Insurance Coverage Options for Fresh Produce Growers

Fresh produce growers today face several risks associated with foodborne illness outbreaks. First, consumers affected by these outbreaks can take legal action against growers to claim monetary damages due to illness (also called liability risk). Second, regulators can issue a product recall or warning because of the outbreak, causing a catastrophic drop in sales and damaging the farm's or product's reputation. As foodborne illness outbreaks increase, so does the risk of economic loss. Insurance against economic loss from foodborne illness helps growers safeguard their business operations. With the variety of insurance coverage or policies available, fresh produce growers should understand what policies best cover their farms.

General Farm Liability Insurance Policy

General farm liability insurance typically protects against claims for bodily injury and property damage that occur on the farm premises or as a result of farm operations (IRMI, 2008). These policies cover accidents that affect farmers, employees, guests, and customers.[1] Outlaw (2007) and the New England Small Farm Institute (2008) suggest that these general commercial or farm liability policies are appropriate for growers with pick-your-own operations and on-farm stands. The New England Small Farm Institute (2008) further explains that farm liability insurance covers lawsuits only from activities considered "farming," which is usually defined to include only agricultural production activities and on-farm roadside stands. These policies also typically cover the sale of produce in its raw, unprocessed state, whether sold on-farm or at a farmers' market. The sale of produce grown by another farmer, even if the produce is sold "raw and unprocessed," is not covered under a general farm liability policy.

Commercial Business Liability Insurance

Commercial business liability insurance may be necessary if the grower also undertakes activities that are not considered "agricultural" or "farming" (New England Small Farm Institute, 2008). It works essentially the same way as general farm liability insurance. The insurance is appropriate for growers who have fresh-produce processing facilities. This insurance is also appropriate for growers that sell in farmers' markets or sell more than a certain percentage of products that originate off-farm (New England Small Farm Institute, 2008).

Product Liability Insurance Policy

Many fresh produce growers mistakenly believe that their general farm liability policy protects against claims of injury from contaminated fresh produce that causes foodborne illness. But as Hamilton (1999) explains, this is not generally the case, because the injury usually happens off the farm premises. In this case, a product liability insurance policy is appropriate, as it protects against consumer claims of injury caused by a defective or hazardous product such as contaminated fresh produce. (Holland, 2007). A growing number of retail stores require that food products they carry have a minimum level of product liability coverage (normally a $1 million policy or more). It is important to understand, however, that food product liability insurance strictly covers claims of injured parties and not recall costs.

The cost of food product liability coverage is difficult to estimate. Insurance providers are often reluctant to provide quotes because there is no "standard" premium rate for food products, and the industry is very competitive. Instead, most insurance companies that offer this coverage provide an estimate only when growers submit a detailed description of their product and business operations (production, distribution, and marketing plans). However, an approximate rule of thumb in the industry is around $1,000 per year for a $1 million policy.

Based on an informal survey of insurance providers undertaken in May 1998, Holland (2007) indicates that the annual premiums for food product liability insurance ranged from $500 to $20,000 for a $1 million policy. The average food product liability premium was found to be $3,000 for a $1 million policy. The most significant factors contributing to the premium charged are: level of gross sales or annual payroll, prior claims (claims history), level of coverage, type of product, type of market, and recall plan.

Product Recall Insurance Policy

A product recall insurance policy typically covers only the actual or direct costs of a product recall, such as costs associated with getting the contami-

[1] *Note, however, that this policy does not replace Worker's Compensation insurance and only typically covers activities considered "farming."*

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nated product off the shelf and destroyed, cost of replacing contaminated products, and transportation costs. It does not cover other indirect costs or losses due to the product recall or an outbreak warning, such as third party expenses, loss of profit, and business interruption losses. Third-party expenses refer to those costs that occur when a downstream retailer loses business as a result of the contamination.[2] Loss of profit refers to instances when the product recall or warning damages consumer confidence in the grower, negatively affecting revenues in the current or next business cycle. Business interruption losses are those losses resulting from a period where the growers' operations shut down.

An important issue to consider in the purchase of product recall insurance is that it covers recall costs only for growers responsible for contamination or outbreak. For those growers that were not a source of contamination but whose products were also taken off the shelf as a precaution, recall losses may not be covered. This can be a problem if, for example, no government entity officially traced or narrowed the source of the contamination (Odza, 2008).

Accidental or Product Contamination Policy

A more comprehensive policy that covers both the direct and indirect costs of product recall is the accidental or product contamination policy. It also insures growers against claims resulting from their own unintentional distribution of a product deemed unsafe. However, as with the product recall policy above, this coverage applies only to those growers whose product was contaminated. Those growers who suffered loss of profit or business interruption losses but were not contaminated (their product was rejected as a precaution or due to a market scare) typically will not be covered under this policy.

Malicious Tampering Insurance

Malicious tampering insurance is a more comprehensive insurance policy that covers losses from criminal actions of sabotage against the grower, as well as the losses covered in the accidental or product contamination policy (the indirect and direct recall costs). An example of a private company that sells this type of comprehensive coverage is MRM MacDougall Risk Management (Skees et al., 2001).[3] Damages due to malicious product tampering are indemnified for up to $75 million, while damages due to accidental product contamination are indemnified for up to $50 million. Under the accidental contamination provision of the policy, losses are categorized into four areas: (1) recall expenses, (2) lost gross profit, (3) rehabilitation expenses, and (4) crisis response. The second category covers loss for "12 months following discovery" or lost profit during a shorter period when the sales revenue remains lower that would have been reasonably projected had the product contamination not occurred. Indemnities are even paid to rebuild the lost market share. Table 1 (see back cover) provides examples of other companies that offer product recall insurance, accidental contamination insurance, malicious tampering insurance, and combinations thereof. Again, the shortcoming of this product, as with the product recall and accidental contamination, is that it applies only to growers whose product was contaminated.

Combination Policies

Some insurance companies offer combination or package policies. For example, the general farm liability policy and commercial business coverage can be combined with a homeowner's policy. A combination policy makes sense for growers whose farms have both residential and commercial characteristics. Such policies are especially appropriate for family- and individually-operated farms (rather than large corporate farming operations). Combination policies generally offer the additional advantage of a lower premium than for two policies purchased separately.

Excess/Umbrella/Surplus Lines of Insurance

Excess/Umbrella/Surplus lines of insurance are the terms used to describe insurance coverage that provides catastrophic loss protection when the underlying insurance is inadequate. For example, there are some risks that North Carolina-licensed insurance companies may not cover. The excess or surplus lines market is an insurance marketplace for unique or hard-to-place risks. For fresh produce growers, these excess or surplus lines provide additional protection above and beyond the losses covered under other policies. An excess or surplus insurance policy can be tailored to protect against losses from foodborne illness outbreaks even when the grower's product is not contaminated. The disadvantage of these types of policies is that premium rates are not regulated under state laws, and the Insurance Guaranty Association offers no protection for companies that sell these lines. Therefore, if the surplus lines insurer has financial difficulties, claims against the policy might not be paid. Note that product liability insurance in North Carolina sometimes falls under excess or surplus lines of insurance.

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

All of the insurance policy options discussed so far are private-industry provided (and underwritten), and these policies are not a part of the government-supported Federal Crop Insurance (FCI) program.[4] Except for the excess/surplus lines, these privately provided insurance options cover only losses related to food-

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2 *Third party expenses may also include the liability the grower faces from downstream retailers whose brand names may be tarnished as a result of the contaminated fresh produce supplied to them.*

3 *This policy is underwritten by Lloyd's of London.*

4 *The FCI program is overseen by the United States (US) Dept. of Agriculture Risk Management Agency (USDA-RMA). This is a publicly supported, privately delivered program that provides insurance products that help protect farmers from yield/revenue losses due to natural perils (such as drought or flood.). AGR and AGR-Lite are offered under this program. AGR-Lite is currently available in North Carolina.*

borne illness outbreaks if the particular grower's fresh produce was contaminated. The insurance options previously discussed (except for the excess/surplus lines) do not cover growers that were not contaminated, even if they suffered product recall expenses such as loss of profit or business-interruption losses.

The Adjusted Gross Revenue (AGR) or the Adjusted Gross Revenue-Lite (AGR-Lite) insurance products offered under the FCI program may cover some of the lost profits or revenues due to a foodborne illness outbreak even if the grower's product is not contaminated. AGR and AGR-Lite are whole-farm revenue protection plans. They protect against low farm revenues due to unavoidable natural disasters or market fluctuations that affect income during the insurance year. This coverage extends to fresh produce, as well as to most farm-raised crops and animals (any source of non-value-added agricultural revenue in the farm). The plans can partially cover a catastrophic drop in fresh produce revenues due to a foodborne illness outbreak. The revenue loss can either be from a precipitous price drop or a substantially low (or zero) demand for the fresh produce due to the outbreak.[5]

AGR and AGR-Lite use a grower's five-year historical farm average revenue as reported on the IRS tax return form (Schedule F or equivalent) and an annual farm report as a basis to provide a level of guaranteed revenue for the insurance period. If actual revenue for the period falls under the revenue guarantee chosen by the grower, then the AGR or AGR-Lite policy will provide indemnity payments. Note, however, that there are limits to the amount of revenue that can be insured, depending on the coverage and payment rates chosen. Large corporate farms with revenues above these limits may not qualify. For more details on AGR and AGR-Lite, see the RMA factsheets about them (RMA, 2007).

For more details about which insurance may apply to their particular operation, growers should contact their *insurance agents.*

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[5] *Note that this is the authors' interpretation of the policy. However, there is a clause in the AGR-Lite policy where losses from the following may not be covered: "inability to market the agricultural commodities due to quarantines, boycotts, or refusal of any person to accept your agricultural commodities." We have contacted RMA for clarification of this issue and were told that a product warning that causes a revenue reduction (due to an industry wide drop in prices, for example) would be covered under AGR-Lite. The warning that caused low prices is a "market fluctuation" and should be covered. However, we were unable to get a definitive interpretation of whether revenue losses from a direct, government-announced product recall falls under this clause.*

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For Assistance in Finding Authorized Insurance Services in North Carolina:
N.C. Department of Insurance

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

MAP (919) 733-9811
For help with unauthorized insurance
1-800-546-5664 consumer services
(919) 733-7487 agent services

Table 1. Examples of Product Recall, Contamination, and Malicious Tampering Policies offered by Private Companies (From Skees et al., 2001).

Company	Product	Description
AIG Insurance	Recall Plus	Includes First Party Recall, Third Party Product Recall Expenses, and Third Party Impaired Property Expenses. The First Party Recall covers the traditional recall expenses and also has a "rehabilitation coverage option that covers the cost of restoring the company's sales or market share to the level expected prior to the product recall."[a]
Fireman's Fund	Liability insurance and product withdrawal expense coverage	Covers expenses for recalls, including communications, office supplies, additional labor costs, shipping, and the costs to dispose withdrawn products. "If a defective product is discovered, you can act quickly and confidently by initiating a withdrawal without obtaining prior approval." Also offers business interruption coverage.[b]
Liberty Mutual	Product recall expense insurance	Covers expenses for recalls, including communications, overtime compensation, and product disposal. Included as a general liability endorsement.[c]
Triple S. Inc: Subsidiary of National Food Processors Assoc.	Product Contamination Insurance	Covers expenses to inspect, withdraw, and destroy product; value of product itself; and "extra expenses to rehabilitate and re-establish the product in the marketplace." For members of the National Food Processors Assoc. only.[d]
Chubb Group	Reputational damages liability insurance	Protects against claims for financial damages made by a customer or franchisee alleging that a foodborne illness harmed its reputation and resulted in a loss of income.[e]
Zurich, U.S.	Brand protection insurance	Covers recall expenses, including those of third party. Also covers "loss of profit relating to recall incident and costs to rehabilitate or re-establish processor's reputation and product's market share."[f]
IBS (Insurance Brokers Service)	Total recall plus	"Provide up to $25 million in protection from the unexpected costs of recall management and gross profit loss" and brand protection.[g]
CAN Commercial Insurance	FOOD program	Allows food companies to "take preventative action by getting products off the shelves quickly if there is any question of food safety."[g]
MRM MacDougall	Recall insurance	Offers up to $50 million in protection for a recall and $75 million for malicious tampering with food products. Insures recovery expenses as well as damage to sales and reputation.

[a] Source: Company Web site is: http://firemansfund.com/spd/cfm? spi=liability and Mancini, L. 1997. "Before disaster strikes:property and product liability insurance for food companies." Chilton's Food Engineering. 69(4): 95-98.

[c] Source: Company Web site is: http://www/libertymutual.com/business/specialp.html and Demetrakakes, P. 1999. "Backlash." Food Processing. 60(8): 16-21.

[d] Source: Company Web site is: http://www.nfpa-food.org/triplesbrochure and Mancini, L. 1997. "Before disaster strikes:property and product liability insurance for food companies." Chilton's Food Engineering. 69(4): 95-98.

[e] Source: by Goch "Chubb liability insurance designed for food industry," Best's Review – Property-Casualty Insurance Edition, November 1998, p. 86 and Company Press Release, Aug. 24, 1998 "Chubb protects food processors and suppliers from losses when customers and franchisees sue for 'reputational damages' stemming from foodborne illness."

[f] Source: Demetrakakes, P. 1999. "Backlash." Food Processing. 60(8): 16-21.

[g] Source: Dwyer, S. 1999. "Is your brand bulletproof?" Prepared Foods. 168(6): 29-30.

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