

Liability Issues for Direct Marketing Grass Fed Meat

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Risk management is an important area of consideration in any business. Two methods of minimizing risks are purchasing the right insurance coverage and business risk analysis and management. Most beef producers hold large amount of assets (mostly in land) that could be at risk, if a claim is filed against the operation. Diversification to direct marketing of meat products to consumers can add additional risks that need to be properly addressed to protect the assets of the ranch. Producers need to consider conducting a risk analysis of selling a food product to consumers. Most producers have assumed that the farm or ranch liability policy will cover this extended ranch business. Most insurance agents have stated that their general farm liability packages do not cover processed foods or off farm retail activity. In these cases, the policy does not provide product liability coverage that producers need if they are selling meat products to the public. Having on farm sales, farm tours, or farm stays that brings the public on the ranch to sell product, may require a business liability policy. Some farmers markets will require product and business liability policies and may also ask that they are listed as “Additional Insured”.

It is best to work with your insurance agent to properly insure your business based on its operation and the risks involved. The agent needs all applications and supplements to be completed with as much detail as possible, to satisfy the insurance underwriters. The insurance industry operates on a small margin and uses economies of scale to be profitable. They generally do not provide business specific coverage, but create general packages. Making sure your agent clearly understands your business and has a package that adequately covers your risks is important. When you contact your insurance agent, to ask if your ranch package includes coverage of the diversification of your ranch business, be ready to succinctly describe what is involved and show that you have thought about the risks and how to manage to minimize them. Most insurance agents are not familiar with the coverage requirements of selling meat and their underwriting companies may have even less. Without a description of the business and risk management, they may not see the value of attempting to define the risk, and in some cases have either quoted a very high price or stated that they do not provide a policy in that area. Explain what will occur with processing of the animal, aging, transportation, storage, and marketing of the meat. Many agents will use this to define the risk that is being incurred. As one insurance agent stated, “the thickness of the document tends to increase underwriter security”.

Things to Consider Covering in Your Business Description

1. How many years have you raised cattle?
2. How many years have you been marketing meat?
3. How many pounds of meat do you market annually?
 - a. Estimated value (two previous years and this year)
4. Do you have Agri-tourism on the farm or ranch as part of the marketing?

5. Describe your marketing process?
 - a. Who do you market your product to or through?
 - i. If it is through a cooperative, describe their insurance coverage
 - b. Describe your ownership through the process
 - c. Is the meat sold as a fresh or frozen product?
6. Who processes your animals?
 - a. What is the processing plant and meat inspection process?
 - b. What are the quality control procedure?
 - i. USDA inspected plants - Hazard Avoidance Critical Control Program (HACCP) plan
 - c. Have they had a product recall?
 - d. Will they store the meat on their facilities
 - e. What plant security do they have? (Alarm system, fence, etc.)
7. Are there recall safety measurements?
 - a. If so, what is the process?
 - b. Are there tracebacks? To plant? To animal? To package?
 - c. If not, how would a recall be handled?
 - d. If yes, plant # and process.
8. How is the product transported from the processing plant to the sales site?
 - a. Does the store pick the meat up, does the insured deliver or does the insured hire a firm to make deliveries?
9. How is the meat handled at the retail level?
10. If you are overnight mailing your beef product, how is it assured to be frozen and handled correctly by the consumer upon receipt?
11. How is your business going to be sure that contractors that handle the meat are going to maintain appropriate temperatures to the meat?
 - a. At the processing plant
 - b. During transport

Questions for your Insurance Agent

1. Does my farm or ranch liability policy cover my direct marketing as described?
2. Is there a limit to the amount or type of direct marketing?
3. Does the commercial business policy include product liability?
4. How much should I be insured for?
5. Is my policy a “claims made”, or “occurrences” policy?
 - a. How does my coverage end if I change insurers?
6. What are the policy exclusions?
 - a. Are defense costs included within the Limit of Liability, or are they unlimited (outside the limit)?

In his book, *The Legal Guide for Direct Farm Marketing*, Neil Hamilton points out that there is need to understand the kind of agent that you are working with when they make policy interpretations. Agents can work for an insurance company as a “general agent” or as an “independent” agent meaning they sell policies for a number of different companies. “In situations where the agent is employed directly by the company, what the agent knows and what the agent tells you can be held directly accountable to the

company. But in situations where agents are independent, the information you share with them such as what activities you are conducting, and what the agent tells you about coverage, may not bind the company”. He points out that some states, like Arkansas, have passed laws making the companies liable, in certain circumstances, for promises of independent agents. So it is best to check with your agent to fully understand their relationship with the underwriting company. He also points out that there is a need for understanding the terms and conditions of the insurance policy. Some policies limit that the claims and the occurrences must happen during a period of coverage. If you have this policy condition he states, “the effect of this could be that if the occurrence happened one year but the actual claim against the insurance isn’t made until the next year, there would only be coverage if the same policy was still in force with the same insurer. This provision requires people to stay with the same insurance company or there may be a gap in between the occurrence and the claim causing the former insurer to say there is no coverage”. Another policy condition that he points out for evaluation is declining value. With this condition, “the “loss” is interpreted to include the amount the insurance company spends on the defense of the claim. Depending on the amount of coverage involved and the difficulty of the defense, one effect could be that all of the coverage is used up in the cost of the defense and you are left without insurance to cover the actual claim or liability”. If you have this condition you may want to consider a higher coverage value to fully protect the ranch.

The American Grassfed Association (AGA) is providing a service to its members by working with the Brown/Raynor Corporation to offer a Commercial General Liability insurance product specifically for direct meat marketers, including Products and Completed Operations coverage. Based on favorable claims experience and business longevity, the average cost of policies has been \$640 per year. For more information contact Jim Thompson at jthompson@brownraynor.com. If you find the price quote acceptable, then you need to join AGA at <http://www.americangrassfed.org/Membership.htm> www.aAmerican to be eligible. Other ranchers have obtained product liability from the underwriter, American Indemnity of Galveston, Texas.

Maintaining the proper temperature of meat is an important risk management activity. It is generally called cold chain security. Temperatures above 40 °F allow the growth of E coli bacteria. Short term stored and transported fresh meat should be refrigerated at temperature of 30 to 35 ° F, while optimum temperature for long term storage is 28.6 °F. In smaller plants chilling down of processed carcasses can be a concern if they process more animals in one day than the compressors can quickly chill. Refrigeration parameters should be defined, established and recorded so that carcasses reach a temperature of 40 °F or less within 24 hours. Frozen product should be stored and transported at 0 °F or below. Adequate air movement to quickly freeze meat by using wire baskets or spacers between the boxes should always be used.

Farmers Markets can require additional insurance and risk management requirements. Some farmers markets will require proof of a 1 or as much as 2 million dollar liability policy is held by the marketer. Many require proof of insurance or to be listed on the

policy as “Additional Insured”. Providing samples of a cooked product at a farmers market is a good method of product promotion, but can increase liability risks. Some farmers markets prohibit it for that reason. Some areas to be addressed to reduce risks include:

- Hand washing of each vendor that prepares or serves samples
- Equipment and utensils must be easily cleanable, in good condition, and free of cracks and crevices.
- Cooking the meat to the appropriate temperature
- Storage of the meat products between cooking and tasting.

Internet sales have the challenge of maintaining the appropriate temperature during shipment to the customer. Most have attempted to address this through additional vacuum packaging of meat, ice packs or dry ice, appropriate insulated packaging, and guaranteed delivery shipping.

Forming a corporation to merchandize the meat is another way to protect the ranch and farm assets by limiting liability to the investments in the business. This adds to the cost of operating the corporation and potential additional tax considerations. Limited Liability Corporations can provide liability protection and can also address some of the tax issues. Forming a Cooperative is another method of limiting liability that can also provide the size of operation to reduce costs and secure larger markets. Cooperatives also bring the challenge of working as a group and losing the independent operation that most agriculturist value.

Some have chose to not think about this risk to their business. The worst potential is that all of the land and personnel property are at risk if your insurance carrier states that ranch liability coverage does not include food processing or the claims exceed the coverage amount.

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