Risk Assessment and Management¹

Disclaimer

The information contained in this chapter is deemed correct and accurate to the best of the ability of the author, based on information used at the time of the review. This chapter is for educational purposes only and is not an interpretation of any laws.

Risk is the uncertainty regarding the likelihood or magnitude of loss, damage or injury. By engaging in agritourism, you are taking on several types of risk. The nature and extent of these risks depends on several factors, including:

- 1. Current and potential hazards on your property
- 2. Activities and/or events you propose to develop on your property and how visitors will be involved

Benefits of Identifying Your Risk Tolerance and Assessing Your Risks²

- Allows you to identify and exclude those alternatives that expose you to unacceptable risks.
- Helps guide providers of risk management services to the best options for you.
- Ensures that your insurance dollars will be spent wisely.
- Increases the likelihood that you will select the best combination of risk management strategies.

To best manage risk, you should follow these steps:

- 1. Identify the types of risk agritourism enterprises may face
- 2. Understand legal considerations in Colorado
- 3. Understand the regulatory environment in your county, specific to your proposed enterprise
- 4. Assess risk specific to your enterprise
- 5. Identify methods to manage your risk
- 6. Consult an attorney
- 7. Learn basic insurance concepts
- 8. Develop safety measures and re-evaluate them regularly

¹ Adapted with permission from The University of Tennessee. UT Extension publication PB 1754, Agritourism in Focus: A Guide for Tennessee Farmers. September 2005.

² USDA, RMA. Introduction to Risk Management. 1997. Available online at: http://www.rma.usda.gov/pubs/1997/riskmgmt.pdf

1. Types of Risk

There are six main categories of risk that may be relevant to agritourism enterprises. Legal risk is perhaps the most commonly recognized risk, but you also face human resources risk, business interruption risk, production risk, marketing risk and financial risk when you operate an agritourism business.

Type of Risk	What Does It Involve?	
Legal Risk	Federal, state and county laws and regulations concerning public health & safety; accessibility by the disabled; land use & development; direct marketing; licenses & taxes, the environment	
Human Resources Risk	Changes to family that will impact business management (death, divorce, disability, disagreement); protection & management of employees	
Business Interruption Risk	Loss of income due to hazardous weather, natural disasters	
Production Risk	Agritourism enterprises that incorporate or rely on the production of agricultural commodities, specialty crops, or livestock face production risks. Weather conditions, disease or pests may decrease or eliminate yields. Biosecurity may be compromised by increased traffic, which increases the potential for disease or pathogens to spread among crops, livestock or products.	
Marketing Risk	May include not being able to attract enough customers, attracting more customers than you can accommodate for a quality experience, or negative impact from a new source of competition.	
Financial Risk	Meeting cash flow needs, obtaining affordable debt capital, maintaining or growing equity in the agritourism enterprise, risk of having property damaged or stolen	

Each of these risks has the potential to be very costly to your business. The planning and operation of an agritourism enterprise should, therefore, include risk assessment and the development and implementation of a risk management plan.

2. Legal Considerations for Colorado Agritourism Operators³

As with any business venture, operating a successful agritourism enterprise requires a good understanding of the laws that govern it as well as the legal risks it involves. Figuring out what these are can be challenging because by its very nature agritourism requires attention to all of the legal concerns associated with running a business open to the general public as well as those associated with a modern farming or ranching operation.

Successfully navigating these legal waters requires substantial legal knowledge and experience. Unless you personally have that expertise, you should plan on spending some time with an attorney who specializes in the area of agritourism before you expand your current agricultural operation. If you need help contacting a suitable attorney, the Denver Bar Association maintains a list of attorneys in Colorado who specialize in agricultural law.

Identifying, analyzing and addressing all of the legal issues associated with an agritourism business can be daunting, even to an experienced professional. They range from liability for slip and fall accidents and licensure requirements to complex tax questions and regulatory issues. When you meet with an attorney, therefore, be prepared to explain your business plans in enough detail to enable him or her to adequately identify and assess your enterprise's particular legal needs and concerns. This is critical because of the diversity of agritourism options. For example, the set of concerns associated with a running a corn maze for several weeks a year is quite different from those raised by a year-round food and lodging facility or outfitting operation. The more detailed and specific information you can provide, the better the consultation and advice you can expect to receive.

A major concern of all agritourism entrepreneurs is, or should be, **liability**. While every farm or ranch has some liability for people who might come onto their property, such as mail carriers, repair persons, etc., that risk is dramatically increased when the facility extends an open invitation to the general public. Developing an accurate risk assessment for an agritourism business requires consideration of many factors, and your risk exposure can vary widely depending on the particular kind of attractions and activities you plan to offer. Some activities, such as horseback riding, may be covered by state laws providing some protection against negligence suits from injured customers (see §§ 13-21-119 and 121, C.R.S.), while other aspects of your operation may have more limited or no statutory protections. Another important consideration is the number of people that will be visiting your operation. The more customers you have, the more opportunities there are for people to slip, fall or otherwise injure themselves or others. Calculating your risk, minimizing it where possible, and securing adequate and appropriate insurance for the inevitable claims, is critical to protecting your investment and profits associated with your agritourism business as well as your existing agricultural operation and personal assets.

3. Regulations Applicable to Agritourism Businesses

Agritourism enterprises may be affected by a wide variety of regulations depending upon the type of attractions offered, location of the enterprise, whether employees are hired and a

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³ Prepared by David Joeris, 2007.

number of other factors specific to each enterprise. These regulations may be imposed at the federal, state and local levels of government. It is important to investigate all regulations applicable to your agritourism enterprise in order to avoid penalties, fines or interruptions to your business.

Regulations Checklist

The following list of regulations is discussed in the next section. You should check each regulation that applies to your operation and then become familiar with the details of those regulations. You are also encouraged to contact the appropriate governing agency for more information on how the regulations may directly impact your agritourism enterprise.

General Regulations
☐ Land Use and Development (county, city)
☐ Business License and Taxes (county, city)
☐ Lodging Taxes (county, city)
☐ Sales Tax Collection and Remittance (state, county, city)
Americans with Disabilities Act (federal)
Employment Regulations
☐ Fair Labor Standards Act (federal, state) ☐ Child Labor Act (federal, state) ☐ Occupational Safety and Health Act (federal, state) ☐ Workers' Compensation (federal, state) ☐ Unemployment Taxes (federal, state) ☐ Income Tax Withholding (federal)
Permits and Licenses for Specific Enterprise Types
☐ Food Service Permits and Inspections (state, county) ☐ Retail Food Store Permits and Inspections (state) ☐ Animal Exhibitor Licensing (federal) ☐ Winery Licensing (state) ☐ Access to Public Lands & Wildlife Resources (federal, state, county)

4. Risk Assessment

The first step to reducing and managing risk is to recognize which particular risks are associated with your agritourism enterprise. Risk assessment should be a continuous process because new risks may arise at any time. Use the Risk Identification Exercise to document the specific risks your agritourism enterprise may face.

Risk Identification Exercise⁴

Type of Risk	Assessment Questions	Identified Risks
Legal Risk	 Have I reviewed my property and liability insurance policies? Do they exclude areas that concern me, such as pollution or livestock? Am I covered in community service activities? What about leased buildings or equipment? Are my recent acquisitions covered, such as computers or antiques? Do I need to perform an environmental audit? Am I aware of and do I follow environmental record keeping requirements? 	
Human Resources Risk	 Do I have a will? When did I last review it? Have I sought professional help to guide me through this process? Can I find important documents such as wills, titles to property, banking and investment records? Is it possible for others to find them? Does everyone understand our plans and decision making structure? Does everyone feel that they have a chance to contribute to the planning process? Do I understand the goals of other family members and employees? Do we have regularly scheduled times for reviewing goals and performance? Does everyone clearly understand what has to be done to be successful within the organization? Do I understand all the regulations concerning hiring and retaining employees? 	
Business Interruption Risk	 Do I have a contingency plan to offer an alternate activity to visitors if weather or crop failure impact my agritourism operation? What are the capital, legal and human resource risks associated with offering alternate activities under this scenario? 	
Production Risk	 What knowledge and management capabilities do I need for an additional enterprise? Are they readily available? Do I have a serious commitment to a new enterprise? Which additional capital investments would I need to diversify? What are the added labor needs of a new enterprise? Where are new markets? What is the income relationship between a prospective new enterprise and 	

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 $^{^4\} Extracted\ from\ USDA,\ RMA.\ Introduction\ to\ Risk\ Management.\ 1997.\ Available\ online\ at:\ http://www.rma.usda.gov/pubs/1997/riskmgmt.pdf.$

Type of Risk	Assessment Questions	Identified Risks
	my existing enterprise(s)? • Will the new enterprise provide effective diversification?	
Marketing Risk	 Will my lender understand my plan and help me achieve my goals? What are the potential costs and returns associated with alternative strategies? Should I seek professional marketing services? Have I checked my marketing plan against my financial plan to make sure that income from marketing covers cash flow needs? Have I calculated operating costs and estimated my revenues to determine my pricing structure? 	
Financial Risk	 What are my short-term and long-term goals and how do they affect my financial planning? Was documented historical information used in my financial projections? Was it accurate? Which records do I need to monitor the financial status of my operation? Which records do I need to document my borrowing requests? Which farm record and financial analysis packages might help me? What have been the trends in my business's key performance indicators? What are alternative sources of financing and their terms and conditions? What can I do to reduce a lender's risk exposure and thereby ensure that I pay the lowest possible interest rate? Do I completely understand the terms and conditions of my borrowing arrangements, including the calculation of interest? What alternative sources of income are available to me? What are my cash flow requirements for operating inputs, machinery, personnel, land costs, debt payments and farm overhead? What are some ways of reducing cash expenses? What are my tax obligations? What types of personal and property insurance do I need? What is an effective contingency plan for meeting cash flow needs after a crop failure or a period of low prices? 	

The risk assessment process also involves estimating the likelihood that a risk will result in loss, damage or injury as well as the potential magnitude of the loss. You will be able to accomplish this phase of the risk assessment process later with the Risk Assessment and Management Worksheet.

5. Risk Management

Simply identifying risks does not diminish or eliminate them. A risk management plan should be developed and implemented to help reduce or eliminate potential risks. Risk may be managed using four general methods:6

- 1. Avoid risk
- 2. Reduce risk
- 3. Transfer risk
- 4. Accept risk

Avoid Risk. You can avoid risk simply by choosing not to engage in agritourism activities altogether. By using the risk assessment process, you may also decide that a specific agritourism activity has more risk associated with it than you want to take on. Therefore, you can decide not to offer that activity.

Reduce Risk. You can reduce risk by implementing preventative measures and procedures. For agritourism enterprises, customer and employee safety is one area where risk reduction can be effective. A proactive approach to safety for customers and employees should be a major priority. Safety considerations for agritourism enterprises are discussed in another section.

Transfer Risk. Another method for managing risk is to transfer risk to another party. The most common way is through insurance coverage. An insurance company accepts risk on your behalf in return for compensation in the form of premiums. In return, the company will reimburse you for damages, if incurred, according to the details of your policy.

Accept Risk. You may not be able to reduce or transfer all risk associated with some kinds of agritourism activities and still decide to offer the activity. In this case, you have decided to accept risk and should take action to prepare for loss or damages in other ways. For example, you can create an emergency fund to pay for expenses you might incur as a result of the risk.

Certain risk management methods are more suited to managing specific risks based on the expected severity and frequency of damage, loss or injury. The Risk Management Method Matrix illustrates which methods logically relate to severity and frequency combinations. If an event is expected to occur only occasionally and the potential for injury, damage or loss is low, then inexpensive risk reduction strategies and steps to accept risk may be logical. If the severity of losses will be high with a low frequency of occurrence, more intensive risk reduction and acceptance strategies may be necessary. If the expected severity is low but the frequency is high, once again reduction of risk as well as risk transfer is recommended. With both high severity and frequency, you may also reduce and transfer risk or decide that the activity is too risky and avoid it altogether.

Risk Management Method Matrix			
	Low Severity	High Severity	
Low Frequency	Reduce or Accept	Reduce or Accept	
High Frequency	Reduce or Transfer	Reduce, Transfer or Avoid	

Some strategies to help reduce, transfer or accept risk in an agritourism enterprise are listed below. Check the items which may be applicable to your agritourism operation.

→ Rec	luce
	Familiarize yourself with laws and regulations and follow requirements relevant to your operation.
	Develop and implement safety measures and procedures for customers and employees.
	Develop and implement an emergency response plan.
_	Develop and implement an incident reporting system to preserve contact information for injured parties and witnesses, incident-site photos and other relevant information.
	Develop and implement safe food handling procedures.
	Train employees in proper operational procedures.
	Make hand-washing facilities available for employees and customers.
	Get first-aid training and require employees to get training.
	Purchase and make available first-aid supplies, fire extinguishers and a weather radio.
	Place lists of emergency phone numbers with directions to your operation at all phones.
	Seek assistance from professionals such as lawyers, accountants, production specialists and regulators when needed.
→ Tra	nsfer
	Obtain property insurance.
	Obtain liability insurance.
	Obtain health and disability insurance.
	Obtain crop insurance.
	Learn and follow insurance requirements and claim procedures.
	Require customers to sign lease or rental agreements for appropriate activities (such as fee-hunting or equipment rental).
	Require vendors and independent contractors to maintain current licenses and insurance while operating on your property.
	Require customers to sign hold harmless agreements or liability waivers.

\rightarrow Acc	ept
	Develop a business analysis and management system.
	Choose a beneficial business structure for your agritourism enterprise.
	Monitor market conditions.
	Create an emergency fund to pay for insurance deductibles and unplanned,
	necessary repairs.

Now that you have listed potential risks and have read about different methods and strategies to manage risk, use the Risk Assessment and Management Worksheet to further assess your risks and develop risk management strategies for each.

Risk Assessment and Management Worksheet

- 1. Refer to the Risk Identification Exercise you completed earlier. List the risks you identified on that worksheet in the numbered rows under the column heading Potential Risks. (You may need to make additional copies of the worksheet.)
- 2. Rate the likelihood that each of the potential risks will result in actual loss, damage or injury on a scale of 1 (Low Risk) to 5 (High Risk) by circling the corresponding number under the column heading Likelihood of Injury.
- 3. For each potential risk, rate the magnitude of the potential loss, damage or injury on a scale of 1 (Small Risk) to 5 (Large Risk) by circling the corresponding number under the column heading Magnitude of Potential Loss.
- 4. Develop appropriate strategies to avoid, reduce, accept and/or transfer each of the identified risks.
- 5. Finally, estimate the cost of your planned risk management strategies. Reassess activities and potential risks where costs are too great.

Risk Assessment and Management Worksheet				
Potential Risks	Likelihood of Injury Low - High	Magnitude of Potential Loss Small - Large	Methods to Avoid, Reduce, Accept and/or Transfer Risk	Estimated Cost of Risk Management
			Transfer Kisk	Methods
1.	1 2 3 4 5	1 2 3 4 5		
2.	1 2 3 4 5	1 2 3 4 5		
3.	1 2 3 4 5	1 2 3 4 5		
4.	1 2 3 4 5	1 2 3 4 5		
5.	1 2 3 4 5	1 2 3 4 5		
6.	1 2 3 4 5	1 2 3 4 5		
7.	1 2 3 4 5	1 2 3 4 5		
8.	1 2 3 4 5	1 2 3 4 5		
9.	1 2 3 4 5	1 2 3 4 5		
10.	1 2 3 4 5	1 2 3 4 5		
11.	1 2 3 4 5	1 2 3 4 5		
12.	1 2 3 4 5	1 2 3 4 5		

6. Consulting an Attorney

Consulting with a legal advisor who specializes in agricultural and rural issues will help protect your business as well as your customers' safety. Depending on the type of agritourism operation you have, you will want to discuss the following potential risks with an attorney:

- General liability (financial loss because of bodily injury or property damage to employees or customers caused by negligence);
- Personal injury (visitor injury on your property);
- Property damage (that occurs to visitors' personal property while on your farm or ranch);
- Product liability (harm to visitor from consuming or using your product(s)); and
- Professional liability (protection for a business that provides a service to visitors, in the case where the service causes personal harm).

It is advisable to review your business structure with your tax accountant to understand your exposure to liability, and to finalize your business plan before consulting your attorney.

7. Insurance Concepts

Insurance is a method used to manage risk by transferring it to another individual or entity. Insurance is defined as "a legal contract whereby risks are transferred from one party to another in exchange for a premium."⁵

Several types of insurance may be relevant to agritourism enterprises, including:

- 1. Commercial or general liability
- 2. Product liability
- 3. Special events liability
- 4. Property and loss
- 5. Health and disability
- 6. Crop

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Insurance purchased for your farm or ranch operation may not be adequate to manage the risk from your agritourism enterprise. For example, a general farm liability policy may not include liability coverage for agritourism activities or products since revenue is earned through non-production agriculture activities.

Another example relates to property insurance. Property insurance coverage on your tractor as part of your general farm/ranch policy may not be in effect during a time when you will use that tractor for income-generating agritourism activities. If the tractor were to be damaged while you were conducting a hayride, the damage may not be covered by your existing insurance. Be sure to check with your insurance agent to make sure you have adequate coverage for both production agriculture and agritourism uses.

⁵ Barnett, Barry. Risk and Insurance Principles. Available online at: http://www.agecon.msstate.edu/Aquaculture/workshop 1/Insurance Principles.pdf.

When searching for and obtaining insurance, you should contact the carrier for your other insurance policies, such as your farm policy. Since that company has a history with you, it may be more likely to provide coverage for your agritourism activities. It may be beneficial, however, to compare similar policies from other companies every couple of years to be sure you have the policy that best meets your needs at the most economical price.

Many insurance companies have little or no experience with agritourism enterprises and, therefore, may be reluctant to provide coverage. Although agritourism in its earliest form began in the 1800s, very little information is available on which to evaluate potential risks. When the risk cannot be quantified, companies cannot accurately set premiums or the price for coverage to ensure that they will be able to cover claims and maintain a profitable business. Insurance companies may decide not to write a policy for agritourism enterprises in order to avoid financial risk for their companies. Companies may also decide to reduce financial risk by offering policies to certain types of enterprises or for a limited number of enterprises. As the industry continues to grow, the demand for liability insurance products for agritourism is increasing; and as more information becomes available about risk exposure, it is likely that more insurance companies will offer options for coverage.

When considering insurance coverage as a risk management strategy, it is helpful to understand some specific terminology and concepts. The following table lists some common insurance terms with general definitions.

Common Insurance Terms and Definitions			
Term	Definition		
Policy	Written contract for insurance coverage.		
Coverage	The dollar amount available from the insurance company to		
	meet liabilities or cover damages as defined in the policy.		
Premium	The price paid to the insurance company for the policy.		
Deductible	The amount specified in an insurance policy that the insured		
	party must pay out of pocket. It relieves the insurer of		
	responsibility for an initial specified loss.		
Covered Peril	Something that imperils or causes risk of injury or loss that is		
	eligible for coverage.		
Excluded Peril	Something that causes risk of injury or loss that is not eligible		
	for coverage. Usually, perils not specifically listed as covered are		
	assumed to be excluded.		
Claim	A request for payment for damages or loss sustained.		
Exposure	The potential for damages or loss.		

When visiting with an insurance agent regarding insurance for your agritourism enterprise, you should be prepared to provide some information. It is important to communicate fully and clearly to make sure the agent understands your enterprise and the potential risks. Consider inviting the agent to your operation to give a better idea about what you are planning to do or are doing.

Read each insurance policy carefully and make sure you understand what perils are included and excluded in the coverage, the amounts of deductibles, levels of coverage and details on how to file a claim. Do not rely solely on the agent to tell you all the details of the policy. Generally, you should not share details of your insurance coverage with customers except for what is necessary to file a claim.

Two worksheets to help you collect and organize information necessary to discuss your liability insurance options are provided. The Insurance Information Worksheet provides space to list some information about your operation that an insurance agent is likely to need. The Insurance Policy Evaluation Worksheet provides a list of questions you may want to ask insurance agents.

Insurance Information Worksheet
Write a detailed description of ALL activities to be conducted at the enterprise and the methods implemented to reduce risk.
Hours/seasons of operation
Type of customers expected (adults, teenagers, elementary school children, senior citizens)
Number of customers expected
NT 1 C 1
Number of employees
Estimated amaga calca/mayanya
Estimated gross sales/revenue

Insurance Policy Evaluation Worksheet 8			
Insurance Company Name			
Contact Name			
Phone Number			
Date			
Is the company licensed to sell insurance in Colorado?	\square Yes \square No		
Does the agent understand my enterprise or proposed enterprise?	□ Yes □ No		
What is the amount of coverage?	\$		
Is the premium a set fee?			
Is the premium based on a percentage of gross sales or on client days?	\square % Sales \square Days		
How much is the premium?	\$		
Is there a deductible?	□ Yes □ No		
If yes, how much is the deductible?	\$		
Does the insurance apply to:			
my premises and operations liability?	□ Yes □ No		
my products and operations liability?	□ Yes □ No		
my contractual liability to others?	□ Yes □ No		
my personal liability to others (libel, slander, invasion of privacy?	□ Yes □ No		
my personal injury liability to others (libel, slander, invasion of privacy)?	□ Yes □ No		
my advertising injury to others?	□ Yes □ No		
my property liability damage to others?	□ Yes □ No		
incidental medical malpractice liability resulting from my helping an injured person?	□ Yes □ No		
non-owned watercraft liability?	□ Yes □ No		
host liquor liability?	□ Yes □ No		
court costs for defense?	□ Yes □ No		
Are court costs covered above the liability coverage limit or included in liability policy limit?	☐ Above ☐ Included		
Are there any specific exclusions to the policy?	□ Yes □ No		
Are my employees insured under this policy?	□ Yes □ No		

Insurance Policy Evaluation Worksheet 8			
Do I have to belong to an association to purchase this insurance?	□ Yes □ No		
If yes, what is the cost of membership?	\$		
Notes			