



Module 8: Managing Liability and Risk

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Learners' Objectives

- Decide if GAPs certification fits your business model.
- Understand the cost/benefits of GAPs certification.
- Ask appropriate questions of insurers.
- Know how to find information related to liability exposure.

Introduction

- GAPs certification is voluntary (not mandatory).
- Growers of fresh produce need to decide whether to adopt GAPs and get certified.
 - Economic decision
 - Weigh benefits vs. costs

Economic Benefits of GAPs Certification

- Economic Risk Reduction
 - GAPs adoption and certification not 100 percent guarantee of food safety
 - Reduces risk/probability of outbreak
 - Calculate potential economic loss with and without GAPs
- Improved Market Access Opportunities
 - Many markets require 3rd-party GAPs certification
 - Credibility from having 3rd-party certifiers

Economic Costs of GAPs Certification

- Costs of adopting GAPs
 - Large capital investments (e.g. water purification facility)
 - Moderate expenditures (e.g. training on worker hygiene)
- Cost of hiring third party to undertake certification
 - No hard data
 - 2001 estimate: \$300 to \$500 per farm

Case Study: Spinach

- Sept. 14, 2006 – FDA announced spinach contamination due to *E. coli*
- No fresh spinach sales for 5 days
- Spinach from CA off the market for 10 days

Case Study: Spinach

Bagged spinach sales are down four months after outbreak.

In 2007, bagged spinach and salad retail sales values still lag

Percent change in sales value from a year ago for:

January 24- February 24, 2007	August 24, 2006- February 24, 2007
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Percent

Bagged spinach	-27	-43
Bagged salad with spinach	-24	-42
Bagged salad without spinach	-5	-8

Source: Perishables Group, *Facts, Figures & the Future*.

Case Study: Spinach - Market Outcomes

- Whole industry suffered from outbreak, even if only one field was contaminated (negative externality)
 - GAPs certified and non-GAPs certified growers were affected
- In March 2007, fresh produce handlers to service only GAPs certified growers
 - Able to recover faster
 - Market access benefits

Case Study: Cantaloupes

In May 2002, an outbreak of *Salmonella* in the U.S. and Canada was associated with Mexican cantaloupe.

- Shipped through McAllen, TX
- 58 cases identified
- 3rd season of *Salmonella* outbreak from cantaloupes traced to southern Mexico

Case Study: Cantaloupes

- In October 2002, the FDA issued an import alert against all cantaloupe exports from Mexico.
- To be removed from alert, Mexican farmers must petition FDA and provide documentation of food safety/GAPs practices.

Case Study: Cantaloupes

- FDA will conduct on-site inspections with priority to growers with third-party certification of food safety practices/GAPs.
- With this priority, GAPs certified producers can recover more quickly.
 - Can access markets faster than non-GAPs producers
 - Market access benefits (first-mover advantage)

Case Study: Green Onions

- In November 2003, outbreaks of Hepatitis A in TN, NC and GA were associated with undercooked green onions.
 - One person in TN died.
 - 500 people contracted Hepatitis A from PA diner.
- FDA identifies four Mexican firms as source (not GAPs certified).

Case Study: Green Onions

GAP status	Impact on:	
	Volume of green onion sales	Demand for other products
GAPs	Fairly constant	No impact
Partial GAPs	Down a bit	Some impact
No GAPs	Down by 50 percent	Down by about 30 percent
No GAPs and named by FDA	No sales and most fields plowed under	Shippers stopped selling all or almost all products from these growers

Estimated losses: \$10.5 M

Having a Risk Management Model Is Important

- Purpose:
 - Orderly management of risks
 - Reduces economic losses
 - Highest return on risk management dollars
 - Identification of training needs for management and employees

Steps in a Risk Management Model

- Risk Identification
- Risk Evaluation
- Risk Treatment
 - Insurance is one of many risk treatments
- Selection and Implementation
- Program Monitoring

Insurance Is One Mechanism to Protect Against These Risks

- What types of insurance policies are out there for food safety-related risks?
- What are their characteristics?
- Growers need to make informed insurance purchase decisions.

Insurance Coverage Options for Risks Related to Food Safety

- Increased concerns about outbreaks of food-borne illness
 - Tomatoes (*Salmonella*)
 - Spinach (*E. coli*)
- Outbreaks are becoming more frequent
- Economic losses due to outbreak:
 - Monetary damages from lawsuits
 - Financial damage from product recall/warning (cost of taking off shelf, catastrophic drop in sales, damaged reputation, business interruption, etc.)

Insurance Coverage Options

- General farm liability insurance
- Commercial business liability insurance
- Product liability insurance
- Product recall insurance
- Accidental/product contamination insurance

Insurance Coverage Options

- Malicious tampering insurance
- Combination policies
- Excess/umbrella/surplus lines of insurance
- Adjusted gross revenue (AGR) or adjusted gross revenue-lite (AGR-Lite) insurance

General Farm Liability Insurance

- Protects against liability claims for bodily injury and property damage arising out of one's premises and/or operations.
- Protects against lawsuits due to on-farm accidents.
- Recommended for pick-your-own operations and those with on-farm stands.
- Covers lawsuits from activities considered "farming."

Commercial Business Liability Insurance

- Same as general farm liability but may cover activities considered “non-farm” or “non-agricultural.”
- For growers that process fresh produce and have processing facilities.
- For growers that sell in farmers markets and sell large proportion that originate off-farm.

Product Liability Insurance

- Protects against claims of injury caused by a defective or hazardous product (e.g., contaminated fresh produce).
- Provides protection if fresh produce causes injury or illness.
- Strictly covers claims of injured parties, not recall costs.
- Premium estimate: \$1,000 per year for \$1 million of protection

Product Recall Insurance

- Covers actual or direct costs of a product recall.
 - Costs associated with getting contaminated product off the shelf and destroyed; cost of replacement; transport costs.
- Does not cover indirect costs.
- Intended for growers that were contaminated (source).

Accidental or Product Contamination Insurance

- Covers both direct and indirect costs of product recall.
- Examples of indirect costs – third-party expenses, loss of profit due to recall (lost confidence), business interruption losses.
- Intended for growers that were contaminated.

Malicious Tampering Insurance

- Covers direct and indirect losses of product recall, but also covers losses from criminal actions of sabotage against grower.
- Intended for growers that were contaminated.

Combination Policies

- Combines several different policies.
- For example, you can combine general farm liability and homeowner's insurance if the family operations are smaller.
- Typically have lower premiums compared to the cost of purchasing separate policies.

Excess/Umbrella/Surplus Lines of Insurance

- To provide for coverage when underlying available insurance is “lacking” – hard-to-place risks.
- Not regulated under state laws – premium rates not regulated and no guarantee protection from Insurance Guaranty Association.

Adjusted Gross Revenue (AGR) or Adjusted Gross Revenue-Lite (AGR-Lite)

- Whole-farm revenue insurance based on tax forms.
- Covers revenue losses below a guarantee – if losses are from insured cause of loss.
- Can cover part of revenue losses of non-contaminated growers if losses are due to market fluctuation (industry-wide drop in prices due to a product warning).

Case Study Activity

Tort Definition

- A civil wrong
- A wrong for which the courts provide redress in a civil action

Types of Torts

- Strict
- Intentional
- Negligent

Products Liability

- Defective design/production
- Theories of liability
 - Strict liability (liability without fault)
 - Not available in North Carolina
 - Negligence (fault)

Products Liability (cont'd)

- Express warranties
 - Subject to negotiation
 - Interpretation
 - Usage of the trade
 - Course of dealing
- Implied warranties
 - Merchantability
 - Fitness for a particular purpose

Strict Liability Torts

- Liability without fault
- Ultra-hazardous activity
- Duty to make safe
- Products liability

Intentional Torts

- Intent
- Punitive damages available
 - Unrelated to actual damages
 - Actual damages need not exist
 - Also available for quasi-intentional torts
 - Gross negligence/reckless disregard

Negligent Torts

- Duty
- Breach of duty
- Proximate cause
- Actual damages

Negligent Torts (cont'd)

- Defenses to negligence
 - Contributory negligence
 - Comparative negligence
- Statutory modification
- Liability waivers & disclaimers

Statutory Liability

- Administrative (civil)
- Criminal
- Private right of action

Liability for Acts of Independent Contractor

- Vicarious liability
 - Question of state law
 - General test: Was the activity inherently dangerous?
 - Distinguish from strict liability test.
 - Independent Contractor must be negligent

Burden of proof

- Civil
 - Preponderance of the evidence
- Criminal
 - Beyond a reasonable doubt

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***For assistance in finding authorized insurance services in North
Carolina:***

- *N.C. Department of Insurance*

***For assistance finding insurance, regularly licensed companies and
surplus lines:***

- *MAP 919-733-9811*

For help with unauthorized insurance:

- *1-800-546-5664 Consumer services*
- *919-733-7487 Agent services*