, depending on the type of structure and the business activity that you want to operate. Check with your local planning and zoning departments to be sure you meet all state and local requirements.

Attracting consumers to your farm stand or U-pick requires good advertising, including clear and conspicuous signs directing people to your property. The laws regarding signs that can be seen from the highway vary by state, and different rules may also apply in local areas. Be sure to check with your state department of transportation for rules about placing signs along state highways, and then check with your local planning department for local rules about signs.

Many farm-direct businesses have had success with on-farm events generally referred to as “agritourism,” such as farm-to-plate dinners, corn mazes, farm tours, music events, and weddings. Oregon requires that any events held on agricultural lands be related to and supportive of the agricultural use of the land. Farmers holding events that do not have a substantial relationship to agriculture may face legal action from local zoning and planning authorities or neighbors. It is important to check with your local zoning officials before you start any new and unique on-farm tourism

opportunities that are open to the public. You should also ensure that your farm operation is an integral part of the experience.

Community Supported Agriculture

Community Supported Agriculture (CSA) farms provide a way for customers to buy a “share” of a farm’s output in advance. The farmer then provides a portion of the harvest to each customer on a weekly, monthly, or annual basis over the growing season. CSAs have been successful throughout the PNW for many kinds of farm products. All of the standard legal concerns with business liability, food safety and handling, insurance, and good recordkeeping apply.

Although a CSA feels like a friendly, supportive relationship between farmer and customer, the CSA agreement should be treated as a contract. It does not have to be written in technical legal terms but should clearly address the rights and risks of both parties. The agreement should include details such as:

- Number of weeks the CSA agreement covers
- Products available: Give sample expected harvests throughout the growing season, as they will change.
- How much product to expect (such as a percent of the harvest)
- Member’s risk. A statement such as: “Although the farmer agrees to use good production practices to ensure a good harvest, the member accepts the risk of crop failure due to natural conditions that may decrease the harvest.”
- Amount and terms of payment
- Delivery options, timeframe for pick up, or additional delivery fees
- Forfeited product if the member does not pick up his or her share within agreed timeframe, and what happens to the product
- How to get in touch if either the farmer or subscriber needs to make other arrangements for a scheduled delivery

CSAs often deliver the product to the customer, usually at a central pick-up place or to the customer’s home or office. In addition to the extra planning and organization required to coordinate and communicate delivery drop off and pick up, CSA operators should be aware that transportation of products adds more liability risk. Be sure that drivers have the appropriate license for the delivery vehicles and that you have adequate insurance coverage for delivery service. The farm business is responsible for any damage caused by delivery drivers in the course of CSA deliveries.

Delivery to a central pick-up place also creates a legal relationship between you and the property owner. A central pick-up spot is often an established farmers market, office building, church, or community center. A sophisticated property owner may ask that the CSA indemnify him or her in the case that a CSA member is injured on the property while picking up their CSA share. Be sure that your liability insurance covers a claim for injuries that happen off your property but related to your deliveries.

Some CSAs use work-share programs, in which members are invited to work on the farm. Some characterize this as a volunteer experience, some make it a requirement for CSA participation, and some make it an option to help the member pay for their CSA share. In any case, some states are very strict about enforcing labor laws for on-farm work. If you offer a work-share option as payment, be sure to keep good records. Document that the value of the product share the member is receiving

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in exchange for work hours is equivalent to at least minimum wage. Workers' compensation insurance is also required when you allow anyone to perform work for your farm business.

Internet or catalog sales

Farmers are finding that advertising and soliciting orders via catalogs or the Internet can be complementary to their local direct-marketing strategies. Some websites allow farmers to list their products in exchange for a percent of the sales or a fee. Other farmers might want to create their own website to be in touch with local buyers and to take orders that can be shipped anywhere.

Besides technical and marketing issues involved in Internet and catalog sales, there are a few legal issues to keep in mind. First, the Federal Trade Commission (FTC) requires that you have a reasonable basis to believe that you can ship advertised items within 30 days. Therefore, before advertising your goods, be sure that the supply you have available can meet the anticipated demand, and have a plan for fulfilling orders. Keep records of your transactions for at least 5 years to show that you meet the criteria.

If you are collecting customers' personal information for the purposes of fulfilling orders and future contact, the FTC also requires that your business take reasonable steps to safeguard this information. See the FTC website for information on how to comply with these rules. If you are initiating other communications with customers, such as follow-up email advertisements, the FTC also has rules that require accurate and complete information from you as the sender, and an opt-out method if the customer does not want to receive emails in the future.

Many states restrict incoming shipments of alcohol, and special rules may apply in other states. If you plan to ship products containing alcohol to other states, know which ones restrict shipments or have special rules.

Sales to Restaurants, Retailers, and Institutions

Rather than selling direct to individual customers, some farmers are selling direct to restaurants, grocery stores, schools, universities, hospitals, or other institutions to avoid wholesalers and capture a larger return on the sale of their products. While there are many important marketing and business considerations in deciding whether to sell to other businesses, there are important legal considerations as well.

Marketing to restaurants, retailers, and institutions requires building strong relationships with the chefs and managers, and following through on your promises for certain products and their quantity and quality. But there is more to ongoing sales than relationships. The ongoing negotiation and exchange of promised product at a specific price can be viewed as creating a contract. Restaurants, retailers, and institutions typically will not pay cash on delivery, so it is important to keep good records of the products that you deliver and to provide professional invoices. The buyers should also keep good records about the products that they receive and should communicate clearly about product that they reject and refuse to pay for. Each side of this bargain has made promises that the law will enforce, even if they are not written down. Keeping good records protects you in the event that a buyer fails to pay for some product that you delivered.

Now that more restaurants, retailers, and institutions are working directly with local farmers, many require proof of adequate insurance and all required

food safety licenses, inspections, and certifications. Some institutions and retailers require third-party audits or certifications in order to sell with them because they advertise certifications to their customers. Be prepared to show documentation of all required practices, audits, and certifications. If you cannot produce the required documentation, you will lose the ability to sell your products to them. If you have promised certain practices or certifications and do not follow through, you will have broken a contract and a marketing relationship.

For More Information

Nationwide resources

Farmers' Legal Action Group. St. Paul, MN. Marketing Publications found at:

<http://www.flaginc.org/topic/marketing/page/2/>

Internal Revenue Service (IRS). <http://www.irs.gov>

USDA. Grading, Certification and Verification. How to Request a GAP and GHP Audit.

These documents help you determine which audit is right for you; lists contact people by state (including Idaho, Oregon, and Washington).

<https://www.ams.usda.gov/services/how-request-gap-and-ghp-audit>

Your Legal Guide for Direct Farm Marketing Checklist. 2013. Drake University Agricultural Law Center (adapted from Hamilton). <http://directmarketersforum.org/wp-content/uploads/2011/12/A-Supplemental-Checklist-for-Legal-Guide-4.pdf>

Idaho resources

Idaho Business Resources. <http://business.idaho.gov/>

Idaho State Department of Agriculture. <http://www.agri.idaho.gov/>

Idaho State Tax Commission

800 Park Boulevard, Plaza IV

Boise, Idaho 83712

Phone: (800) 972-7660 or (208) 334-7660

Website: <http://tax.idaho.gov>

Protecting Your Farm or Ranch: A Guide for Direct Farm Marketing in Idaho. 2008. Rural Roots.

<http://www.ruralroots.org/protecting-your-farm-or-ranch-a-guide-for-direct-marketing-in-idaho/>

Oregon resources

Keeping it Legal: Regulations and Licenses for Growing and Selling Food in Oregon. 2014.

Oregon State University Small Farms Program.

http://smallfarms.oregonstate.edu/sites/default/files/regs_licenses_handout_sfc_2013.pdf

Oregon Department of Agriculture. FAQ on Farm Direct Marketing Law.

<http://www.oregon.gov/ODA/AboutUs/Pages/FAQs.aspx>

Oregon Department of Agriculture. *Farm Direct Marketing, Agricultural Products*. 2014.

<http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/FarmDirectMarketingAgProducts.pdf>

Oregon Department of Agriculture. GAP and GHP.

<http://www.oregon.gov/ODA/programs/MarketAccess/MACertification/Pages/GAPGHP.aspx>

Oregon Department of Agriculture. *Oregon Agripedia*. 2013.

<http://library.state.or.us/repository/2008/200802261548322/2013.pdf>

Oregon Department of Agriculture. What Can I Do Without a License?

<http://www.oregon.gov/oda/programs/FoodSafety/FSlicensing/Pages/WithoutLicense.aspx>

Oregon Department of Revenue. <http://www.oregon.gov/dor/pages/index.aspx>

Oregon Secretary of State: Business. <http://sos.oregon.gov/business/Pages/default.aspx>

Washington resources

Washington State Business Licensing Service.

<http://bls.dor.wa.gov/> and <http://www.bls.dor.wa.gov/ownershipstructures.aspx>

Washington State Department of Agriculture. Bridging the GAPs.

<http://agr.wa.gov/Inspection/GAPGHP/>

Washington State Department of Agriculture. Small Farm & Direct Marketing Handbook. 2014. <http://agr.wa.gov/Marketing/SmallFarm/greenbook/>

Washington State Department of Revenue information on sales tax for prepared food: <http://dor.wa.gov/Content/DoingBusiness/BusinessTypes/Industry/Food/default.aspx>

Washington State Department of Revenue. <http://dor.wa.gov/Content/Home/Default.aspx>

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Revised June 2009. Revised May 2016.