- Capitalized earning approach
- Cash flow method
- Cost to create approach
- Debt assumption method
- Discounted cash flow
- Excess earning method
- Multiplier of earnings
- Multiplier or market valuation
- Owner benefit valuation
- Rule of thumb method
- Tangible assets method
- Value of specific intangible assets

There are pros and cons for each method. The method selected should be relevant to the type of business being valued. See the Appendix Section (VII) for a description of each of the methods listed above. Regardless of what method is used, the business owner needs to understand the valuation method used and the reason for using the method so that he or she can defend the price of the business. The buyer needs to understand the reasoning behind the price so that he or she can evaluate the level of personal and financial risk required to make the purchase and own the business.

2. Reasons why businesses fail

There are many reasons why businesses fail. As a professional, you are in a good position to provide a person who wants to start a new enterprise or a person who is already in business with information so the following problems can be avoided.

a. Management:

- *Failure to commit* – A business owner must be willing from the very beginning to commit money, time, and other resources. He or she must be willing to come in first, leave last, get paid last, and in many cases, get paid less.

- *Failure to seek help when in trouble* – It is not uncommon for business owners to wait until it is too late to get some help. A new businessperson should put together an advisory team of people who are indirectly affiliated with the company such as a banker, accountant, lawyer, mentors, suppliers, family or close friends with experience in a similar business, and other business resources groups.

b. Marketing:

- *Failure to promote* – Adequately promoting one's product/services is essential. Ranchers and business owners who don't market because sales are so good that they think they don't need to promote, or sales are so bad they think they can't afford to promote, are headed for failure.

- *Failure to introduce new products/services* – Every product goes through a life cycle of introduction, growth, maturity, and decline. Businesses will not survive without new products or services. Although sales can be made on products/services in the decline stage, sales become increasingly unprofitable.

- *Failure to pay attention to the outside world* – Market and global factors will impact an enterprise. Business owners have a difficult time paying attention to market and economic conditions, competitors, environmental changes, trends, and other external factors that affect an enterprise because they are so busy with the day-to-day operations.

c. Financial:

- *Failure to manage cash flow* – Cash flow is the heartbeat of any enterprise or business. It is essential that a new business owner knows the source and use of every dollar in the business. The loss of one customer or one sale should not cause irreparable damage; however, a mismanaged cash flow that results in nonpayment of workers compensation taxes or a missed payroll can put a person out of business.

- *Failure to manage accounts receivables and customers' accounts* – It is not uncommon for new business owners to fail to collect from customers. A sale is not a sale until money is collected from the customer. Customers won't pay if the business doesn't take time to invoice them. A good set of credit and collection policies can be a major factor in the business's profitability and survivability.

- *Failure to show earnings* – If a new business or enterprise doesn't show that the business owner will be able to draw an income within three years, it is a hobby, not a business.

- *Failure to cover overhead* – A person must know exactly what it costs to produce the product/service and allocate a portion of the overhead cost to each until sold. Volume will not correct the problem if the product/service is incorrectly priced.

- *Failure to understand cost versus price* – It is the market, not the business's costs, that ultimately determines the price at which one can sell one's product or service. While the cost establishes the level below which one cannot sell one's unit and make money, the maximum price for which one can sell a product or service is determined to be somewhere between the price floor and the price ceiling, depending on the market.

- *Failure to understand financial reports* – "My accountant handles my financials," is a common statement made by business owners. However, the accountant is not going to pay the loan when the company fails. It is essential that the business owner know his or her financial records. To understand one's business, the owner must understand the statement of cash flows, the balance sheet, and the income statement, and how they connect with each other.

- *Failure to use money wisely* – Cash shouldn't buy buildings and equipment, and long-term loans shouldn't pay for inventory. A business owner needs to know how to apply for loans with terms that match the uses of funds.

3. <u>Crises management</u>

A crisis is anything that has the potential to negatively affect the stability, reputation, or creditability of a business. A small business or a start-up business must be prepared, even more so than a large business, to handle a crisis, even a small crisis, because the margin of error is so much smaller. Crises management should be a top priority because disruption or loss of business happens – and when it does, it can be very serious. Because so many businesses operate with limited resources, including time, business owners often fail to plan for crises management. Good business management includes developing plans to cope with unforeseen events that can seriously disrupt operation.

a. There are five core types of business crises:

Organizational crises – Organizational crises are events that disrupt the operation of the business. For example, the loss of a supplier of pesticide at the beginning of the summer can seriously disrupt crop production. A threatened lawsuit by a disgruntled neighbor over a dispute over water rights can suddenly take precedent over the daily operations. Management succession can create a crisis within a family business.

Employee-related crises –The people within a business can disrupt operations in many ways, intentionally or unintentionally. For example, violence or drugs in the workplace, or an accident can create an emergency situation. The loss of a key employee can seriously disrupt management indefinitely.

Customer-related crises – Although the business owner has little control over customer-related crises, it is extremely vulnerable to predicaments such as product-liability problems, loss of a major customer, customer payment delays or bankruptcy.

External crises – External crises are devastating to a business. A business has very little, if any, control over natural catastrophes such as weather, fire, or earthquakes or man-made disasters such as power outages, gas leaks, or industrial accidents. Even changes in zoning and local political issues can create chaos in a business.

Personal crises – Usually the last in priority, but often the most serious, personal crises can be devastating to a business. Personal crises include the death or loss of spouse or family member, a serious illness or accident, or personal, marital, or family problems. Family businesses face personal crises when business succession is not handled properly within the family.

b. Proactive crises management

The most important thing a person can do is to plan ahead for the inevitable — do not wait until a disaster happens to start planning. The following steps, recommended by business crises management counselors, can help a businessperson prepare for and manage a crisis, no matter how small the business.
Get the facts – The first step is to get accurate information about the crisis and its potential damage. By knowing the facts and understanding the elements of the crisis, the owner can challenge rumors, exaggerations, and negative perceptions.

Form a crisis team – Define roles and responsibilities as well as how to reach one another day and night. Develop different scenarios and even simulate mock emergencies to practice responsiveness to the five core types of crises (above).

Identify weaknesses in the business – Forecast potential crises by preparing a list of crises that might be more likely to occur and another list of crises that might not be as likely to occur but would be more devastating to the business. Compare both lists for similar weaknesses in the business that occur on both lists and develop a plan to respond to those vulnerabilities before they turn into a crisis, either by eliminating them or lessening their risk to the business in the event a crisis occurs.

Develop an action plan – For each potential crisis, develop an action plan that includes a simple checklist of steps that will be followed. The plan should include the team members assigned to certain responsibilities and important phone numbers.

People who have weathered a business disaster say that the worst part of the experience is the element of surprise. A well-thought-out plan will remove some of the damage out of the crisis should it occur.

c. **Recovering from a crisis**

If a crisis does occur, the best thing a business owner can do is to avoid taking a defensive role or acting as if nothing has happened. The crisis will not disappear by ignoring it. Negative information (whether correct or incorrect) about a business can spread very quickly. The business owner should communicate with family, business team, customers, suppliers, and community that the crisis is being managed effectively. Quick, practical communication is important to reassure everyone who is directly involved in the business as well as the public. If the media becomes involved, proactive communication includes providing a brief statement about the crisis and clarification of corrective steps that will be taken to overcome the crisis.

d. **Plan ahead for the next crisis**

Surviving a crisis offers the management an opportunity to review how the crisis occurred, analyze how the crisis was handled, evaluate the performance of each member of the crisis team, and prepare a plan for how to handle a similar crisis in the future.

In summary, although crises are inevitable, the majority of them can be managed. Good business management includes developing a plan to handle unforeseen events that can seriously disrupt business operation. No one should just sit and wait for a crisis to hit. With pre-planning, good communication, and effective follow-through, a business can be managed to survive a crisis.

D. Resources

- An excellent resource for business planning assistance are the Small Business Development Centers, located throughout the state. For a list of Wyoming offices, see the Resources Section (6) of this guide.

- Gail Gordon, Business Development and Family Economics Specialist, University of Wyoming Cooperative Extension Service, College of Agriculture, P.O. Box 3354, Laramie, WY 829071, (307) 766-5373.

LEGAL

LEGAL

A. Selecting the right legal form for an alternative agricultural business

1. Introduction

Selecting the right legal form to operate any agricultural business requires careful planning. This is particularly true for farmers and ranchers who are considering high risk or nonconventional enterprises like specialty crops, ranch recreation, or value-added activities; bringing in young family members as co-owners to operate such businesses; or soliciting investors to finance them. Which legal form—sole proprietorship, partnership, corporation, limited liability company, statutory trust, or their hybrids—can best address the needs of these producers?

The purpose of this article is to aid readers and their customers in weighing which legal form might best serve their alternative agricultural businesses. Section II describes five legal forms and five hybrids. Section III discusses several reasons producers might select a particular form and tie these objectives to particular characteristics of the legal forms previously discussed. The article concludes with two checklists producers might use in preparing to work with their attorneys and accountants in making this decision.

This article is based upon a longer draft extension bulletin on the same topic.[1] The article provides an overview of very complicated legal issues. It does not discuss how state and federal securities laws might impact this decision and only briefly touches on some of the tax questions involved. Farmers and ranchers are encouraged to work closely with their legal and financial advisors in selecting the best legal form for their businesses. This article is not intended to provide legal advice or substitute for competent professional assistance.

[1] ALAN SCHROEDER & GAY GEORGE, SELECTING THE RIGHT BUSINESS FORM FOR YOUR AGRICULTURAL BUSINESS (Draft September 2001).

2. Legal forms currently available to operate alternative ag enterprises in Wyoming.

a. Five different legal forms:

1) *Sole proprietorships*
A sole proprietorship is established the moment an owner begins operating a business for him or her. Sole proprietors are not obligated to file any documents, either locally or with the Wyoming Secretary of State, to commence operations.

Sole proprietors are entirely responsible for management decisions (though they may employ various sales and purchasing agents to help conduct their businesses). Sole proprietors are personally liable for any unpaid business obligations. Income from sole proprietorships is included on the owners' individual federal tax returns and is subject to self-employment taxes.

Sole proprietorships end when their owners stop operating, sell their assets, become incapacitated, or die. Personal and business creditors and others may also seek to terminate sole proprietorships involuntarily through court actions that seize the business's assets.

2) *General partnerships*
A general partnership is created when two or more persons agree to operate a business together for profit. No specific documents need be filed with the Wyoming Secretary of State to create general partnerships. Partners typically prepare a General Partnership Agreement, either orally or in writing, that details the partnership's purpose and duration, outlines the partners' relative rights and duties in the business, allocates profits and losses, and

provides for partner's voluntary or involuntary withdrawal and reimbursement.

Absent contrary terms in the Partnership Agreement, statutory provisions authorize general partners to jointly manage the business and split profits and losses equally among the partners, regardless of their relative contributions. Under these statutory defaults, the majority rules when conflicts over day-to-day management decisions arise. Unanimous consent is required when the decision involves the addition of a new partner, modification of the Partnership Agreement, or matters outside the ordinary course of business. Partners are individually and jointly liable for any obligation of the partnership.

Partnerships are pass-through entities for federal income tax purposes. This means the partnership entity pays no taxes and only files an information return; individual partners pay federal income and self-employment taxes on their allocated share of the partnership's profits.

Partnerships-at-will (partnerships with no fixed duration and no specific activity to be completed) may be terminated at any time, either by an exiting partner or any recipient of that partner's interest (e.g., a purchaser, creditor, heir, ex-spouse). Durational partnerships (those with a fixed duration or a specific purpose to be accomplished) are terminated, among other reasons: a) when the duration or purpose is completed; b) upon consent of the partners; c) upon the happening of a terminating event, specified in the Agreement; or d) upon the request of a current partner following the exit of another.

3) *General business corporations*

Incorporators establish a general business corporation by filing its Articles of Incorporation with the Wyoming Secretary of State. Incorporators are not required to be shareholders. Day-to-day business operations are normally governed by the corporation's Bylaws, adopted by the corporation's board or shareholders, in accordance with its Articles and the Wyoming statutes.

General business corporations are distinct entities from their shareholder-owners. They may, among other things, sue and be sued, acquire and transfer property, establish debt, make contracts, and transact any lawful business. General business corporation affairs are managed by three groups:

- Shareholder-owners who exercise their rights by electing directors, establishing Bylaws, and voting on certain other matters.
- Directors who exercise their powers by establishing general policies and naming the officers and employees.
- Corporate officers and employees who are in charge of the day-to-day management of the business.

Typically, shareholders are only liable for corporate debts and obligations to the extent of their required contributions. Corporate profits are distributed, following a declaration of dividends by the board of directors, based upon the types and numbers of shares each shareholder owns.

General business corporations may be taxed for federal income tax purposes in two ways: as regular Subchapter C corporations or as specially designed S corporations. Under Internal Revenue Service (IRS) rules:

- Subchapter C (regular) corporations: Pay income taxes on their corporate earnings. Dividends distributed by Subchapter C corporations are also taxable income for their shareholders.

- Subchapter S (specially designated) corporations: Designated corporation is taxed like a partnership. No income taxes ordinarily paid at the corporate level. Share owners must pay income taxes on their proportionate share of any corporate earnings, even though the corporation does not distribute any dividends. Unlike general partners Subchapter S shareholders are not obligated to pay self-employment taxes on their share of the corporate profits.

  To become a Subchapter S corporation, the shareholders must file a request with the IRS. To qualify for a Subchapter S designation, the corporation must have: a) no more than seventy-five (75) shareholders; b) only one (1) class of stock; c) no nonresident aliens as shareholders; and d) only natural persons (other than certain estates, trusts, and tax exempt organizations) as shareholders.

General business corporations may be terminated in three ways. First, the corporation's board of directors and shareholders may terminate them voluntarily. Second, the Wyoming Secretary of State may terminate them administratively, among other reasons: a) for failing to maintain a registered agent in the state; b) for failing to submit annual license taxes and/or annual reports; or c) following a determination that cessation would be in the public interest. Third, general business corporations may be terminated judicially if, among other reasons, a petitioner can show: a) the directors are deadlocked, the shareholders cannot break this deadlock, and irreparable injury has or will occur to the business or shareholders; b) the shareholders are deadlocked and have not been able to elect successors to directors for at least two annual meetings; c) illegal, oppressive, or fraudulent actions by the board or those in control; or d) misapplication or wasting of corporate assets.

4). <u>*General limited liability companies*</u>

General Limited Liability Companies (LLCs) have characteristics of both general partnerships and corporations as well as attributes unique to themselves. LLCs are separate legal entities from their member-owners, having all the powers necessary or convenient to accomplish the purpose(s) for which they are established. LLCs are established by filing Articles of Organization with the Wyoming Secretary of State.

Member-owners of general LLCs also prepare Operating Agreements, setting out the rules governing day-to-day management, transfers of rights, dissolution, and allocating powers among member-owners. LLCs may be member-managed or manager-managed, depending upon the terms of the Articles of Organization and Operating Agreements. Absent contrary terms in these documents, the default provisions in the Wyoming statutes provide that LLCs are to be member-managed and authority proportionally based upon each member's relative contributions. The Operating Agreement may also specify how profits and distributions will be handled. If the Operating Agreement is silent, the default provisions provide that distributions will be based upon the member-owners' contributions. Member-owners of LLCs generally have limited liability. Member-owners can choose whether to have their LLC taxed either like a C corporation or a general partnership.

Member-owners' interests in a general LLC may be transferred or assigned as provided in the Operating Agreement. Transferees of this interest receive the transferor's rights to any profits or distributions from the LLC. However, transferees receive no right to participate in the company's management, unless unanimous written approval is given by the remaining member-owners or the Operating Agreement provides otherwise.

The Wyoming statutes provide that the life of a general LLC is thirty years or the period specified in the Articles of Organization. A LLC is dissolved and its affairs must be wound up: a) if its duration or purpose expires; b) member-owners unanimously agree in writing to dissolve it; or c) a member-owner dies, retires, resigns, is removed, becomes bankrupt, dissolves, or any other event occurs that terminates the member's continued membership unless the remaining member-owners unanimously agree to continue, in accordance with rights specified in the Articles of Organization.

5). *Statutory trusts*

A statutory trust is established by filing a Certificate of Trust with the Wyoming Secretary of State. Statutory trusts are like ordinary trusts, with trust property held by the trust, trustee(s) named to manage the property, a trust document prepared governing the trust's operation, and beneficiaries established to whom benefits from the trust are to be distributed. Unlike ordinary trusts, however, statutory trusts are created to operate a business. Trustees of statutory trusts typically have more day-to-day management responsibilities and face greater risk than trustees of ordinary trusts. The creator of a statutory trust also prepares a Governing (Trust) Instrument, outlining the trust's purpose and allocating authority, rights, and duties among the trustee(s) and beneficial owners. While trustees normally are charged with the day-to-day management of the business, the beneficial owners may also be authorized to vote on certain matters.

Depending upon the terms of the Governing Agreement, beneficial owners may: a) make an initial contribution to; b) buy into; or c) be granted a beneficial interest in it by the trust's creator. Beneficial owners have the same level of liability as shareholders of a general business corporation. Profits and other distributions are determined by the Governing Instrument. If the Governing Instrument is silent, the default provisions of the Wyoming statutes base distributions upon each beneficial owner's proportionate share of the total beneficial interests in the trust. The trustee, acting in accordance with the relevant documents, may specify whether earnings from the statutory trust will be taxed like a regular C corporation or a partnership.

Beneficial interests are transferable in accordance with the Governing Instrument. In the absence of unanimous consent from the trustee(s) and other beneficial owners or a specific provision within the Governing Instrument, a subsequent transferee has no right to participate in, be kept apprised of, or become a beneficial owner in the statutory trust.

Statutory trusts will terminate in accordance with the Governing Instrument. Beneficial owners may also seek judicial dissolution based upon general trust principles.

b. Hybrid forms

1). *Limited partnerships*

A limited partnership consists of one or more general partner(s) and one or more limited partner(s). To establish a limited partnership, the co-owners must file a Certificate of Limited Partnership with the Wyoming Secretary of State. The name of a limited partnership must include, without abbreviation, the words "limited partnership." Owners of a limited partnership also prepare a Limited Partnership Agreement, outlining the purpose of the business and fixing their relative rights and responsibilities. The Agreement may be oral or in writing.

The general partners are responsible for managing the limited partnership's business. General partners are absolutely liable for any unpaid obligations of the limited partnership. Limited partners are essentially passive investors in the limited partnership. Their liability is normally limited to their required contributions to the business.

The Limited Partnership Agreement normally establishes how profits and losses are to be distributed among the owners. Absent a specific term in the Agreement, statutory defaults allocate profits and losses based upon the co-owners' relative contributions to the business. Earnings of the limited partnership are not taxed at the entity level but the partners will be obligated to pay federal income taxes on their allocated shares. Earnings allocated to general partners will normally be subject to self-employment taxes; earnings of limited partners typically are not.

General partners may dissociate (leave) a limited partnership at any time, even though such actions constitute a breach of contract. Limited partners may only withdraw in accordance with the Limited Partnership Agreement.

Limited Partnerships normally must dissolve and their affairs be wound-up when: a) their duration or purpose ends; b) an event specified in the Limited Partnership Agreement occurs; or c) the limited partners fail to appoint a general partner after the last general partner(s) withdraws. Except in the last instance, the partners may unanimously agree to continue the business. Partners may also request that the district court dissolve their limited partnership following a finding that it is not reasonably practicable to carry on its business in conformance with the Limited Partnership Agreement.

2). *Registered limited liability partnerships*.
A Registered Limited Liability Partnership (RLLP) is a general partnership that provides limited liability to all its partners. It is created by filing a Statement of Registration with the Wyoming Secretary of State. Its

business name must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," or a statutorily authorized abbreviation (e.g., "R.L.L.P," "L.L.P.," "RLLP," or "LLP"). The Wyoming Statutes authorize professionals to use the RLLP form, if neither the applicable licensing statute nor licensing body prohibits it.

Aside from the broad limited liability protections afforded their general partners, RLLPs are subject to the same rules governing general partnerships. Partners of this form remain liable for their own negligent acts and the negligence of those whom they are supervising. Partners of RLLPs may also be liable for any obligations they personally guarantee or for any obligations that a majority of the partners agree to be responsible for, unless otherwise provided for in any agreement between the partners.

3). *Close corporations*

A close corporation is a Wyoming business corporation with thirty-five (35) or fewer shareholders whose filed Articles of Incorporation and stock indicate that the business is being operated as a close corporation. The Wyoming Statutes permit shareholders of close corporations to modify the typical rules governing general business corporations in several ways:

- Formalities: The shareholders may eliminate directors and officers for the corporation as well as bylaws and annual meetings and operate the business like a partnership.

- Transferability: The shareholders may impose limits on the transferability of the close corporation's stock, by: a) giving the corporation a right-of-first-refusal, whenever a shareholder attempts to sell his/her stock; b) requiring the corporation to buy a decedent's or his/her co-owner's stock; and c) authorizing buy-sell agreements, unanimously consented to by the shareholders.

- Minority rights: The Wyoming statutes establish special rules protecting minority shareholders' rights (see discussion of minority rights below).

Close corporation stock may only be transferred to "qualified shareholders." These are purchasers whose ownership is permitted under state or federal tax law and will not impose personal holding or other penalties on the corporation. Otherwise, close corporations are governed by the same rules outlined earlier for Wyoming general business corporations.

4.) *Flexible limited liability companies*

Flexible Limited Liability Companies (FLLCs) are created by including within their filed Articles of Organization a specific statement indicating that the business will be operated under Wyo. Stat. Ann. § 17-15-144. This statute provides:

- Ownership: FLLCs may have a single owner member (general LLCs must have at least two owner-members).

- Transferability: Interests in FLLCs are freely transferable, except as provided in the

Operating Agreement. The Operating Agreement may automatically authorize transferees to participate in management of the business.

- Continuity: FLLC Operating Agreements may also provide for the business's continuation, following the occurrence of events, which would otherwise terminate a general LLC.

- Liability: The Articles of Organization for a FLLC may allow for the personal liability of officers, agents, managers, or members. Otherwise FLLCs are subject to the same rules governing a general LLC.

5). *Close limited liability company*

Wyo. Stat. Ann. § 17-25-103 defines a "Close Limited Liability Company" (CLLC) as "a limited liability company whose Articles of Organization contain a statement that the company is a close limited liability company." The CLLC must also place this statement in a conspicuous manner in the Operating Agreement and upon any certificates of ownership in the business. The FLLC provisions, described above, may not be applied to businesses organized as CLLCs.

The rules governing the establishment and operation of CLLCs look very much like those for the general LLC. CLLCs may have a single member-owner. CLLCs may be either member- or manager-managed.

The rules governing withdrawal from a CLLC and its dissolution are significantly different from those governing a general LLC. A member-owner may only withdraw from a CLLC in accordance with the terms of the Operating Agreement. If the Operating Agreement is silent regarding withdrawal, a member may only withdraw with the unanimous consent of all other members of the company. A withdrawing member-owner may only receive part or all of his contributions to the CLLC if the business assets are sufficient to cover all other obligations (other than those owed to other member-owners for their contributions) and: a) the remaining member-owners all consent; b) the CLLC is dissolved; or c) the Articles of Organization or Operating Agreement so provides. A CLLC must be dissolved: a) when the period fixed for its duration expires; b) upon unanimous written agreement of all member-owners; or c) at the time or upon the occurrence of an event specified in the Operating Agreement.

3. Choosing among these forms for an alternative agricultural business: some points to consider

a. Rationale(s) or objectives in selecting a particular business form

The best reason to select a legal form is that it satisfies the specific needs of producers and their families. For simplicity we will group these requirements/objectives into eleven categories. No attempt is made to prioritize this listing as to which objective might be most important. Table 1 contrasts these objectives with selected characteristics of the ten legal forms discussed.

1). Legally available
All 10 forms described in this article may be used by a Wyoming farm or ranch. However, producers who also farm or ranch in South Dakota or Nebraska must be

careful; both states impose restrictions on the use of multi-ownership forms like corporations and LLCs.[2] Readers with customers in this situation should alert them to this fact and make sure they inform their attorneys of their out-of-state agricultural lands as well as any out-of-state business they might conduct.

2). Easy to enter and operate

Sole proprietorships and general partnerships are the with the Wyoming Secretary of State and the general business corporation and close corporation forms also require submission of annual reports to the Secretary of State. Table 2 describes some of the state licensing or filing fees associated with each of these forms.

In reality the major expense, in establishing a legal form for a multi-owner business will be in preparing the necessary agreements governing the business's operation (e.g., the Partnership Agreement, Operating Agreement, Bylaws, or Governing Instrument). Reality also indicates that spending money up front for a good agreement will save farmers and ranchers headaches in the long run.

3). Simplifying and sharpening day-to-day management

A good governing document will clarify day-to-day general business corporation requires annual meetings of the co-owners and formal meetings of the directors. Qualifying businesses may opt for the close corporation form and avoid most of these formalities by choosing to operate their corporate farms or ranches like a partnership.

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[2] **Matthew M. Harbur, *Anti-Corporate, Agricultural Cooperative Laws and the Family Farm*, 4 DRAKE J. AGRIC. L. 385, 387-91 (1999).**

Some co-owners want to be involved in every decision. In contrast, many retired farmers and ranchers are not interested in managing the business's day-to-day operations. Other owners may want to specialize their management skills, delegating responsibilities for other aspects of the business to a co-owner or third party manager. The LLC and partnership forms (and their hybrids) offer great flexibility in allocating management authority. Owners may agree to centralized management (manager-management in the LLCs or a designated managing partner in the partnership), an entirely decentralized management shared by all the owners, or iterations in-between.

Readers should be particularly aware of the statutory default or gap-filling provisions that come into play when the relevant documents do not specifically address the question of authority. Under these defaults:

- Partnerships: General partners have equal management authority; disputes on ordinary business matters will be based upon majority rules.

- LLCs: Member-owners' authority and voting rights are based upon their relative contributions.

- Corporations: Shareholder voting rights are based upon the number and types of shares they own. The Articles of Incorporation and Bylaws may impose super-quorums or super-majority voting requirements for certain matters. Shareholders may also employ voting proxies, voting trusts, and other agreements to alter voting rights.

Regardless of which noncorporate form (e.g., partnership, LLC, or their hybrids) is involved, co-owners must make sure that customers and other third-parties understand who is authorized to act on behalf of their businesses. General partnerships are particularly vulnerable, since partners are normally assumed to have authority to make agreements on behalf of the partnership in the ordinary course of business. Exiting (dissociating) partners should also notify former customers and the public to avoid personal liability for subsequent actions of the partnership. Wyo. Stat. Ann. § 17-21-703(b) makes exiting partners liable for up to two years, following dissociation, for most commercial nonreal estate credit transactions (other than agricultural liens) if creditors can show they:

- Reasonably believed the at the time of the transaction that the dissociated partner was a partner;
- Did not have actual notice of the dissociation;
- Did not have record notice of the dissociation, as a result of filed statements of dissociation or authority; and
- The obligation would have bound the dissociated partner if s/he had been a partner in fact.

The Wyoming statutes provide no instructions regarding the LLCs' liability if a member-owner—acting outside of his/her authority—attempts to obligate the company.

4). Limited liability

Aside from sole proprietorships and general partnerships, all other legal forms provide some (limited partners in limited partnerships) or complete limited liability to owners, at least theoretically. Why just theoretically?

First, Wyoming courts have indicated that they will disregard the corporate form and hold shareholders personally liable when, among other reasons:

- Corporate formalities have been disregarded (e.g., failure to hold stockholder or director meetings).

- Personal and business assets have been co-mingled.

- The corporation is under-capitalized, given the obligations it is reasonably expected to encounter.[3]

Similar arguments may be made for disregarding the limited liability company form in similar circumstances, though the Wyoming Supreme Court has yet to address this question. In contrast, the Wyoming legislature has specifically provided that failure to follow technical requirements shall not be grounds for disregarding the close corporation form and holding its shareholders personally liable.

[3] ***AMFAC Mechanical Supply Co. v. Federer*, 645 P.2d 73 (Wyo. 1982).**

Second, practical problems lessen the benefit and promise of limited liability for many farms and ranches using these forms. For many producers, for example, their business property includes their most economically valuable assets. Moreover, under each of these forms owners will be held personally liable for any business obligation they might guarantee. Additionally, owner-employees are personally liable for their own negligent or criminal actions while working for the farm or ranch business. Furthermore:

- Limited partners will be treated like general partners for liability purposes if they participate in the control of the business;

- Partners in RLLPs remain liable for their own negligence and the negligence of those whom they supervise.

- Member-owners of FLLCs and partners of RLLPs can agree to be personally liable for their company's obligations.

Producers should not rely solely on their business's legal form to protect their personal assets from business creditors. Producers should:

- Have a separate risk management plan in place to address liability exposures.

- Make sure their business has adequate liability insurance to cover potential civil suits brought against the business and themselves, in their capacities as directors, officers, employees, and/or agents.

- Think carefully before guaranteeing any obligation of their business.

5). Generating additional financing and investors

All of these forms permit the business to go into debt to finance its operations. Subject to the applicable governing documents, all of the multi-ownership forms permit existing owners to solicit new co-owners.

Pragmatically, however, the fact that a business can use equity financing does not necessarily mean that it will be able to or even should:

- Who—aside from family members or friends—will be interested in investing in the farm or ranch?

- What do potential new owners want in order for them to invest?

- How will these investors be solicited?

- How might such investments dilute the current owners' authority or create new conflicts?

Different types of investors may prefer different legal forms. Producers should talk with their business advisors to determine which form is favored by their intended investors.

Seeking new outside investors may subject the business to state and federal securities laws. Small businesses may be exempt from registration requirements under specific federal exemptions. Nevertheless readers should alert their customers of this possibility if obtaining outside investors is a primary goal.

6). <u>Fair distributions and compensation</u>.

Partnerships, LLCs, and business trusts (and their hybrids) generally may allocate business profits and losses as they see fit through their applicable documents. Both partnerships and LLCs permit allocations to be made based upon services provided to the business. Profit allocation in statutory trusts is normally tied to each beneficial owner's proportionate share of total beneficial interests but remember—the creator of a statutory trust may distribute beneficial interests to individuals, even though they did not make any capital contributions.

Allocating profits in the corporate form is less flexible. It is typically tied to the type(s) and number of shares owned which in turn are based upon the capital contributions made when the stocks were issued. Shareholders have no rights to dividends until they are declared by the corporation's board of directors.

What happens if the relevant documents do not address the distribution of profits or compensation. The defaults under Wyoming law provide:

- Partners in <u>general partnerships</u> will receive an equal share of profits from general partnerships, regardless of their level of contributions. Partners have no right to remuneration for services performed, except in winding-up the business.

- Profits in <u>limited partnerships</u> are allocated based upon contributions. Managing partners have no right to remuneration for any services performed, other than in winding-up the business.

* Profits and losses in LLCs and their variations are to be allocated based upon the relative contributions of the owner-members. The statutes are silent regarding compensation for services provided to the company.

* Profits and losses from statutory trusts are to be allocated among beneficial owners of statutory trusts based upon the proportion of the entire undivided beneficial interest that they own.

7). Maximizing after-tax income.
Most producers want the legal form they adopt to assist them in taking advantage of peculiarities in the federal income tax code. These producers are interested in how business income will be taxed, what deductions may be available (either for themselves or their businesses), and what the tax consequences will be if the business is terminated or their interest bought-out.

Income from an agricultural enterprise is taxed as personal income for the sole proprietorship. Regarding partnerships, LLCs, business trusts, and their hybrids, co-owners can request that the IRS tax their business like a Subchapter C corporation or like a partnership. Solely-owned FLLCs and CLLCs will be treated like sole proprietorships unless their owners' indicate they want their businesses taxed like corporations.

Persons basing their choice of business form solely upon its federal income tax consequences must be aware that differences do exist:

* Allocations: Partners and owner-members of LLCs may allocate income and losses in any reasonable

manner, provided only that it has a substantial economic effect (i.e., its sole purpose may not be to simply minimize taxes).

- Self-employment taxes: Profits from the sole proprietorship and general partnership are subject to self-employment tax.

- Fringe benefits (e.g.,housing and meals, life or medical insurance):

    - Sole proprietorships and partnerships: Generally not deductible (proportion of medical insurance cost are).

    - Subchapter C corporations: Generally fully deductible.

    - Subchapter S corporations: Shareholder-employees, holding two percent or more of the stock of a Subchapter S corporation, will be treated like sole proprietors for purposes of fringe benefit deductions.

- Business Losses:
    - Sole Proprietors: Fully deductible.

    - Partnerships and Hybrids: General partners may deduct all such losses—even exceeding their basis and loans to the partnership—to the extent of their share of the partnership's liabilities.

- Subchapter C Corporations: Not deductible by shareholders.

- Subchapter S Corporations: Shareholders may deduct their share of the business's losses only up to their basis in the stock they own—generally the value of the cash and other property they contributed to obtain their interest—and loans they have made to the corporation.

- LLCs (and Hybrids): Owner-members may also deduct their share of the business's losses, beyond their initial basis, by their share of the company's debts and obligations.

Federal tax laws impose special rules for deducting losses when co-owners do not materially participate in the business. These passive loss rules permit taxpayers to deduct such losses only from income earned by another passive source. Similarly, federal income tax law imposes special limitations on income allocations in family partnerships to ensure that income is taxed to the person whose labor or capital earned it. In particular, these rules will not recognize minor children as co-owners of a family partnership unless they are shown to be competent or a fiduciary exercises control on their behalf, solely for their benefit, and under the supervision of a court.[4]

[4] **Treas. Reg. § 1.704-1(e)(2)(viii) ( ).**

8. <u>A right to withdraw or transfer the ownership interest</u>.

- Sole proprietor may withdraw or terminate their interest in the business at any time. Shareholders in general business corporations are also free to sell their interests in the business at any time. Regarding the remaining forms, the right to exit and reimbursement depends upon the form and type of owner involved:
- <u>General partners</u>: May withdraw from general partnerships, limited partnerships, and RLLP at any time, even if such withdrawals constitute a breach of contract.

    - They have no right to reimbursement unless the relevant agreement so specifies or the business is wound up.

    - Their investment will earn interest in the interim, less any damages caused by a wrongful withdrawal.

- <u>Limited partners</u>: May withdraw and receive back their contributions) only in accordance with the partnership agreement.

- <u>Close corporations</u>: Subject to governing documents.
    - Close corporations may restrict transfers by establishing: a) a right-of-first-refusal (allowing the corporation to match any offer received by a shareholder); b) mandatory re-purchase by the corporation of a decedent's or his/her

co-owner's shares; and c) buy-sell agreements, providing for shareholder purchases of an exiting owner's interest.

  - Close corporation stock may only be transferred to "qualified" shareholders—those who otherwise qualify to own stock under the corporation's tax status (C versus S corporation) and whose ownership would not impose personal holding company or other penalties.

- LLCs: Member-owners may withdraw and seek return of their contributions at any time, following six months written notice to the other members-owners. The right to reimbursement is governed by the Operating Agreement. If the Operating Agreement is silent, withdrawing owner-members have only a right to return of their contributions; they have no right to receive a share of the company's value as a going concern.[5]

- CLLC: The statutes for CLLCs make no provisions for transferring member-owners' interests.

Perhaps a more interesting question in looking at the multi-owner forms is the nature of the interest that can be transferred. Under the corporate form, all rights, including the right to engage in management (i.e., vote

[5]***Lieberman v. Wyoming.com LLC*, 11 P.3d 353 (Wyo. 2000).**

the shares), are transferred. With respect to the other multi-ownership forms, only the economic interests (rights to any distributions from the business) are readily transferable, subject to the terms of the applicable agreements. The right to participate in management is typically not transferred (other than possibly for the FLLCs), unless the remaining co-owners agree.

9. The business's duration.
A legal form's duration is generally tied to the governing documents, the willingness of co-owners to stay with the business, and the ability of exiting co-owners or third parties (e.g., creditors or transferees) to force the business to be terminated. All of these forms may be terminated voluntarily by their co-owners or upon the happening of an event specified in the relevant documents, unless the co-owners agree to keep the business going. Business forms with a limited duration or specific purpose are also normally terminated when this occurs, unless the co-owners agree otherwise.

Corporations theoretically have a perpetual existence. The duration of the other multi-owner legal forms differ in terms of when an exiting co-owner or third party (e.g., creditor, transferee of the co-owner's interest, etc.) can force the business to wind-up its affairs and reimburse the co-owners:

- Sole Proprietorships: May be terminated and its business required to be wound-up at any time through court action by a third party.

- Partnerships-at-Will: May be terminated and its business required to be wound-up at any time by an exiting partner or third party.

- Durational Partnership: Not terminated automatically if an exiting partner or third party requests, provided the duration or purpose has not been accomplished. Remaining partner(s) may, however, request the business be terminated and its affairs be wound up.

- Limited Partnerships: Their affairs must be wound-up if the limited partners are unable to name a new general partner for the business after the last general partner leaves.

- LLCs: General LLCs must be dissolved and their businesses wound-up following the death, retirement, resignation, expulsion, bankruptcy, dissolution of an owner-member unless the remaining owner-members unanimously consent in writing to carrying on and the Articles of Organization give them such a right.

- CLLCs: Makes no provision for exiting member-owners or third parties to force the business to be wound up. Must be dissolved if; a) their duration expires; b) the owner-members unanimously agree; or c) an event specified in the Operating Agreement occurs.

- Statutory Trusts: Will only terminate—and the beneficial owner receive reimbursement for his or her proportional interest—in accordance with the Governing Instrument. Beneficial owners may also ask the courts to terminate their statutory trust based upon ordinary trust principles.

10). Estate planning considerations.
Many producers would like the legal forms they select to assist them in accomplishing their estate planning goals. A legal form can do this by permitting owners to transfer interests in the business to others and

- Take advantage of annual gift tax exclusions under federal estate and gift tax laws;

- Reduce federal income taxes by shifting income to family members who are in lower income tax brackets;

- Lessen their taxable estate for federal estate tax purposes when they die; and

- Still retain control of the income-producing assets themselves.

Other producers are not interested in retaining control. They may still want to accomplish the first three objectives and ensure a steady income for their retirement.

Sole proprietorships provide few estate planning benefits. Gifts of assets during the owner's lifetime may threaten the continued viability of the farm or ranch business. Transfers of the farm or ranch assets to family members at death create other problems, particularly when family squabbles or federal estate taxes remove resources necessary to keep the agricultural business from operating. Gifting income-producing assets, while attempting to retain control over them, can create the worst-of-all-possible-worlds for sole proprietors. The IRS may well conclude that the gift was not completed and include the income from and value of the supposedly transferred asset in both the sole proprietor's federal income tax obligations during his or her lifetime and in his or her taxable estate, for estate tax purposes, upon his or her death.

The multi-ownership forms, discussed in this article, resolve these problems by permitting owners to transfer stock or other certificates of ownership to family members, rather than the assets themselves. Properly planned, a transfer of these interests will not threaten the viability of the operation and permit the parent-owners to accomplish their other estate planning objectives. Moreover, careful planned gifting may permit valuation discounts—for either the transferred interest or the parent's retained interests—when computing federal gift or estate taxes, based upon a claim that the transferred or retained minority interest is less valuable because of the holder's lack of control.

11. <u>Protecting minority interests</u>.
Many producers (and often their children) are concerned about what their rights might be if the majority owner is not playing fair. For example, a shareholder in a family-owned, Subchapter S corporation complained that the majority shareholder was taking most of the profits as compensation as its chief operating officer. She did not begrudge the salary but did object to the fact that the corporation had never declared a dividend, even though it had profits over the years. She was even less pleased when she discovered that she was legally responsible for her share of these retained profits and faced interest and penalties for not declaring them on her federal income form.

Conflicts are to be expected in a multi-owner, multi-manager business. Others have suggested such problems might be particularly troublesome in inter-generational agricultural operations because parents and children often times have very different goals for the business, earnings are not sufficient to permit every family member to stay on the farm or ranch, and parents are interested in providing for on-farm/ranch and off-farm/ranch heirs.[6]

In these fights, depending upon the terms of the governing documents, the majority owner normally wins. Theoretically, minority interests are protected by permitting them to transfer their interests to third parties. This protection is of limited utility, however, if:

- There is not a ready market for the ownership interest.
- Transfer rights themselves are restricted (as is the case for close corporations and CLLC).
- The rights being transferred are limited (e.g., the right of management will normally not transfer unless the majority partner, member-owner, or beneficial owner consents).

Good planning, well drafted documents, and continuing communications should address many of these fears. Producers also should be aware of the statutory default protections afforded minority owners under each of these legal forms:

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[6] **KENNETH H. THOMAS & MICHAEL D. BOEHLJE, FARM BUSINESS ARRANGEMENTS: WHICH ONE FOR YOU (North Central Regional Extension Publication 50, Rev. 1982).**

- <u>Partnerships</u>: Managing general partners owe duties of loyalty, due care, good faith, and fair dealing in operating the business to both the partnership and the minority partners. All partners have a right of access to the partnership books and records.

- <u>Statutory Trusts</u>: Trustees owe a fiduciary duty to the beneficial owners, though no greater than the duty owed by directors to shareholders of Wyoming general business corporations.

- <u>General Business Corporations</u>: Directors and officers of general business corporations have a duty to act in good faith, with the care of an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in or at least not opposed to the corporation's best interest. The statutes also regulate potential conflict-of-interest transactions between directors and the corporation.

- <u>Close Corporations</u>: Close corporation shareholders may seek relief from state district courts if they can show, among other reasons, that "[t]he directors or those in control have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner whether in his capacity as a shareholder, director or officer of the corporation."[7]

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[7] **Wyo. Stat. Ann. § 17-17-140(a)(i) (LexisNexis 2001).**

Minority owners should carefully consider what they want an intervening court to do. A commentator has pointed out that the typical remedy in close corporation cases is an opportunity for minority shareholders to be bought out rather than a change in the offending party's actions.[8] This may or may not be satisfactory, given the desires of the minority shareholder(s).

4. Summary: choosing the right business form for an alternative agricultural enterprise

Changes in federal and state laws has significantly transformed earlier discussions of choice of a legal form to operate a business. Those discussions focused almost exclusively on the sole proprietorship, partnership, and corporate forms and based their analysis on duration, limited liability, and income tax concerns. Today all of the multi-owner, noncorporate forms or their hybrids can provide owners with some form of limited liability and a choice between being taxed like a partnership or a corporation. Additionally, producers can—through the governing documents—provide for central or decentralized management or variations in-between.

Thus there is no one criteria or one business form that is best for an agricultural enterprise. Sole proprietorships and general partnerships fare worst under almost all of the eleven objectives we have discussed, aside from ease of entry and exit. The remaining forms share many similar attributes. Which is best for particular producers will depend upon how much weight they give to each of the eleven objectives and the particular facts of their operations.

Persons considering whether to establish an alternative agricultural enterprise may decide to employ several business forms rather than

[8] **Steven C. Bahl, *Judicial Approaches to Resolving Dissention Among Owners of the Family Farm*, 73 NEB. L. REV. 14 (1994).**

one. Multiple legal forms allow producers to take advantage of the unique attributes of each to accomplish the multiple, sometimes conflicting goals of the co-owners.[9] For example, parents, interested in establishing a ranch recreation enterprise with one of their children, might establish the enterprise as a CLLC, separate and distinct from their ranch business. Doing so may:

- Protect the parents' ranch land from creditor claims and tort actions brought by injured customers against the ranch recreation enterprise.

- Allow the co-owners to allocate profits and management responsibilities, taking into account contributions in addition to capital and the co-owners' relative interests in participating in management.

- Prevent ownership from being transferred to nonfamily members.

- Permit producers to weigh the tax advantages of having the two separate business entities taxed like C corporations or partnerships.

- Satisfy estate planning objectives by transferring income potential to on-ranch family members (who might operate the separate ranch recreation enterprise) while distributing some or all of the income from the main ranch business to off-ranch heirs.

In contrast, a CLLC may be unacceptable if outside investors are to be involved. Such investors may like the fact that the CLLC permits them to participate in the management of the business (if the business

[9] **James R. Monroe, *The Restructuring of Agribusiness Operations from a Tax Perspective*, 4 DRAKE J. AGRIC. L. 407, 435-36 (1999).**

selects to be taxed like a partnership, outside investors who materially participate in the business can deduct any losses from other business income). However, they may:

- Dislike the limitations this form imposes on transferability.
- Be concerned whether the Articles of Organization might impose personal liability on the member-owners.
- Be somewhat worried regarding its limited track record in courts in Wyoming and other states.

5. Choosing a legal form for an alternative agricultural enterprise: assisting your customers

a. Some other questions to be addressed in selecting a legal form for an agricultural business

Figures 1 and 2 provide checklists that readers can give to customers to help them in preparing to work with their attorneys and accountants in making the final decision. The checklist in Figure 1 asks readers to consider several questions before selecting a legal form for their agricultural business. First, what will the operation look like over the next ten years? What is its purpose? What will it do and not do? A business form that is too big—permits too may enterprises—may be just as uncomfortable as one that is too small. The answer to these questions can be included in the operating agreements for many of the legal forms we have discussed.

Second, how important are the eleven objectives for their customer's operation? Do the customers have other goals they want to accomplish in making this choice? The article shows that several legal forms can satisfy many of the same objectives. The reader's customers will have to determine whether other attributes—operating costs, legal uncertainties, added complexities, etc.—might tip the balance in favor of one form over another.

Third, is the current agricultural operation (or the operation being planned) profitable enough to support additional owners? What level of earnings would be necessary? What additional capital (debt or equity) and resources are necessary to support additional owners or the new enterprise(s)?

Fourth, can the current owner work with the proposed co-owner(s) on a day-to-day basis? What parts of the business would the current owner focus on; what parts of the business might the proposed co-owner(s) specialize in? If the co-owner is another family member, how might family interactions/conflicts complicate or smooth the business relationship? What conditions must be in place for this operation to work professionally and personally? Readers should encourage their customers to complete this questionnaire separately and share their answers. It may be eye-opening.

Figure 2 gives a checklist of documents potential co-owners should examine before entering into a multi-ownership arrangement. Many of these documents summarize the earning potential of the current operation. The parties should also prepare pro forma income and balance sheets to assess the viability of proposed new ventures. The remaining documents summarize basic ownership questions.

b. <u>Additional resources</u>

Producers should complete both checklists before meeting with their attorneys and accountants to make a final decision regarding the best legal form for their farm or ranch. For additional general information regarding business forms and agriculture, readers might suggest their customers examine:

- Department of the Treasury, Internal Revenue Service, Publ. No. 225, Farmer's Tax Guide (2000).
- Farmers' Legal Action Group, Legal Issues for Minnesota Farmers Starting a Processing or Marketing Business (2000).
- Neil E. Harl, Farm Estate & Business Planning (14th ed., 1999).
- University of Minnesota Extension Service, Publ. No. PC-6317-GO, Transferring the Farm (nd).
- Wyoming Secretary of State, The Choice Is Yours (rev'd Nov. 2000).

c. **Contacts:**

- Alan Schroeder, Agricultural and Natural Resources Law Specialist, UW Cooperative Extension Service,, College of Agriculture, P.O. Box 3354, Laramie, WY 82071, (307)-766-5133.
- Gay George, Staff Attorney, Wyoming Supreme Court, 2301 Capitol Avenue, Cheyenne, wY 82002, (307) 777-7600.

CHECKLIST 1:

EVALUATING THE FUTURE NATURE OF THE FARM OR RANCH BUSINESS

A. NATURE OF THE BUSINESS. OVER THE NEXT TEN YEARS (add additional pages if necessary)--

1. Briefly describe what the business form will be doing (business activities).

2. Are there some business activities it will not be doing (e.g. the business form will not raise the following alternative crops/livestock, engage in the following ranch recreation activities, and/or carry-out the following value-added enterprises)?

3. Assets:
   a. What assets will the business form control (e.g., land, structures, livestock, equipment, etc.)? How will these assets be controlled (e.g., the entity will own the property; the property will be rented to the form; the form will jointly own the property with another person or entity; etc.)?

b. Are these assets currently controlled by the reader? If not, how will control be acquired?

4. Who will be involved in the operation (e.g., on-farm/ranch versus off-farm owners)? In what capacity? Who may live on the farm/ranch? What rights and obligations are associated with this arrangement?

B. RANK THE RELATIVE IMPORTANCE OF THE FOLLOWING OBJECTIVES IN SELECTING A BUSINESS FORM FOR THE READER'S FARM OR RANCH

Instructions: Please use the following scale: 1 not important; 2 somewhat important; 3 important; 4 very important; or 5 would not select a business form that did not address this concern. The information on this page will be used by the owner's attorney in determining which legal form best address the owner's concerns.

Illustration: A business form obviously should not be selected if it is not legally available. A reader, operating solely in Wyoming, thus may circle question 3 as a (1). However, risk averse readers may rank it higher because they are concerned that the laws governing some of the newer forms has not been addressed by Wyoming courts. Similarly readers with lands or co-owners in other states may rank this question higher because they are concerned about how the laws of these other states will affect the business form they are considering.

1.	Ease of Entry:	1	2	3	4	5
2.	Simplifies Management:	1	2	3	4	5
3.	Legal Availability:	1	2	3	4	5
4.	Limit Legal Liability:	1	2	3	4	5
5.	Generate Additional Financing and Investors:	1	2	3	4	5
6.	Fair Distributions and Compensation:	1	2	3	4	5
7.	Maximize After-Tax Income:	1	2	3	4	5

8.	Right to Withdraw or Transfer the Ownership Interest:	1	2	3	4	5
9.	Business's Duration (ex. Perpetual life) perpetual life):	1	2	3	4	5
10.	Estate Planning Concerns:	1	2	3	4	5
11.	Protecting Minority Owner's Interests:	1	2	3	4	5

The Reader's General Comments Regarding the Relative Importance of Each of These Concerns:

C. FARMING OR RANCHING TOGETHER.

Instructions: The remaining questions are for readers evaluating whether to operate their businesses with another. Answers to these questions will help them in selecting a business form and in preparing relevant management agreements for their business regardless of which form is selected. Readers should consider exchanging their answers with the potential co-owner(s) to discover similarities and differences in their expectations.

1. The Operation's Potential To Support Additional Co-owners.
   a. How many additional co-owners are being considered?

   b. What contributions towards the business will the additional co-owners supply (e.g., cash, assets, services, etc.)?

c. Is the current agricultural operation or the operation being planned profitable enough to support the additional owners? What level of earnings would be sufficient?

d. How will the contributions be made by the additional owner(s) boost the income of the agricultural operation? By how much? How/when will this occur?

e. By what additional amount will these contributions raise the profitability of the business? Will this addition be sufficient to cover the needs of the current and additional owner(s)? If the answer to this question is no, what other sorts of contributions (e.g., loans, contract arrangements, etc.) or sources of income (e.g., nonfarm jobs) is the reader considering to make up the difference? What additional obligations will these arrangements create? Who will be responsible for them? Are these obligations acceptable?

2. Can the Reader and Potential Co-owner(s) Work Together?

a. What is your vision of the future business operation with this co-owner(s) (e.g., business activities; division of responsibilities; etc)?

b. What do you think the vision is of the potential co-owner(s)?

c. What parts of the business operations might the reader focus on? What parts of the business do they think the potential co-owner would focus on? How will this be accomplished?

d. How will conflicts regarding the management of the business be handled?

e. What does the reader absolutely need in order to enter into this business together? What does the reader think the potential co-owner(s) answer is to this same question?

CHECKLIST 2:

DOCUMENTS TO EXAMINE.

- Historic balance sheets of the business (and any business that is to be merged into the reader's current operation).
- Historic income statements of the business (and any business that is to be merged into the reader's current operation).
- A pro forma balance sheet of the new business operation.
- A pro forma income statement for the new business operation.
- Five years of federal income tax returns for the business (and any business that is to be merged into the reader's current operation).
- Five years of other documents governing other local, state, or federal tax, filing or other obligations of the business (e.g., annual property taxes, corporation license fees, etc.) for the business (and for any business that is to be merged into the reader's current operation)
- A summary of existing debt and debt instruments for the new business operation.
- Copies of documents of title and other ownership interests of property (e.g., leases) to be part of the new business operation.
- Summaries of any other important documents or agreements:
  - -- Agreements with input suppliers.
  - -- Agreements with output purchasers.
  - -- Existing insurance contracts.
  - -- Employee wage/fringe/incentive/bonus contracts.
  - -- Current wills.
  - -- Buy-sell arrangements.

- Other desired documents:

<u>Table 1</u>: Selected Characteristics of and Objectives in Choosing a Particular Legal Form for an Alternative Agricultural Enterprise.

FORM	Ease of Entry	Agriculture may use@	Management	Limited Liability	Investors Permitted	Fair Distribution of Profits & Compensation	Income Taxes	Transfer Interest	Use in Estate Planning	Protect Minority Owners' Rights
Sole Proprietorship	No filing required	Yes	Sole proprietor	No	No	All earning are sole proprietor's	All earnings included on owner's tax return and subject to self-employment taxes; limited ability to deduct fringe benefits	May sell assets	Minimal	Not applicable
General Partnership	No filing required	Yes	Defined by agreement; otherwise shared by partners	No	Yes**	Subject to Agreement; otherwise distributed equally; no right to compensation	No taxes at entity level; all earnings subject to self-employment taxes; limited ability to deduct fringe benefits; subject to family partnership rules	Limited#	Limited (transfer is a technical dissolution); may be subject to family partnership rules	Partners owe duties of loyalty, good faith, due care, and fair dealings to each other
Business Corporation	Articles of Incorporation must be filed	Yes	Defined by Articles and Bylaws	Yes*	Yes	Defined by Bylaws and other documents	May be taxed at both entity and shareholder level (C corp.) or only at shareholder level (S corp.)	Unlimited	Possible (transfer of voting stock may threaten control)	Directors must exercise reasonable business judgment
Limited Liability Company	Articles of Organization must be filed	Yes	Defined by Operating Agreement; may be member-or manager-managed; if silent member-managed	Yes*	Yes	Defined by Operating Agreement; otherwise distributions based on contributions	May choose to be taxed like C corp. or general partnership	Limited#	Possible	Statutes do not specify duties; do prohibit indemnification for negligence or misconduct or for receiving improper personal benefits.

Statutory Trust	Certificate of Trust must be filed	Yes	Defined by Governing Instrument; managed by Trustee	Yes	Yes	Defined by Governing Instrument; otherwise based on proportionate share of total beneficial interests	May choose to be taxed like C corp. or general partnership	Limited#	Possible	Trustee owes same standard of care owed by director of a corporation
Limited Partnership	Certificate of Limited Partner-ship must be filed	Yes	Managed by general partners; powers may be fixed by Limited Partnership Agreement	Yes*	Yes**	Subject to Agreement; otherwise based upon contributions	May choose to be taxed like C corp. or general partnership	Limited#	See general partnership (transfer of limited partnership interest will not threaten control)	See general partnership (no duties specified for limited partners)
Registered Limited Liability Partnership	Statement of Registra-tion must be filed	Yes	See general partnership	Yes	Yes**	See general partnership	May choose to be taxed like C corp. or general partnership	Limited# #	See general partnership	See general partnership
Close Corporation	Filed Articles must include a statement that the business is a close corpora-tion	Yes	See business corporation; shareholders may agree to have business managed like a partnership	Yes*	Yes	See general corporation	See general corporation	Greatly Limited	See general corporation	See general corporation (minority shareholders may petition court to act upon a showing that actions are/will be illegal, oppressive, fraudulent, or unfairly prejudicial

Flexible Limited Liability Company	Articles of Organiza-tion must indicate business is a FLLC	Yes	See LLC	Yes*	Yes**	See LLC	May choose to be taxed like C corp. or general partnership	May be transferr-ed like stock	See LLC	See LLC
Close Limited Liability Company	Articles of Organiza-tion must indicate business is a CLLC	Yes	See LLC	Yes*	Yes**	See LLC	May choose to be taxed like C corp. or general partnership	Greatly Limited	See LLC	See LLC

@ Corporate and LLC forms use in agriculture is restricted in adjoining states of South Dakota and Nebraska.
* Co-owners may engage in certain activity regarding the business for which they remain liable (see text).
** Unless governing documents provide otherwise, unanimous consent required.
# Unless governing document provides otherwise, economic interests may be transferred; unanimous consent required to transfer management rights.

Table 2: Wyoming Filing Fees.

Entity	Type of Filing	Fee
Sole Proprietorship	None Required.	
General Partnership	None Required.	
Other Multiple Ownership Forms except Statutory Trusts	Initial Filing Fee. Additional Filings Other Than An Initial Filing or Annual License Tax. Annual Report License Tax.	\$100 \$ 50 \$ 50 or two-tenths of one mill on the dollar (\$0.0002)--which ever is greater based on the company's assets located and employed in the state of Wyoming,
Statutory Trust	Certificate of Trust/Certificate of Authority. Any Filing Other Than an Initial Filing or Annual Fee. Annual Tax. Certificate of Existence.	\$100 \$ 25 \$100 (if not paid by 2/1 penalty of \$100) \$ 10

Source: WYOMING SECRETARY OF STATE, FILING FEE SCHEDULE <http://soswy.state.wy.us/corporate/fee.htm> (last visited August 17, 2001).

B. Licensing and regulations

The terms "licensing" and "regulations" strike fear in some people. It is important to be in compliance and to make sure your client has taken into consideration requirements for their business, but it need not be a scary endeavor. There are many resources available to assist producers through this process.

Initially, your customer may want to consider contacting a state or national association that aligns closely to their business. Agricultural related businesses have a great variety of associations to choose from. To get an idea of associations that may be available in your client's type of business, you can search the Internet, or search in *The Gale Encyclopedia of Associations*, a reference book available in most libraries. There are many good reasons to enlist the assistance of an association:

- Opportunity to interact with many people in the same business and learn what has worked for them, or risks or considerations you should be aware of.
- Client will be kept informed of legal and licensing requirements.
- An association may offer special certifications or trainings that will increase the credibility and skills of the owner(s) and employees.

Numerous federal, state, and local regulations affect the organizational structure and operations of a business establishment. Many of these regulations apply equally to any type or phase of business operations.

The form of ownership and type of business organization will, in part, determine the regulatory agencies it is necessary to work with. The type of regulatory agency governing a business is determined more by the occupations and professions represented by the firm than by whether a firm is a manufacturer, wholesaler, retailer, or service provider.

It is strongly recommended that any person who seeks to establish and operate a business in Wyoming engage the services of either a qualified legal counsel or an accountant, and perhaps both, to assist in the business venture.

1. General Steps to Starting a Business

a. Determining the legal structure of your client's business is one of the first decisions they will need to make. A very detailed section on legal structures according to Wyoming laws is included in this resource notebook.

b. Corporations must file Articles of Incorporation with the Wyoming Secretary of State.

c. Most retail businesses should have sales and use tax permits. Sales and use taxes collected by a business must be paid to the Department of Revenue; an application for a license should be made to the Sales and Use Tax Division of this Department.

d. To ensure the location of a building is in compliance with local regulations, zoning regulations must be checked with the appropriate city or county regulatory agency.

e. Before construction of a building can begin, several permits may be required. Those concerned with pollution control and ecology include air pollution, mining and reclamation, solid wastes and hazardous materials, and water pollution. Such permits may be obtained from the Department of Environmental Quality.

f. Business and occupational licenses must be obtained from the pertinent state agency.

g. local business licenses may also be required by the city or county. Such licenses may be obtained from the city or county clerk.

2. **Employee regulations**

Will your client's business hire employees? If yes, then there are several regulations that exist regarding hiring, firing, insuring employee safety, and avoiding discrimination.

a. An employee identification number must be obtained from the nearest district office of the Internal Revenue Service. This number will be used on virtually every piece of paperwork dealing with the IRS.

b. A state unemployment insurance account must be established with the Employment Resources Division, Wyoming Department of Employment.

c. Employers subject to the jurisdiction of the Wyoming Worker's Compensation Act must file proof of compliance with the Wyoming Workers' Safety Compensation Division, Wyoming Department of Employment.

d. Federal and state taxes must be paid, and must be paid on time. A common mistake with start-up businesses, is the priority of what bills should be paid first when cash is short. Do not skip or be late in making payroll tax deposits.

3. **Agricultural and natural resource regulation considerations**

a. Laws and regulations for the protection of the consumer and the agricultural industry of the state are administered by the Wyoming Department of Agriculture.

b. The Department of State Parks & Cultural Resources is responsible for conserving and protecting Wyoming resources, providing recreation to Wyoming citizens and visitors, and enriching the economy through tourism. The Tourism Division of the Wyoming Business Council is accountable for aiding in the establishment of new tourist-oriented businesses and the expansion of the tourist industry, and for publicizing and promoting all of Wyoming' public and private travel destinations.

c. Full authority for the control, suppression, and eradication of livestock and poultry diseases and pests, and for the supervision of livestock and poultry sanitary work is administered by the Wyoming Livestock Board. The Board is charged with the development of the livestock and poultry industries in the state and for administering laws and regulations about livestock and poultry. It is also authorized to enter into cooperative agreements with several federal agencies in matters relating to livestock and poultry disease-control programs.

d. The development of Wyoming's forest resource, suppression of wildfires, and dissemination of information to citizens of Wyoming are the objectives of the Forestry Commission in cooperation with the U.S. Secretary of Agriculture, the College of Agriculture of the University of Wyoming. Private landowners and industries needing assistance in the proper management of their forest lands should contact Office of State Lands of the Forestry Division.

e. Geological information about Wyoming may be obtained from the Wyoming State Geological Survey whose primary purpose is to increase the knowledge of the geology of the state, and to stimulate the orderly development and use of the state's mineral resources.

f. The Wyoming Department of Agriculture, through it Weights and Measures Lab enforces laws and regulations for the protection of dealers and consumers pertaining to the accuracy, of gas pumps, and other measuring devices.

g. The Consumer Health Services (CHS) Division of the Wyoming Department of Agriculture is charged with overseeing the safety of the state's food supply. The section also has some Environmental Health duties such as swimming pool inspection, and assisting with drinking water safety. CHS maintains an "equal to" USDA meats safety program and conducts all meat slaughter and processing inspection, even where local departments exist. CHS promotes public health and safety by conducting hazard analysis based inspections in the following establishments:

- Bed & breakfast establishments
- Day cares
- Meat plants
- Restaurants
- Swimming pools and spas
- Schools
- RV parks
- Grocery and convenience stores
- Institutions
- Temporary food service stands
- Mobile food service units
- Dairy plants
- Food processing establishments

4. Resource list

For more information about licensing, permitting and regulations, contact Paul Howard, Business Permit Program Manager with the Wyoming Business Council 307-777-2843.

For most questions concerning agricultural related businesses, contact:

Wyoming Department of Agriculture
2219 Carey Avenue
Cheyenne, WY 82002
307-777-6569
or
Agri-Business Division of the Wyoming Business Council
307-777-6589.

Contact information for other resources listed in this section:

Internal Revenue Service
Small Business and Self--Employed Community (This is a new site on the IRS web site, it provides publications and special assistance to small businesses and agricultural businesses)
http://www.irs.gov/smallbiz/index.htm

Office of State Lands
Forestry Division
1100 West 22nd Street
Cheyenne, WY 82002
307-777-7586

Wyoming Business Council
214 West 15th
Cheyenne, WY 82002
307-777-2800
1-800-262-3425

Wyoming Department of Agriculture
Consumer Health Services
2219 Carey Avenue
Cheyenne, WY 82002
307-777-7321

Wyoming Department of Employment
122 West 25th Street
Cheyenne, WY 82002
307-777-7672
Wyoming Department of Employment
Wyoming Worker's Safety and Compensation (WSCD) Division
307-777-7159

Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002
307-777-7937

Wyoming Department of Revenue
122 West 25th Street
Cheyenne, WY 82002
307-777-7961

Wyoming Department of State Parks & Cultural Resources
2301 Central Avenue
Cheyenne, WY 82002
307-777-6303

Wyoming Department of Agriculture
Weights and Measures Lab
1510 East 5th Street
Cheyenne, WY 82002
307-777-7120

Wyoming Livestock Board
2020 Carey Avenue, 4th Floor
Cheyenne, WY 82002
307-777-7515

Wyoming Secretary of State
State Capitol
Cheyenne, WY 82002
307-777-7311

Wyoming State Geological Survey
P.O. Box 3008
Laramie, WY 82071
307-766-2286

C. Food labeling

Grocery store aisles are avenues to greater nutritional knowledge. Under regulations from the Food and Drug Administration of the Department of Health and Human Services and the Food Safety and Inspection Service of the U.S. Department of Agriculture, the food label offers more complete, useful and accurate nutrition information than ever before.

1. With today's food labels, consumers get:

- nutrition information about almost every food in the grocery store
- distinctive, easy-to-read formats that enable consumers to more quickly find information needed to make healthful food choices
- information on the amount per serving of saturated fat, cholesterol, dietary
- fiber, and other nutrients of major health concern
- nutrient reference values, expressed as % Daily Values, information on how a food fits into an overall daily diet
- uniform definitions for terms that describe a food's nutrient content--such as "light," "low-fat," and "high-fiber" -- to ensure that such terms mean the same for any product on which they appear
- claims about the relationship between a nutrient or food and a disease or health-related condition, such as calcium and osteoporosis, and fat and cancer.
- standardized serving sizes that make nutritional comparisons of similar products easier
- declaration of total percentage of juice in juice drinks. This enables consumers to know exactly how much juice is in a product.

2. Nutrition Labeling and Education Act

These and other changes are part of final rules published in the Federal Register in 1992 and 1993. FDA's rules implement the provisions of the Nutrition Labeling and Education Act of 1990 (NLEA), which, among other things, requires nutrition labeling for most foods (except meat and poultry) and authorizes the use of nutrient content claims and appropriate FDA-approved health claims. Meat and poultry products regulated by USDA are not covered by NLEA. However, USDA's regulations closely parallel FDA's rules, summarized below.

a. Nutrition labeling--applicable foods

Under these rules, nutrition labeling is required for most foods. In addition, voluntary nutrition information is available for many raw foods: the 20 most frequently eaten raw fruits, vegetables and fish each, under FDA's voluntary point-of-purchase nutrition information program, and the 45 best-selling cuts of meat, under USDA's program.

Although voluntary, FDA's program for raw produce and fish carries a strong incentive for retailers to participate. The program will remain voluntary only if at least 60 percent of a nationwide sample of retailers continue to provide the necessary information. (In a 1996 survey, FDA found that more than 70 percent of U.S. food stores were complying.)

Also, nutrition information is required for some restaurant foods. FDA requires nutrition information for foods about which health or nutrient-content claims are made on restaurant menus, signs or placards. Restaurants have to provide a "reasonable basis" for making claims, although they are given some flexibility in demonstrating that reasonable basis. For example, they could rely on recipes endorsed by medical or dietary groups.

b. <u>Nutrition labeling--exemptions</u>

Under NLEA, some foods are exempt from nutrition labeling. These include:

- food served for immediate consumption, such as that served in hospital
- cafeterias and airplanes, and that sold by food service vendors
- mall cookie counters, sidewalk vendors, and vending machines
- ready-to-eat food that is not for immediate consumption but is prepared primarily on site--for example, bakery, deli, and candy store items
- food shipped in bulk, as long as it is not for sale in that form to consumers
- medical foods, such as those used to address the nutritional needs of patients with certain diseases
- plain coffee and tea, some spices, and other foods that contain no significant amounts of any nutrients.

Food produced by small businesses also may be exempt, under 1993 amendments to the NLEA. Businesses with fewer than 100 full-time equivalent employees may claim an exemption for food products that have U.S. sales of fewer than 100,000 units annually. Companies claiming this exemption must notify FDA that they meet the criteria before they begin marketing their products. U.S. companies, other than importers, with fewer than 10 full-time equivalent employees and selling fewer than 10,000 units of a food in a year also are exempt but do not need to notify FDA. Also exempt are retailers with annual gross sales in the United States of less than $500,000 or with annual gross sales of food to consumers in the United States of less than $50,000.

Although certain foods may be exempt, they are free to carry nutrition information, when appropriate--as long as it complies with regulations. Also, these foods will lose their exemption if their labels carry a nutrient content or health claim or any other nutrition information.

Nutrition information about game meats--such as deer, bison, rabbit, quail, wild turkey, and ostrich--is not required on individual packages. Instead, it can be given on counter cards, signs, or other point-of-purchase materials. Because few nutrient data exist for these foods, FDA believes that allowing this option will enable game meat producers to give first priority to collecting appropriate data and make it easier for them to update the information as it becomes available.

c. **<u>Nutrition information panel</u>**

Under the label's "Nutrition Facts" panel, manufacturers are required to provide information on certain nutrients. The mandatory (underlined) and voluntary components and the order in which they must appear are:

- total calories
- calories from fat
- calories from saturated fat
- total fat
- saturated fat
- polyunsaturated fat
- monounsaturated fat
- cholesterol
- sodium
- potassium
- total carbohydrate

- dietary fiber
- soluble fiber
- insoluble fiber
- sugars
- sugar alcohol (for example, the sugar substitutes xylitol, mannitol and sorbitol)
- other carbohydrate (the difference between total carbohydrate and the sum of dietary fiber, sugars, and sugar alcohol if declared)
- protein
- vitamin A
- percent of vitamin A present as beta-carotene
- vitamin C
- calcium
- iron
- other essential vitamins and minerals

If a claim is made about any of the optional components, or if a food is fortified or enriched with any of them, nutrition information for these components becomes mandatory.

These mandatory and voluntary components are the only ones allowed on the Nutrition Facts panel. The listing of single amino acids, maltodextrin, calories from polyunsaturated fat, and calories from carbohydrates, for example, may not appear as part of the Nutrition Facts on the label.

The required nutrients were selected because they address today's health concerns. The order in which they must appear reflects the priority of current dietary recommendations.

d. **<u>Nutrition panel format</u>**

All nutrients must be declared as percentages of the Daily Values, which are label reference values. The amount, in grams or milligrams, of macronutrients (such as fat, cholesterol, sodium, carbohydrates, and protein) are still listed to the immediate right of these nutrients. But, for the first time, a column headed "% Daily Value" appears on the far right side.

Declaring nutrients as a percentage of the Daily Values is intended to prevent misinterpretations that arise with quantitative values. For example, a food with 140 milligrams (mg) of sodium could be mistaken for a high-sodium food because 140 is a relatively large number. In actuality, however, that amount represents less than 6 percent of the Daily Value for sodium, which is 2,400 mg.

On the other hand, a food with 5 g of saturated fat could be construed as being low in that nutrient. In fact, that food would provide one-fourth the total Daily Value because 20 g is the Daily Value for saturated fat.

e. **<u>Nutrition panel footnote</u>**

The % Daily Value listing carries a footnote saying that the percentages are based on a 2,000-calorie diet. Some nutrition labels--at least those on larger packages--have these additional footnotes:

- a sentence noting that a person's individual nutrient goals are based on his or her calorie needs
- lists of the daily values for selected nutrients for a 2,000- and a 2,500-calorie diet.

An optional footnote for packages of any size is the number of calories per gram of fat, and carbohydrate and protein.

f. **<u>Format modifications</u>**

In some circumstances, variations in the format of the nutrition panel are allowed. Some are mandatory. For example, the labels of foods for children under 2 (except infant formula, which has special labeling rules under the Infant Formula Act of 1980) may not carry information about saturated fat, polyunsaturated fat, monounsaturated fat, cholesterol, calories from fat, or calories from saturated fat.

The reason is to prevent parents from wrongly assuming that infants and toddlers should restrict their fat intake, when, in fact, they should not. Fat is important during these years to ensure adequate growth and development. The labels of foods for children under 4 may not include the % Daily Values for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber. They may carry % Daily Values for protein, vitamins and minerals, however. These nutrients are the only ones for which FDA has set Daily Values for this age group.

Thus, the top portion of the "Nutrition Facts" panels of foods for children under 4 will consist of two columns. The nutrients' names will be listed on the left and their quantitative amounts will be on the right. The bottom portion will provide the % Daily Values for protein, vitamins and minerals. Only the calorie conversion information may be given as a footnote.

Some foods qualify for a simplified label format. This format is allowed when the food contains insignificant amounts of seven or more of the mandatory nutrients and total calories. "Insignificant" means that a declaration of zero could be made in nutrition labeling, or, for total carbohydrate, dietary fiber, and protein, the declaration states "less than 1 g."

For foods for children under 2, the simplified format may be used if the product contains insignificant amounts of six or more of the following: calories, total fat, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamins A and C, calcium, and iron.

If the simplified format is used, information on total calories, total fat, total carbohydrate, protein, and sodium--even if they are present in insignificant amounts--must be listed. Other nutrients, along with calories from fat, must be shown if they are present in more than insignificant amounts. Nutrients added to the food must also be listed.

Some format exceptions exist for small and medium-size packages. Packages with less than 12 square inches of available labeling space (about the size of a package of chewing gum) do not have to carry nutrition information unless a nutrient content or health claim is made for the product. However, they must provide an address or telephone number for consumers to obtain the required nutrition information.

If manufacturers wish to provide nutrition information on these packages voluntarily, they have several options: (1) present the information in a smaller type size than that required for larger packages, or (2) present the information in a tabular or linear (string) format.

The tabular and linear formats also may be used on packages that have less than 40 square inches available for labeling and insufficient space for the full vertical format.

Other options for packages with less than 40 square inches of label space are:

- abbreviating names of dietary components
- omitting all footnotes, except for the statement that "Percent Daily Values are based on a 2,000-calorie diet"
- placing nutrition information on other panels readily seen by consumers.

A select group of packages with more than 40 square inches of labeling space is allowed a format exception, too. These are packages with insufficient vertical space (about 3 inches) to accommodate the required information. Some examples are bread bags, pie boxes, and bags of frozen vegetables. On these packages, the "Nutrition Facts" panel may appear, in tabular format, with the footnote information appearing to the far right.

For larger packages in which there is not sufficient space on the principal display panel or the information panel (the panel to the right of the principal display), FDA allows nutrition information to appear on any label panel that is readily seen by consumers. This lessens the chances of overcrowding of information and encourages manufacturers to provide the greatest amount of nutrition information possible.

For products that require additional preparation before eating, such as dry cake mixes and dry pasta dinners, or that are usually eaten with one or more additional foods, such as breakfast cereals with milk, FDA encourages manufacturers to provide voluntarily a second column of nutrition information. This is known as dual declaration.

With this variation, the first column, which is mandatory, contains nutrition information for the food as purchased. The second gives information about the food as prepared and eaten.

Still another variation is the aggregate display. This is allowed on labels of variety-pack food items, such as ready-to-eat cereals and assorted flavors of individual ice cream cups. With this display, the quantitative amount and % Daily Value for each nutrient are listed in separate columns under the name of each food.

g. **<u>Serving sizes</u>**

The serving size remains the basis for reporting each food's nutrient content. However, unlike in the past, when the serving size was up to the discretion of the food manufacturer, serving sizes now are more uniform and reflect the amounts people actually eat. They also must be expressed in both common household and metric measures.

FDA allows as common household measures: the cup, tablespoon, teaspoon, piece, slice, fraction (such as "1/4 pizza"), and common household containers used to package food products (such as a jar or tray). Ounces may be used, but only if a common household unit is not applicable and an appropriate visual unit is given--for example, 1 oz (28g/about 1/2 pickle).

Grams (g) and milliliters (mL) are the metric units that are used in serving size statements.

NLEA defines serving size as the amount of food customarily eaten at one time. The serving sizes that appear on food labels are based on FDA-established lists of "Reference Amounts Customarily Consumed Per Eating Occasion."

These reference amounts, which are part of the regulations, are broken down into 139 FDA-regulated food product categories, including 11 groups of foods specially formulated or processed for infants or children under 4. They list the amounts of food customarily consumed per eating occasion for each category, based primarily on national food consumption surveys. FDA's list also gives the suggested label statement for serving size declaration. For example, the category "breads (excluding sweet quick type), rolls" has a reference amount of 50 g, and the appropriate label statement for sliced bread or roll is "___ piece(s) (_ g)" or, for unsliced bread, "2 oz (56 g/_ inch slice)."

The serving size of products that come in discrete units, such as cookies, candy bars, and sliced products, is the number of whole units that most closely approximates the reference amount. Cookies are an example. Under the "bakery products" category, cookies have a reference amount of 30 g. The household measure closest to that amount is the number of cookies that comes closest to weighing 30 g. Thus, the serving size on the label of a package of cookies in which each cookie weighs 13 g would read "2 cookies (26 g)."

If one unit weighs more than 50 percent but less than 200 percent of the reference amount, the serving size is one unit. For example, the reference amount for bread is 50 g; therefore, the label of a loaf of bread in which each slice weighs more than 25 g would state a serving size of one slice.

Certain rules apply to food products that are packaged and sold individually. If such an individual package is less than 200 percent of the applicable reference amount, the item qualifies as one serving. Thus, a 360-mL (12-fluid-ounce) can of soda is one serving, since the reference amount for carbonated beverages is 240 mL (8 ounces).

However, if the product has a reference amount of 100 g or 100 mL or more and the package contains more than 150 percent but less than 200 percent of the reference amount, manufacturers have the option of deciding whether the product can be one or two servings.

An example is a 15-ounce (420 g) can of soup. The serving size reference amount for soup is 245 g. Therefore, the manufacturer has the option to declare the can of soup as one or two servings.

h. **Daily values--DRVs**

The new label reference value, Daily Value, comprises two sets of dietary standards: Daily Reference Values (DRVs) and Reference Daily Intakes (RDIs). Only the Daily Value term appears on the label, though, to make label reading less confusing. DRVs have been established for macronutrients that are sources of energy: fat, saturated fat, total carbohydrate (including fiber), and protein; and for cholesterol, sodium and potassium, which do not contribute calories.

DRVs for the energy-producing nutrients are based on the number of calories consumed per day. A daily intake of 2,000 calories has been established as the reference. This level was chosen, in part, because it approximates the caloric requirements for postmenopausal women. This group has the highest risk for excessive intake of calories and fat.

DRVs for the energy-producing nutrients are calculated as follows:

- fat based on 30 percent of calories
- saturated fat based on 10 percent of calories
- carbohydrate based on 60 percent of calories
- protein based on 10 percent of calories. (The DRV for protein applies only to adults and children over 4. RDIs for protein for special groups have been established.)
- fiber based on 11.5 g of fiber per 1,000 calories.

Because of current public health recommendations, DRVs for some nutrients represent the uppermost limit that is considered desirable. The DRVs for total fat, saturated fat, cholesterol, and sodium are:

- total fat: less than 65 g
- saturated fat: less than 20 g
- cholesterol: less than 300 mg
- sodium: less than 2,400 mg

i. **Daily values--RDIs**

"Reference Daily Intake" replaces the term "U.S. RDA," which was introduced in 1973 as a label reference value for vitamins, minerals and protein in voluntary nutrition labeling. The name change was sought because of confusion that existed over "U.S. RDAs," the values determined by FDA and used on food labels, and "RDAs" (Recommended Dietary Allowances), the values determined by the National Academy of Sciences for various population groups and used by FDA to figure the U.S. RDAs.

However, the values for the new RDIs remain the same as the old U.S. RDAs for the time being.

j. **Nutrient content claims**

The regulations also spell out what terms may be used to describe the level of a nutrient in a food and how they can be used. These are the core terms:

- **Free.** This term means that a product contains no amount of, or only trivial or "physiologically inconsequential" amounts of, one or more of these components: fat, saturated fat, cholesterol, sodium, sugars, and calories. For example, "calorie-free" means fewer than 5 calories per serving, and "sugar-free" and "fat-free" both mean less than 0.5 g per serving. Synonyms for "free" include "without," "no" and "zero." A synonym for fat-free milk is "skim".

- **Low**. This term can be used on foods that can be eaten frequently without exceeding dietary guidelines for one or more of these components: fat, saturated fat, cholesterol, sodium, and calories. Thus, descriptors are defined as follows:
    - **low-fat**: 3 g or less per serving
    - **low-saturated fat**: 1 g or less per serving
    - **low-sodium:** 140 mg or less per serving
    - **very low sodium:** 35 mg or less per serving
    - **low-cholesterol**: 20 mg or less and 2 g or less of saturated fat per serving
    - **low-calorie:** 40 calories or less per serving.

  Synonyms for low include "little," "few," "low source of," and "contains a small amount of."

- **Lean and extra lean.** These terms can be used to describe the fat content of meat, poultry, seafood, and game meats.
    - **lean**: less than 10 g fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per serving and per 100 g.
    - **extra lean:** less than 5 g fat, less than 2 g saturated fat, and less than 95 mg cholesterol per serving and per 100 g.

- **High**. This term can be used if the food contains 20 percent or more of the Daily Value for a particular nutrient in a serving.

- **Good source**. This term means that one serving of a food contains 10 to 19 percent of the Daily Value for a particular nutrient.

- **Reduced**. This term means that a nutritionally altered product contains at least 25 percent less of a nutrient or of calories than the regular, or reference, product. However, a reduced claim can't be made on a product if its reference food already meets the requirement for a "low" claim.

- **Less.** This term means that a food, whether altered or not, contains 25 percent less of a nutrient or of calories than the reference food. For example, pretzels that have 25 percent less fat than potato chips could carry a "less" claim. "Fewer" is an acceptable synonym.

- **Light.** This descriptor can mean two things: First, that a nutritionally altered product contains one-third fewer calories or half the fat of the reference food. If the food derives 50 percent or more of its calories from fat, the reduction must be 50 percent of the fat. Second, that the sodium content of a low-calorie, low-fat food has been reduced by 50 percent. In addition, "light in sodium" may be used on food in which the sodium content has been reduced by at least 50 percent. The term "light" still can be used to describe such properties as texture and color, as long as the label explains the intent--for example, "light brown sugar" and "light and fluffy."

- **More.** This term means that a serving of food, whether altered or not, contains a nutrient that is at least 10 percent of the Daily Value more than the reference food. The 10 percent of Daily Value also applies to "fortified," "enriched" and "added" "extra and plus" claims, but in those cases, the food must be altered. Alternative spelling of these descriptive terms and their synonyms is allowed--for example, "hi" and "lo"--as long as the alternatives are not misleading.

- **Healthy.** A "healthy" food must be low in fat and saturated fat and contain limited amounts of cholesterol and sodium. In addition, if it' s a single-item food, it must provide at least 10 percent of one or more of vitamins A or C, iron, calcium, protein, or fiber. Exempt from this "10-percent" rule are certain raw, canned and frozen fruits and vegetables and certain cereal-grain products. These foods can be labeled "healthy," if they do not contain ingredients that change the nutritional profile, and, in the case of enriched grain products, conform to standards of identity, which call for certain required ingredients. If it's a meal-type product, such as frozen entrees and multi-course frozen dinners, it must provide 10 percent of two or three of these vitamins or minerals or of protein or fiber, in addition to meeting the other criteria. The sodium content cannot exceed 360 mg per serving for individual foods and 480 mg per serving for meal-type products.

k. <u>Other definitions</u>

The regulations also address other claims. Among them:

- **Percent fat free:** A product bearing this claim must be a low-fat or a fat-free product. In addition, the claim must accurately reflect the amount of fat present in 100 g of the food. Thus, if a food contains 2.5 g fat per 50 g, the claim must be "95 percent fat free."

- **Implied:** These types of claims are prohibited when they wrongfully imply that a food contains or does not contain a meaningful level of a nutrient. For example, a product claiming to be made with an ingredient known to be a source of fiber (such as "made with oat bran") is not allowed unless the product contains enough of that ingredient (for example, oat bran) to meet the definition for "good source" of fiber. As another example, a claim that a roduct contains "no tropical oils" is allowed--but only on foods that are "low" in saturated fat because consumers have come to equate tropical oils with high saturated fat.

- **Meals and main dishes:** Claims that a meal or main dish is "free" of a nutrient, such as sodium or cholesterol, must meet the same requirements as those for individual foods. Other claims can be used under special circumstances. For example, "low-calorie" means the meal or main dish contains 120 calories or less per 100 g. "Low-sodium" means the food has 140 mg or less per 100 g. "Low-cholesterol" means the food contains 20 mg cholesterol or less per 100 g and no more than 2 g saturated fat. "Light" means the meal or main dish is low-fat or low-calorie.

- **Standardized foods:** Any nutrient content claim, such as "reduced fat," "low calorie," and "light," may be used in conjunction with a standardized term if the new product has been specifically formulated to meet FDA's criteria for that claim, if the product is not nutritionally inferior to the traditional standardized food, and the new product complies with certain compositional requirements set by FDA. A new product bearing a claim also must have performance characteristics similar to the referenced traditional standardized food. If the product doesn't, and the differences materially limit the product's use, its label must state the differences (for example, not recommended for baking) to inform consumers.

l. <u>'Fresh'</u>

Although not mandated by NLEA, FDA has issued a regulation for the term "fresh." The agency took this step because of concern over the term's possible misuse on some food labels. The regulation defines the term "fresh" when it is used to suggest that a food is raw or unprocessed. In this context, "fresh" can be used only on a food that is raw, has never been frozen or heated, and contains no preservatives. (Irradiation at low levels is allowed.) "Fresh frozen," "frozen fresh," and "freshly frozen" can be used for foods that are quickly frozen while still fresh. Blanching (brief scalding before freezing to prevent nutrient breakdown) is allowed. Other uses of the term "fresh," such as in "fresh milk" or "freshly baked bread," are not affected.

m. <u>Baby foods</u>

FDA is not allowing broad use of nutrient claims on infant and toddler foods. However, the agency may propose claims specifically for these foods at a later date. The terms "unsweetened" and "unsalted" are allowed on these foods, however, because they relate to taste and not nutrient content.

n. <u>Health claims</u>

Claims for 10 relationships between a nutrient or a food and the risk of a disease or health-related condition are now allowed. They can be made in several ways: through third-party references (such as the National Cancer Institute), statements, symbols (such as a heart), and vignettes or descriptions.

Whatever the case, the claim must meet the requirements for authorized health claims--for example, they cannot state the degree of risk reduction and can only use "may" or "might" in discussing the nutrient or food-disease relationship. And they must state that other factors play a role in that disease.

The claims also must be phrased so that consumers can understand the relationship between the nutrient and the disease and the nutrient's importance in relationship to a daily diet.

An example of an appropriate claim is: "While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of this disease." The allowed nutrient-disease relationship claims and rules for their use are:

- **Calcium and osteoporosis:** To carry this claim, a food must contain 20 percent or more of the Daily Value for calcium (200 mg) per serving, have a calcium content that equals or exceeds the food's content of phosphorus, and contain a form of calcium that can be readily absorbed and used by the body. The claim must name the target group most in need of adequate calcium intakes (that is, teens and young adult white and Asian women) and state the need for exercise and a healthy diet. A product that contains 40 percent or more of the Daily Value for calcium must state on the label that a total dietary intake greater than 200 percent of the Daily Value for calcium (that is, 2,000 mg or more) has no further known benefit.

- **Fat and cancer:** To carry this claim, a food must meet the nutrient content claim requirements for "low-fat" or, if fish and game meats, for "extra lean."

- **Saturated fat and cholesterol and coronary heart disease (CHD):** This claim may be used if the food meets the definitions for the nutrient content claim "low saturated fat," "low-cholesterol," and "low-fat," or, if fish and game meats, for "extra lean." It may mention the link between reduced risk of CHD and lower saturated fat and cholesterol intakes to lower blood cholesterol levels.

- **Fiber-containing grain products, fruits and vegetables and cancer:** To carry this claim, a food must be or must contain a grain product, fruit or vegetable and meet the nutrient content claim requirements for "low-fat," and, without fortification, be a "good source" of dietary fiber.

- **Fruits, vegetables and grain products that contain fiber and risk of CHD:** To carry this claim, a food must be or must contain fruits, vegetables and grain products. It also must meet the nutrient content claim requirements for "low saturated fat," "low-cholesterol," and "low-fat" and contain, without fortification, at least 0.6 g soluble fiber per serving.

- **Sodium and hypertension (high blood pressure):** To carry this claim, a food must meet the nutrient content claim requirements for "low-sodium."

- **Fruits and vegetables and cancer:** This claim may be made for fruits and vegetables that meet the nutrient content claim requirements for "low-fat" and that, without fortification, for "good source" of at least one of the following: dietary fiber or vitamins A or C. This claim relates diets low in fat and rich in fruits and vegetables (and thus vitamins A and C and dietary fiber) to reduced cancer risk. FDA authorized this claim in place of an antioxidant vitamin and cancer claim.

- **Folic acid and neural tube defects: Folic acid and neural tube defects:** This claim is allowed on dietary supplements that contain sufficient folate and on conventional foods that are naturally good sources of folate, as long as they do not provide more than 100 percent of the Daily Value for vitamin A as retinol or preformed vitamin A or vitamin D. A sample claim is "healthful diets with adequate folate may reduce a woman's risk of having a child with a brain or spinal cord defect."

- **Dietary sugar alcohols and dental caries (cavities):** This claim applies to food products, such as candy or gum, containing the sugar alcohols xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, or a combination of any of these. If the food also contains a fermentalbe carbohydrate, such as sugar, the food cannot lower the pH of plaque in the mouth below 5.7. Besides the food ingredient's relationship to dental caries, the claim also must state that frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. A shortened claim is allowed on food packages with less than 15 square inches of labeling surface area.

- **Soluble fiber from certain foods, such as whole oats and psyllium seed husk, and heart disease:** This claim must state that the fiber also needs to be part of a diet low in saturated fat and cholesterol, and the food must provide sufficient soluble fiber. The amount of soluble fiber in a serving of the food must be listed on the Nutrition Facts panel.

o. **Ingredient labeling**

Ingredient declaration is required on all foods that have more than one ingredient. Because people may be allergic to certain additives and to help them better avoid them, the ingredient list must include, when appropriate: FDA-certified color additives, such as FD&C Blue No. 1, by name sources of protein hydrolysates, which are used in many foods as flavors and flavor enhancers declaration of caseinate as a milk derivative in the ingredient list of foods that claim to be non-dairy, such as coffee whiteners.

As required by NLEA, beverages that claim to contain juice must declare the total percentage of juice on the information panel. In addition, FDA's regulation establishes criteria for naming juice beverages. For example, when the label of a multi-juice beverage states one or more--but not all--of the juices present, and the predominantly named juice is present in minor amounts, the product' s name must state that the beverage is flavored with that juice or declare the amount of the juice in a 5 percent range--for example, "raspberry-flavored juice blend" or "juice blend, 2 to 7 percent raspberry juice."

p. **<u>Resources</u>**

For more information, contact:
FDA
General Inquiries: Call toll-free 1-888-INFO-FDA (1-888-463-6332).
Food Safety Hotline: 1-800-332-4010
FDA's food label information on the Web: www.cfsan.fda.gov/label.html.

USDA
Food Safety Education and Communication Office
1400 Independence Ave., S.W., Room 1180
Washington, DC 20250
Meat and Poultry Hotline: 1-800-535-4555.
BG 99-5

Wyoming Department of Agriculture
Consumer Health Division
2219 Carey Avenue
Cheyenne, Wyoming 82002
307-777-7321

D. **The Universal Product Code**

The Universal Product Code (UPC) is an international numeric symbol for a processed good that is identified by a digital code. The UPC was designed as a common identification tool for bills of lading, invoices, accurate pricing, and collection of sales data. The UPC is composed of a machine readable symbol. This symbol is the basic element that has promoted a revolutionary advance in retail marketing. The symbol promotes scanner-equipped check stands which speeds up a customer checkout operation, reduce item price-marking requirements, and enables the retailer to collect complete and accurate information on all aspects of sales transactions.

1. **The traditional UPC appearance**

The Universal Product Code is an 11-digit numeric code that will identify the consumer package. The code consists of a number system character, a 5-digit manufacturer identification number along with a 5-digit item code number. In combination with your 5-digit manufacturer number, this will form the 10-digit UPC number for each product. The 11-digit UPC is represented by bars and spaces that enables a scanner to immediately identify the consumers' package.

2. **Manufacturer identification number**

The 5-digit manufacturer code is assigned by the Uniform Code Council, Inc.

Uniform Code Council, Inc.
8163 Old Yankee Rd., Suite J
Dayton, Ohio 45459
Telephone: (513) 435-3870

3. **Item code number**

The 5-digit manufacturer code is a number assigned and controlled by a designated company member. This person will assign a specific product a specific code number from the Number System Charter.

4. **Coding system criteria**

Every individual product requires a unique identification coding system that should meet certain criteria:

- The product should have unique number for identification of items and shipping packages.
- The number should be concise and have a constant number of digits.
- Packaging and shipping containers numbering should be essentially random.
- There should not be any numbered portion of the code that stands for an assigned characteristics such as size, weight, color, etc.
- There must not be any duplication of numbers on container or packages. This aids in file retention.
- The system should be economical and easy to learn requires a non-extensive personnel training program.

5. **Getting started**

In order to successfully acquire a UPC here at three suggestive steps to help you and your business:

a. Apply for your Universal Product Code manufacturer identification number. This is a critical step. With your membership in the Uniform Code Council, you will be assigned a 6-digit manufacturer's number that is unique to your company. This number is to be used on all of your products.

b. Assign an item number to your product(s). You should assign a 5-digit number to each of your products. This number must be different for every item. The number you assigned to each product must be unique for store inventory, recording keeping, and pricing purposes.

c. Provide information for your staff and retailer. All employees (production, distribution, marketing, and accounting personnel) should be familiar with your UPC number codes and UPC policies.

6. Uniform Code Council

The Uniform Code Council, Inc. is not a governmental agency, rather a central management and information center for manufacturers and retailers participating in the system. This is an administrative council which functions to issue standard shipping and container codes, control the issuing of company identification codes, provide detailed information and to coordinate the efforts of all participants. The cost of membership is based on sales volume, this is the only time that you will pay. The Uniform Code Council also maintains the standards for product and shipment marking for higher levels of packaging.

7. Standard packaging

A "Standard Pack" is a term used for a package that has been coded by the UCC. The UCC assigns standard coding structures and bar code symbologies. This term also encompasses important secondary information like weight, date, batch, lot, postal code, serial number, purchase order number, and other product and shipment attributes.

8. **Produce electronic look-up code (PLU)**

Fresh produce may be labeled with a code number that identifies the Uniform Product Code for a specific produce item. PLUs are generally used for food retailing. For more information, please contact:

Produce Electronic Look-up Board
Produce Marketing Association
1500 Cash Mill Road
Newark, DE 19714-6036
(302) 738-7100

E. Legal liability risk management and ranch recreation enterprises: an overview

1. Introduction

Just as recreationists must prepare for likely contingencies on their travels, so too must farm and ranch owners carry out a risk analysis when deciding whether to establish a ranch recreation business.

This three step process will make each journey more satisfying and prevent both from serious harm:

a. assessing potential risks;
b. evaluating and selecting among various risk management tools; and
c. implementing, evaluating, and revising as new information and issues arise--

The purpose of this article is to assist readers in helping their customers in carrying out this three-step risk management process to deal to potential legal liability exposures. The article is based upon a recently revised extension bulletin for ranch recreation businesses in Wyoming. [A] It first describes selected legal liability risks for ranch recreation enterprises. It then outlines several risk management tactics that the readers' customers might employ. It ends with recommendations, a brief discussion of who should be part of the enterprise's risk management team, and a checklist readers can go through with their customers in addressing the issues raised in the article.

2. Step one: identifying potential legal liability exposures faced by ranch recreation enterprises (a selected list)

Like any business, ranch recreation enterprises must routinely follow the general laws of their state, comply with specific governmental regulations applicable to their businesses, and make and complete contracts with customers and service providers. Each of these interactions creates potential legal liability exposures. We will limit our attention to legal risks associated with specific services provided to ranch recreation customers. Table 1 summarizes selected legal liability exposures these interactions create. [A]

a. **Duties owed entrants**

Ranch recreation for many Wyoming farmers and ranchers consists primarily of charging an access fee to recreationists to hunt, fish, sightsee, or otherwise recreate on their agricultural lands.

Historically the common or judge-made law imposed different duties on landholders depending upon whether entrants were on the land without permission (trespassers), with "naked" permission not benefiting the landholder (licensees), or with permission for the purpose of benefiting the landholder (business invitees). A photographer who inadvertently enters onto posted private land is a trespasser. An individual given permission to fish for free on a stream running through a farm is a licensee. A hunter paying a "trespass fee" would be a business invitee. Under the historic common law rules landholders owed the lowest duty of care to trespassers and licensees. Landholders were not to willfully or wantonly harm trespassers or licensees. In many states landholders were also obligated to notify licensees of any hidden dangers that the landholders knew of. Similarly, many states adopted the attractive nuisance doctrine, obligating landholders to protect trespassing children from artificial conditions that posed significant dangers to them and whose danger the children, because of their age or maturity, might not fully comprehend. Landholders owed the highest degree of care to business invitees. Landholders were required to exercise reasonable care in inspecting and maintaining the property and in warning business invitees of any hidden dangers.

The historic common law rules have been modified by statute or judicial decision in many states. In Wyoming, landholders must now exercise reasonable care towards all entrants on their property with permission. They owe the same minimal duty towards trespassers required by the previous common law rules: not to willfully or wantonly harm them.

Many states have also created statutory exemptions for some recreational activities. [B] Wyoming has two such statutes. The first, Wyoming's Recreation Use Act, protects landholders who permit free public access to their lands for recreational pursuits. The statute limits the landholder's duties to authorized recreational entrants to that historically owed to trespassers: not to willfully or wantonly harm them. The second, Wyoming's Recreation Safety Act, exempts recreational and sporting activity providers from liability for injuries caused by inherent risks. The Safety Act applies regardless of whether a provider charges a fee. Neither statute exempts injuries caused by recreational or sporting equipment. The Recreation Use statute provides no protection for providers charging access fees. The protections afforded by the Recreation Safety Act for inherent risks are murky at best. The 10th Circuit Court of Appeals recently ruled that whether a risk is inherent is normally a question of fact for a jury to decide. [C]

b. **Duties owed to guests for food and/or housing services**
Ranch recreation enterprises that provide food or housing services to customers must comply with applicable local and state food and safety regulations. Wyoming food providers are subject to new regulations under the Wyoming Food, Drug, and Cosmetic Safety Act of 2000. Violation of these regulations may give rise to a legal cause of action for customers who can show that the violation led to their injuries.

Both common and contract law impose additional duties on food and housing providers. Food providers must exercise reasonable care in food preparation, handling, and storage. Similarly, by statute persons in Wyoming who routinely sell food products impliedly promise (warrant) that the food will be "merchantable" (i.e. will be of at least ordinary quality and would pass in the market without objection). Providers making specific promises regarding the food (e.g, vegetarian, kosher, peanut oil-free) will be legally liable if a customer is harmed because one of these promises is not satisfied.

Courts in several other states have held that providers of bed and breakfast and tourist cabins as well as typical motels and hotels are subject to special, innkeeper obligations. Under the common law innkeepers must exercise reasonable care in maintaining guest rooms, hallways, and other common areas; areas of ingress and egress; and other locations open to their customers. Wyoming courts have exempted providers from any liability associated with injuries caused by the natural accumulation of snow and ice. Also under the common law innkeepers were strictly liable for thefts of property from guests' rooms. Most states including Wyoming have created specific statutory exemptions from this liability for innkeepers who offer a place of safekeeping for guests' valuables. The Wyoming courts have not yet had an opportunity to decide whether these special, innkeeper rules apply to ranch recreation providers.

c. **Bailments**

Recreational operators who loan guests personal property for their use--horses, guns for target shooting, inner tubes for sliding down hills, etc.--are engaging in "bailments." Under the common law, individuals who loan personal property to others without charge (a gratuitous bailment) are only obligated to inform borrowers of any known defects. In contrast, ranch recreation operators who rent equipment or animals to their guests for a fee (a mutual benefit bailment) are required to exercise reasonable care in inspecting, selecting, and maintaining the property. Wyoming's statutes also indicate that providers who routinely rent personal property to guests impliedly warrant that the items are of average quality and would pass in the market without objection. Providers who make specific promises or know of the special needs of a customer regarding the rented personal property (e.g., this horse is gentle or is appropriate for a small child) must be prepared to defend their decision if their customer is injured because the promise is not satisfied.

d. **Injuries caused by other animals under the control of the ranch recreation enterprise**

The common law holds owners of domestic animals liable for injuries they cause if the injured party can show that the animal had a dangerous tendency, the owner knew of this tendency, and the owner failed to protect the entrant. Owners of domestic animals are also liable if an entrant is injured because of the owners' negligence in handling the animal (e.g., shooting a gun off while a guest is petting a normally gentle horse). Owners of wild animals--the pet raccoon, for example--are absolutely liable for the injuries they cause. Entrants also have an obligation to exercise reasonable care around both domestic and wild animals.

e. **Injuries caused by the ranch recreation enterprise's employees**

Generally employers are liable for any actionable injuries caused by their employees, acting within the course of their employment. This concept is referred to as vicarious liability or respondent superior. The key question in these cases is whether the employee's actions were within the course of their employment. A ranch recreation enterprise would clearly be liable if guests are injured when its employee, as part of his job, is negligent in driving them to the ranch. Liability would be fuzzier if the injury occurred when the employee and a guest left the ranch on their own to get a drink at a local saloon.

Wyoming and other states now recognize the doctrine of negligent hiring in holding employers liable for other actions of their employees. This doctrine typically come into play when an employee, acting outside the scope of his or her employment, harms a customer, as when an employee with a criminal record--discoverable upon reasonable inspection--sexually assaults a customer on an overnight trail ride he is leading. Courts have increasingly obligated employers to thoroughly investigate before hiring employees who are to be placed in positions of trust and responsibility.

3. **Step 2: possible legal risk management tools for ranch recreation enterprises**

Risk managers typically try to avoid, reduce, lessen, or transfer risk. Briefly, these strategies involve:

- Avoidance occurs when a business chooses not to engage in a risky activity.
- Risk prevention occurs when a business seeks to minimize the probability of harm.
- Risk reduction occurs when a business engages in activities designed to minimize the size of any resulting harm.
- Risk transfer occurs when a business seeks to transfer the risk to a third party (e.g., the guest, an insurance company, or another entity.

Risk avoidance is the preferred strategy if the possibility and size of the resulting risk is significant. The other strategies are optimal if the activity is valuable compared to the possible harm and the cost of implementing a specific tool is less than the resulting benefit created.

Risk transfer tends to require the assistance of a third party (e.g., an attorney or insurance agent) to implement. Risk prevention and reduction quite often can be done by the ranch recreation enterprise on its own. Table 2 at the end of this article illustrates several legal risk management tools for ranch recreation enterprises. [A]

Avoidance. Landholders can simply refuse title foraccess. This can be done on the entire property or partially by posting certain parts of the farm or ranch off-limits. A court could disregard the posting if guests were routinely allowed to enter "off limit" areas. Exclusion by posting may also be ineffective to curb legal liability for injuries to children (see discussion of the attractive nuisance doctrine above).

Avoid charging fees for access. As we indicated above, landholders not charging an access fee for recreational users are specifically protected from certain legal actions by Wyoming's Recreation Use statute. Not charging a fee, however, defeats the purpose of engaging in ranch recreation activity to supplement agricultural income. Landholders might charge only some entrants (big game hunters, for example) or for only certain services (free entrance but a charge for guiding, rental of a horse, etc.).

Purchase of liability insurance. An informal survey in the 1980s found at least one insurance company in Wyoming provided optional liability coverage for ranch recreation enterprises. [A] Other insurance companies contacted indicated that their existing farm/ranch policy would provide liability coverage to their customers, provided the enterprise was only a minor source of farmer or rancher's income. A similar study of insurance coverage for ranch recreation enterprises is to be conducted this fall. Readers should encourage their customers to discuss with their insurance agents available coverage for their ranch recreation enterprises.

Release or waivers of liability signed by guests. In a written release customers waive their rights to sue the provider for any injuries they might suffer as a result of the ranch recreation activity. The Wyoming Supreme Court has held that such releases may waive liability for negligence but not for injuries caused by gross negligence, by willful misconduct, or for services demanding a special duty to the public. The Wyoming Supreme Court has also held that recreational providers are not subject to a higher duty than other service providers and that recreational contracts are normally freely entered into by both parties. [A]

Conducting the recreational enterprise through a legal entity wth limiited liability. A traditional tactic to limit liability exposures is to choose a business form that limits the owners' personal liability. One of several legal forms providing this protection is the business corporation. This tactic does not provide much protection if the injury resulted from a shareholder/employee's own negligence or if most of the producer's assets are held by the corporation.

Transferring recreational business to a guide or outfitter. Farmers and ranchers may also grant recreational leases to guides or outfitters to bring customers onto their lands. These leases allow producers to transfer day-to-day responsibility for managing the recreational activity to a third party while still capturing a portion of their lands' recreational income potential. Transfer of recreational leases to outfitters or guides does not shield landholders from all liability. The common law generally holds landholders, who retain possession of their property, personally responsible for hidden defects on their lands. To avoid legal liability, landholders adopting this practice should continue to inspect and maintain their property. In addition, they should make sure that the guide or outfitter is insured and that the landholder is also listed as a named insured on the guide or outfitter's policy.

Establishing maintenance, training, and/or screening programs. Establishing a maintenance, training, and screening program constitutes an important risk prevention and reduction tactic. These efforts can include carefully screening guest-service employees before hiring, teaching personnel CPR, informing staff about health and safety regulations, establishing a routine equipment maintenance program, engaging in periodic inspections to discover and correct any problems, and developing and implementing checklists to alert guests of dangers and to assist them in case of accidents or employee misconduct.

4. Step three: Implementing a legal risk management program for a ranch recreation enterprise (getting started)

The first step in implementing a legal risk management program for a ranch recreation enterprise is assembling a risk management team. Team members should include the owners, ranch employees responsible for carrying out the program, the ranch's attorney, and its insurance agent. Owners may also want to contact other ranch recreation enterprises in the area to learn how these businesses currently are managing their legal risk. Some existing ranch recreation enterprises may permit potential operators to work at their places, thereby giving potential operators a real taste of what it is like to manage a ranch recreation enterprise.

Table 3at the end of this article provides a basic checklist for implementing a legal risk management program for a ranch recreation enterprise. It walks readers and their customers through the three-step risk management process. If the readers' customers or their risk management team do not know the answer to a question posed by the checklist they should talk with someone who does. For example, if Wyoming readers or their customers are considering a bed and breakfast operation but do not know the fire or health code requirements, they should check with their county officials and the Wyoming Department of Agriculture to complete the checklist.

5. Conclusions and limitations

Legal risk management involves three steps: 1) identification and quantification of legal risks; 2) examination and selection of particular risk management tools to handle these liability exposures; and 3) implementation, evaluation, and revision as new information and issues arise.

Section 2 indicates that a ranch recreation enterprise's liability risks are tied to the types of services it provides. Enterprises granting free access for recreational pursuits face limited legal liability exposures. Those offering overnight rooms, food service, and rental of personal property face the greatest.

Section three outlines a variety of legal risk management techniques. These tools range from avoidance to risk transfer. Each tactic has its own advantages and costs. A ranch recreation business's best strategy is to avoid injuring guests regardless of whether a legal liability exposure is involved. Winning a lawsuit will not overcome the negative publicity if a guest is injured. Guests as well as employees should be seen as partners in implementing the risk management process rather than as adversaries.

Although this publication is intended to provide general information regarding liability risk management to its readers, its primary focus is on Wyoming law. Even here it is limited. Not all the legal liability exposures ranch recreation operations might face (e.g., tax requirements, employment law, hunting regulations, etc.) have been discussed. Moreover, the rules governing the exposures that are discussed are likely to change. It is therefore important for readers to encourage their customers to work with their risk management team to fashion the best legal risk management program for their ranch recreation operation and to keep in contact with their team to make sure that their plans are up-to-date.

6. References cited

a. Schroeder, Alan & Rich Olson, "Minimizing Landholder Liability from Public Recreational Use of Private Lands," (University of Wyoming Cooperative Extension, under review, 2001).

b. Centner, Terrence J., "Tort Liability for Sporting and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities," 26 J. Legis. 1 (2000).

c. Cooperman v. David, 214 F.3d 1162 (10th Cir. 2000).

Table 1: Care Required of Ranch Recreation Providers, Based Upon Types of Service Provided and Entrants' Status.

Nature of Service	Unapproved Access Only	Approved Access Only	Approved Access Plus Meals and Housing	Approved Access Plus Rental of Personal Property
Type of Access	Trespasser	Licensee or Business Invitee	Business Invitee	Licensee or Business Invitee
Standard of Care	May not willfully or wantonly harm. Special duties if trespasser is a child who is attracted to a dangerous artificial condition on the land.	Reasonable care. Special duties may be created if the landholder specifically warrants the safety of the land.	Reasonable care. Compliance with health and safety regulations. Special duties may be created as a result of contractual or common law duties owed guests by innkeepers.	Reasonable care in the maintenance, selection, or instructions given regarding personal property rented. Special duties may be created if provider expressly or impliedly warrants (promises) to the guests that the personal property rented is safe or fit for the particular purpose it is to be used.
Examples of Liability Exposures	Spring gun, placed in vacant building, injured a trespasser. Trespassing child injured when climbs on a poorly arranged hay stack.	Permitting camping (without warning) in an area which the landholder knows is subject to flash flooding.	Guest becomes sick after drinking unpasteurized milk or due to failure to properly vent cabin heater. Guest's room is broken into and jewelry stolen.	Rental of a horse with a known tendency to bite.
Additional Comments	Trespassers are also obligated to exercise reasonable care. Landholders are not liable to trespassing children for injuries caused by natural conditions.	Entrants are obligated to exercise reasonable care. Landholders are not liable to entrants for injuries caused by apparent hazards.	Guest are obligated to exercise reasonable care. Innkeeper liability for stolen property is subject to statutory exemption.	Borrower is obligated to exercise reasonable care in using rented personal property.

Source: [A].

Table 2: Illustration of Several Risk Management Tactics to Minimize Liability.

Activity	Type of Technique	Person(s) Involved	Effect on Liability Exposure	Activity/Possible Use by Reader or Customer
--Lock Buildings. --Gates on Private Roads.	Avoidance	Employer/ Employee(s)	Eliminate liability exposure by eliminating access. May not be effective if exceptions are made so that a pattern of admittance is shown or proof that landholder knew of trespassers prior to engaging in hazardous activity.	
--Inspection Program. --Employee Screening Program. --Maintenance Program. --Use of Checklists to Warn Guests of Dangers and Instruct Them on Proper Equipment and Its Use. --Maintain Records on Accidents Identifying Causes, Responses, and Measures Undertaken to Eliminate Recurrence.	Reduce the Probability of Injury	Employer/ Employee(s) Use of Safety Specialist	Reduce/eliminate liability exposure by lessening likelihood that injury will occur. Well documented screening, maintenance, and training program can evidence that business has exercised due care. BE CAUTIOUS: Record of recurring but not corrected problems would evidence failure to exercise due care.	
--First Aid Training and Equipment.	Reduce Amount of Any Possible Claim	Employer/ Employee(s) Use of Safety Specialist	Reduce liability exposure by lessening the size of claim that would occur if an accident takes place.	
--Purchase of Insurance.	Transfer	Landholder/ Insurance Company	Transfer risk to Insurance Company. Insured may also take advantage of additional services provided by Insurance Company including safety inspections. May be ineffective if not all necessary lands, employees, or activities are covered.	
--Releases or Accident Waivers.	Transfer	Landholder/ Entrants/ Attorney	Transfer risk of loss to entrant. Releases may be ineffective if improperly drawn, if they attempt to waive statutory duties or intentional or grossly negligent acts, or if entrant did not clearly intent to waive this particular risk.	
--Adopt Business Form (e.g., corporation, limited liability company) that limits owner's liability to value of contribution to the business.	Transfer	Landholder/ Attorney	Transfer of liability to separate legal entity. Transfer proves only limited protection to landholders if all of their assets are given to the legal entity, if landholders retain liability for injuries caused by the land they control, or the landholder--acting as an employee of the entity--causes the injury.	
--"Lease" Recreational Rights to Outfitter(s) or Guide(s).	Transfer	Landholder/ Outfitters/ Attorney	Transfer liability risk for negligence in provision of services to outfitter(s)/guide(s). Landholder will retain liability for actionable injuries on lands under landholder's control.	

Source: [A].

Table 3: Implementation Checklist.

Activities/Questions	Access Only	Access Plus Food	Access Plus Housing	Access Plus Rental of Personal Property
IDENTIFYING AND EVALUATING POTENTIAL EXPOSURES ☐ What recreational activities will be permitted?				
☐ What is the likelihood of injury for each?				
☐ What is the magnitude ($) of injury for each?				
☐ What legal duties does the ranch recreation enterprise have?				
☐ What legal duties does the customer have?				
SELECTION OF AN APPROPRIATE RISK MANAGEMENT STRATEGY ☐ What particular tactic(s) can be adopted to minimize this legal risk?				
☐ What is the cost of this tactic(s)?				
☐ What remaining legal risk exists if this tactic(s) is adopted?				
IMPLEMENTATION, REVIEW AND REVISION OF THE RISK MANAGEMENT STRATEGY ☐ Who will be responsible for implementing this tactic(s)? When?				
☐ What specific actions must be undertaken to implement this tactic(s)? How will implementation be established in case of a court action?				
☐ How will the effectiveness of this tactic(s) be measured? How will it be demonstrated in a case of a court action?				
☐ How frequently will this tactic be reviewed, revised, or updated?				

* Readers and their customers should prepare a separate check list to evaluate each tactic (avoidance, risk prevention or reduction, or transfer)

FINANCE

FINANCE

A. Introduction

"Where can I find money to start my business?" is the most frequently asked question from entrepreneurs. The most logical place to look for financing is in a person's own assets. These sources include money in bank accounts, certificates of deposits, stocks and bonds, cash value in insurance policies, real estate, home equity, hobby collections, automobiles, pension fund, Keogh or IRAs and credit cards. One must consider carefully which of these options to choose, as penalties and a loss of interest income may occur. Friends and families represent another source of money. If this is an option, these transaction should be handled in a business-like way with clear terms and agreements.

This section provides information on many alternative sources available to finance small businesses and a brief description of financial statements to prepare before visiting a lender. Keep in mind that each business has its own individual circumstances, location, resources, and goals that will influence the selection of money or financing sources.

1. Why is the money needed and how will it be used

These are two very important questions. Often times, an agricultural entrepreneur, as well as any other individual wanting to go into business, does not completely understand what financing needs they have. One must identify what type of loan is needed, and the intended purposes of the loan.

There are basically four different stages of financing, and a variety of ways to obtain money available for these different stages. The four basic financing needs of business are:

- Seed money
- Startup capital
- Working capital
- Growth capital

Seed money is money needed to develop an idea. It is used for research and development to create prototypes, researching the market and writing business plans. Money for this stage generally comes from personal finances or friends and family. Investors are rarely interested in investing at this early stage.

Start-up capital is used to take the business concept to the marketplace. It pays for initial equipment and all expenses of getting the business underway. Start-up money comes from personal finances, friends, family and sometimes investors and banks, if the concept is very strong and the management team looks good.

Working capital is used for financial inventories, accounts receivable and the cash necessary to operate the business. When a business has a good track record, then working capital is the easiest money to attract. Banks are traditional financiers for working capital and factoring companies also play a major role here.

Growth capital is used for financing expansion, purchasing new equipment, or training new people for the growth of the business. Traditionally, growth is financed by the profits of the operations. Other sources for growth capital include angel investors and venture capitalists, stockholders and taking a company public.

2. Debt financing versus equity financing

Debt financing can be defined as any type of loan, where you borrow money and pay the money back plus interest. Banks are not the only debt financing option. Other sources for debt financing include credit unions, cooperative banks (such as The Farm Credit System), consumer finance companies, and insurance companies are just some examples.

Equity financing involves receiving money in exchange for the investor(s) to have part ownership of the business. Examples of equity financing include venture capital investors and angel investors. The following is a list of options for both debt and equity financing.

- An established company or business has several options available to serve financing needs. These include taking a first or second mortgage on any real estate property owned, borrowing money against machinery or hard assets such as equipment or motor vehicles, or borrowing against a pension fund or investment that is considered liquid.
- Commercial banks represent the largest single source for loans and financing. The amount of interest they charge is based on two factors: the size and history of the customer and the risk the bank will take in providing the loan. SBA -guaranteed loans are available through banks, making more money available for business loans.
- Loan companies are considered collateral lenders, meaning they rely upon the borrower's ability to back up every dollar of the loan with assets. Their interest rates are usually higher than banks.
- Credit unions have traditionally financed cars and appliances, however, recently they have expanded their lending operations to include non-members and investments outside traditional financial investments.
- Angel investors may operate as individuals or several individuals who invest together to make investments and loans, usually in exchange for an equity interest in a company. The funds available from private investors vary widely. Investors can be found through local bankers, accountants, and lawyers.
- Venture capitalists almost always seek an equity or ownership interest in the firm in exchange for capital.
- Suppliers can be a great source of funding by giving 30 to 90 day terms. Sometimes, suppliers will provide supplemental equipment that is necessary for use with the products they provide.

- If a person leases equipment instead of buying it, he may find companies eager to help make the deal.
- Local economic development agencies are interested in attracting new businesses to particular areas, and many times offer significant incentives. Check with the local economic development agency or with the Wyoming Business Council for details.
- For small loans, the Wyoming Women's Business Center provides loans for up to $2,500. WWBC partners with other financial institutions and economic development agencies to provide these loans.
- The Wyoming SBIR/STTR Initiative, more commonly known as the SBIR (Small Business Innovative Research) program, is a federal research and development grant or contract program specifically for small businesses. Through the SBIR program, 10 federal agencies provide more than $1 billion in research and development funding annually. This is a three-phase program in Wyoming. The phase O program provides $5,000 for preparation and submission of a specific SBIR Phase I proposal. Phase I proposals are a feasibility study to evaluate the proposed project's technical merit for which an awardee may receive a maximum of $100,000. Phase II proposals involve research and development efforts that expands on the Phase I competitive program that funds new, innovative new commercial products or services. The money is a grant and is not paid back, although complete and accurate records must be maintained on expenditures.
- There is also the possibility of owner financing if buying a business. Ask the seller if he or she will be willing to sell it to you on contract.
- The Small Business Administration offers loan guarantees to commercial lenders making loans to small businesses for working capital, inventory, machinery, land, buildings, purchases of businesses and other "new money" projects.

3. Successfully obtaining financing

The best preparation an entrepreneur can do to obtain financing is to prepare a complete business plan. A common mistake is to seek financing without a written plan. As the entrepreneur or business owner puts the information together for the business plan, they should keep in mind the validity of the information gathered. Lenders will have more confidence in lending if they feel the information presented is supported by documentation and the information is gathered through credible resources.

Loan requests are evaluated on the *Cs of credit*. A lender will look at all of these areas. Some are more crucial than others.

- *Credit* – A credit check will be made to look at references, credit report, liens, delinquencies, and bankruptcy.
- *Character* – A lender has more confidence in a borrower who is honest, and in good standing in the community.
- *Capacity* – Capacity is the ability of the business to generate funds and repay the debt. A lender will also look at secondary sources to pay the debt back.
- *Collateral* – Lenders want to make sure they get paid back, and want to know what assets a business can use to assure the debt is repaid.
- *Conditions* – Conditions include both the economic conditions at the local, state and national levels, and also the economic conditions within a specific industry.
- *Capital* – How much money is the business willing to invest? Lenders will not loan 100 percent of financing needs.

The entrepreneur should view the lender as a team player and approach all interactions with a professional attitude. Refer to the business plan sub-section of this resource guide to understand the elements included in a business plan. Once the business plan is written, the lender will also ask for:

- Three years of personal tax returns
- Three years of business tax returns, if applicable
- Appraisals on all properties (business and personal)
- Personal financial statements of all owners
- Lenders usually run a complete credit check on all owners/borrowers

4. Financial statements

Financial statements provide small business owners and entrepreneurs with the basic tools for determining how well their operations perform at all times. Many small business owners do not realize that financial statements have a value that goes beyond their use as supporting documents to loan applications and tax returns.

These statements are concise reports designed to summarize financial activities for specific periods. Owners can use financial statement analysis to evaluate the past and current financial condition of their business, diagnose any existing financial problems, and forecast future trends in the businesses financial position. Virtually all suppliers of capital, such as banks, finance companies, and venture capitalists, require these reports with each loan request, regardless of previous loan history. Also, prospective buyers of a business will ask to inspect financial statements and the financial/operational trends they reveal before they will negotiate a sale price and commit to the purchase.

Forms that are essential to prepare before seeing a lender include:

- Income statement
- Balance sheet/pro forma balance sheet
- Cash flow

The two key reports for all sizes and categories of business are the balance sheet and the income statement. What do these forms tell the lender?

The balance sheet is an itemized statement that lists the total assets and the total liabilities of a business, and gives its net worth on a certain date. The preparation of a balance sheet or future projections is called the pro forma balance sheet. Pro forma balance sheets are used to project how the business will be managing its assets in the future. For example, a pro forma balance sheet can quickly show the projected amount of money tied up in receivables, inventory, and equipment. It can also be used to project the overall financial soundness of the company. A pro forma balance sheet can quickly pinpoint a high debt-to-equity ratio. This statement provides two views of the same business: what resources the business owns, and the creditor and owner investments that supplied these resources. These divisions are generally set up in the two-column account form, with assets on the left, liabilities and equity on the right. An alternative – the one column statement form or report form – lists assets on top, liabilities and equity below.

The income statement, also called the statement of income and expense or profit and loss statement, records revenues versus expenses for a given period of time.

Cash flows fall into two categories: inflows and outflows. Inflows include revenues from sales, proceeds from loans, and capital injections by owners. Outflows include costs of sales, operating expenses, income taxes, repayment of loans and distribution to owners. The cash flow statement will also show the break-even point. The break-even point is basically when cash income equals the cash outflows.

There are many ways to finance a business, and there are many more options available than listed here. One should think creatively and possibly look at combining several options to obtain financing to grow a business.

5. Resources

"Tilling the Soil of Opportunity…NXLeveL Guide for Agricultural Entrepreneurs," University of Colorado at Denver, University of Nebraska and US West Foundation, December 1999.

"Wyoming SBDC Business Counselor Certification Training Manual," Wyoming Small Business Development Center, Laramie, Wyoming 2000.

MARKETING

MARKETING

A. General overview of marketing

Many people confuse the term marketing with advertising, but the process of marketing involves much more than simply placing an advertisement in the local newspaper.

> *"Marketing is everything you do to promote your business, from the moment you conceive of it to the point at which customers buy your product/service and begin to patronize your business on a regular basis."*
>
> Jay Conrad Levinson; Guerrilla Marketing

The view that marketing and selling are the same is also a common misconception. Selling is a crucial part of marketing, but marketing is far more expansive. As a professional who is assisting an agricultural producer, it is important to understand this misnomer because traditional agricultural marketing generally is the act of selling an agricultural commodity. The challenge to you, the professional advisor, will be to make this distinction in a diversified agricultural enterprise.

For example, a traditional marketing strategy for a grain producer would primarily include: cash flow needs, storage capacity, and possible tax consequences. The decision would be whether to sell the commodity directly from the field; store the grain at harvest and price it when it is delivered; or store the grain and forward contract it for delivery next year, and so on.

Marketing, as described in this sub-section of the guide, consists of many different activities – sales, advertising, customer service, the product, pricing, and the business reputation. It includes the name of the business; the type of product or service being sold; the colors, size and shape of the product; the packaging; the business location; advertising; public relations; and the sale. The purpose of marketing is to reach customers and compel them to purchase, use and repurchase a product.

1. What is marketing

Marketing is the human activity directed at satisfying human needs and wants through exchange processes. A distinction between the difference of *needs* and *wants* is essential to the basic understanding of marketing. *Needs* can be defined as a requirement that is absolute. *Wants* are desires for specific satisfiers of these absolute needs. Peoples' needs are relatively few, but their wants are staggering. Marketers do not create *needs*, but they can influence *wants*.

A simple definition of a *product* or *service* is something that is viewed as capable of satisfying a need or want. A *market* is the set of all actual and potential buyers of a product or service.

The marketing concept is a key management task that determines the needs and wants of target markets and manages the enterprise to deliver products/services to satisfy those wants and needs in a process that is more efficient and effective than its competitors. Management must make sure that its overall goals are consistent with and support the role of the product or service in satisfying the needs and wants of its target markets.

2. Why is marketing so important

All businesses and organizations face the complexity of how to increase the value for target markets that are undergoing continuously changing needs and wants. Organizations must thoroughly define their products, services, prices, and distribution in a way that meets buyer needs in a competitively viable way (Kotler 1980) . Although selling products and services is very old, marketing is a relatively new complex concept that involves, among many things, promoting and advertising, selling, developing new products/services, market research, customer knowledge, and physical distribution.

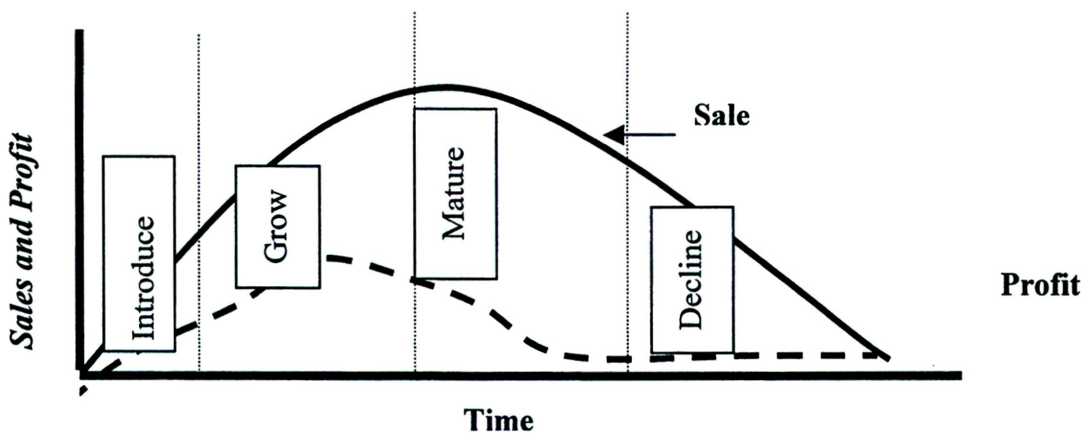
Developing an effective marketing strategy can help stimulate the turnover of products/services. The key to effective marketing is understanding customer's needs. Knowing what customers are looking for helps the enterprise owner identify strengths and weaknesses in appealing to a target audience and develop an appropriate promotional message. In today's busy world, people are continually bombarded with marketing messages about products and services. A challenge of the business owner is to create the right message so that his or her product/service will be recognized above all others.

B. The product/service –life cycle

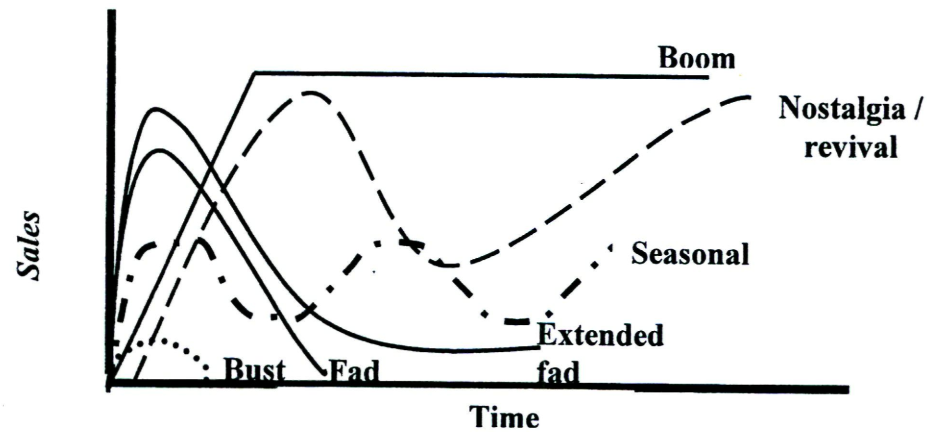
As a professional, you have an important role as an educator to teach business people about the concept of the product/service life cycle. This concept is useful as a framework for developing effective marketing strategies in different stages of the life cycle.

All products and services have a life cycle in which the product/service reaches maturity and then declines. Depending on the external and internal climate of each business, some products or services will have shorter life cycles than others.

1. Product/service life cycle of sales and profit



2. Special product/service sales life cycles



A key factor in the marketing strategy of an enterprise is the role played by the product/service life cycle. The product/service stage in the life cycle of introduction, growth, maturity, and decline changes over time. Each stage provides specific opportunities and threats to the enterprise's profit potential. Products and services pass through four stages, as follows:

- *Introduction* – A period of slow growth during which the product or service is introduced to the marketplace. Profit is non-existent at the beginning and increases very slowly.
- *Growth* – A period of growth due to acceptance by the market and increase in profits for the enterprise.
- *Maturity* – At this stage, the profit margin and sales slow down due to market saturation, decline in acceptance by new customers, and costs to the enterprise to maintain the product/service's position in a marketplace due to increased competitors.

- *Decline* – Sales continue to decline, which eats away at profits until profits eventually erode to zero.

An enterprise should already have a strategy in effect much earlier than the stage of decline for deciding on the course of action. Does the enterprise introduce a new product or service, modify the existing one, or exit from the marketplace once it enters the decline stage?

Special product/service life cycles should be carefully strategized because their length of cycles may be hard to predict or may require special marketing tools and information because they may depend on the extent to which the product/service genuinely meets the needs of the customer, and is consistent with other societal trends, norms, and values.

3. General marketing communications decisions for the stages of the product/service life cycle

While there are entire courses on marketing strategies, there are some "rule-of-thumb" tactics recommended by marketing experts for people who are developing market strategies to complement the stages of the product/service life cycle. The common feeling among marketers is that "salesmen put products on the shelves and advertising takes them off. " (Kotler 1980.) However, there is much more in communicating to the marketplace than relying only on selling tactics and advertisements.

Creating and building buyer awareness - Advertising, sales promotion, and publicity are usually the most cost-effective tools.

Producing product/service comprehension – Advertising and personal selling are effective tools for informing the customer group and educating the marketplace.

Influencing buyer conviction - Personal selling followed by advertising and publicity are usually the most effective marketing tools for convincing the buyers.

Placing an order for actual purchase – Sales calls, personal selling, and sales promotion are most effective at this point in the communication process (Kotler 1980).

- Advertising: Any paid form of non-personal presentation and promotion of ideas, goods, or service by an identified sponsor.
- Personal selling: An oral presentation in conversation with one or more prospective purchasers for the purpose of making sales.
- Sales promotion: Short-term incentives (samples, coupons, money-refund offers, contests, premiums, etc.) to encourage purchase or sale of a product or service.
- Publicity: Nonpersonal stimulation of demand for a product/service by planting commercially significant news about it in a published medium or obtaining favorable presentation of it upon radio, television, or stage that is not paid for by the sponsors (Kotler 1980).

C. The strategic marketing process

Identify opportunity → Select target market → Competitive positioning → Written marketing plan → Implement and control plan

The strategic marketing process is a managerial process of the following steps:

Market opportunity analysis – The process begins with identifying, evaluating, and developing a set of marketing opportunities for the enterprise. This step is complex and time-consuming because it involves research (gathering information about industry, customers, competitors, and market potential) and analysis (reviewing and comparing research gathered on various opportunities, and evaluating the potential of each opportunity). The selected opportunity/opportunities must show three things:

a. Consistency with the enterprise's goals.
b. Potential of providing the enterprise with a competitive advantage (something that it will do better than other competitors).
c. Fits with the enterprise's current distinctive competences (the things that the enterprise does exceedingly well).

Target market selection – This is the task of breaking down a total market into logical target markets (also called market segments or sub-markets) that differ in their requirements, purchasing habits, or other important characteristics.

Competitive positioning – This step requires the enterprise to develop a general plan of what it will offer to the target market in relation to the competitors' offers. This could involve making positioning decisions based on the product-feature differentiation, price/quality differentiation, or other factors.

Marketing plan development – Once the enterprise has selected a target market and defined its competitive positioning, it is ready to develop long-range and annual written marketing plans developed for the target markets. The written plan is a document that defines the goals, strategies, tactics, and budgets that will be used to acquire and sustain a market position and succeed in meeting its marketing goals.

Plan implementation and control – Implementing the plan requires assigning people to accomplish tasks within specific time periods. The management must control the plan by setting certain monitors that will be used to check and evaluate the efficiency, profitability, and effectiveness of the strategic marketing process.

D. The marketing plan: marketing mix and the "Four Ps"

The general approach to a marketing plan is to develop a marketing-mix of the amount and type of marketing tools used at a particular time to accomplish a specific marketing goal or set of marketing goals over a certain time period. In 1960, a marketer by the name of E. Jerome McCarthy popularized a four-factor classification call the *four Ps: product, price, promotion, and place.* This is accepted as the traditional approach used to select the variables for a marketing mix in the marketing plan.

1. The basic marketing variables (tools) – the "Four Ps"

PRODUCT/ SERVICE	PRICE	PROMOTION	PLACE
Quality Features Benefits Options Style Brand name Packaging Sizes Services Warranties Returns	List price Discounts Allowances Payment period Credit terms	Personal selling Sales promotion Public relations Word-of-mouth Advertising	Channels Coverage Locations Inventory Transport

The marketing-mix is the set of controllable variables or tools and their levels that the enterprise uses to influence the target market.

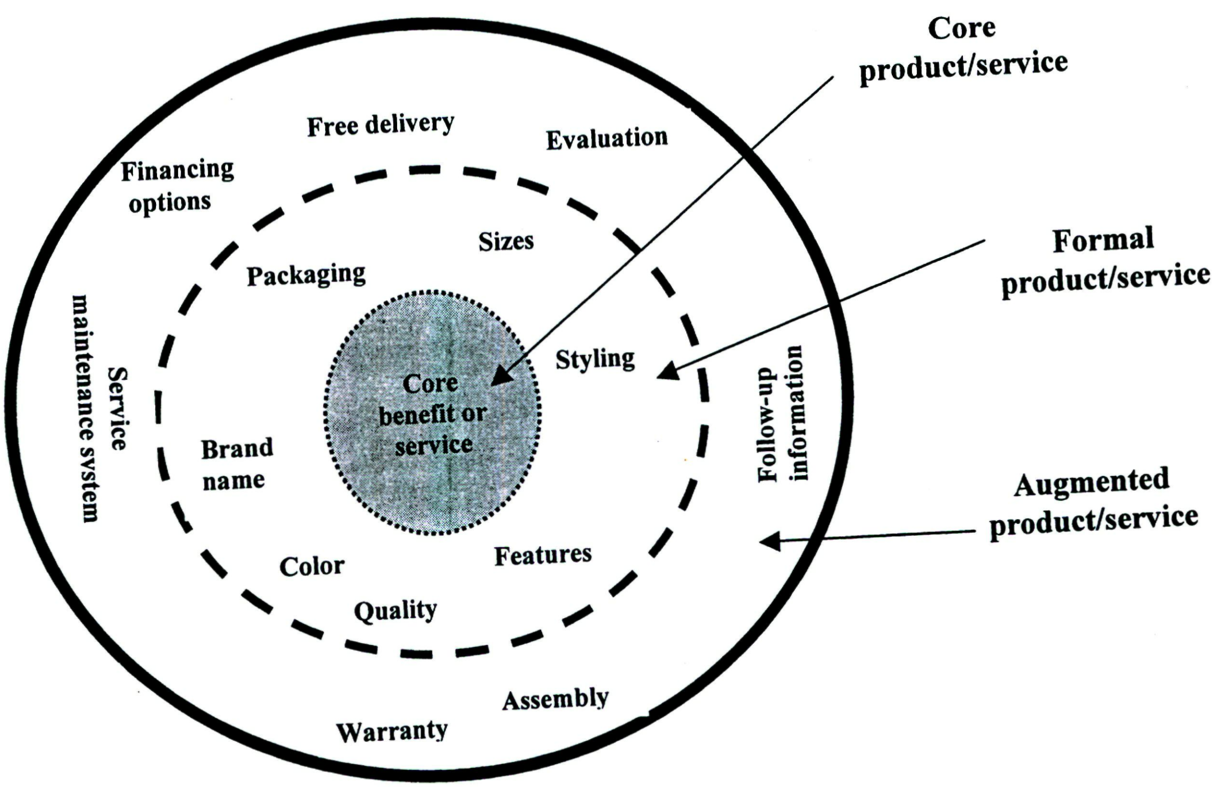
The product/service is the most important element of the marketing-mix. It will be examined first and then the other three elements of the mix will be examined.

a. **The product or service**

What is the product or service? To fully understand one's product or service, a marketer should understand the product/service could be perceived by the buyer at three levels – core, formal, and augmented.

The core product or service - This is the most fundamental level that answers the question, "What is the customer really buying?" The core benefit or service is the essential item or service that is being offered to the buyer to solve a problem, want, or need; the actual product or service is the packaging of the "problem-solver" required by the buyer. The challenge to the enterprise is to sell the core benefits of the service or product, not the features of the service or product. If an enterprise is marketing a bed and breakfast on a cattle ranch in the Rocky Mountains, the *feature* is a bedroom, two hot meals, and a shared-bathroom will two other bedrooms. The *benefit* is the opportunity to get away from the stress of city-life for a quiet, peaceful stay at a large cattle ranch that has been in the same family for four generations, has an exquisite view of the mountains, and the best home-cooked food in the entire county. The customer is buying rest and relaxation, nostalgia, and comfort.

Three Levels of the Product or Service



The formal product or service – Is the larger "packaging' of the core product. It is the tangible offerings of the product or service that include the packaging, quality, name, styling, and features that surround the essential core product/service.

The augmented product or service – Is the intangible part of the offering that enhances the formal product or service. The combination of the formal and augmented product or service is the area where a person can add value to its core product or service to increase its competitive edge over encroaching competition during the maturity stage in the product/service life cycle.

b. <u>The price</u>

Developing a pricing strategy can be one of the hardest things an entrepreneur does because if it is too low, one is working for very little financial return; if it is too high, one runs the risk of losing markets.

Pricing is influenced by costs including raw materials, labor, time, overhead, and taxes. Demand also influences pricing and requires an evaluation of what the market is willing to pay. Perceived value of product/service by the buyer is an important consideration in determining a pricing strategy.

There are several pricing strategies from which a person can choose. Theoretically, a pricing strategy should be developed around a combination of three important factors: demand, cost, and competition. However, several pricing strategies place more focus to one of these factors.

Cost-oriented pricing: The enterprise sets its prices on the basis of its costs. All costs are taken into account, including arbitrary allocation of overhead based on expected operating levels. This strategy usually includes mark-up pricing and cost-plus pricing, both of which determine price by adding a fixed percentage to the unit cost of the product or service.

Demand-oriented pricing: This strategy relies on the customer's perceived-value of the product or service rather than on the seller's level of cost. The key is to make an accurate determination of the market's perception of the value through good market research.

Demand-differential pricing: Another form of demand-oriented pricing is demand-differential pricing. Different prices are set for the same product or service, as follows:

- *Customer basis*: Different customers pay different amounts, such as one customer pays full list price, another pays a bargained price. Another form of this is client price adjustment basis, in which different prices are charged to different groups such as small businesses/large businesses, students/general public, members/non-members, government/private business, and old clients/new clients.

- *Product-form basis*: Different versions of the product/service are priced differently but not proportionally to their respective marginal cost. One customer pays $30 for an all-day wagon-ride if he or she brings his/her own lunch. Another customer is charged $50 for the same all-day wagon ride that includes a box lunch, with sandwich, apple, and pop.

- *Place basis*: Different locations are priced differently although there is no difference in the marginal cost of the location. A hand-knitted wool cap is sold at a ski resort for a much higher price than at a local store in a nearby town.

- *Time basis*: Prices vary seasonally, by the day, or even by the hour.

Competition-oriented pricing: This strategy prices the product or service based on what the competition is charging. The price is not necessarily set at the same price as the competition, although this is often the strategy. The risk of setting price at the same price as the competition is how to provide additional service or added value to the product/service to position the enterprise at an advantage over the competition. This strategy can also mean that the enterprise decides to set prices above or below that of the competition, but the point of this type of pricing strategy is that it is based on what the competition charges and not on the demand for the product/service or the enterprise's costs.

Industry pricing strategy – Occasionally, a product or service is in an industry that has an established pricing norm. If an enterprise has a product or service that fits into this category, it is difficult to price outside the accepted price scheme.

Common pricing mistakes include the following:

- Failing to allow for waste, inventory shrinkage, and damaged goods
- Not adjusting prices annually
- Ignoring the cost of replacing equipment
- Under-estimating the cost of getting and keeping customers
- Under-estimating the cost of special services or added value to a product or service.

c. <u>Promotion</u>

A well thought-out promotional strategy is important to the success of any business. One goal of promotion is to let people know about the availability of a product or service and to offer it at the appropriate prices and at the right time and place. Promotion defines the position of a product/service, brings in new customers, and maintains regular customers.

Promotion covers all the communication tools that deliver a message to a target audience (Kotler 1999).. The tools fall into five classes:

- Advertising
- Sales promotion
- Public relations

* Sales force
* Direct marketing

Advertising – Advertising is a powerful tool to build awareness of a company, product, service or idea. Because advertising can be very expensive, effective use of the advertising dollar is extremely important to a business enterprise.

Advertising involves five M's:

1. Mission – what is the purpose of the advertisement? Is it designed to create awareness, interest, desire or action?
2. Message – the message is shaped by the intended target market and perceived value to the customer.
3. Media – how will the message be delivered – by television, billboards, telephone, direct mail, or internet?
4. Money – the company must determine how many people it wants to reach in the target market, with what frequency, and with what impact.
5. Measurement – the best measurement is the sales impact of the advertising.

Paid advertising channels include: television, magazines, newspapers, yellow pages, direct mail, billboards, radio, brochures, vehicle signs, purchased promotional give-away items, such as tee-shirts, pens, and pencils.

Sales promotion – Advertising works mostly on the mind, and the sales promotion works on behavior. Sales promotion includes incentives, discounts, and free gifts. A word of caution should be extended to the entrepreneur: most sales promotions lose money for the company.

Public relations – This publicity includes:

1. Publications – company brochures, annual report
2. Events – trade shows, sponsoring athletic teams

3. News – articles written about the business, its employees, and its product or service
4. Community involvement activities – volunteering or giving donations
5. Identity media – stationery, business cards, logo
6. Lobbying activity
7. Social responsibility activities – good reputation

Sales force – Putting a salesman on the road is an expensive marketing tool, and for diversified operations, the sales force will be relatively small, and often will have several responsibilities besides sales. Outsourcing sales, via telemarketers or through distributors, is an option to reduce the sales force and associated expenses.

Direct marketing – Direct marketing and a good potential customer database allow target markets to be efficiently reached, at a relatively low cost.

d. Place (or distribution)

Every seller must decide how to make its products and services available to the target market. The two choices are to sell the goods or services directly to the customer or sell them through a middleman. Agricultural operators who deal in a commodity-based environment are accustomed to making this decision, but in a diversified operation, the decision may become more difficult. The distribution channel for a value-added product or a service may be different than the distribution of a raw commodity.

Being able to deliver the product or service in a timely manner is an important part of the marketing mix. Promoting a product, for example, and being unable to fill the orders will do great harm to a business. Similarly, offering a guided hunt, then not having a place to take a hunter will lead to a dissatisfied customer.

The method chosen to distribute goods and services will play a key role in developing the overall marketing strategy. Timeliness and dependability are key factors to customers, and are often more important to the customer than cost.

E. <u>Researching the industry</u>

Research is an important component in marketing. Not only is it important to research if there is a need for a potential product, it is important to research the industry in which a client is interested in becoming a part. For instance, if an individual decides to add a bed and breakfast component to his agricultural operation, it is important that he understands the bed and breakfast industry.

Market research

1. Identify the customer
   Before a person starts research markets for a good or service, it is important to identify the market or audience the product or service would serve. A market is made up of those people, businesses, agencies, organizations, and other groups that have a need or a desire for a product or service. Once this customer base is identified, further research needs done to identify who, from the list, is willing and able to pay for the product or service. This subgroup of customers is considered a target market.

2. Niche markets
   Finding a niche market (one that is a smaller set of customers who have more narrowly defined needs) can also be advantageous. Focusing on serving the customers in a niche allows for opportunity to know each customer more personally, and to have fewer competitors. Generally, these customers are willing to pay more for a good or service because it is so specialized. On the other hand, the niche marketer faces greater risk because the customer base is so narrowly defined. As customers' needs and interests changes, the niche may not be as viable.

F. Competition

1. Knowing one's competitor

Is competition bad? Competition can be a healthy aspect of being in business. There is a wealth of information one can gain by being keenly aware of one's competition. As a professional, you are in a good position to help the person who is starting or running an enterprise to appreciate what competition brings to the marketplace. A savvy businessperson can analyze valuable information about how to run his or her enterprise, including the following:

- What customers want or need
- What to avoid
- Where one fits into the market
- What he or she is doing that works or doesn't work
- Marketing ideas such as product/service mix, merchandising, and promotional activities
- Niche markets that aren't being served, are underserved, or over-served

2. Importance of a competitive advantage

To be successful, an enterprise should have one or several enterprise features that place the business in an advantageous position over the competition. By analyzing one's competition, a person can determine his or her competitive advantage that will give him or her an edge over the competitors. One reason that a competitive advantage is important is that the enterprise has a unique feature to promote or advertise. Encourage your client to study his or her competition and then to identify one or two features of the enterprise that are in some way better or unique than those of the competitors.

The following list includes many key competition features:

- Product/service offered
- Product/service selection

- Product/service availability
- Customer service
- Price
- Credit policy
- Advertising/promotion
- Business stability
- Business reliability
- Management
- Expertise
- Image/reputation
- Location
- Store appearance
- Store layout
- Sales methods
- Sales follow-up
- Training or use of product/service

3. Determining one's competitive analysis

Determining "competitive advantage" can be used to help a person to analyze internal and external essential characteristics of key competitors and to compare them with one's own key features. By summarizing key features with corresponding strengths/weakness and opportunities/threats, an astute businessperson is in a better position to determine his or her competitive advantage.

a. Determining sales potential

The process of determining sales potential has several steps as follows:

Positioning the product/service in a market area – The first decision that one needs to make is a geographical one. Where will the product or service be "positioned" or made available for sale? The market area is the geographical scope of one's market. In other words, what are the geographical boundaries that one can position the product/service, taking into consideration many factors including existing resources, business and family goals, time, and other matters.

Developing a customer profile – This step requires secondary and primary market research to determine the specific characteristics (psychographics and demographics) that make up a group of potential customers.

Determining the trade area and the target market – This step focuses on the number of people in the market who "fit" or match a customer profile. The target market is a sub-segment of the overall trade area because generally an enterprise cannot meet the demand and needs of an entire population within an overall trade area. There may be several target markets, identified by specific characteristics that make up the total demand for the product or service. Again, the enterprise's ability to market to one or more target markets depends on several factors including existing resources, goals, time, and other matters.

Selecting a market niche – Often, small enterprises or businesses seek a select market group that is overlooked by other businesses. By concentrating on a smaller, less obvious market, an enterprise can take advantage of advertising and promoting the product/service in a more efficient and effective manner, customizing the product or service to customers' needs, and better utilization of one's resources.

Determining the potential market share – Once a market niche and trade area has been identified, the enterprise should carefully estimate what it considers to be its percentage of the market niche. This step is crucial because people tend to overestimate their potential market share.

Estimate sales potential – This is the final step in which one estimates the potential sales level per period (month, annual, other) based on the price of the product/service and the number of sales per customer during this period.

b. <u>Determining sales potential in a niche market</u>

A demonstration of this process follows using the sale of handspun/hand-knitted wool stocking caps.

1). Product positioning in market area: -
The product is handspun, hand-knitted wool stocking caps, produced on a Wyoming sheep ranch, priced at $1. The positioning should be in an area that has a cooler climate or season such as the high altitudes in the northern United States. To avoid starting out by over-estimating a market of all people in the northern part of the United States (this would be millions), the positioning decision continues to refine the market area to a reasonable level for the enterprise's resources and other considerations. Eventually, the decision leads to positioning the wool caps to people who spend time outdoors in Utah and Wyoming.

- The United States
    - Higher altitudes in northern U.S.
        - Rocky Mountain Region
            - Wyoming and Utah
                - Product Position: People who spend time outdoors in Wyoming and Utah

2). *Developing a customer profile*

By using a reference guide for consumer market analysis, The Lifestyle Market Analyst, customer profiles are developed from the three metropolis areas for Utah and Wyoming. The three market profiles are:

- Cheyenne/Scottsbluff
- Casper/Riverton
- Salt Lake City

3). *Key lifestyles*

Key lifestyles from these three market profiles are identified as hunting/shooting and camping/hiking. People who enjoy the hunting/shooting and camping/hiking lifestyles in Wyoming and Utah tend to have a higher percentage of the following demographics:

- 18 – 44 (age of household)
- Male
- Median income $36,000 - $38,000
- Own home

The top 10 activities and interest characteristics identified in the three metropolitan market areas are the following characteristics. These generally show a similarity of interests within the three groups.

Top Ten Activities and Interests		
Casper/Riverton	Cheyenne/Scottsbluff	Salt Lake City
Recreation vehicles	Recreation vehicles	Snow skiing
Fishing	Fishing	Recreation vehicles
Motorcycles	Snow skiing	Motorcycles
Needle work/knitting	Own dog	Fishing
Own dog	Motorcycles	Buy pre-recorded videos
Snow skiing	Needle work/knitting	Use IBM compatibles
Military veteran in household	Sewing	Attend arts and cultural events
Crafts	Automotive work	Golf

Source: Standard Rate and Data Service. The Lifestyle Market Analyst. National Demographics and Lifestyles: Polk Company, 1998.

With this information, the enterprise can develop a customer profile as follows:

- Men, 18-44 years of age, living in Wyoming and Utah, who like to shoot, hunt, camp, and/or hike. They also like to fish and snow ski. Their household median income is about $37,000. People in their household likely have hobbies such as needlework, knitting, and sewing. They might own a recreational vehicle, motorcycle, and dog.

4). Determining the trade area and the target market: The trade area needs to be defined more narrowly than the geographical population of Wyoming and Utah, which is over 2 million. The process of refining the population to a workable number that fits the customer profile and eventually a smaller niche is as follows:

- Population of Utah and Wyoming: 2,176,438 people
  - Potential trade fitting customer profile: 860,000 (males 18 - 44 year old)

5). Selecting a market niche

The enterprise cannot provide products and adequately handle managing an enterprise that markets to 860,000 people. Thus, the process of narrowing the target market to a defined niche (market sub segment) is very important to a small business or enterprise. The Wyoming ranch decides to market the wool caps to hunters in Utah and Wyoming, who fit well within the customer profile identified above. After researching the annual hunters' report published by the Wyoming and Utah Game and Fish departments, the ranch carefully estimates that approximately 38 percent of the 860,000 males fitting the customer profile are hunters.

- Market niche: 38% of 860,000 males are hunters = 326,800 hunters

6). Determining the potential market share

The Wyoming ranch has correctly determined that this niche of 326,800 hunters is unreasonable because not every hunter will need or want to purchase a wool cap or purchase one sold by the ranch. Estimating a market share is difficult. It involves knowledge about the competition and the customers. The Wyoming ranch knows that there are many hats, caps, and stocking caps on the market and that most customers own more than one type of head covering used for outdoor purposes.

The ranch also knows that it has a limited capacity to produce and market wool stocking caps. Based on market research and enterprise resource analysis, it determines that it has a very small potential market share potential of .25 percent (1/4 of 1%.)

→ Share of niche market: .0025 of 326,800 = 817 wool stocking caps

7). *Estimated annual sales potential*

The Wyoming enterprise is finally in a position to estimate annual sales potential. The estimate includes determining the number of sales per targeted customer per year. In this case, the enterprise determines that one wool stocking cap will be sold per customer per year. The annual sales potential of $12,255 is the gross sales amount. The enterprise will have to estimate the cost of goods sold, expenses, and taxes to determine if the sale potential is feasible and reasonable.

→ Estimated money spent per targeted customer: $15

→ Estimated annual sales potential: $15 x 817 = $12,255.

> Note: The following pages offer a variety of marketing ideas for you, the professional to distribute to your clients, based on their specific needs and interests.

G. Creating a promotional message and plan

1. How do you define your service or product? If you were at a party and someone asked you what you did for a living, how would you answer?
2. Why are you producing this message? Why are you taking the time, spending the money, and going to this effort? What is your purpose?
3. What do you want to accomplish? What is your objective? What do you want to make happen for the money and time you spend?
4. Who is your audience? Who is your target market? Define the decision marker(s). What are they like? What is their customer profile?
5. What does your target market want from your service or product? What are their selection criteria when they are deciding on this service? What are their concerns? What are their hopes? What are their fears?
6. If you can only place one thought in your target's head, what would it be? Your audience will forget your message soon after hearing or reading it. What is the major thought or focus you want them to remember?
7. What is the one thing you can legitimately deliver to everyone who buys from you? What does your target market get? What can you promise?
8. What other reasons should they buy from you? List as many reasons your product or service should be attractive to the audience as you can, such as price, service, expertise, convenience, etc. Elaborate on each one.
9. Who are your main competitors and what do they have to offer? What are their strengths and weaknesses?
10. What makes you different from your competition? What makes you stand out? What is your competitive advantage? What can you offer that the competition can't?
11. What objections are there to the sale? What are the barriers you must overcome? How will you overcome them?

12. What outside factors may affect your message? What is there about the product, industry, economy, culture, environment, business trends, etc., that may affect the sale of the service or product?
13. What media will you use? What vehicles or promotional tools will you use to reach your target audience? Each tool is different. Remember that the message must fit the medium.
14. Are there any timing issues, outside of the media, affecting your message? Is seasonality a factor? Is there a political cycle or current event that might affect the message or the audience's reaction to the message?
15. How should the audience feel after receiving your message? What kind of impact do you want to make? How should the audience feel after receiving your promotional message?
16. What should the audience do after they receive the message? How should the audience respond? What action should take place: should they contact you, send for information, etc.?
17. Is there anything that must <u>not</u> appear, be included, or be considered in the message?
18. What is the budget and deadline for this promotional project?
19. Who should be contacted for more information?

Source: Joe Zagorski, National Business Association, Nov/Dec 1996 National Business News, in cooperation with U.S. Small Business Administration's BIC's, SBDC's, and SCORES's offices.

H. Direct mail tips

Direct mail can include a variety of marketing tools, including letters, brochures, fliers, postcards, catalogs and coupons. Each one requires special attention in the design of the piece. The most important part of a direct mail campaign is the mailing list. A great mailing package, with superior copy and glitzy design is useless if it doesn't reach the right audience for the product or service.

The sales letter is an important component of the direct mail piece. This is not to say that a brochure, coupon, flier, etc., can't be included with the letter, in fact, they should. Letters create the illusion of personal communication, an important component in making the sale.

Advantages of direct mail:

- Usually lower cost per potential customer
- Can be very selective to the target audience
- 85 percent of direct mail is opened
- Results are immediate – response is usually seen within three to four days after mailing

Disadvantages of direct mail:

- Developing a good mailing list is difficult
- Timing and mail delivery dates cannot always be determined if using bulk mail
- Design of the mail piece is critical, including format and wording

Tips for sending direct mail:

- Ensure the mailer gives the prospective customer information that will help him or her make a buying decision
- Mail to a target audience, identifying who your customer is when compiling the list
- Develop a consistent message
- Give contact information – your name, address, phone number

- Test your mail piece by coding different mailings to see which are most successful
- Make an offer – a free brochure, free catalog, free information
- Talk in specifics, not vague generalities
- A simple design is best. Don't be too creative or cutesy
- Present a powerful opening in your mail piece – don't save the best for last; chances are the customer won't get to the end of the message
- Follow up, and respond to a request promptly

Develop a strong opening for the mailer:

- Ask a proactive question
- Go straight to the heart of the reader's most pressing problem or concern
- Arouse curiosity
- Lead off with a fascinating fact or incredible statistic
- Start the offer up front

I. Tradeshow marketing tips

1. Overview

Trade shows can be a great way for consumers, retailers, buyers, and brokers to see the products and services that you have to offer. There are different kinds of trade shows and exhibition opportunities. At retail shows, you sell directly to the consumer. At wholesale trade shows, you will sell to buyers. Some regional and local shows will allow both retail and wholesale sales. A retail show will allow you to expose your products to consumers and to sell to them at retail prices. This generates more dollars per sale, but has limited market penetration in terms of establishing other outlets for your product. Direct sales to consumers do give you feedback on acceptance of your product or service and help you to understand pricing. The advantage of a wholesale trade show is that it is a cost-effective way to meet and sell to the trade. Trade shows also provide an opportunity for doing some valuable market research.

If you have never attended trade shows, one of the best ways to learn about trade show and your industry is to go to a show as a visitor. If possible, attend the specific show that you're thinking of exhibiting at or talk to past exhibitors and get their input.

Before participating in a trade show, does it fit into your business and marketing plan?

a. *Does the show target the market you're after?*
Don't waste your time and money on a show that caters to people who have no interest in your product. At the same time, don't overlook shows where you may be the only one capitalizing on a marketing opportunity missed by your competitors.

b. *Do you have the production capacity to handle increased orders?*

Once you've decided to participate in a show, you'll need to address availability of product. One of the biggest mistakes a business can make is over-committing. Don't sell what you can't deliver, or you'll have unhappy consumers, distributors, brokers, and retailers.

c. *What is the real cost of doing the show?*
Be sure you can afford to participate in the show. Establish a budget that includes travel, lodging, meals, and entry fees. Determine if you need to hire an assistant to help at the show. Make sure you know what deposit is required and what the cancellation penalties are. Read your contract carefully. Electricity, tables, chairs, refrigeration, etc., are usually not included in the basic booth fees. If the cost is prohibitive then consider sharing a booth with other vendors to save money and to provide some backup during the show.

2. <u>Booth design</u>

While many people design their own booths, others work with companies that design booth space for large and small businesses. As you begin to attend some of the larger shows, you'll see that the competition is fierce. It will also give you ideas on how to design your own booth. If you decide that you don't want to tackle the booth design ask other business owners for their recommendations. Be aware that shows have specific regulations. Most shows have a booklet that spells out the rules you must follow. Most promoters are very strict, and you don't want to jeopardize your ability to participate in the show. When designing your booth remember that you will have to transport it from show to show, so utilize lightweight materials. Design your signage so that you can use it at various shows. This will save you time and money.

Make a list of items you'll need to take with you:

- a lock box for cash (if necessary)
- hammer
- Velcro
- extra light bulbs
- file folders
- tape
- business cards
- brochures
- price lists and promotions
- paper and pens
- snacks
- a change of clothes if you'll be setting up the booth the same day the show begins

3. Working the show

Once you have designed an eye-catching booth you are now ready to meet consumers and buyers face to face. Be prepared to sell the product efficiently and enthusiastically. Try not to eat when you're in your booth. Half the battle is getting someone to stop long enough for you to make your sales pitch. Be aggressive. Don't sit in the back of your booth with your nose in a book. Sometimes you'll have only a split second to get the attention of buyers. Get them to sample or look at your product, and give them brochures, along with order information, for them to take with them. Ask for information about your potential customer and follow up. You may not be able to talk to everyone, so you need at least to get their names so you can contact them later.

Find out who is attending the show and plan to get in touch with buyers you want to meet. Invite them to visit your booth. Ask the show organizer for a few complimentary tickets and send them to the top buyers. If you are participating in a consumer show, invite local retailers. Read badges and make eye contact with good prospects.

You should talk to as many qualified buyers as your can, so don't waste time on tire kickers. They waste your time and can cost you a sale. Don't underestimate how hard it is to be enthusiastic about your product hour after hour, all day long. You're not the only one trying to get the attention of these potential customers, so you are going to have to stand out in the crowd. Start honing your skills on smaller regional shows, before you sign up for national or international events.

J. Tips for creating a brochure

The purpose of a brochure is to educate the customer about your product or service and encourage the customer to get in contact with you.

1. Brochure design

Brochures are designed for two reasons:

1. To attract a customer's attention the first time:
   This type of brochure is an attention-getter to introduce your product or service to the customer. It contains general information about your product or service, and requires the customer to follow up for further information.

2. To give a customer more information:
   This type of brochure is the follow up brochure, containing much information on the product or service. The brochure educates customers and calls them to action.

Step 1:
Develop the copy (text) for your brochure. Keep the copy concise. Be sure to include contact information on the brochure.

A *feature* is what a product has. A *benefit* is what a product does. The more the product does, the more attractive it becomes.

Step 2:
Add graphics to add emphasis, not to clutter the brochure. Remember, white space is considered a graphic element, and can be as effective as a four-color photograph or illustration. When on a tight budget, spot color (an additional color) can be used effectively.

2. Do's and Don'ts

Don't:

- Ask open-ended questions. Phrase each question so the answer can only be "yes".
- Use more than nine or 10 lines of type per paragraph.
- Underline or use all CAPITAL LETTERS for emphasis: use bold or italics, instead. This will make the brochure easier to read.

Do:

- Keep paragraphs short
- Keep a consistent image with your other promotional material

Source: Marketing for Dummies by Alexander Hiam

K. Internet marketing tips

1. Don't treat the internet like another media. It is different from traditional media and requires a different approach. The world wide web allows you to reach a potentially large audience with a great deal of information for a relatively small cost. Your site should allow users to interact and get the information they find useful to them. Some marketing strategies work better than others, but there are six basic elements to include in your strategy for it to be effective:
   - Give away products or services
   - Provide for effortless transfer to others
   - Scale easily from small to very large
   - Exploit common motivations and behaviors
   - Utilize existing communication networks
   - Take advantage of others' resources
2. Find out what your competitors are doing on the web. Analyze their sites. How does it relay information about their products and/or services?
3. Create an internet marketing plan. When you are ready to begin your company's website project, consult with an internet marketing professional to determine the goals to be achieved for your company's site and develop a marketing plan right for your business. Then build a site.
4. Promote and advertise your web site. Some of the successful entrepreneurs spend about 75 percent of their advertising budgets on non-internet media. Put your website on everything and in every place that you can think of. One of the most effective ways to do this is to get your site listed on a variety of "search engines," or places people go on the web to search for specific web sites. There are other tools such as: banner ad, which is an ad that integrates with another's web site; or using e-mail to round out your electronic marketing efforts.
5. Integrate your web site with your other marketing activities.
6. A good web site will add to your existing customer service to help keep customers and develop new ones.

7. Use the site as an information resource for your target markets.
8. Include a plan for international business in your web site marketing plan, even if it means relaying that you don't accept out of country orders.
9. It is critical that you outsource your web site development to the right firm, such as an internet marketing specialist, etc., if you have the financial resources. If not, spend a few months learning about it and taking courses on web site development and the various protocols. Some important questions you'll need to think about include: what size screen to design for (pixels or percentages); what color palette to use; and how form data will be saved.
10. Analyze your web traffic and learn from it. Find out how people are getting to your site and what they are doing once they get there. If using a development firm, make sure they review this with you on no less than a quarterly basis.

L. Print advertising tips

Components of a print advertisement:

1. *Headline*: the large words that first attract the eye, usually at the top of the page.
2. *Subhead*: an optional addition to the headline to provide more detail. The subhead is smaller than the heading, but larger than the body copy.
3. *Body copy*: the main text of an ad.
4. *Visual*: A photograph, illustration or other graphic element. This is an optional component of an advertisement.
5. *Caption*: Copy attached to the visual to explain it.
6. *Trademark*: A unique design that represents the brand of the company (like Nike's swoosh).
7. *Signature*: The company's trademarked version of its name. Often used as a logo design that features the brand name in a distinctive font and style.
8. *Slogan*: An optional element consisting of a short phrase, representing the spirit of the company.

<u>Do's:</u>

- Develop a dynamic headline
- Use active words, not passive words
- Use white space
- Be concise; not wordy
- Remember the five M's – mission, message, media, money and measurement

<u>Don't:</u>

- Assume that bigger is always better
- Clutter the ad
- Use unfamiliar words
- Use passive words

Source: Marketing for Dummies, page 126

M. Marketing method/idea checklist

_____Advertising: direct mail, newspaper, television, radio, magazine, yellow pages

_____Balloon ride: restaurant used as prize for grand opening and received free publicity when prize was awarded

_____Balloons: kids become mobile advertising force

_____Billboard: announce opening, introduce new product, new location

_____Birthday cards: send to valued customers, enclose free sample of latest item (e.g. fragrances)

_____Bookmarks

_____Booths: to fit the occasion: a computer show was attended by a candy maker – "Sample Bits and Bytes of Alma's Amazing Fudge"

_____Brag book: photographs of type of products you create, or manufacture.

_____Brochures: include phone number and address, make it easy for people to order from you. Use some type of code so you can learn best location for brochures.

_____Bulletin boards: Use miniature pads and provide tear off phone numbers or post business cards

_____Business announcement in newspapers:;of a special class you attended, if you or the product or service received attention in a national magazine, business start-up.

_____Business cards: carry with you at all times, include name, address, and business hours.

_____Bumper stickers

_____Buttons, badges, and nametags: attention getters that people will ask about.

_____Calendars: use name, phone number, address, and develop one appropriate for your business.

_____Capitalize on existing demand: in an area plagued by increased crime, a man who was marketing a burglar alarm which could be set off easily inside a pocket put a story in the newspaper that resulted in contacts from senior citizens for purchase.

______Checks printed with business name and logo: people ask you about your business, it's an opportunity for personal selling.
______Christmas/holiday cards
______City maps: with your logo on them
______Congratulations newsmaker: clip and send to the newsmaker; a radar detection service sent brochures to people who have received speeding tickets; new mothers receive baby clothes advertising.
______Contests: get names for a mailing list and free publicity when winners are announced.
______Complementing enterprises: when a strawberry farm discovered 70% prefer pick-your-own and 30% prefer pre-picked, it provided both
______Co-op advertising: split costs with other businesses
______Coupons: build traffic, introduce new items or service, can be bill stuffers or prizes, can be coded and tracked.
______Donations and door prizes: request your business name be mentioned, place your business card and sticker on the item.
______Doorknob holders: local pizza place offers free delivery Thursday between 4 pm and 7 pm – now ever Thursday is pizza night.
______Evaluate effectiveness: code/color, department number in advertisements; one store offered peanuts in shells in stores and asked customers to throw the shells on the floor so management could track the traffic pattern; books worn and need repair; radio ad – offer 10% discount when ad is mentioned with purchase.
______Famous person: restaurant owner invited David Frost, was picked up by AP and received national free publicity.
______Franchise approach: a cinnamon roll franchise has a calorie zapper, each store has see-through window panel so people can see rolls being made.
______Free trial: a caterer catered one flight free she happened to have the company business president present on board and got the business.
______Game shows: complimentary gifts
______Gift certificates
______Grocery store stuffers

______Home craft fair: send invitations to special people and hold in a place people want to see, like a local mansion

______In-store promotions; instructional selling, demonstrate how to make a product.

______Logo: develop an image to build consumer recognition: increase consumer confidence; people associate a logo with commitment to quality and longevity; confidence leads to increased sales. Do you recognize Izod Lacoste? How about alligator shirts?

______Magnetic car signs: attention getter, tells people what you do.

______Mailing list: establish one by asking customers to sign guest book, asking for mailing address on tickets for a drawing, putting names and addresses on sales tickets, taking name and address from checks you cash, and asking if people want to be on a mailing list for notification of sales, special events, and other promotions.

______Multi-market your product as well as yourself: one architect is a teacher, author, "stars" in and serves as a judge; a wheat crafter developed a design for national magazine, did a column for area newspaper, and taught classes.

______Name must be easy to pronounce: tell you something about the product ("tot trots" was changed to "stay in the saddle" which hints of safety instead of a term people associate with illness), be simple and catchy (hula-hoop, Etch-a-Sketch).

______Networking

______Newsletters: to special customers

______Packing: cans or bottles of popcorn, fruit basket collector of wood flowers, sapphires in dirt in burlap bag.

______Parade: a dog food stagecoach pulled by eight dogs; baton teachers had a dancing and marching troop;an auto restorer drove his vintage items; a woman who sells sailboats rides one in county parade

______Party plan

______Personal selling: know your rejection level

______Personalized license plates: set you apart; use business name

______Place mats: put restaurant name in center, block edges and sell space

_____Point of purchase: put out business cards, offer sewing alterations service at a clothing shop, a wallpapering service at hardware store, or a handyman service at hardware store.

_____Posters

_____Premium items

_____Recipe sheets: publish for cookbook, food columns, newspapers,and bookmarks

_____Record keeping: a bee pollen wholesaler discovered one third of its business in drug store; one-third in health store; and one third in grocery store: inventory to discover popular colors and styles.

_____Recording setting: attempt to break Guinness book of records, line up publicity ahead of time.

_____Referrals: decisions on services are made through referrals.

_____Restaurant: centerpieces

_____Samples: can be sold to people who want product immediately; caterer used a sample centerpiece gold foiled with her name – for purchases company name and information appeared on similar stickers – received orders from the sample.

_____Specialty products: Good Fellow catalog, Denver Mart

_____(State name) made: use stickers on product; great for tourism

_____Stickers: place on everything you make, e.g. "I received your product as a gift and want to order for a friend."

_____Surveys: learn likes and dislikes

_____T-shirts, jackets, sweatshirts, hats, aprons: maker of rattlesnake skin products wore hat-band, belt, and boots at shows. Also had shirt with business name on front and back.

_____Target ad: a home-based business owner advertised a fog free mirror in Good Housekeeping, which cost $1,000,and didn't receive one order; a man advertised a product in Family Circle which cost $1,500 and didn't receive one order.

_____Tasting party in stores: Famous Amos took his chocolate chip cookies everywhere he went.

_____Teaching special topics, classes: adult education through schools, club programs; increases exposure, gains creditability, offers a chance to sell.

_____Telephone: use an answering machine when you aren't there to answer the phone
_____Thank you notes: should be handwritten to convey sincerity (e.g. "we appreciate your business," keep communication lines open.
_____Tie-in promotion: wallpapering business cards at lumber yard, plants at grocery store, artwork in doctor, dentist and attorneys office
_____Tours: school organization, conventions
_____Trade journals and magazine:
_____Truck identification: a pest sprayer painted his vehicle like a bug
_____T.V.
_____Unique: e.g. letters from grandma, a cookie on a stem boxed like a rose and delivered, or chocolate roses made the same way.
_____Wear it: pig skin roses, farm wife apron
_____Window display: rent or borrow window space in vacancy stores
_____Windshield sheets:

N. **Resources**

A good source for marketing information is your local Small Business Development Center office. Numerous books have been written on marketing. We suggest any titles by Philip Kotler, or Jay Conrad Levinson. Levinson has a cut-to-the-chase approach to marketing.

Cindy Garretson-Weibel
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(307) 777-6589

Gail Gordon
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HUMAN
RESOURCES

HUMAN RESOURCES

A. Overview

Managing the human resources of an agricultural enterprise is as important as managing any other aspect of the business. Formalized human resource management is a way to effectively manage the people in the business. It includes organizing, hiring, training, compensating, and firing people. But it includes much more. The owner of a family business, such as a ranch, may find it challenging to be an effective manager because, in addition to strong management skills, the role requires certain leadership traits such as setting goals, creating a vision, inspiring, delegating, trusting, identifying strengths of others, providing guidance, and most importantly, communicating effectively.

Although many ranch operations rely on family members for labor, other operations use a combination of family members and non-family employees as workers. It is essential to organize an enterprise so that all workers, whether family or non-family, have a clear understanding of who the boss is, to whom they report, and what decisions they can make on their own. Roles for family members and non-family employees should be clearly defined. Guidelines should be established and written.

B. Management issues

Organizing – The business needs to be set up in a structure that makes it clear who reports to whom so that each person has only one boss. The key is to organize the business so that structure clearly defines relationships among the people; and authority is defined, limited, delegated, and matched with the appropriate degree of responsibility. Organizing includes developing four tools for effective management:

1. *Job Description* – No matter how small the business, workers and managers benefit by having written job descriptions that clarify and define roles, responsibilities, and provide measurement tools for performance. Job descriptions are not

static. They need to be reviewed regularly and updated as needed.

2. *Personnel handbook* – A personnel handbook is a written document that provides the following information:
   - Mission statement, goals of the business, and organization chart
   - Employee and worker policies and benefits
   - Vacation, sick leave, and holiday policies
   - Problem resolution procedures
   - Reporting structure and functions
   - Performance appraisal procedures

   Although the personnel handbook may appear to be a complex documentation, the handbook can be as short as several pages in length. The goal is to produce a concise written guide that effectively communicates important policies and procedures. There is no law that requires an employer to provide workers with a personnel handbook, but having a guide can save a small enterprise a good deal of money and time. Some courts and employees interpret a personnel handbook as a binding obligation on employers. Therefore, the employer should avoid any unconditional promises to employees in the handbook unless he or she is willing to face lawsuits by former employees trying to enforce those promises later.

3. *Personnel files* – Although few managers want to handle more paperwork, an efficient and updated set of personnel files will pay off in the long run. A personnel file should be developed for each worker from the date of hire. It should include information regarding a worker's raises, promotions, and commendations; all evaluations and disciplinary actions; worker's current status and past performance status; and all contractual or other agreements between employee and worker.

4. *Employee evaluations* – Consistent and objective evaluations help employees improve their performance and protect the employer from legal claims of wrongful termination. Written evaluations should be conducted periodically (once or twice a year, or more often if an employee is having serious problems). Although evaluations should be tailored to account for the specific enterprise and the responsibilities of the job position, they should include attendance and punctuality; dependability and ability to follow instructions; attention to detail; quality of performance; teamwork; initiative; and communication skills. A meeting should follow a written evaluation with the employee to review the document and to offer the worker an opportunity to respond.

Hiring process – This process includes determining the necessary skills required for the job, setting up an efficient interviewing process, checking references, and communicating the roles, responsibilities, and policies of the enterprise before offering the position.

Training – Before people can do their job well, they must know what to do and how to do it. On-the-job training is an important component of human resource management. It is not uncommon for small enterprises to overlook or undervalue the need for training all workers at every level. Training should be kept current; and the worker should be compensated for the time spent being trained, just as he or she is compensated for work completed.

Compensating – A compensation plan for a family business is critical, but very sensitive and challenging. How does one determine fair pay among members of a family? What is fair pay for family members and non-family employees? The philosophy of the family enterprise will determine how this issue is resolved.

- Business-first philosophy: if a business is operated under a business-first viewpoint, then fair pay is based on the concepts of equity (the job that is done, the skills that are required, the market rate for the job).

- Family-first philosophy: if a business is operated under this approach, the business exists for the family and effort is made to create jobs for all family members. The fair pay issue is based on the concept of equality where everyone is compensated in some way.

Firing – Although employers generally have flexibility in deciding whether to fire an employee, there are restrictions. If the employee does not have an employment contract and the employer has not made any promises about termination, the employer can fire the person for any legal reason; this is called firing "without cause." If there is an employment contract or promises were made regarding termination, the promises or contract will control the reason for firing. In these cases, firing must occur for "good cause," which means that the reasons must be directly related to their job performance. Once a person has been fired, the former employer can give a positive reference if he or she wishes to a prospective employer seeking a reference of the former employee. In the event that the former employer is not comfortable giving a positive reference, he or she need only confirm dates of employment and job responsibilities. The former employer should resist the urge to provide negative information to the prospective employer to avoid the possibility of a defamation suit from the former employee.

C. Employment relationships

There are two types of employment relationships. Because the correct choice of employment relationship is crucial to an employer, and because each type of employment relationship has strengths and weaknesses, it is advisable that employers contact an attorney before entering into an employment relationship.

1. *Contractual relationship* – A contractual relationship is a formal agreement between employer and employee. It is also known as "term employment." It is usually written. Both parties agree and are obligated to adhere to terms of the contract for a certain period of time. The contract should include the employment duration, duties to be performed, position, and

compensation. The contract also should include a discharge of employment provision that allows the employer to fire the employee for certain specific reasons.

2. *At-will relationship* – This relationship is a less formal arrangement and is quite common. The arrangement allows that either party can terminate the employment for virtually any legal reason.

D. <u>The difference between an independent contractor and an employee</u>

Occasionally an enterprise finds it necessary to utilize the services of independent contractors to replace employees, save money, to avoid certain employment issues, or to acquire expertise. Misclassification of the status of a worker's employment can prove costly to a business. It makes no difference how the worker is labeled; it is the substance of the relationship, not the label, which governs the worker's status. Three categories of degree of control and independence provide the final determination of worker's status (refer to the Employee or Independent Contractor handout on the following page):

- Behavioral control – Facts that show whether the enterprise has a right to direct and control how the worker does the task for which he or she is hired.
- Financial control – Facts that show whether the enterprise has a right to control the business aspects of the worker's job.
- Types of relationship – Facts that show the intent, permanence, and extent to which service is performed are key aspects of the regular business activities of the enterprise.

Employee or Independent Contractor A quick guide	
Employee	**Independent Contractor**
1. Instructions	
Employees comply with instructions about when, where, and how work is to performed.	Contractors set their own hours and do the job in their own way.
2. Training	
Employees are trained to perform services in a particular way. They are required to take correspondence courses and attend meetings. Other methods also indicate that the employers want the services performed in a particular way.	Contractors use their own methods and receive no training from the purchaser of their services.
3. Integration	
Services of an employee are merged into the business. Success and continuation of the business depends upon these services. The employer coordinates work with that of others.	The success and continuation of the business aren't dependent on services provided by a contractor.
4. Services Rendered Personally	
Services must be rendered personally. An employee does not engage other people to do the work.	Contractors are able to assign their own workers to do the job.
5. Hiring, Supervising, Paying	
An employee hires, supervises and pays workers at the direction of the employer (i.e. acts as foreman or representative of the employer).	Contractors hire, supervise and pay the other workers as the result of a contract. A contractor agrees to provide materials and labor and is responsible for the results.
6. Continuing Relationship	
An employee continues to work for the same person year after year.	Contractors are hired to do one job. There is no continuous relationship.
7. Set Hours of Work	
The employer sets an employee's hours and days.	Contractors are masters of their own time.
8. Full Time Required	
An employee normally works full time for an employer.	Contractors are free to work when and for whom they choose.
9. Doing Work on Employer's Premises	
Employees work on the premises of an employer; or on a route, or at a site, designated by the employer.	Contractors work off an employer's premises and use their own offices, desk, and telephones.
10. Order of Sequence Set	
An employee performs services in the order or sequence set by the employer. Salespersons report to the office at specified times, follow-up on leads, and perform certain tasks at certain times.	Services are performed at contractor's own pace. Salespersons work their own schedules and usually have their own offices.

11. Oral or Written Reports	
Employees are required to submit regular oral or written reports to the employer.	Contractors submit no reports.
12. Payment by Hour, Week, Month	
The employer pays employees in regular amounts at stated intervals.	A contractor is paid by the job on a straight commission.
13. Payment of Business and/or Travel Expenses	
The employer pays employees' business and/or travel expenses.	Contractors take care of their own expenses and are accountable only to themselves for expenses.
14. Furnishing of Tools, Materials	
An employer furnishes tools, materials, etc.	Contractors furnish their own tools, etc.
15. Significant Investment	
An employee has no significant investment in the facilities used to perform services.	A contractor has a real, essential and significant investment.
16. Realization of Profit or Loss	
An employee cannot realize a profit or loss by making good or bad decisions.	Contractors can realize a profit or suffer a loss as a result of their services or decisions.
17. Working for More than One Firm at a Time	
An employee usually works for one employer at a time.	An independent contractor works for a number of persons or firms at the same time.
18. Making Services Available to the Public	
An employee does not make services available to the general public.	Contractors have their own offices and assistants. The hold businesses licenses are listed in business directories, maintain business telephones, and otherwise generally make their services available to the public.
19. Right to Fire	
An employee can be discharged at any time.	Contractors cannot be fired so long as product results meet contract specifications.
20. Right to Quit	
Employees can quit their jobs at any time without incurring liability.	Contractors agree to complete a specific job and are responsible for satisfactory completion; or they are legally obligated to make good for any failure.

The above summary is reprinted from IRS Tax Facts, January 1992.

E. Resources

- An excellent resource for business planning assistance are the Small Business Development Centers, located throughout the state. For a list of Wyoming offices, see the Resources Section (6) of this guide.
- Debbie Popp, Associate State Director, Wyoming Small Business Development Centers, P.O. Box 3922, Laramie, WY 82071, (307) 766-3593.

NATURAL RESOURCES

NATURAL RESOURCES

A. General information

The relationship between natural resource stewardship and the success of traditional agricultural businesses has been acknowledged and taken into account by many generations of farmers and ranchers. Recall that enterprise diversification involves the use of resources, including natural, in more than one enterprise. Given this framework, it is difficult today to imagine an alternative agricultural enterprise that is not somehow tied to the land.

Whether the alternative enterprise is based on specialty crops, non-traditional livestock, hunting, or recreation, its potential success will depend on the people on that land exercising care in the management and use of the resources of that land. Review the Resource Inventory (Section III) for natural resources that could either be incorporated into existing enterprises or become the basis for a new enterprise. "Poor" resource conditions may point to obstacles that need to be overcome for an enterprise to be successful. On the other hand, "good" resource conditions may indicate opportunities for profitable new enterprises.

For example, if the chosen enterprise is service-based and involves people in direct contact with the land, the expectations are for shining examples of natural resource stewardship rather than obvious signs of neglect or abuse. Landscape aesthetics, something often not considered in traditional agricultural production, are also valued by potential recreationists on the land unit. This translates into a quality experience, and the potential for a repeat customer. So, sites that may detract from positive visitor experiences, like erosion or old dumping sites, should be addressed.

If the selected enterprise is product production-based, and relied on natural resources, then it is really no different than producing a traditional commodity. Excessive soil erosion reduces production potential of alternative crops, and poor grazing practices can reduce the potential for alternative livestock production or for maintaining key habitat for a wildlife population that is marketable.

It then makes sense, at least in part, that the economical sustainability of a diversified agricultural enterprise is dependent upon the ecological sustainability of the same land unit. It can be thought of as a symbiotic relationship because the care and wise use of the natural resources will help perpetuate the success of the business. Conversely, the careful management of the business can earn the reinvestment capital necessary for enhancing and maintaining the natural resources.

Many diversified ranch operations require a different approach to natural resource management. Management of the general operation may need to be adjusted around desired products and activities. For example, a pasture may need to be left ungrazed during peak wildflower bloom, a riparian corridor could be managed for birding, and an excellent hunting spot may need protection from other uses in the fall.

There are a multitude of factors that may need to be considered in an agribusiness enterprise. Some of the common ones are:

B. Access

Access will be an important consideration for many diversified enterprises. Some producers are very tolerant of visitors, while others do not want to contend with strangers. If the choice is to engage in a recreational enterprise, whether by fee hunting, bird watching or trail riding, people who are not familiar with the property will not be using it. Let them know what is expected of them, in terms of closing gates, staying on designated trails, and not littering. Explain how neglect of these things affects the other natural resources. By informing visitors of the kind and extent of limitations such as these, they will likely be more conscientious of the ranch and its operation.

Access can be managed in a number of ways. The landowner can limit the number of visitors, when they visit, which areas they can use, how they can use those areas, and the duration of the visit.

C. <u>Aesthetics</u>

Producers may need to take a step back and assess the ranch from an aesthetic point of view, identifying the best views on the ranch, noting where noxious weeds are, or locating quiet spots in the shade for reflection. Many guests may not be accustomed to what a "real, working ranch" looks like. They will have their own set of ideas and expectations, often based on what they have seen in the movies, and what they have been taught in school and have seen in the media about the environment.

Preparation for guests includes: healing erosion sites, laying out trails to take advantage of the most spectacular views, and concealing improvements, like stock water developments, on the far side of a hill or in the timber.

D. <u>Noxious weeds</u>

This is a growing concern across much of the West. Vehicles driven off-road are an excellent vector for spreading noxious weed seed from one location to another. What can be done? The producer can require guests to wash their vehicle in town prior to arriving at the ranch, or they might provide a car washing facility on site at the ranch. The producer could also arrange to pick up the guests at a pre-determined location to avoid the potential spread of weeds.

What about guests that want to bring their own horses? Have they been feeding weed-free hay, or have they been grazing weed-free pastures? The producer could suggest that the guests feed weed-free hay to their horses for at least a week prior to visiting. Better yet, the producer could provide all of the horses for the guests during their stay, and change higher rates.

A good education program is essential for noxious weed management. The producer can develop a packet on noxious weed information and send it to all guests prior to their visit.

E. **All terrain vehicle /off-road vehicle use**

The producer will have to decide if they will allow ATV and/or ORV use on the land unit. Many rangelands are fragile, and thus, susceptible to erosion from ATV/ORV use. The producer can manage these impacts by limiting the use to designated trails and roads, and at times of the year when soils are less erodible. Require visitors to use designated stream crossings where there are bridges or the stream channel has been armored.

ATV/ORV traffic can also affect animal distributions, both domestic and wild. Use of these vehicles should be managed to avoid displacement, or prevention of use, of animals in desired locations during times of the year when animal presence is a priority.

F. **Waste products**

Many visitors have a heightened awareness of environmental stewardship, and consequently, have related expectations. Old dumping sites should be rehabilitated. Some producers have also installed septic tanks and outhouses at designated camping sites to better manage waste. This has proven to be a favorable practice with their paying guests.

Another potential consideration may be with fuel dispensing sites on the farm or ranch. There may be patches of soil with fuel or waste oil spills that could be removed and properly disposed. Many farms and ranches are now installing fuel-dispensing facilities that are completely contained within a concrete apron and pad.

G. **Livestock grazing**

Livestock grazing is a long-standing tradition on many western ranches. It is also one of the most contentious issues related to ranching because some people have differing viewpoints as to the impacts of grazing on other resources. Producers should, at the very least, be aware of this perception. While many guests may not know what "healthy" rangeland looks like, they do have a perception of what "unhealthy" rangeland looks like. Management strategies should be implemented to move plant communities to more desirable compositions, to reduce and/or heal erosion, and to improve any other undesirable conditions. Proper grazing management helps maintain healthy rangeland and can serve as a tool for educating visitors as to the positive relationship that often occurs between grazing animals and plant communities.

Many producers are not familiar with alternative, non-traditional species of livestock, such as yaks, bison, elk, and camels. There are several factors that are important to consider in the context of natural resources stewardship. Some of these include forage preferences, distribution patterns, grazing and social behaviors, and water needs, all of which may be unique to these other types of livestock.

For recreational enterprises, some producers build corrals at designated camping or picnic sites to limit the impacts of grazing horses to a small, designated area. Hay is stock-piled and fed at these locations. This keeps the *visua*l impact and *real* impact of the grazing to a minimal area.

Others may choose to limit the access of visitors only to those areas that exhibit the highest degree of resource stewardship, while other areas are being improved as financial and other resources permit.

H. Wildlife/fisheries

Fisheries and wildlife are the basis for many diversified ranch enterprises across the West. Some producers opt to lease these resources to outfitters or sportsmen's clubs. Others choose to operate a fisheries or wildlife-based enterprise themselves. These can range from simple access fees to full-fledged guided operations with all amenities provided.

Much can be done to develop, enhance, and mange habitats for target species. Producers can also manage for trophy development or to reduce wildlife depredation impacts to other priority resources. Some producers find it beneficial to link with adjoining landowners to achieve desired trophy and/or population objectives for target species.

I. Conservation practices

The natural resource professional can assist the producer in developing strategies for addressing natural resource concerns and optimizing opportunities. Conservation practices are excellent tools that are available for accomplishing these types of objectives.

A conservation practice is a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. A diverse array of conservation practices are contained with the USDA-NRCS Field Office Technical Guide, which is found in each NRCS Field Office.

For example, if the producer is interested in a recreational enterprise, then he or she may be interested in a Recreation Trail and Walkway (code 568) or a Windbreak (code 380) adjacent to a campsite or lodging facility. Or, if the producer was interested in a fee hunting or fishing operation, then perhaps Streambank and Shoreline Protection (code 580) and Wetland Wildlife Habitat Management (code 644) would be desired.

Following the list of resources are the lists of NRCS Conservation Practices and 2003 practice component costs to use in evaluating enterprise feasibility and for planning conservation improvements to farm and ranch operations.

J. Resources

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USDA-NRCS Field Office Technical Guide
- can be accessed at all USDA Service Centers and NRCS Field Offices

USDA-NRCS National Range and Pasture Handbook. 1997.
- can be accessed at all USDA Service Centers and NRCS Field Offices

USDA-CSREES Cooperative Extension Service publications
- a list of natural resource publications for Wyoming, Colorado, Utah, Idaho, and Montana can be found in the Resources Section (VI) of this guide.