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# Reducing Risk: Legal Agreements for Your Business and Across the Supply Chain

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October 13, 2015

# Topics

- Types of Legal Risk
  - Regulatory Liability
  - Food Product Liability
  - Product Recall
- Other Types of Risk
  - Financial
  - Quality Control
  - Supply

# Setting the Expectation

- No individualized guidance in this setting
  - This group is probably too diverse

# Learning Objectives

- Gain a working knowledge of the more important federal laws that impact your meat business
- Gain a working knowledge of food product liability
- Develop issue spotting skills that will enable participants in the meat business to identify and appreciate each others risks.
- Provide practical strategies for mitigating risk wherever possible.

# Regulatory Risk: Food Safety Inspection Service

- I defer always to food safety experts
  - No room for interpretation on these rules

# Regulatory Risk: Packers and Stockyards Act

- Statute: 7 U.S.C. § 181 - § 229
- Regulation: 9 C.F.R. § 200 – § 206
- Twofold purpose:
  - Protect the immediate financial interests of farmer by ensuring prompt payment for accurate weight
  - Protect consumers from monopolistic practices

# Regulatory Risk: Packers and Stockyards Act

## Applicability

- Packer: Any person engaged in buying livestock for the purpose of slaughter, or of manufacturing or preparing meat for sale, or marketing meat or livestock in unmanufactured form as a wholesale broker, dealer, or distributor. (7 U.S.C. § 191)
  - A food hub, or even another farmer or rancher

# Regulatory Risk: Packers and Stockyards Act

## Prohibitions (7 U.S.C. § 192)

- Unfair, unjustly discriminatory, or deceptive practice or device;
- Making or giving any undue or unreasonable preference or advantage to any particular person, or subjecting a particular person to undue prejudice or disadvantage;
- Engage in business with the effect of manipulating or controlling prices or of creating a monopoly



# Regulatory Risk: Packers and Stockyards Act

## Requirements

- Market agencies and packers with average annual purchase exceeding \$500,000 must maintain a bond (9 C.F.R. § 201.29)
- Monitor scales and weighing procedures (9 C.F.R. § 201)

# Packers and Stockyards Act

## Prompt Payment Provision (7 U.S.C. § 228b(a))

- Generally, full payment of livestock purchase price before close of next business day following purchase and transfer of possession (7 U.S.C. § 228b(b))
- May be waived only by written agreement (7 U.S.C. § 228b(b))
- Delay in payment of funds is per se an unfair practice. (7 U.S.C. § 228b(c))

# Regulatory Risk: Packers and Stockyards Act

- Likely to Burden:
  - Meat hubs and food hubs
  - Grocery stores and food co-ops
  - Anyone else meeting the broad definition of “Packer”
- Likely to Protect:
  - Farmers, Ranchers

# Packers and Stockyards Act: Risk Management

Risk management is applicable almost exclusively to “Packers”

- Always use a written instrument to conduct a sale
- Adequately capitalize and pay on time, OR secure a written waiver from prompt payment
- Scales and calibration
  - Smaller “packers” rely heavily on third party processors to do the weighing
  - “Packer” will be liable for inaccuracy, but put the processor on notice that you are relying on their scale tickets to comply with the regulation

# Food Product Liability

- Civil liability
  - Distinguished from regulatory liability
  - Unpredictable and unquantifiable
- Strict Liability
  - Dangerous or defective product placed into the stream of commerce
  - Causes an injury
- Distinguished from negligence

# Food Product Liability: Risk Management

- Procedural Controls
  - Continuous inspection of third party processors
- Corporate Shield
- Product liability insurance
- Indemnification agreements
- Recall Insurance

# Product Recalls

- Extremely Important Issue for Smaller-Scale Meat Businesses
  - Most have to rely on third-party processors
  - Unlike other processed foods, your food is always inspected
  - Recalls are disproportionately expensive for smaller operations
  - Recall is not the same as contamination or adulteration

# Product Recalls

## Typical Expenses

- Cost of the product
- Cascade Effect
  - A single recalled ingredient can cause other products containing it to be recalled.
- Cost to reimburse customers
  - Cash flow disruption
- Cost to remove from commerce
  - return shipping or disposal
  - Labor, time
- Goodwill



# Product Recalls: Risk Management

- Insurance is a commercial contract with a third-party
- Product Recall Insurance
  - Recall insurance is a supplemental risk management product and is not part of a general commercial liability policy.
  - Either a farmer/rancher and their processor should have it, preferably both.

# Product Recalls: Alternatives to Recall Insurance

- Self-Insurance
  - Self-funded litigation for breach of warranty
  - Not timely
  - Recovery is not assured
    - Indemnification has its limits

# Product Recalls: Risk Management

- A written agreement between the seller of the meat and the processor of the meat which identifies who has the burden to purchase recall insurance
  - Other terms can definitely be included in an agreement between the seller and the processor, but this one is probably the most important.

# Non-Legal Risks

- Types of Risk that decentralized farmers and sellers encounter
  - Price Instability
  - Quality Control
    - Product quality can vary from one animal to the next for individual farmers
    - Product Quality can vary between farmers
  - Supply
- Issues have been addressed by larger meat integrators
  - contract production

# Non-Legal Risks

- **Contract Production: Push**
  - Title usually vests with the integrator
- **Market Orders: Pull**
  - Using the promise of payment to incentivize performance

# Non-Legal Risks

- No easy solutions for our scale
  - We are decentralized
  - Lack of familiarity with the subject matter
  - Fear and misunderstanding about contracts
- Written Agreements
  - Clear, enforceable language assigning responsibilities to the parties
  - Negotiation itself is a useful exercise

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