



Maryland Department of Agriculture

Agriculture | Maryland's Leading Industry

*Office of Marketing
Animal Industries and Consumer Services*

Larry Hogan, Governor

Boyd K. Rutherford, Lt. Governor

Joseph Bartenfelder, Secretary

James P. Eichhorst, Deputy Secretary

*Agricultural Marketing and
Development*

The Wayne A. Cawley, Jr. Building

50 Harry S. Truman Parkway

Annapolis, Maryland 21401

www.mda.maryland.gov

410.841.5770 Baltimore/Washington

410.841.5987 Fax

800.492.5590 Toll Free

To: Janise Zygmunt, USDA Agricultural Marketing Service
From: Mark S. Powell, Chief of Marketing, Maryland Department of Agriculture
RE: Final Report on FSMIP Grant "Managing Risk of Community Supported
Agriculture Business Model"
Date: April 21, 2016

Maryland Department of Agriculture and its partners at the University of Maryland and Maryland Farm Bureau completed work on developing a Model Contract and Contracting Guide for CSA farmers and created a final report on the project, which is attached to this memo. Here, the final report is available electronically:

<http://drum.lib.umd.edu/bitstream/handle/1903/17440/Legal%20Risk%20Mgmt%20for%20CSA%20in%20MD.pdf?sequence=1&isAllowed=y>

This FSMIP Grant has successfully provided sound information to Maryland farmers on managing the relations with customers in CSA arrangements. The project was proposed to examine ways in which the State might reduce the risk of farmers and consumers entering into CSA arrangements. There had been a series of CSA farm failures in Maryland, leaving consumers without the CSA shares they had expected. To be prepared for potential legislation requiring some sort of regulatory structure for CSA farms, this project was initiated to provide farmers the necessary tools to reduce the need for regulation. The final report of the project, an analysis prepared by the University of Maryland suggests the State of Maryland may consider a certification program like the program currently used in California if issues continue to arise with CSA farms.

In this period of the project, all work has been completed. The resulting educational materials have been promoted to Maryland farmers and other state departments of agriculture. They are at this web site at the University of Maryland for your review: <https://www.extension.umd.edu/aglaw/publications/community-supported-agriculture-csa-publications>

Maryland Department of Agriculture annually promotes CSA farms to consumers in the winter. We now routinely include information for consumers and farmers developed by this project.

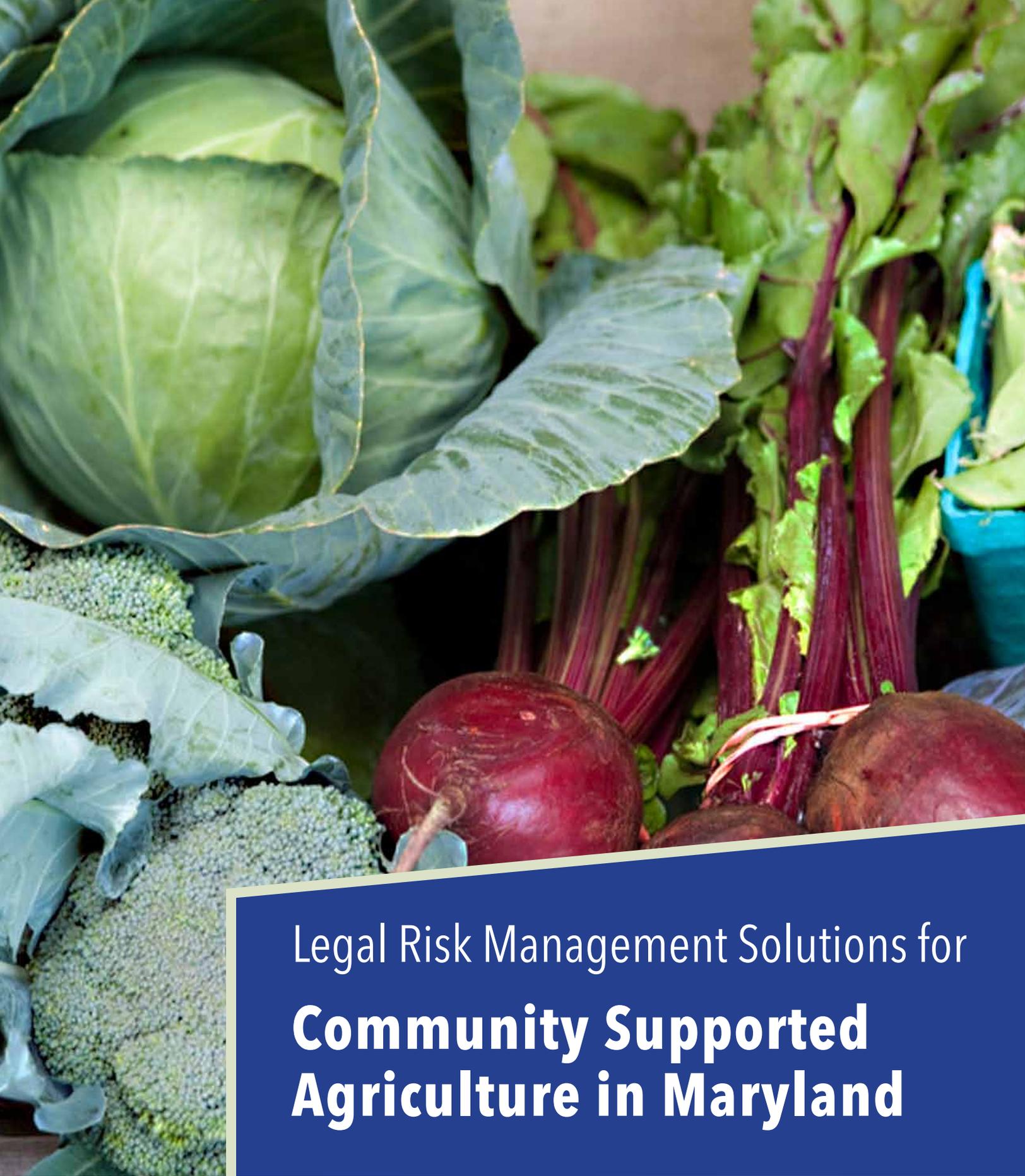
Model Contract and Contracting Guide

The model CSA contract is available <http://drum.lib.umd.edu/handle/1903/16329> as both a fillable pdf and a Word file.

To go with the model contract, we also developed contracting guide to walk users through the contract. We printed and distributed 1,000 copies of the guide.

The contracting guide, *Understanding A Community Supported Agriculture Agreement: What Should Be Included In A Good CSA Membership Agreement?*, is also available online and has been downloaded more than 860 times.

Thank you for the opportunity to work on this with the support of the USDA Ag Marketing Service.



Legal Risk Management Solutions for
**Community Supported
Agriculture in Maryland**



**“The ultimate goal of farming is not the growing of crops,
but the cultivation and perfection of human beings.”**

- Masanobu Fukuoka, author of One Straw Revolution.

The basic premise of the CSA model is that community members pledge support to a farm and the farmer relies on this support instead of traditional financial venues, such as market prices and lending institutions.

Fukuoka’s quote above encapsulates the idea that food production is not simply an economic act divorced from human beings and human relationships. Many people interested in strengthening the connection between land, food, producer, and consumer have embraced community-supported agriculture (CSA), an alternative farming system increasingly popular in the United States. The CSA model was introduced in the United States by two Northeastern farms in 1986. Since then, CSA popularity has exploded, with over 12,500 CSA farms nationally, according to the 2012 Census of Agriculture.

The basic premise of the CSA model is that community members pledge support to a farm and the farmer relies on this support instead of traditional financial venues, such as market prices and lending institutions. The support can take the form of volunteer labor or, more commonly, by purchasing a share of the future produce at the beginning of the season. Members cover operational costs and receive periodic shares of the farm’s products, often vegetables and fruit. According to the 2012 Census of Agriculture, there are 119 farms in Maryland using the CSA model to sell their products.



The CSA model inverts the traditional agricultural economic model. Rather than relying on sales at the end of the season to cover interest on loans, cost of labor, and planting costs, CSA farmers have the capital they need at the beginning of the season from selling CSA memberships. CSA farmers receive a steady stream of income, protecting them from the economic consequences of low yields. CSA members, in turn, receive part of the farm's bounty, usually weekly, and enjoy a connection to the land and the food they are consuming.

Due to the nature of the CSA model, members assume a certain amount of risk upon joining a CSA farm since the model spreads the risk between farmers and members. In the conventional or production agricultural system, consumers are protected from risk factors such as inclement weather, pest damage, weed pressure, and other causes of low yields. By purchasing a share and investing in the farm's future bounty at the beginning of the season, the members are just as vulnerable as the farmers. If the crops fail, members may not see a return on their investment.

As consumer interest in local food grows, more Maryland consumers are turning to the CSA farm model for their produce and other food needs. Along with this growth have come complaints from consumers. Maryland Department of Agriculture (MDA) received phone calls from concerned citizens unhappy with the products they received from their CSA farms. Some were confused about decreased quantity or produce or had concerns about their farmer's practices. These issues led MDA to conduct an online survey of self-identified CSA farmers and members in summer 2014. The goal of the survey was to determine if there is a need for regulation of CSA farms.

Survey results showed an information gap between farmers and members. Confusing membership agreements and contracts or a lack of any written



As consumer interest in local food grows, more Maryland consumers are turning to the CSA farm model for their produce and other food needs

explanation were the main problems in communicating risk. MDA cooperated with researchers at the University of Maryland's Department of Agricultural and Resource Economics (AREC) and the Agriculture Law Education Initiative (ALEI) to develop better contracts and other resources to encourage the continued successful growth of CSAs in the state.

Methodology

In summer 2014, two surveys were written, one for CSA farm owners and one for CSA farm members. The questions covered a range of topics such as marketing strategies, types of produce sold and bought, acreage, and risk communication strategies. The surveys were written and distributed using Qualtrics, Inc., an online survey builder and distributor.

Links to the surveys were distributed via individual emails. The email sent to the farmers included a brief description and link to the member survey. MDA asked farmers to forward the link to their past

and current members in order to respect privacy considerations. The farmers' email addresses were found primarily through the Maryland's Best website (<http://www.marylandsbest.net>), which allows farmers to self-identify as CSA operators. Each self-identified CSA farm was verified to ensure the farm had a CSA program. Emails were also collected through MDA employees who identified CSA farm owners. When the survey was closed after a few weeks, a total of 32 farmers and 68 CSA farm members had responded.

While analyzing survey results, special attention was given to responses regarding risk communication and member experiences with CSA farms. After noticing inconsistencies in farmer and member answers about risk communication, membership agreements and contracts publicly available online were reviewed to assess how farmers described risk.

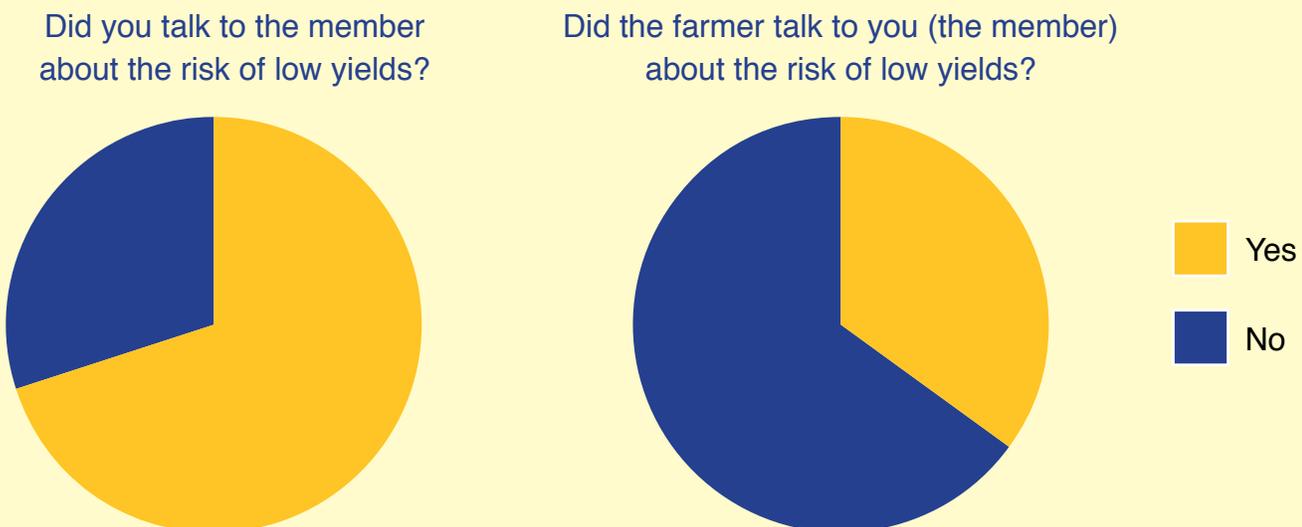
Even though 70% of farmers reported efforts to communicate risk, 67% of consumers either did not hear about risk, did not remember, or did not fully understand what was communicated.

Results

The surveys contained a variety of questions designed to help MDA understand Maryland's CSA farms. In the questions pertaining to risk management, a few notable discoveries were made:

- Of the farmers who responded, 68% said they already use some type of membership agreement or contract.
- Some 70% of farmers answered that they specifically mentioned the risk of lowered yields, either in the agreement or verbally.
- Despite the farmers' efforts, only 33% of consumers responded they specifically learned about risk.
- That is, even though 70% of farmers reported efforts to communicate risk, 67% of consumers either did not hear about risk, did not remember, or did not fully understand what was communicated.

Given this gap, AREC and ALEI decided to look into the CSA contracts farmers are using. After



Results from Maryland Department of Agriculture Summer 2014 Survey



analyzing 22 CSA contracts from Maryland farms available online, AREC and ALEI found that the risk explanation portions of contracts currently in use were vague, confusing, and in some cases absent.

Materials Developed

To help Maryland CSA farmers develop clearer risk communication tools, a model contract was developed. It is based on the contracts CSA farmers already use, and includes space for farmers to personalize the document with their own details and information. In the model contract, the risk communication section is prominent and uses clear language to explain the risk of lowered yields. Accompanying the model contract is a contracting guide that walks farmers through each step of creating and using a contract, including tips related to protecting the farm. The guide includes a list of videos available covering a range of relevant topics, including information on contracts, labor, and crop insurance practices related to CSA farming.

Additionally, ALEI conducted in-person workshops and webinars to provide farmers with detailed information on how to use membership agreements, the model contract, and accompanying guide.

The resources and materials created for the workshops were published online to make them easily accessible. The materials from the webinars were also published online as videos. All materials can be found on the University of Maryland Extension website under the Agricultural Law Education Initiative page at <http://go.umd.edu/CSAPage>.

Next Steps

An original goal of the CSA survey was to gather information so that MDA could make a well-informed decision about whether or not to begin to regulate CSA farms as a separate type of farm business. To this end, some survey questions were designed to gauge interest in a regulatory scheme. The survey found that despite some concerns and desire for more information, the majority of farmers did not see a need for regulations.

The survey and subsequent review of contracts pinpointed a clear problem area - poor communication between farmers and members. This issue may be solved with the new resources created through this program, such as the model contract and contracting guide. Before adopting a regulation scheme, it will be important to see if the new resources help to resolve the communication problem. A possible next step could be repeating part or all of the survey in a few years to assess implementation of membership agreements and the quality of risk communication methods.

If consumer complaints persist, and perhaps to strengthen consumer confidence in the CSA farm system, an alternative to adopting a full regulatory scheme is to create a CSA farm certification program like the one in California.

The goal of California's program was to create a precise definition of who can and cannot call themselves a "CSA" and relatedly, who can and cannot reap the benefits associated with the



In the California program, the farmer must inform the consumers who produced which items in their share boxes. For example, if a farmer produced all the fruits in the share but purchased the honey, the law requires farmers to indicate which farm the honey was purchased from.

CSA label. California legislators were motivated by complaints from CSA farmers who observed that large agribusinesses and cooperatives were incorrectly labeling their operations “CSA farms.” This made it difficult for true CSA farmers to compete with the larger companies and confused consumers. Despite proclaiming to be locally produced, some companies were filling shares with tropical fruits not even grown in the United States, such as bananas. CSA farmers felt these larger agribusinesses were unfairly profiting by incorrectly marketing their products as CSA products. This type of complaint led to an interest in legislative action.

The California program defines a CSA farm as either a single-farm operation or a multi-farm operation in which a registered direct marketing producer grows food for a group of California consumer shareholders or subscribers who pledge or contract to buy a portion of the producer’s future bounty. The farmer or farmers must register with the state agriculture department, helping to eliminate operations using the CSA label incorrectly. There are

some requirements for California farmers, such as an annual registration fee and labeling requirements designed to improve transparency between farmers and member. The farmer must inform the consumers, either through their website if they have one or in the share boxes, who produced which items. For example, if a farmer produced all the fruits in the share but purchased the honey, the law requires farmers to indicate which farm the honey was purchased from. Essentially, the law gives a concrete definition to the term “CSA farm.” Producers running cooperatives or distribution-type operations can no longer use the term “CSA” for marketing purposes. This program, which began in January 2014, has been mostly well-received. Farmers expressed hesitation at the annual cost but were generally happy to have a law backing up the meaning of a CSA farm.

So what does this mean for Maryland? Maryland could consider adopting a registration or certification program using the California program as a model, rather than a more burdensome regulatory program. Certified farms could use a unique logo or display a certificate to signify meeting certain requirements. This could even be a voluntary program, which would minimize regulation but still provide flexible yet firm standards.

Conclusion

Maryland CSA farmers are already trying to address risk communication. With the materials produced as a result of this project, CSA farmers now have more resources to improve and develop their operations. There is insufficient evidence that a regulatory program of CSA farms is needed, but it will be important to monitor risk communication successes and failures now that farmers have more information and resources. If issues continue, a registration program like the one in California may be a good alternative to regulation. Another option is a certification program, either mandatory or voluntary.



CSA farming is an excellent way to encourage more consumers to buy local agricultural products and build strong relationships between farming and non-farming communities. With the right amount of support from institutions like MDA and University of Maryland, CSA farms can continue to thrive and provide high quality produce to Maryland consumers. ■

Maryland could consider adopting a registration or certification program using the California program as a model, rather than a more burdensome regulatory program.

Sources

“Alternative Farming Systems: Community Supported Agriculture.”
United States Department of Agriculture. Last modified July 31, 2014. <http://www.nal.usda.gov/afsic/pubs/csa/csa.shtml#define>

“Community Supported Agriculture.” Localharvest.org. Accessed August 6, 2014, <http://www.localharvest.org/csa/>

DeMuth, S. “Defining Community Supported Agriculture.”
United States Department of Agriculture.
Published September 1993, modified July 31, 2014.
<http://www.nal.usda.gov/afsic/pubs/csa/csadef.shtml>

Patton, Steve. (California Department of Food and Agriculture)
in discussion with author, October 8, 2015.

Authors

Mayhah Suri
Research Assistant

Paul Goeringer
Extension Legal Specialist

Photos by Edwin Remsberg



Building your 2015 Risk Mgt. Plan

Whole Farm Revenue Protection **new Farm Bill crop ins. protection programs** **for FARMERS**

By Steve Connelly
MDA

steve.connelly@maryland.gov

410-841-5824



–. “ This institution is an equal opportunity provider.”



Crop Insurance Decision Tool

Risk Management Agency

32% \$10.00
 28% \$11.00
 24% \$12.00
 20% \$13.00
 16% \$14.00
 12% \$15.00
 8% \$16.00
 4% \$17.00
 0% \$18.00
 -4% \$19.00
 -8% \$20.00
 -12% \$21.00
 -16% \$22.00
 -20% \$23.00
 -24% \$24.00
 -28% \$25.00
 -32% \$26.00
 -36% \$27.00
 -40% \$28.00
 -44% \$29.00
 -48% \$30.00
 -52% \$31.00
 -56% \$32.00
 -60% \$33.00
 -64% \$34.00
 -68% \$35.00
 -72% \$36.00
 -76% \$37.00
 -80% \$38.00
 -84% \$39.00
 -88% \$40.00
 -92% \$41.00
 -96% \$42.00
 -100% \$43.00

Your Selection



Planting Time

Your APH:

Projected Price:

Expected County Yield:

Insurance Choices

Additional Coverage: SCO

Underlying Insurance Plan:

Underlying Coverage Level:

50% 85%

Harvest Time

Your Actual Yield:

0 210

Harvest Price:

Send Feedback

Coverage Amounts (per acre)

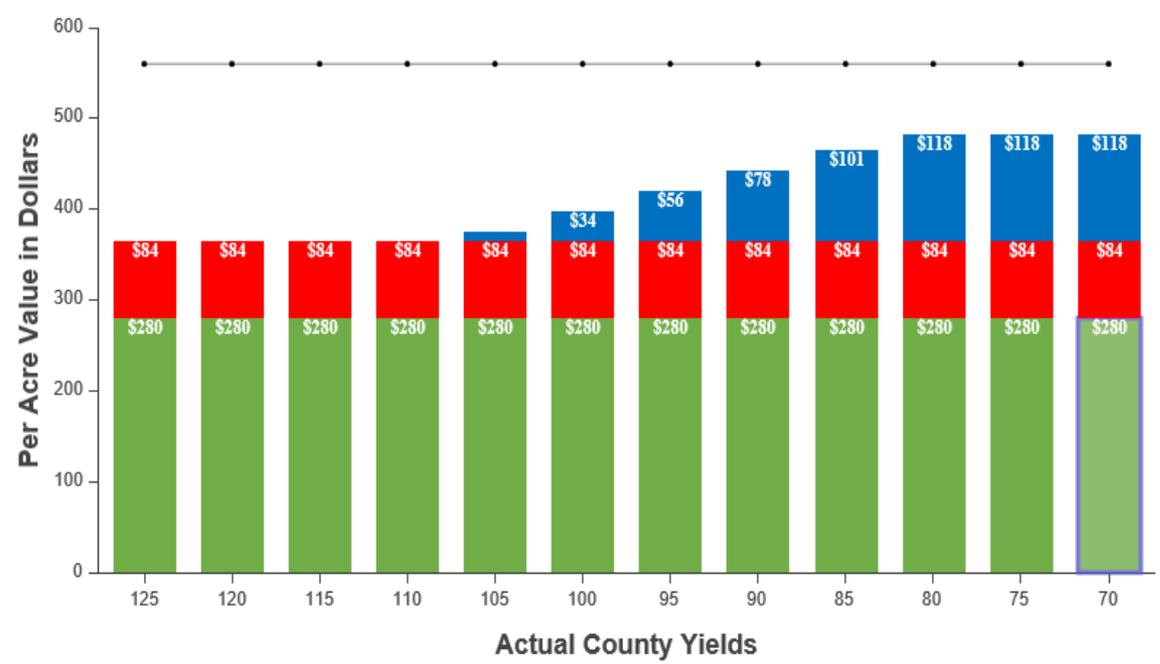
Protection Amounts	Coverage Range	Producer Premium*Pr
SCO	21% (86% - 65%)	\$0.00
Revenue	65% (65% - 0%)	\$0.00
Total	86% (86% - 0%)	\$0.00

\$560.00
 Expected Crop Value:

Select Location

* Estimates only.

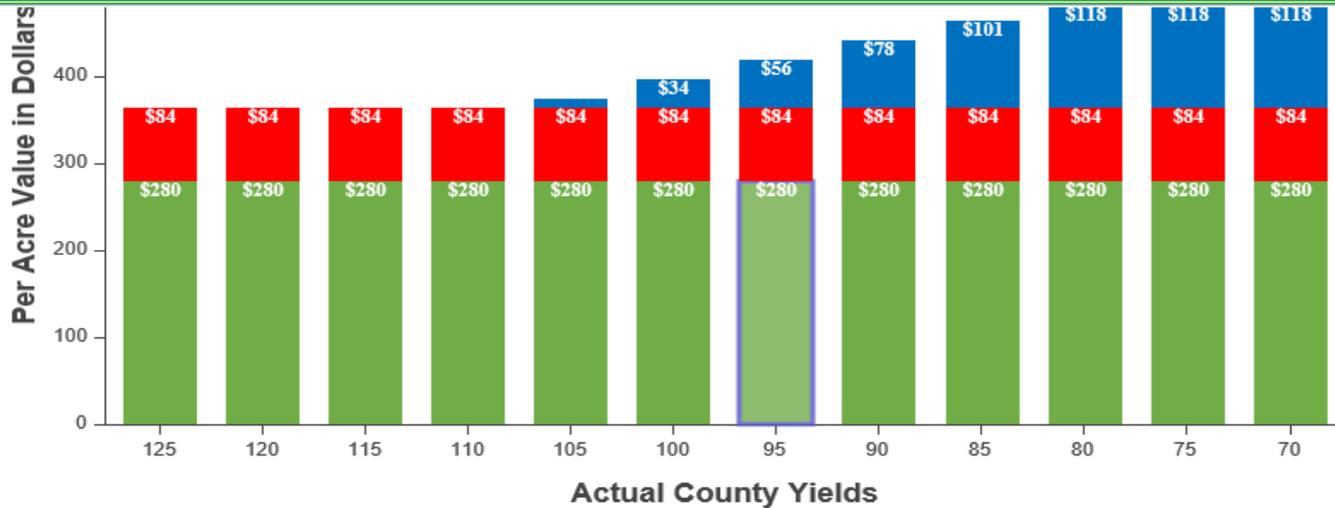
Crop Returns by Actual County Yields Chart Premium Cost by Coverage Levels Chart Premium Cost by Underlying Insurance Plan Chart



Crop Returns **
 Underlying Payment **
 SCO/STAX Payment **
 Expected Crop Value **

Insurance Decision Tool

32% \$10.00
 99% \$34.98
 76% \$40.11
 59% \$121.84
 100% \$361.01
 82% \$37.46
 93% \$1



- Crop Returns **
- Underlying Payment **
- SCO/STAX Payment **
- Expected Crop Value **

** Click to show/unhide

Calculations (per acre)

Actual County Yields	Percent of Expected Yield	Crop Returns	Underlying Payment	SCO Payment	Total Payment	Total Income
125	100%	\$280.00	\$84.00	\$0.00	\$84.00	\$364.00
120	96%	\$280.00	\$84.00	\$0.00	\$84.00	\$364.00
115	92%	\$280.00	\$84.00	\$0.00	\$84.00	\$364.00
110	88%	\$280.00	\$84.00	\$0.00	\$84.00	\$364.00
105	84%	\$280.00	\$84.00	\$11.20	\$95.20	\$375.20
100	80%	\$280.00	\$84.00	\$33.60	\$117.60	\$397.60
95	76%	\$280.00	\$84.00	\$56.00	\$140.00	\$420.00
90	72%	\$280.00	\$84.00	\$78.40	\$162.40	\$442.40
85	68%	\$280.00	\$84.00	\$100.80	\$184.80	\$464.80
80	64%	\$280.00	\$84.00	\$117.60	\$201.60	\$481.60
75	60%	\$280.00	\$84.00	\$117.60	\$201.60	\$481.60
70	56%	\$280.00	\$84.00	\$117.60	\$201.60	\$481.60

New improved Whole-Farm Revenue Protection

(\$8.5 mil. max. revenue)

- Covers all farm commodities including animal and animal products revenue including commodities purchased for resale (limit up to 50% of total expected revenue) (no protection for timber forest, forest products and animals for sport, show or pets)
- Coverage levels from 50 to 85% of expected revenue (also covers min. market readiness costs)
- Covers natural causes of loss and declining market prices within the insurance year
- Premium subsidies vary from 55% to 80%.
- Replanting payments
- Opportunity to also purchase MPCl Buy-Up policies for selected individual crops

Whole Farm Revenue Protection

Example

* 5 year avg. Adj. revenue	=	\$100,000
* <u>75%</u> coverage level	=	\$75,000 loss trigger
* Revenue produced	=	<u>\$30,000</u>
* Revenue ins. loss	=	\$45,000 loss payment
* Income <u>With</u> Ins.	=	\$75,000
* Income <u>Without</u> Ins.	=	\$30,000

- ▶ Revenue for guarantee may include intended commodities to be purchased for resale and minimal preparation for marketing costs.

New improved Whole-Farm Revenue Protection

(\$8.5 mil. max. revenue)

The paperwork responsibilities for the farmer, will include:

- The WFRP Application
- Whole Farm History Report (last 5 tax years)
- IRS Tax Form 1040 Schedule F
- Farm Operation Report (Intended, Revised, Final)
- Allowable Expenses and Revenue Worksheets
- Beginning & End of year Inventory Reports (if applicable)
- Accounts Receivable and Payable Reports for beginning & end of year (if applicable)
- Market Animal and Nursery Inventory/Accounting Worksheets (if applicable)
- Verifiable complete marketing record for each commodity

Whole-Farm Revenue Protection What Changed Compared to the AGR Programs?

COMPARISON	AGR-Lite	AGR	WFRP
Liability Limit	\$1 Million	\$6.5 Million	\$8.5 Million
Coverage Level	65, 75, 80* *3 Commodities	65, 75, 80* *3 Commodities	50-85 in 5% increments 3 Commodities for 80 and 85% (no catastrophic level is available for WFRP)
One Commodity	No Restriction	No Restriction	No restriction unless only one commodity (using commodity count) and that commodity has an MPCl revenue product available.
Payment Rate	75, 90	75,90	None
Animal or Animal Product Limit	None	35 % of Expected Income	35% of expected revenue up to \$1 million (Max)
Nursery and Greenhouse Limit	None	None	35% of expected revenue up to \$1 million (Max)
Potato Requirement	Minimum of 2 Commodities (with calculation)	Minimum of 2 Commodities (with calculation)	Minimum of 2 Commodities (using the commodity count)
Replant Payments	None	None	Up to 20 percent of expected revenue for annual commodity with 20 acres or 20 percent of crop needing replant. Not allowed if also insured under MPCl with replant provisions.
Other Federal Crop Insurance- Underlying Policies	Optional	MPCl required if 50% of expected income from MPCl crops and allowed otherwise	MPCl coverage is optional and may be at any buy-up level. Farm is not eligible if catastrophic level MPCl policies are purchased.
Market readiness amounts in insured revenue	No	No	Yes
Expanding operations	No	No	Average allowable historic revenue increased by 10% if operation physically expanding and if approved by AIP. This allows for farm growth that may or may not trigger indexing.
Cancellation/Termination	31-Jan	31-Jan	Same as sales closing date for county. (2/28, 3/15)
Contract Change	31-Aug	31-Aug	31-Aug
Sales Closing Date	March 15 New Jan 31 Carryover	31-Jan	In Actuarial Documents-same as dates for spring crops for county: 2/28 and 3/15 depending on county
Rating Methodology	Same as AGR	Rates revenue variability of individual commodities.	Same as AGR
Premium Subsidy	Basic Levels	Basic Levels	Whole-Farm Level for 2 or more commodities Basic Level for 1 commodity (using the commodity count)

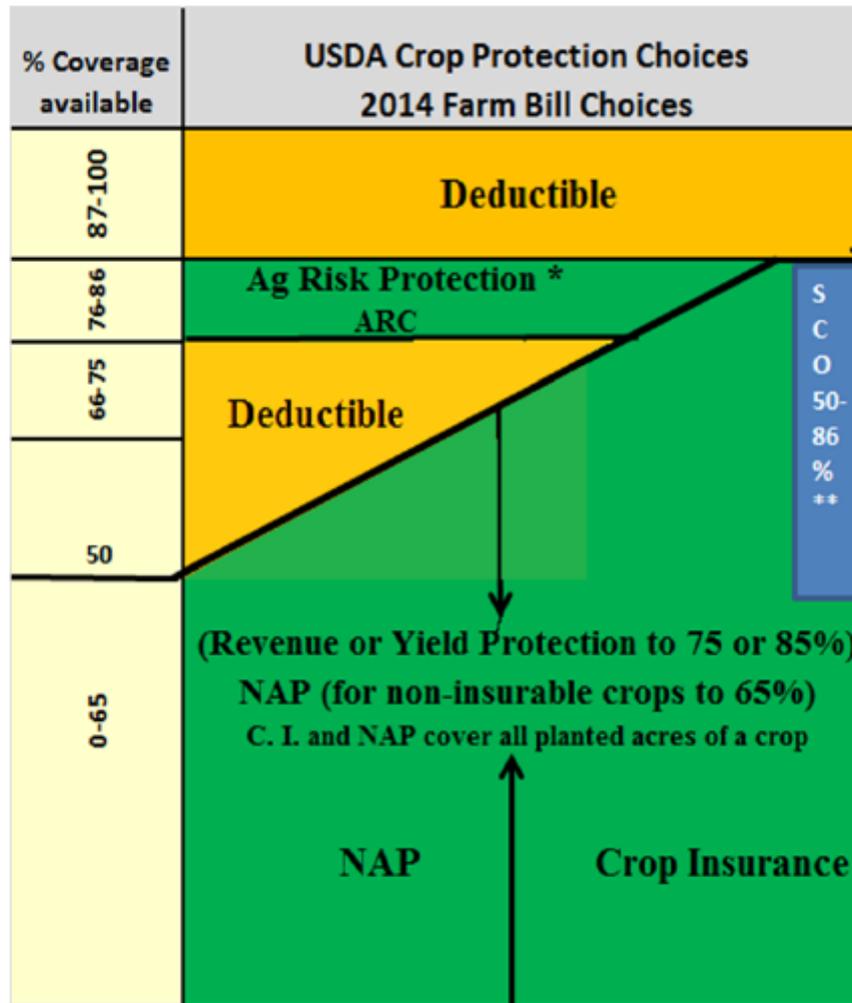
The "Sum of the Parts" - Protection for YOUR Farm

Each producer is personally responsible to develop a risk management plan for their farm(s) before enrollment deadlines. USDA provides tools for YOUR consideration.

* Price Loss Coverage (PLC) available in lieu of ARC on Program crops with base acres at FSA

* Comparison of PLC and CCP Price Support Levels

Covered Commodity	2014 Farm Bill Reference Prices Statutory	2008 Farm Bill Target Prices
Wheat	\$5.50	\$4.17
Barley	\$4.95	\$2.63
Oats	\$2.40	\$1.79
Corn	\$3.70	\$2.63
Grain Sorghum	\$3.95	\$2.63
Soybeans	\$8.40	\$6.00



** Supplemental Coverage Option (SCO) available on an expanding number of crops (not available on crops enrolled in ARC). SCO provides area loss coverage between 86% and the individual policy coverage @65% premium subsidy.

Is YOUR Risk Management Plan Adequate to Manage a Disaster Related Business Interruption?

Farm Bill Safety Nets

- **A farmer can choose:**
 - **Crop Insurance or NAP** (if crop insurance is not available)
 - **ARC Individual or County or**
 - **PLC** (will be default if no choice is made)
 - **SCO (Supplemental Coverage Option may be available to fill the gap between individual crop ins. policy and 85% level)**
- **Detailed information:**
 - **NAP, ARC and PLC from FSA; (fsa.usda.gov)**
 - **Crop Insurance info. from crop ins. agent**
(www3.rma.usda.gov/apps/agents/)

Manage Your Crop Risks

Each producer is personally responsible for developing a risk management plan for their farm(s) before the enrollment deadlines.

Information is available from:

Crop insurance Agents

<http://www.rma.usda.gov/tools/agent.html>

<http://www.fsa.usda.gov/>

❖ Protection Plans for general field crops with FSA base

acres: ♦ **County and Individual Ag Risk Coverage (ARC)**

- Provides up to 65% or 85% of revenue losses between 76% and 86% of historical revenue for eligible crop losses for crops with FSA base acres (maximum payment of 6.5% or 8.5% respectively).
- This protection is available at no cost to you.

♦ **Price Loss Coverage (PLC)**

- Provides protection when market prices are less than reference prices for crops with FSA base acres.
- This foundation protection is available at no cost to you.

❖ Protection Plans for almost all crops and some livestock:

- Provide protection not covered by the ARC or PLC programs.
- Can significantly reduce risk exposures to manageable levels to minimize financial interruptions when disasters occur.
- Provided with federal cost sharing to make the protection more affordable.

♦ **Crop Insurance Protection is available**

- For up to 75% of your yield history (85% for some crops) on many crops and some livestock.
- Whole Farm Revenue Protection also available.
- New Farm Bill has added improvements, including benefits for new/beginning and organic producers.

♦ **Non-insured Crop Assistance Program (NAP)**

- New Farm Bill has added improvements
- Provides similar protection as crop insurance for most crops, at up to 65% of your yield history when a crop insurance policy is not available. (NAP coverage is available from your county FSA office.)

Claim Calculation – Yield vs. Revenue Protection for Field Crops
*per acre 100% ownership share illustration for educational purposes

Field Crops (barley, grain corn, grain sorghum, soybeans and wheat)		Revenue Protection	
Yield Protection		Lower Price at Harvest Time	Higher Price at Harvest Time
148	Approved Yield	148	148
75%	Coverage % Level	75%	75%
111	←Yield guarantee/ Yield base for revenue calculation →	111	111
	Projected Price	\$4.60	\$4.60
	Revenue Guarantee (minimum)	\$510.60	\$510.60
	Est. Harvest Time Price **	4	5.05
	Est. Harvest Time Guarantee **	N/A	560.55
40	Yield Produced	40	40
71	Yield Loss		
\$4.60	←Projected Price/ Value of Yield Produced →	\$160.00	\$202.00
\$326.60	Estimated Loss Payment	\$350.60	\$358.55

** Harvest time typically determined from the monthly average of the daily closing prices from the appropriate Board of Trade harvest time contract, just prior to the harvesting completion of the crop, see insurance policy for details.

Information Sources: FSA and RMA Fact Sheets

Claim Calculation Illustration
*per acre 100% ownership share
for educational purposes

Yield Protection	Hybrid Tomatoes
170	Approved Yield – Cwts
65%	Coverage % Level
110.50	Yield Guarantee
10.75	Yield Produced
99.75	Yield Loss
\$78.00	Projected Price
100%	Price Percentage
\$7,780.50	Loss Payment

Information Sources: FSA and RMA Fact Sheets



"This institution is an equal opportunity provider."

Crop Insurance Improvements authorized by the Farm Bill continued

1. **More coverage options – Many are listed below**
2. **Improved NAP Protection** (Non-insured crop disaster Assistance Program from FSA) provides up to 65 percent level of coverage and 100 percent of projected price for most non-insurable crops
3. **New Irrigated/Non-Irrigated Acreage Options** - Separate enterprise insurance units and different coverage levels are allowed
4. **Improved Organic Protection**
 - a. Organic elections availability for more crops
 - b. Extended for organic price coverage – for 2014, to eight additional crops (oats, peppermint, apricots, apples, blueberries, almonds, pears, and grapes for juice) to a total of sixteen (producer has the option of using organic or conventional prices)
 - c. Five percent premium surcharge is removed for organic price options
5. **New benefits for being beginning farmers**
 - a. Additional 10 percentage points of premium subsidy for additional coverage policies (buy-up) that have premium subsidy;
 - b. Exemption from paying the administrative fee for catastrophic (CAT) and additional coverage (buy up) level policies;
 - c. Use of the production history of farming operations, if BFs were previously involved in the decision making or physical activities; and
 - d. An increase in the substituted yield for yield adjustment, which allows a replacement of a low yield due to an insured cause of loss, from 60 to 80 percent of the applicable transitional yield (T-Yield) for the crop in the county.

Crop Insurance Improvements Continued

6. **New T-Yield Options** (effective beginning with 2015 crop year Spring Crops) - When a crop in a county suffers over a 50 percent yield loss, producers in that county and adjacent counties may omit their yield for that year's production. For this provision, the Federal Crop Insurance Corporation may make a separate determination for irrigated and non-irrigated acreage. Note: The current 60% yield plug is retained for replacing low APH yields (80% yield plug for new and beginning farmers).
7. **New improved Whole-Farm Revenue Protection** (\$8.5 mil. Max. revenue)
 - a. Covers all farm commodities including animal and animal products revenue including commodities purchased for resale (limit up to 50% of total expected revenue) (no protection for timber forest, forest products and animals for sport, show or pets))
 - b. Coverage levels from 50 to 85% of expected revenue (covers min. market readiness costs)
 - c. Covers natural causes of loss and declining market prices within the insurance year
 - d. Premium subsidies vary from 55% to 80%.
 - e. Opportunity to also purchase MPCCI Buy-Up policies for selected individual crops
8. **Supplemental Coverage Option (SCO)** - An option to buy area/county loss trigger insurance to cover yield or revenue loss (depending on the coverage in effect of the individual policy. The level of coverage is between 86% and coverage of individual policy. Premium is subsidized at 65% subsidy. SCO covers all planted acres with no payment limitation (not available for crops covered by ARC.) SCO coverage for 2015 available (2016 info. expected about 11/17/16) at:
<http://www.rma.usda.gov/news/currentissues/farbill/2015scomap.pdf>
9. **Conservation Compliance Certification:** By June 1, 2015, farmers must file form AD-1026 with the Farm Service Agency (FSA) to be eligible for premium subsidy on crop insurance policies in the 2016 Reinsurance year (July 1, 2015 to June 30, 2016). Farmers and any affiliated persons must be in compliance with the HELC and WC provisions.

NAP (Non-insurable crop disaster Assistance Program)

– from FSA

- **Improved NAP** - Up to 65% level and 100% of projected price for most non-insurable crops

New benefits for beginning farmers - A farmer or rancher entity or joint operation, who has not actively operated and managed a farm or ranch for more than 10 years, and materially and substantially participates in the operation; For legal entities to be considered a beginning farmer or rancher, all members must be related by blood or marriage; and all the members must be beginning farmers or ranchers

- The NAP administrative fees do not apply if you meet the definition of a beginning farmer, limited resource farmer, or *socially disadvantaged farmer
- The premium for limited resource, beginning, and “socially disadvantaged” farmers is 50 percent of the premium

***Socially disadvantaged farmer definition** – A farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include the following, and no others unless approved in writing by the Deputy Administrator:

- (a) American Indians or Alaskan Natives, (b) Asians or Asian-Americans, (c) Blacks or African-Americans, (d) Hispanics or Hispanic-Americans, (e) Native Hawaiians or other Pacific Islanders, and (f) Women.
- * For legal entities requesting to be considered Socially Disadvantaged, the majority interest must be held by socially disadvantaged individuals

Micro-Loans - Expanding eligibility and increasing lending limits to help more beginning and family farmers.

- The borrowing limit is increased from \$35,000 to \$50,000
- Loan types include: production operations, machinery and breeding stock, farm real estate (purchase and make improvements, and land development to promote soil and water conservation)
- The lending process is simplified;
- Updating required "farming experience" to include other valuable experiences
- Expanding eligible business entities to reflect changes in the way family farms are owned and operated
- Help more people who are considering farming and ranching, or who want to strengthen their existing family operation.

Producers Crop Safety Net Worksheet

By utilizing the table we are getting a handle on the information needed to respond to the following questions:

Obtain Farm Bill Safety Net Options and advice from crop insurance agents, your county Farm Service Agency office, NRCS Representatives and Penn State Extension Ag Educators.

Crops I Plan to Grow	Estimated Input Costs	Estimated Expected Revenue	Protection Choices Available	Protection Choice I'm Considering	Notes
Am I likely to enroll in: ARC - County Loss Trigger, ARC - Individual Farm loss trigger or PLC Price Protection Program (binding 5 year commitment for crops with FSA base acres)?					

How much risk exposure do I have?

What should my ideal safety net accomplish?

- * Cover production costs?
- * Cover preharvest sales contract?
- * Replace livestock feed?
- * Make a rent or mortgage payment?
- * Contribute to family living expenses?
- * Secure Ag Loans?
- * Other?

How much protection do I need?

Do I prefer revenue protection or yield protection?

At what percentage of crop loss should my payment trigger?



"This institution is an equal opportunity provider."

Is MY Risk Management Plan Adequate to Avoid a Disaster Related Business Interruption?

How Good is your Risk Management Plan ?

What do you want YOUR Crop Insurance Based Risk Management Plan to do For YOU when disasters occur?

- **Protect crop value \$? A.**
- **Protect input cost \$? A.**
- **Protection to secure operating loan (security) \$?**
- **\$\$ To replace livestock feed \$?**
- **\$\$ Buy-out preharvest sales contracts \$?**
- **Strengthen the business plan and avoid an income interruption \$?**

At what percent of crop damage do you need a loss claim to trigger? _____%

Risk Management Check Up

Will YOUR 2015 Risk Management Plan be Adequate to Manage 2015 Risks?

(Increasing Input Costs, Prices & Weather Volatility)

Individual farm details available from crop ins. agents, list available at:
www3.rma.usda.gov/apps/agents/



–. “ This institution is an equal opportunity provider.”



The alternative to having crop ins. & NAP₁₇

EB-424

Understanding A Community Supported Agriculture Agreement

What Should Be

Included In A Good

CSA Membership Agreement?





Understanding a Community-Supported Agriculture Agreement:

What Should Be Included in a Good CSA Membership Agreement?

Contents

Let’s Start at the Beginning: What is a Contract?	5
Parol Evidence Rule Is a Common Law Rule Used to Interpret Contracts.	6
Keep “Legalese” to a Minimum	6
Growing Practices on the Farm.	6
Detail the Products and Delivery Schedules	7
Explain That Crop Failure Is Always a Possibility	8
Do the Members Benefit From a Crop Surplus?	8
Clearly Indicate the Cost and Benefits of CSA Membership	8
Keep the Lines of Communications Between Producer and Members Open	9
Including a Short Indemnification and Hold Harmless Provision Will Provide Some Protection from Potential Lawsuits.	9
What Happens If a Member Cannot Fulfill Contractual Obligations? . .	10
What Happens If There Is a Dispute With a Member: Mediation	10
References	11
Maryland Community Supported Agriculture Model Agreement	12

AUTHORS

Paul Goeringer
 Ashley Newhall
 Sarah Everhart
 Wele Elangwe

Photos: Edwin Remsberg



In a typical community-supported agriculture (CSA), members pledge to help cover the anticipated costs of the farm's production for part or all of the growing season. In return, the members receive a portion of the farm's crops over the period of time specified in the CSA membership agreement, usually summer through early fall. The CSA model allows farmers to get needed capital at the start of the growing season while providing members with fresh locally produced fruits, herbs, meats, or vegetables.

Underlying the CSA relationship is the agreement that the farmer and CSA members share the risks inherent in agriculture, including commodity (crops, livestock, and eggs) failure due to drought, disease, etc. As a result, members may not receive their anticipated share. The Maryland Department of Agriculture (MDA) often gets calls from CSA members who

do not understand the potential risks associated with agriculture and are disappointed when farmers are unable to deliver the anticipated shares.

Even with the risks involved, many farmers do not use fully developed or written CSA member agreements (Johnson, 2013). A recent MDA survey of CSA operators found that 55 percent used a membership agreement in their operations (Suri, 2014). One CSA farmer captured the sentiment of those not using written membership agreements stating, "We got into farming to escape corporate America. We don't need written agreements." (Johnson, 2013) Well-written membership agreements are not just a good business practice, but can outline and explain to CSA members how the relationship will work and the risks that are shared. A membership agreement, in other words, can help limit future disputes.

Underlying the CSA relationship is the agreement that the farmer and CSA members share the risks inherent in agriculture, including commodity (crops, livestock, and eggs) failure due to drought, disease, etc.

With that in mind, we have developed a model CSA membership agreement to aid farmers in preparing their own membership agreements. The model CSA membership agreement

reflects UME legal specialists' opinions and opinions of legal specialists at the University of Maryland Francis King Carey School of Law and UMES on the components of a good CSA membership agreement. The model membership agreement provides the basis for individual producers to develop membership agreements specific to their situation. The following guide will explain the various terms in the model membership agreement, why they were included, and the possible legal protections they offer.

When developing an individual CSA membership agreement, it is always advisable to seek the counsel of an attorney well-versed in this area of the law. You can find a list of Maryland attorneys specializing in contract law at umaglaw.org. An attorney can

also explain to CSA members any membership terms that they don't understand.

Let's Start at the Beginning: What Is a Contract?

A "contract" is defined by Black's Law Dictionary, 9th ed. as "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." Simply put, to be a contract there needs to be an offer by one party, acceptance by a second party, and there must be consideration given.

As you see, there are three elements required for a contract:

1. **Offer:** An intention by an individual offering goods or services for sale that can be accepted or rejected by a second party;

2. **Acceptance:** When the second party accepts the offer;
3. **Consideration:** Consideration is a legal term that requires the two parties to exchange something of value, a legal detriment to the parties giving consideration. This will become clearer with an example.

Let's see how this terminology applies in a typical agricultural sale. Suppose a farmer proposes to sell 100 bushels of tomatoes to a restaurant (the *Offer*) for \$5,000 and the restaurant agrees to the offer (the *Acceptance*). The *Consideration* for the farmer would be giving up ownership of the 100 bushels of tomatoes and for the restaurant would be paying \$5,000 if the tomatoes are delivered. The offer, acceptance, and consideration form a



Well-written membership agreements are not just a good business practice, but can explain to CSA members how the relationship will work and the shared risks.

For more information:

Maryland Contract Law is located in Md. Code Ann., Commercial Law Art., Section 2-206.

The elements of offer and acceptance in contract formation are clearly spelled out in § 2-206.

valid contract. In membership disputes, if one of the three elements is missing, the contract could be deemed invalid and the parties will not be bound by it. Keep the three elements—offer, acceptance, and consideration—in mind to make sure your CSA contract is complete.

Parol Evidence Rule Is a Common Law Rule Used to Interpret Contracts

As you use the model membership agreement or develop your own based on this guide, be sure to consider adding details that you may not have included in previous contracts. Detailed contracts are important because of the Parol Evidence Rule which can limit evidence which might add to or contradict a written agreement, such as your CSA membership agreements. The theory behind the Parol Evidence Rule is that a written agreement contains all the agreed-upon terms of a contract and anything not included in the contract was not a part of the deal and cannot be introduced in court as evidence of the deal.

Your operation’s website and other marketing materials likely already include much of the information discussed in the model membership agreement. These information sources are useful

for encouraging consumers to participate in your CSA. However, the terms and conditions outlined on websites and in marketing materials will not benefit you if a dispute arises because a court will disallow this evidence if the information is not included or referenced in your CSA membership agreement.

The model membership agreement includes descriptive sections, such as available products and delivery schedule, explanation of crop failure, etc., where you can incorporate references to pages on your website. If you are using an online membership agreement, you can provide hyperlinks for the relevant pages on your website. The goal is to include sufficient detail in the CSA membership agreement so the agreed upon terms are clear and admissible in court, if necessary.

Keep “Legalese” to a Minimum

Plain language is important because the CSA membership agreement is an extension of your operation and should help ensure that your members understand your farming methods and standards.

Growing Practices on the Farm

Your CSA membership agreement should clearly explain the farming practices you use in your operation. Are you certified or in the process of becoming certified organic? Do you grow in accordance with some organic practices but with no certification? Is your meat free range? Is it grass fed?

Describing your operation can be helpful for your members but be careful not to use terms or language that could be considered deceptive. For example, if you are not going to renew your organic certification, you may not want to include the term “organic” in the membership agreement.

Your operation’s website likely outlines the farming practices you use. However, potential CSA members will undoubtedly look at many CSA websites before deciding on yours. Putting farm operation information in the membership agreement provides future members another opportunity to review your practices



The model membership agreement includes descriptive sections, such as available products and delivery schedule, explanation of crop failure, etc., where you can incorporate references to pages on your website.

and helps eliminate any potential confusion about your farming methods versus those described on other CSA websites. Do not pass up this final opportunity to clarify to members the practices you are currently using in production.

Detail the Products and Delivery Schedules

Your contract should describe the products that a CSA member can expect to receive, broken down by the harvest schedule. New members accustomed to shopping for produce in grocery stores may not be familiar with the availability of seasonally grown foods. A simple chart or list will give members an idea of what they can expect throughout the term of the share. For example:

Between these approximate dates, you can expect the following:

- June 25 – Sept. 15: Sweet Corn
- July 1 – Sept. 1: Cucumbers
- July 4 – Sept. 15: Tomatoes
- July 1 – Sept. 30: Potatoes
- July 15 – Aug. 30: Okra
- Aug. 15 – Nov. 5: Apples

This type of listing should be accompanied by a qualifier such as “this description is based on our best estimate, but of course, weather, pests, and other events will affect actual production and we cannot guarantee the quality or quantity of any particular item.”



Your contract should describe the products that a CSA member can expect to receive, broken down by the harvest schedule.

For meat producers, including the form of the product you deliver such as whole chickens, bulk sausage, unsliced bologna, etc., is a good practice. Make it clear in the membership agreement that the description of expected products is only an example and not a contractual promise to produce the exact items listed. Include a general statement that the member is responsible for properly refrigerating, thoroughly washing, and inspecting all of the food prior to eating it.



For meat producers, including the form of the product you deliver is a good practice.

You will need to check with the MDA’s Weights and Measures Division if your contract includes the specific weights of commodities you will provide to members; for example, “delivery will be 6 lbs. of produce per week.” MDA may need to inspect the scales you are using to ensure true weight. Before including a

weight in your CSA membership agreement, contact the Weights and Measures Division at 410-841-5790, or http://mda.maryland.gov/weights_measures/Pages/weights_measures.aspx.

The membership agreement should detail specific information about the times and locations for members to pick up their CSA shares. If you can offer more than one time and location for pick up, include these options in the membership agreement and ask members to place an X next to their choices. You should also include information about what happens if a member fails to pick up his or her share. For example, the share could be distributed to other members or donated to a local food bank.

Explain That Crop Failure Is Always a Possibility

Although you may understand the risks you face in your operation, your members may not. Explaining these risks on your website and in the membership agreement will ensure members understand there are no guarantees they will receive their shares of all products if a crop fails or livestock become diseased.

The model membership agreement includes a section informing members that buying a commodity



Make it clear in the agreement if you will sell crop surplus to other markets or if you will not be able to harvest the surplus, so that CSA members understand that they may not receive larger shares of the surplus crop

directly from a farmer involves risks. MDA cites the most common complaints from CSA members are for a farmer who was unable to deliver the product(s) due to crop failure.

If your farm has a policy for handling crop failures, it should be included in the membership agreement. Do you supply produce from a neighboring farm? Do you supplement their share with crops that are ready to be harvested? Do you offer any refund of the share price? Clearly state if you do or do not offer refunds in the event of crop failure.

Do the Members Benefit From a Crop Surplus?

Just as crop failures can happen, in some years there may be a surplus. Your member agreement should contain an explanation of how you prioritize your production and if members will share in the bumper crop.

Make it clear in the agreement if you will sell the surplus to other markets or if you will not be able to harvest the surplus, so that CSA members understand that they may not receive larger shares of the surplus crop. On the other hand, if you produce exclusively for the CSA and its members, include that information in the membership agreement. The model membership agreement includes language for both scenarios. If you have a different plan for the surplus than those outlined in the model membership agreement, add that information in the blank spaces provided.

If you are not sure what you will do with a crop surplus, include a statement in the membership agreement indicating that the surplus will be sold in other markets or distributed to CSA members at your discretion.

Clearly Indicate the Cost and Benefits of CSA Membership

Membership fees allow you to grow produce, for example, and provide fresh, local food to CSA members. Members need detailed information on the



Membership fees are typically priced depending on such factors as the market for the products you are offering, the size of the shares, and the cost of production, among other criteria.

cost of each share and the type of products they will receive. Clarify when payment should be made, can credit card be used, and what happens if a payment is not made. Providing all information up front in the membership agreement will help ensure that there are no surprises or disappointed members down the road.

Deciding how much to charge for a membership fee can be difficult, making it necessary to do your research before listing your fees. Membership fees are typically priced depending on such factors as the market for the products you are offering, the size of the shares, and the cost of production, among other criteria. If you have a wait list for membership, people likely will be willing to pay more per share. If you offer half shares, they are usually priced at more than half the cost of a full share.

You may want to try to anticipate some of the questions or issues that may arise and include information in the “membership” section of the membership agreement which spells out the rules and limits to CSA membership. For example, is a membership transferable to another person? Is there ever a time when refunding a membership fee is the best course of action? You also should include the details of the process for each course of action. For

example, let’s assume you will allow cancellation of a membership but will not provide a full refund. What is your basic formula for determining a refund? This should be spelled out in the membership agreement.

Keep the Lines of Communications Between Producer and Members Open

Make it very clear in the membership agreement how a CSA member may contact you and be certain you have all the members’ email and phone information. Complete contact information can relieve a lot of stress when questions or concerns arise about the pick-up location or time, or if a weather emergency makes it difficult to arrive at the appointed place or time.

Problems can and likely will arise at some point so clarify the communications process, as well as how and when you will alert members of any changes or get back to them if they have questions or concerns. If email or social media is not the best way to get in contact with you, please include a phone or cell number of one or more persons.

Edit the model membership agreement to fit your farm operation. If you do not have a website or won’t be updating the one you have regularly, you should consider editing or deleting the portion of the agreement concerning social media outlets.

Including a Short Indemnification and Hold Harmless Provision Will Provide Some Protection from Potential Lawsuits

An indemnification and hold harmless provision means that upon signing the membership agreement, the member has waived or agreed not to pursue legal action against you for the broad categories listed in the clause. For example, “By signing this Agreement, the Member hereby releases, indemnifies and agrees to hold harmless the Farm, its agents and employees from any and all claims and/or liability from being on the Farm property, being at any of the CSA pick up locations, from the purchase of a CSA membership or the use or consumption of food provided by the Farm.” This clause will reduce your legal exposure



Your membership agreement should include a short section clearly giving you authority to terminate the membership agreement if the member violates any provisions of the membership agreement and allowing you to keep any member fees already paid.

for incidents such as a member being injured while visiting your farm.

It is worth noting that this clause only limits your potential legal exposure. There may be circumstances where waivers would not be effective and would not immunize you from lawsuits. Along with a waiver such as this one, consider other risk management tools, such as liability insurance, use of a business entity, etc. To understand the impact of an indemnification and hold harmless provision in your membership agreement, please check with a competent attorney in your area.

What Happens If a Member Cannot Fulfill Contractual Obligations?

When a member is in breach of the membership agreement, the farmer will need to end the contractual relationship. If a member does not fully pay the membership fee or refuses to follow the parking procedures at the pick-up location, for example, he/she has breached the membership agreement. Your membership agreement should include a short section clearly giving you the authority to terminate the membership agreement if the member violates any provisions of the membership agreement and allowing you to keep any member fees already paid.

If you end up being drawn into litigation over the CSA membership agreement, the only way you will be able to get a judge to award payment of court costs and attorney's fees is if the membership agreement clearly states that you are entitled to those expenses in the event of a contract breach. You should talk to an attorney to determine if these are provisions you want to include in your membership agreement.

What Happens If There Is a Dispute With a Member: Mediation

Let's face it: going to court can be a long and expensive process. Including a mediation clause in your CSA membership agreement is one potential way to limit litigation costs. Mediation is a low-cost non-adversarial process through which a neutral third party works to facilitate a discussion and negotiate a favorable outcome for both parties. Mediations often happen in a timelier manner than going to court. For these reasons, you may consider including a mediation clause in the CSA membership agreement that requires both you and your customer mediate any disputes before going to court.

MDA offers free to low-cost mediations through the Agricultural Conflict Resolution Service (ACReS). This service makes available trained mediators who can help resolve issues related to your CSA membership agreement. For more information on ACReS, see their website at <http://mda.maryland.gov/Pages/acrs.aspx>.

References

- Burch, M.L. and M.D. Ernst. *A Farmer's Guide to Marketing through Community Supported Agriculture (CSAs)*. Knoxville, TN: University of Tennessee Extension, PB1797, Dec. 2010.
- Goeringer, L.P, A. Newhall, S. Everhart, and W. Elangwe. *Community Supported Model Contract*. University of Maryland, Mar. 2015. Internet site: <http://drum.lib.umd.edu/handle/1903/16329>.
- Johnson, N.R., R. Armstrong, and A.B. Endres. *Community Supported Agriculture: An Exploration of Legal Issues and Risk-Management Strategies*. 28-FALL Nat. Resources & Env't 26 (2013).
- Maryland State Bar Association. *2015-16 Legal Services Directory*. Baltimore: MSBA, 2015. Internet site: <http://drum.lib.umd.edu/handle/1903/16374>.
- Suri, M. *Community Supported Agriculture (CSA) Survey: Summer of 2014*. Unpublished Manuscript: Maryland Department of Agriculture, Aug. 2014.

Author names:

Paul Goeringer
Ashley Newhall
Sarah Everhart
Wele Elangwe

Maryland Community Supported Agriculture Model Agreement

Member Agreement for _____ (insert season/year)

Name of Farm: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Email: _____

This Agreement is entered into on _____, 20_____, between

(insert legal owner of Farm name) (hereinafter referred to as “Farm”) and

(insert Member(s) name(s)) (hereinafter referred to as “Member”) who resides at

(insert Member(s) address), phone number is _____, and email is

In consideration of the terms described in this Agreement, Member agrees to pay the membership fee and in exchange, the Farm promises to provide Member with fresh, local, seasonal food for the growing season indicated above, as available.

Growing Practices of the Farm

The Farm is _____ (insert practices: is the farm Certified Organic, working on a certification, not certified organic but use organic practices such as, naturally grown, free range, grass fed, etc). _____

(consider discussing what these practices mean and how a Member can receive more information on the practices used).

Products and Deliveries Members Should Expect

The Farm's CSA runs for _____ weeks or from approximately _____ (month) to _____ (month).

Member will receive on average _____ (insert Farm's specific products) for each distribution during the CSA season. This will typically mean _____ (1 or 2 grocery bags or boxes) each pick up or _____ bags/boxes during peak season, which is usually _____ (insert what is average for your farm on the type of products they can expect).

Below is a table of products the Farm expects to deliver to a Member during the season. This chart is based on our best estimate, but of course weather, pests, and other events will affect actual production and we cannot guarantee the quality or quantity of any particular item.

Month of Harvest	Expected Crop/Meat/Dairy Product

Member will be expected to pick up your share _____ (*insert frequency – once a week, twice a week, etc.*) from a drop off site. Please check the pick up site you would like to use (*if you only have one location, delete table and just put address, day, and time of pick up*).

Check Selection	City	Name of Location	Address	Day	Time(s)

Member is responsible for observing the Farm’s following pick-up rules:

1. Bring own bag/return box from last week to collect products.
2. Pick up Member’s share within the allotted timeframe. Farm’s products can deteriorate if not picked up on time and stored properly.
3. Follow rules for pick up site, such as parking limitations, as provided by the Farm.

If Member cannot pick up Member’s share, Member must arrange for substitute to pick up share.

Member will need to explain the pick up site location and procedures to Member’s substitute (*you may want to require some form of proof to confirm person is actually a substitute*). Any shares not retrieved in a timely fashion will be _____

(*explain what happens to unpicked up shares: donation to food bank, selling to other markets, etc*).

Risk of Crop Failure

By joining Farm’s CSA, both Farm and Member are agreeing to share in the risk of crop failure, due to factors such as inclement weather, pests, and acts of God. If a crop failure does happen, Farm’s normal policy is as follows: (*describe your policy; for example, do you give Members other crops ready to harvest, buy crops from other local farms, or a combination of the two*). _____

In the event of a substantial crop failure, a refund of the share fee (*choose either: is/is not*) available. However, Farm reserves the right to deviate from these policies. _____

_____ Initial

Crop Surpluses

(Select one of the following):

- Farm's production is exclusively for the CSA and Members. When Farm has surplus crops, Farm will provide Member with as much as possible, but Farm does not want to overwhelm Member with products that may go to waste. When Farm experiences surplus, Farm will make excess crops

(Will you donate to local food pantry, let members harvest excess crops, set out excess crops for members to pick up on own, etc.?).

- Farm also sells produce to _____ *(insert other markets)*, but Farm keeps the CSA production separate by _____ *(insert how you segregate production)*. When Farm experiences a crop surplus with segregated CSA crops, Farm will provide Member with as much as possible, but Farm does not want to overwhelm Member with products that may go to waste. When Farm experiences surplus, Farm will make excess crops _____

(Will you donate to local food pantry, let members harvest excess crops, set out excess crops for members to pick up on own, etc.?).

- Farm also sells produce to _____ *(insert other markets)*. Farm does not segregate CSA production, but CSA production does receive our priority. In the event of a crop surplus, other markets will be served after Farm has satisfied Member's shares.

- Farm also sells produce to _____ *(insert other markets)*. Farm does not segregate CSA production; production is balanced between the CSA and other markets.

Members Fees

Selling CSA memberships helps the Farm reduce the burden of up-front costs (such as seeds, tillage, and other inputs) before the season starts. Farm appreciates Member's commitment to the Farm. Use table below if Member has multiple shares. Feel free to add additional rows (*vegetable/fruit, meat, dairy, etc.*) but if Member has only 1 share, delete table and write out the share.

Check Selection	Type of Share	Share Size	Price if before [date]
	Total Amount Due		

Check Selection	Payment Preference (Only include if you allow options)
	Member will pay full membership fee up front
	Member will pay membership fee in _____ number of installments, due on X date(s)

If Member is paying full membership fee up front, enclose a check for the total amount due _____, made payable to _____ with this agreement signed. If you are paying in installments, please enclose _____ checks for _____, one dated _____ and check(s) dated _____ with this signed agreement. By signing and submitting the agreement, you are agreeing to pay the membership fee for share indicated above. (*indicate if payments are refundable by a date or non-refundable*).

The Farm may, in its discretion, consider a request from a Member to downsize a share and may or may not grant a refund upon downsizing.

Communications between Farm and Member

The best way to communicate with the Farm is via email. Our email is _____ . Farm will do our best to respond as soon as possible, but please understand that we spend much of our time in the field growing your food and are not always able to send a same day response. Please contact us with any news of the following: changes to your postal or email address, problems with your pick up location, or dissatisfaction with your share.

We will communicate with Members primarily by email. When you sign up, you will be added to our distribution list. Please regularly read your email from the Farm. We depend on being able to communicate important information such as necessary changes to your distribution schedule or notices of our Farm events. We will do our best to post on our website information about the crops available that week (*insert link to site*). We will also regularly post recipe ideas and farm-related news.

Indemnification and Hold Harmless

By signing this Agreement, Member hereby releases, indemnifies and agrees to hold harmless Farm, its owners, agents and employees from any and all claims, damage and/or liability he or she might suffer from being on the Farm property, being at any of the CSA pick-up locations or from the purchase of a CSA membership, including but not limited to, the use or consumption of any food provided by the Farm.

Termination

If Member violates any of the provisions of this Agreement, he or she will be considered to be in breach of contract and Farm may terminate this Agreement and retain all Member fees. If the Farm violates any of the provisions of this Agreement, the Farm will be considered in breach of contract, the Member may terminate the agreement and receive a refund of the membership fee minus the value of any products received during the season.

Mediation

All claims and disputes arising under or relating to this Agreement are to be first submitted for mediation through the Maryland Agricultural Conflict Resolution Service. Both parties shall equally share the mediator's costs and fees. This provision may be enforced by any court of competent jurisdiction and the party seeking enforcement may seek all costs, fees, and expenses associated with enforcing this provision.

Acknowledgment

I agree to purchase the membership share indicated in the Membership section. I understand that, although unlikely, Farm may change parts of this Agreement related to production and distribution from time to time. I understand that Farm will contact me via email in advance of any changes to this agreement.

By signing this Agreement, I acknowledge that I have read, understand and agree to the terms contained herein.

Member Name (please print): _____ Date: _____

Signature: _____

The Agriculture Law Education Initiative is a collaboration between the [University of Maryland Francis King Carey School of Law](#) and [College of Agriculture & Natural Resources](#), University of Maryland, College Park. Through the [University of Maryland Extension](#) - the statewide, non-formal agriculture education system - the collaboration partners with the [School of Agricultural and Natural Sciences](#), University of Maryland Eastern Shore.

Beginning Farmer Success is supported by the Beginning Farmer and Rancher Development Program of the National Institute of Food and Agriculture, USDA, Grant #2012- 49400-19552. To find more resources and programs for beginning farmers and ranchers please visit www.Start2Farm.gov, a component of the Beginning Farmer and Rancher Development Program.



CSA LABOR ISSUES

SARAH M. EVERHART, ESQ.



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

DISCLAIMER

This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law. For advice about how these issues might apply to your individual situation, consult an attorney.



CSA LABOR ISSUES-INTERNS

- Many farms across Maryland use interns or apprentices to lighten the overall farm work load and help young people gain practical farming knowledge.
- The compensation of farm interns varies but what is the legality of these arrangements?
- Can interns work for free or be provided a small stipend or must they be paid minimum wage?
- When and how can interns be treated differently than the average employee?



CSA LABOR ISSUES-INTERNS

- The U.S. Department of Labor has specific definitions of both internships and apprenticeships.
- The Maryland Department of Labor and Licensing (DLLR) administers the federal program of regulation and registration of apprenticeship programs, and the bar for having a registered apprenticeship is quite high.
- Therefore, a farmer cannot simply qualify a position on a farm as an apprenticeship and pay or otherwise treat the person in the position differently than the average employee unless the apprenticeship is properly registered with the state and federal government.



CSA LABOR ISSUES-INTERNS

- As for interns, the U.S. Department of Labor has established six legal criteria to define an internship that can be compensated at less than minimum wage (see [Fact Sheet #71](#)).
- Generally, for an internship to be legal the employer must derive no immediate advantage from the activities of the intern and the intern cannot displace regular employees. By this definition, a farm intern that performs general farm duties and provides helpful labor is not a legal intern and must be compensated not less than the minimum wage unless another exemption applies.



CSA LABOR ISSUES-INTERNS

- Maryland law does allow students in DLLR approved work-study programs to be paid less than the minimum wage.



CSA LABOR ISSUES- INTERNS

- Glatt vs. Fox Searchlight Pictures, S.D.N.Y., 6/11/13

An intern sued Fox Searchlight Pictures for back-wages after an unfulfilling summer working on the set of *Black Swan*, where he performed menial tasks like retrieving files, delivering paychecks, organizing file cabinets, and making copies. The court held that because these activities were primarily for the benefit of the employer and not for the education or professional development of the plaintiff, the plaintiff was an “employee” covered by the Fair Labor Standards Act and the New York State Labor Law. Status as an employee entitled the plaintiff to receive minimum wage for his time on the set of *Black Swan*.



MINIMUM WAGE- FLSA AND WAGE AND HOUR

- FLSA and W&H -set the minimum hourly pay rate that interns and other employees must be paid. Although the federal minimum wage is \$7.25, the Maryland minimum wage is \$8.00/hour and effective July 1, 2015, the rate increases to \$8.25/hour, excluding Prince George's and Montgomery counties who have adopted higher rates. The higher State minimum wage is the wage that must be paid to all employees.
- Workers cannot waive their right to be paid minimum wage. It is not a viable defense for an agricultural employer to claim that the intern knew and accepted an unpaid position.



500 MAN DAY EXEMPTION

- The 500 Man-Day Exemption allows smaller scale farm operations to pay interns and other employees less than minimum wage if, during each quarter of the preceding calendar, the farm employer used no more than 500 agricultural-worker days.
- A man day is defined as any day during which an employee performs agricultural work for at least one hour. To qualify the agricultural work must be hands-on work related to planting, maintaining, and harvesting crops, and raising animals. Off-farm sales work such as work at a farmers' market does not qualify as agricultural work for the purpose of the 500 Man-Day Exemption.
- $7 \text{ workers} \times 5 \text{ days/week} \times 13 \text{ weeks} = 455 \text{ man days}$



500 MAN DAY EXEMPTION

- According to the Code of Federal Regulations (29 C.F.R. 780.11) if an employee in the same workweek performs work which is exempt under one section of Act (agricultural) and work which is non-exempt (non-agricultural), the employee is not exempt for the entire week and the minimum wage requirements apply.



EXEMPTIONS TO MINIMUM WAGE

- Agricultural employees who are an **immediate** family member of their employer
- Those principally engaged on the range in the production of livestock
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year
- Minors, 17 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 17



EXEMPTIONS TO MINIMUM WAGE

- Maryland excludes employees engaged in canning, freezing, packing or first processing of perishable or seasonal fresh fruits, vegetables or horticultural commodities, poultry or seafood from the State minimum wage requirements. Unless these types of employees are excluded for another reason, they would still need to be paid minimum wage under federal law.
- Additionally, if the employee is under 20 years of age, the State of Maryland permits an employer to pay the employee, for the first six months, a wage equal to 85% of the State minimum wage.



OVERTIME

- In Maryland, agricultural employers shall pay employee overtime pay for all hours over 60 hours a week.



CSA LABOR ISSUES- ROOM & BOARD

- When can room and board be deducted from an intern's compensation?
- The reasonable cost of board, lodging or other facilities may be included as part of an employee's wage if the facilities are regularly available to all similarly situated employees, the acceptance of the facilities is voluntary on the part of the employee and the employee actually receives the benefits. An employer may not calculate the reasonable cost of board, lodging or other facilities to exceed the actual cost to the employer.
- It is advisable that agricultural employers keep very careful records of the cost of providing board, lodging and facilities provided to intern employees and consult with DLLR before making any income deductions.



CSA LABOR ISSUES- ROOM & BOARD

- Before an agricultural employer decides to build or convert an existing building into intern housing, he or she should consult the local zoning ordinance to make sure that group housing is legally permitted in that location.
- Additionally, an employer will need to make sure that intern housing meets all local and state housing and/or health code standards prior to occupation.



CSA LABOR ISSUES-MSPA

- Many farmers may be surprised to learn that interns, performing seasonal agricultural work, fall under the protections of the Migrant and Seasonal Worker Agricultural Protection Act (MSPA).
- If interns are required to be away from their permanent residence while performing the seasonal agricultural work, they will be considered migrant workers and if not, they will be considered to be a seasonal worker.
- The MSPA has two main exemptions, the 500 Man Day Exemption described above and the family business exemption which exempts a farm labor contractor working for a farm owned and operated by either himself or his immediate family member.



CSA LABOR ISSUES-MSPA

- If an employer is not exempt, the MSPA requires an agricultural employer provide migrant employees with written disclosures and seasonal employees with verbal disclosures prior to the initiation of employment regarding the place of employment, wages to be paid, types of work the intern will perform, period of employment, transportation, housing, and workers compensation benefits.
- Agricultural employers must also provide employees with detailed pay stubs showing their earnings and deductions and retain copies of payroll records for a period of 3 years.
- Employers must also post worksites with a poster from the U.S. Department of Labor detailing the rights of workers pursuant to the MSPA.



CSA LABOR ISSUES-WORKER COMP

- If a farmer has at least 3 full-time employees or an annual payroll of at least \$15,000 for full-time employees, then the farmer is subject to Maryland's Worker Compensation Insurance law.
- Farm workers exempt from workers compensation-
 - (1) the individual customarily is engaged in an independent business occupation of the same nature as that of the service performed;
 - (2) the individual is free from control and direction over the individual's performance of the service;
 - (3) the individual provides the individual's own equipment, materials, and tools; and
 - (4) the farmer is not required to withhold Social Security, unemployment, State, or federal taxes from the compensation paid to the individual.



CSA LABOR ISSUES- WORKER SHARES

- Having members work on a CSA creates a higher risk for the grower due to the increased liability should a member be injured, so you may consider having members perform nonfield activities such as creating and distributing the newsletter, assisting at distribution sites, or supervising product pickup at the farm.
- Members could also be encouraged to research, compile, or contribute recipes for the newsletter.
- Growers need to contact their insurance provider and have a detailed risk management plan before they proceed with involving members in these and other tasks.
- Your insurance provider may view members working on the farm as employees, which will have a major impact on the cost of workers' compensation insurance.



CSA LABOR ISSUES- UNEMPLOYMENT INSURANCE

- Further, if a farmer pays wages of at least \$20,000 to employees for agricultural work or employs at least 10 individuals in a period of 20 weeks in the current or preceding calendar year, the employer must also participate in the Maryland Unemployment Insurance program.



CSA LABOR ISSUES- PICK UP SITE INSURANCE/VOLUNTEER WAIVER

- Make sure you have insurance coverage for off farm pick-up site locations. Most farm liability policies will not cover an off-farm injury.
- Consult your insurance agent- you may need a general commercial liability policy.
- You may want to have your attorney draft a liability waiver if you are going to have volunteers or social activities on the farm. A form liability waiver is available here- <http://hdl.handle.net/1903/15985>



CSA LABOR ISSUES

- Consult your attorney and insurance agent regarding establishing a CSA and describe how you plan to organize and implement the operation.
- You may be required to purchase workers' compensation insurance and increase your product liability insurance. Your current business structure may also need to be revised to accommodate the additional risk of having the public visiting or working on your farm.
- Having these concerns addressed will help alleviate stress and reduce liability exposure should an accident or another emergency arise.



SPONSORSHIP

Thank you to our other
sponsors:

Research is based on a Federal
State Marketing Improvement
Program grant from:



Maryland Crop Insurance:



*This institution is an equal
opportunity provider*

PARTNERS IN THE GRANT:



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**

EMPOWERING THE STATE



THANK YOU AND ANY
QUESTIONS?

SARAH EVERHART, ESQ.
SEVERHART@LAW.UMARYLAND.EDU
410-458-2475



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

CSA CONTRACTS: WHAT NOT TO DO

Ashley Newhall, Legal Specialist

Webinar

March 31, 2015



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

Disclaimer

This presentation is intended to provide general information about laws and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Maryland. For advice about how these issues might apply to your individual situation, consult an attorney.



University of Maryland MPower

The University of Maryland: *MPowering the State* brings together two universities of distinction to form a new collaborative partnership. Harnessing the resources of each, the University of Maryland, College Park and the University of Maryland, Baltimore will focus the collective expertise on critical statewide issues of public health, biomedical informatics, and bioengineering. This collaboration will drive an even greater impact on the state, its economy, the job market, and the next generation of innovators. The joint initiatives will have a profound effect on productivity, the economy, and the very fabric of higher education.

- <http://www.mpowermaryland.com>



Agriculture Law Education Initiative

The Agriculture Law Education Initiative is a collaboration between the University of Maryland Francis King Carey School and College of Agriculture & Natural Resources, University of Maryland, College Park. Through the University of Maryland Extension - the statewide, non-formal agriculture education system - the collaboration partners with the School of Agricultural and Natural Sciences, University of Maryland Eastern Shore.

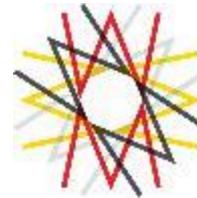
Website: www.umaglaw.org

Twitter: @MdAgLaw

Facebook:

www.facebook.com/MdAgLaw

Email: umaglaw@umd.edu



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

Overview

- Do you want to protect your farm and CSA offerings?
- Do you have a contract already in place?
 - If your answer is *NO*, wouldn't you like to have one?
 - If it is *YES*, wouldn't you like to know if you have included everything necessary to protect yourself and operate efficiently?



Overview

- Either way, wouldn't you like to know WHY you would have a contract for your CSA at all?
- Up to 70% of CSAs operate as a sole proprietorship or general partnership, exposing the farmland and personal assets to claims arising out of the business (2009 Survey of Community Supported Agriculture Producers, University of Kentucky Cooperative Extension Service)



Overview

- This survey also showed that many CSA operators recognize concerns that a more legalistic farm organization may create an undesired relationship between the CSA and its members
- The desirable relationship most CSAs strive for is the more personal relationship with its customers



Overview

- With that said, the survey showed that 1/3 of CSA farmers are hesitant to put the terms of their CSA in writing because it appears litigious and consequently untrustworthy



Overview

- *BUT*, legal issues arise from not using written agreements
 - Farmers may think that discussing the risks of their CSA on their website, facebook, or other social media outlet is enough and will protect them against disappointed customers
- **EXAMPLE:** 3 CSA farms failed to produce in Illinois and Wisconsin after a severe drought in 2011. An upset customer called an attorney wanting to know how he could get his \$560 CSA share refunded. Whether the farmer owed the customer turned on a nonexistent sales agreement and whether the lack of vegetables materialized from risks shared between the farmer and customer.



Overview-Parol Evidence Rule

- So, why isn't having information on your website or facebook page enough?
- One reason is a contracting rule called the ***Parol Evidence Rule***
 - It is contracting rule used by courts that can limit inclusion of evidence that "clarifies" a contract
 - The idea is that all your negotiations are reflected into the final document (ie the contract).
 - EX: Farmer Paul has a warning that weather may affect production on his website, but not on his membership contract. The court may rule that Farmer Paul's warning is not included in the agreement and therefor the customer is not held to be in warning of weather issues concerning production.



Overview-Parol Evidence Rule

- By including in the contract, you clarify potential areas of dispute.
 - Yes I realize you would prefer the document to be short sweet and to the point
 - Short sweet and to the point can come back to hurt you.
- This can be done by spelling out items in your contract, as we do in the model contract that Paul will be discussing.
- Can also do this by using Appendixes or ***referencing*** back to spots on your website and including copies for potential members.



HOW DO YOU CURRENTLY
ADDRESS ISSUES?

How do you address....

- Surpluses?
- Shortages?
- Pickups?
- harvest schedules?
- U-Pick?
- Growing practice notifications?



WHAT NOT TO DO

Sample Contract #1

Please return by Feb. 5th — Space is limited.

Please call for information on work shares.

Regular share	\$350
Family share	\$600
Omnivore's Delight	\$200
Vegetarian's Bliss	\$175

****Returning customers take 5% off total until January 10th****

Name _____

Address _____

phone: _____

EMAIL _____

(please indicate if this is not a good way to contact you!)

Pick up spot – please circle your preference

The farm, Wednesdays 10 a.m.-12 noon and 4-6 p.m.

Frostburg, Main St. Books Fridays 9 a.m.-12 noon

Thomas White Room Thursdays 12 noon- 2

Signature of agreement _____

Please return this form with payment to :



Issues With Sample Contract #1

- Not enough information!
- Only includes:
 - Membership Fees
 - Name and information of member
 - Option for pick up
- What is not included:
 - Occurrence of surplus or shortage
 - Details/definition of what each share is
 - Growing practices



Sample Contract #2

CSA Membership Form 2015

Print out this form and mail it to us with your check (Please Print!).

Name _____

Address _____

City _____ State _____ Zip _____ Phone # _____

Email (Please print legibly) _____

***Only ONE email address per share. If you're sharing with someone, please designate one of you to be the main contact that will pass all emails along!

Amt. Paid _____ Date _____

Please check below to indicate which CSA option you are choosing

Register between Oct 8, 2014 and May 7, 2015

Regular Season Produce CSA

*Fall Share

\$499 register before Dec 1, 2014 & receive a \$20 gift card _____
 \$499 register between Dec 2, 2014 & Apr 1, 2015 _____
 \$515 register between Apr 2, 2015 & May 7, 2015 _____

*Bi-Weekly Share

\$290 register before Dec 1, 2014 & receive a \$15 gift card _____
 \$290 register between Dec 2, 2014 & Apr 1, 2015 _____
 \$300 register between Apr 2, 2015 & May 7, 2015 _____

*Weekly Half Share

\$315 register before Dec 1, 2014 & receive a \$15 gift card _____
 \$315 register between Dec 2, 2014 & Apr 1, 2015 _____
 \$325 register between Apr 2, 2015 & May 7, 2015 _____

Early Spring Share

\$100 register before Feb 15, 2015 _____
 \$115 register between Feb 16 & Apr 15, 2015 _____

Summer Share

\$200 register before Apr 1, 2015 _____
 \$225 register between Apr 2 & July 1, 2015 _____

Add-On CSA Options for 2015

You must purchase a share in the produce CSA to be able to purchase an add-on.

*One Dozen Brown Eggs

\$90 register between Oct. 8, 2014 & May 7, 2015 _____

*One Pound Loaf of Bread

\$96 register between Oct. 8, 2014 & May 7, 2015 _____

Both items are picked up weekly from May 14 through October 22, 2015. Bi-weekly pick-up is not an option. Pick-up days will be assigned to you based on your pick-up day for your produce CSA.

I am a returning CSA member _____ My previous share was _____

I am donating \$_____ for a share for a needy family in the community.
 (All donations go towards shares for families from a local elementary school.)

How did you learn about joining our CSA Program? _____

Pick-up Site:

Brad's Produce
 550 Asbury Rd.
 Churchville, MD 21028

CSA Shareholder Agreement

I understand that payment for a share of the _____ CSA entitles me a share of fruits and vegetables harvested at _____, our local partnering farm. This is a commitment between me and _____ CSA and I recognize that I will share in the risks of the growing season along with other members and the farmer. It is my responsibility to pick up my share on time or to contact my host. I understand that pick-up times will be assigned based on the share I have chosen. If I do not pick up my share or have someone pick it up for me within 24 hours of my assigned time, my share will be donated elsewhere. I also understand my payment is nonrefundable.

Signed _____



Issues With Sample Contract #2?

- Only includes:
 - Membership Fees
 - Name and information of member
 - One option for pickup
 - Details/definition of what each share is
- What is not included:
 - Occurrence of surplus or shortage
 - Growing practices
 - Occurrence of weather problems and effect on pickup
- Issue
 - The highlighted portion that's states someone else can pick up the share-this can cause issues if someone attempt to steal the share!



Sample Contract #3

Five Seeds Farm is a family farm with 2 locations: **Baltimore City & Baltimore County**. We farm roughly 5.5 acres. We have been raising high-quality, organically-grown produce, honey and eggs since 2007. We grow over 60 different vegetables, herbs, berries & small fruits focusing on open-pollinated and unique heirloom varieties including the now again famous Fish pepper. We are a founding member of the **Farm Alliance of Baltimore County**. We sell directly to consumers at the **2nd Street Farmers Market of Washington, DC**, the **Columbia Heights Community Marketplace** in Washington, DC and the **Baltimore Farmers Market & Bazaar**. 2013 will be our sixth year operating a CSA.

What's in a share? Your share will be 6-8 items (valued at \$27) to include any of the following: arugula, heirloom & slicer tomatoes, garlic, sweet peppers, jalapenos, carrots, Swiss chard, endive, cucumbers, summer squash, winter squash, pumpkins, melons, pink baby ginger, green beans, onions, potatoes, sweet potatoes, broccoli, collards, kales, rapini, salad mix, head lettuce, celery, fennel, spinach, cauliflower, napa cabbage, bok choy, radishes, okra, melons, beets, turnips, edible flowers and culinary herbs. We do not offer half-shares, we encourage our customers to create community amongst family, friends, neighbors and strangers to split a share.

Season: May 18 through October 26, The time span of the CSA is 24 weeks, you will get 22 weeks worth of vegetables. We will take two separate weeks off from the CSA to allow time for the farm and farmers to regroup and receive feedback from our share members during the season, the last week of June and August.

Cost, Payment Methods and Mailing Address: \$575 until February 28; \$600 until March 15; \$620 thereafter. Checks by mail to **Five Seeds Farm, 10600 Bobbe Road Sparks, MD 21151**. We also accept PayPal, EBT (with payment arrangements), credit/debit and cash.

Contact Information: info@fiveseedsfarm.com or [410.552.5555](tel:4105525555)

Name: _____

Email Address: _____

Phone Number: _____

Share Price:

_____ \$575 (from January through February 28, 2014)

_____ \$600 (March 1 through March 15, 2014)

_____ \$620 (after March 15, 2014)

Share Type (choose one):

_____ Pick up on the farm with "U-Pick" options (such as cherry tomatoes, green beans, peas and flowers) on **Wednesdays from 10am to 3pm**

_____ Pick up at the Station North Tool Library on **Thursdays from 5 to 9pm**

_____ Pick up on the farm with "U-Pick" options (such as cherry tomatoes, green beans, peas and flowers) on **Fridays from 10am to 3pm**

CSA Commitment Statement

I understand that I am a subscriber to the **Five Seeds Farm** harvest season from mid-May through October. As a subscriber, I commit myself to supporting the farm with timely payments. I also commit to pick up my weekly delivery as indicated above. If not picked up in a timely manner I do not expect to have my share saved. I understand that if I do not pick up my share it will be forfeited. As a subscriber to the **Five Seeds Farm** CSA, I will receive a weekly share of approximately \$27 worth of produce. I understand that the variety of produce I receive depends on growing conditions that vary from season to season and that the risks and benefits of the harvest are shared. By participating in this CSA, I am supporting local growers as well as a healthier lifestyle for myself and for society.

Signature _____ Date _____

Please fill out the information below and mail this portion back to us:



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

Issues With Sample Contract #3?

- Only includes:
 - Membership Fees
 - Name and information of member
 - Details/definition of what each share is
 - Pickup options
- What is not included:
 - Occurrence of surplus or shortage
 - Growing practices
 - Occurrence of weather problems and effect on pickup
- Issue
 - Simply stating that the member “acknowledges” issues with weather on vegetable supply may not be enough-need to explain in more detail what will happen
 - Listing share in amount of items and not weight
 - How will the U-pick option be determined?



Sample Contract #4

Name: _____ Email: _____

Address: _____

Best phone number to reach you: _____

Share Price

_____ *Returning 2013 members only, prior to November 23, 2013:*
\$650 + bonus Thanksgiving share on Tuesday, Nov. 26th

_____ *Between November 24, 2012 and February 15, 2014:*
\$675 - Returning 2013 Members. \$700 - New Members.

_____ *After February 15, 2014:*
\$700 - New and/or returning 2013 members

Share Type (Circle One)

~~Delivered Share~~ ~~On Farm Share~~ **On Farm Share** - MD - Pickup will be market-style. Includes u-pick Tuesdays through Saturdays. **On farm shares are the most bountiful & diverse share option.**

Choose a preferred pick-up day.

_____ Tuesday 2-8 pm and Wednesday 7 am - noon

_____ Friday 2-8 pm and Saturday 7 am - noon

Delivered Share - Bagged/boxed share delivered to one of these sites. Includes u-pick at the farm Tuesdays through Saturdays. Shares will typically be 7-12 items, representative of the season. This is a slightly smaller option than an on-farm share. We may include items that are also typically available u-pick (Ex. peas, green beans, cherry tomatoes, etc). *Choose a preferred pickup day and location.*

_____ Tuesday 2 - 8 pm ~~Harmon's HO Country Store, Bel Air, MD~~

_____ Tuesday 2:30 - 8 pm ~~Bel Air Residence on Freshville Rd, Bel Air, MD~~ (near Old Joppa Rd)

_____ Tuesday 3 - 6 pm ~~Donna & Harry's Place on Rolling Place, Bel Air, MD~~

~~(near Ring Factory, Bel Air, MD)~~ **This is an alternating Delivered Share to Bel Air / On Farm Share in Bel Air, MD**

Every other week you would pick up on ~~Harmon's HO Country Store~~ and alternate weeks you would come to the farm

_____ Wednesday, 2:30 - 8 pm ~~Steve's Place on Old Joppa Rd, Joppa, MD~~

~~Hollingsworth, Bel Air, MD~~

_____ Wednesday 5 - 7 pm ~~Wine World, Bel Air, MD~~

_____ Wednesday 4 - 8 pm ~~Peace Yoga, Bel Air, MD~~

_____ Wednesday 3 - 6 pm ~~Coffee Corfee, Bel Air, MD~~

_____ Wednesday 2 - 5 pm ~~Belvedere Farm, Bel Air, MD~~

Market Share - Create a debit account and pick up *a la carte* at any of our farmers markets. A 10% credit will be added to your account at the beginning of the season. No weekly commitment and you can pickup only what you will use. This is a great option for households with picky eaters or people who travel often. There will be opportunities for social visits to the farm through the season, but u-pick crops are not included in this share option. Credit can be used for any FPF products (veggies, eggs, meats). Currently, our 2014 market schedule is as follows:

- ~~XXXX~~ Saturdays 7-11 am
- ~~XXXXXX~~ Saturdays 9-12 pm

This will be your dedicated pick-up day, location, and share type for the entire season and cannot change on a week-to-week basis. However, as we add drop sites, you will have a chance to change your share type/pickup site prior to the beginning of the season

Payment Plan Options

The money we get from members is our working capital for the season and our most hefty costs, like seeds, are in the early spring, so we appreciate if you are able to pay as much as possible early on. **\$200 required at time of sign up to hold your share (and early pricing schedule).** We are very flexible with payment plans. Members have until May 1 to pay full amount, in any schedule that suits you. ****All shares are due in full by May 1.** Any shares not paid in full by May 1 will be offered to another family. No refunds given. We will send out a monthly reminder invoice until the commitment is paid in full.

CSA Member Commitment

I am committing to support the work of this farm and in return I will receive a share of the harvest. I understand that the farm will provide the most bountiful harvest as possible, however I realize that farming varies from season to season and is susceptible to weather, insects, disease and other acts of nature. There is no guarantee of any specific crop or quantities.

Signature _____ Date _____



Issues With Sample Contract #4?

- Includes:
 - Membership Fees
 - Name and information of member
 - Details/definition of what each share is
 - Pickup options
- What is not included:
 - Occurrence of surplus or shortage
 - Growing practices
 - Occurrence of weather problems and effect on pickup
- Issues
 - Simply stating that the member “acknowledges” issues with weather on vegetable supply may not be enough-need to explain in more detail what will happen
 - Are there too many pick-up sites? Are those consistent and maintainable all season?
 - Market Share option-what happens if people pick over what you allotted for 10% credit-how does that get measured?
 - The payment plan could potentially raise issues-taking a \$200 deposit could open yourself to many defaults unless you know you can make up unpaid shares



Sample Contract #5

When you join our CSA, you: eat from the source; participate in the growth of your food; eat organic, local, fresh and in-season; teach your kids where their food comes from; get your hands dirty; learn how food grows; learn how to garden; eat heirloom vegetables.

_____ is a certified organic Community Supported Agriculture farm just south of _____, Maryland, providing a CSA to our community since the year 2000. We grow a wide variety of vegetables to entice you all season long. What we grow (may vary from this list).

We are a small organic farm that prioritizes the whole farm experience—participating in the growth of your food, getting your hands into the soil, and connecting to this place. Members are invited to family-friendly events, work days, and harvest parties.

CSA HARVESTS RUN FOR 20 WEEKS BEGINNING MID-MAY

___ FULL SHARE MEMBERSHIP...\$600 WEEKLY PICKUPS, CHOOSE 8 ITEMS

___ HALF SHARE MEMBERSHIP...\$350 WEEKLY PICKUPS, CHOOSE 4 ITEM

ON FARM MAY CHOOSE WEEKLY HALF SHARE OR EVERY OTHER WEEK PICKUP. AT DROP SITES HALF SHARES ARE WEEKLY. Two households may split a full share and alternate weeks between the two households.

CHOOSE A PICKUP LOCATION:

On-farm pickups: _____ (not mailing address) _____

_____ CARROLL STREET CAFE — TUESDAYS 8am-4pm _____

In our CSA, you "pick your 8 items" on the farm. At drop-off sites you can pick your items online and a specialized box will be delivered to your drop-off site with your name on it. Up to two weeks of items can be "banked" and picked up on another week, take a 2 week vacation and pick up your 16 items on another week.

Members choose 8 bunches of vegetables from a list of what is harvested that week—5-12 choices in any given week. Members picking up on the farm select their eight items and pack their own bags. Members picking up at our drop-off sites will receive a box of fresh organic produce grown on our farm, delivered to the designated pickup site. You may choose your items online by the weekly deadline, or we will make a nice "farmers choice" selection for you.

A perk to picking up at the farm is the U-Pick Rows: herbs, flowers, cherry tomatoes, peas and green beans, as available. Members at drop-off sites may plan visits to the farm to help in the fields on a workday, or to pick some flowers and cherry tomatoes and have a farm tour. Members are encouraged to bring the kids so they can meet their farmers and learn where their food is grown.

TWO WAYS TO SIGN UP:

1. PAY ONLINE:



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

Issues With Sample Contract #5?

- Only includes:
 - Membership Fees
 - Name and information of member
 - Pick-up location
 - Growing practices
- What is not included:
 - Occurrence of surplus or shortage
 - Occurrence of weather and changes to pick up and U-pick choices due to weather
 - How to contact farm
- Issues
 - Confusion on U-Pick items-are they an extra cost or part of the membership fee?
 - Stating “Mid May” then for 20 weeks-not a clear picture on when share will begin and end
 - Is the “banking” option reasonable? Sounds good in theory but how does it work? →lacks specificity



YOUR TURN!

I will show a sample for a few minutes, then you tell me what you see the issues are

Sample Contract #6

2014 Membership Agreement to ~~Stony Branch Farm~~

The 2014 Season runs for **14 weeks** from the week of June 1 through August 31, 2014. We are offering two choices for your participation in our CSA. Please select the opportunity you are interested in receiving:

- _____ Full Shares are \$350 for the season. You will receive 6-8 farm fresh items per week.
- _____ Half Shares are \$200 for the season. You will receive 3-4 farm fresh items per week.

By purchasing a share in the ~~Stony Branch Farm~~ CSA program, I have accepted the terms of this membership agreement.

Items delivered will vary depending on the time of the season. CSA members support ~~Stony Branch Farm~~ by sharing in the inherent risks of agriculture (poor weather, crop failure, etc.) and the rewards (fresh local and grown vegetables and the bounty of a good season). ~~Stony Branch Farm~~ purposely plans for such contingencies by growing extra crops, using techniques that minimize risk and grow for optimal production.

I understand this principle and agree that there is no guarantee on the exact type of produce I will receive in my share each week. By participating in the CSA, I am supporting the local farmer and local food market, and I am helping to create a more environmentally and economically healthy society.

By becoming a member I commit to picking up my share weekly and understand that if I, or someone I designate, is unable to pick up my share, they will not be saved and will be donated.

Print Name _____

Signature _____ Date _____



Issues With Sample Contract #6?

- ???



THANKS

ANY QUESTIONS?

Contact info:

Website: aglaw.umd.edu

Email: anewhall@umd.edu

Twitter: @MDAgLaw

Phone: 301-405-3541



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

Sponsorship

Research is based on a Federal State Marketing Improvement Program grant from:



Thank you to our other sponsors:



Maryland Crop Insurance:



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS

UNIVERSITY OF
MARYLAND

EXTENSION

Solutions in your community



*This institution is an equal
opportunity provider*

MPOWERING THE STATE

Partners in the grant:



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**

MPOWERING THE STATE



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

DEVELOPING A BETTER CSA CONTRACT

Paul Goeringer, Extension Legal Specialist,
CSA Workshops and Webinar 2015



Sponsorship

Research is based on a Federal State Marketing Improvement Program grant from:



Thank you to our other sponsors:



Maryland Crop Insurance:



This institution is an equal opportunity provider
UNIVERSITY OF MARYLAND
DEPARTMENT OF AGRICULTURAL & RESOURCE ECONOMICS

Partners in the grant:



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES
DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPowering the State



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES
DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS

University of Maryland MPower

The University of Maryland: *MPowering the State* brings together two universities of distinction to form a new collaborative partnership. Harnessing the resources of each, the University of Maryland, College Park and the University of Maryland, Baltimore will focus the collective expertise on critical statewide issues of public health, biomedical informatics, and bioengineering. This collaboration will drive an even greater impact on the state, its economy, the job market, and the next generation of innovators. The joint initiatives will have a profound effect on productivity, the economy, and the very fabric of higher education.

- <http://www.mpowermaryland.com>



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES
DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS

Agriculture Law Education Initiative

The Agriculture Law Education Initiative is a collaboration between the University of Maryland Francis King Carey School and College of Agriculture & Natural Resources, University of Maryland, College Park. Through the University of Maryland Extension - the statewide, non-formal agriculture education system - the collaboration partners with the School of Agricultural and Natural Sciences, University of Maryland Eastern Shore.

Website: www.umaglaw.org

Twitter: @MdAgLaw

Facebook:

www.facebook.com/MdAgLaw

Email: umaglaw@umd.edu



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
 EDUCATION INITIATIVE**
 EMPOWERING THE STATE



COLLEGE OF
 AGRICULTURE & NATURAL RESOURCES
 DEPARTMENT OF AGRICULTURAL &
 RESOURCE ECONOMICS

Disclaimer

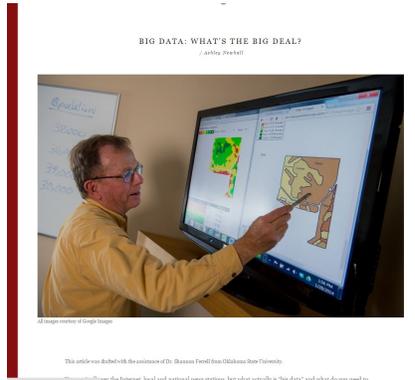
This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law. For advice about how these issues might apply to your individual situation, consult an attorney.



COLLEGE OF
 AGRICULTURE & NATURAL RESOURCES
 DEPARTMENT OF AGRICULTURAL &
 RESOURCE ECONOMICS

Want to learn more?

- www.aglaw.umd.edu cover a wide range of topics on farm policy, crop insurance, and legal issues
- Can sign up for updates



Want to learn more?

MARYLAND RISK MANAGEMENT EDUCATION BLOG

[HOME](#) [ABOUT](#) [SEARCH THE BLOG](#) [ALEI](#) [AREC CROP INSURANCE](#) [UME AG LAW](#) [UNIVERSITY PAGES](#)
[CONTACT](#) [OTHER BLOGS](#) [SOCIAL MEDIA](#)



WELCOME
/ Ashley Newhall, Sarah Everhart, Wole Blangwe, and Paul Goeringer

Search

Welcome to the Maryland Risk Management Blog, provided by the Maryland Crop Insurance Project and the University of Maryland's Agriculture Law Education Initiative. This blog will provide readers with information on legal and risk management issues important to Maryland agriculture, upcoming events, and new materials that may interest readers.

Please sign up to receive email updates of new content (your email will be kept private and not sold). If you do sign up, you will get an email to confirm your email address that may end up in your junk mail folder. Email updates will not start till you confirm your email.

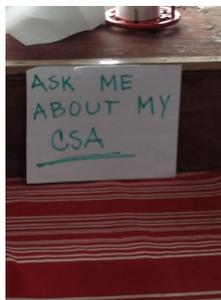
Enter your email address:

[Subscribe]
Delivered by FeedBurner



Overview

How many of you view your CSA as a risk management tool?



Overview



- In a way it really is a risk management tool:
 - Potentially reduces borrowed capital.
 - Ready market
 - Any other benefits?
- Idea of CSA is sharing the risk



Overview

- Although risks shared in CSA issues do arise.
- Not uncommon for (fill in disaster) to hit
- Literature on CSA contracts is lined with stories of members contacting attorneys.



Overview

- Ashley has laid out the problems with many contracts used in CSAs.
 - Literature shows this is a national problem (not a Maryland problem).



MODEL CONTRACT

Model Contract

- We are finalizing a model contract with this project.
 - Contract will cover areas typically seen in the CSA business model.
 - Not areas that are typically covered in every one of your CSA contracts.



Model Contract



- We have tried to keep the “legalese” to a minimum in the contract
- This was done because contract is potentially a marketing tool to show how your farm operates



Model Contract

- Other sources for model contracts:
 - Farmcommons.org
 - Connecticut Extension
 - Other sources are available



Model Contract



- We've developed this to cover all potential issues seen before.
 - Remember we are lawyers, our job is to be over cautious
- Want a contract that works for you?
 - Talk to an attorney



Model Contract

- Contents of the model contract:
 1. Growing Practices
 2. Products and Delivery
 3. Risk of Crop Failure
 4. Crop Surplus
 5. Membership fees
 6. Communication
 7. Indemnification and Hold Harmless



GROWING PRACTICES

Growing Practices

- How are you currently growing crops/livestock on the farm?
 - Certified Organically?
 - Organically?
 - Grass-fed?
 - Grain-fed?
 - GMO free?



Growing Practices



- Why do you want to do this in the contract?
- Its already on your website right?
- Isn't this just repetitive?



Growing Practices

- Yes it could be repetitive, but acts as reminder before future member signs the agreement
- If any dispute ever arises with member on your growing practices, already spelled out in contract



Growing Practices

- So how do you do this for your contract?
- Just copy and paste the language you are already using on your website.
- Remember see the contract as a way to market your CSA, but
- Be clear in the exact practices you are using and do not use too much fluff.



PRODUCTS AND DELIVERIES
MEMBERS SHOULD EXPECT

Products and Deliveries Members Should Expect



- What products do you grow?
- When are these products available?



Products and Deliveries Members Should Expect

- New members accustomed to shopping for produce in grocery stores may not be familiar with the availability of locally grown foods.
- How do you demonstrate this?
 - Simple chart or list of what you grow and when you expect deliver to take place
 - Again going to be similar to what is on your website



Products and Deliveries Members Should Expect

- But Paul, I grow X number of crops and this list could be huge
- Best thing is to include the list in your contract, but can potentially reference list on your website



Size of Delivery



- Keep in mind if you use a specific weight or volume will need to have equipment (scales, etc) checked by MDA Weights and Measures



Delivery location

- Make sure to include:
 - Delivery location(s);
 - Days of delivery take place
- If have multiple delivery locations have them check box on contract.
- Make clear what requirements are to pick up the share.
- Specify what happens if share no picked up.



All right
stop,
Collaborate
and listen



Parol Evidence Rule

- Remember the **Parol Evidence Rule** that Ashley discussed earlier
 - Is a contracting rule used by courts that can limit inclusion of evidence that “clarifies” a contract.
 - The idea is that all your negotiations are reflected into the final document (ie the contract).
- By including in the contract, you clarify potential areas of dispute.
 - Yes I realize you would prefer the document to be short sweet and to the point
 - Short sweet and to the point can come back to hurt you



Parol Evidence Rule

- Can also do this by using Appendixes or referencing back to spots on your website and including copies for potential members.



RISK OF CROP FAILURE

Risk of Crop Failure

- Crop failures do happen (disease, drought etc).
- Are your shareholders aware of this?
- Want to remind them that this is possible.



Risk of Crop Failure



- Why do you want to remind shareholders of this?
- MDA has gotten complaints when farmer stops delivering due to crop failures
 - Literature points out happens across the US



Risk of Crop Failure

- Want to reinforce idea that crops can fail
- Section drives home idea that CSA model is about shared risk



Risk of Crop Failure



- Have you dealt with a crop failure before?
- If so describe how you handled it.
- Makes member aware of how you could potentially handle the situation.



CROP SURPLUS SECTION

Crop Surplus Section

- Many of you potentially already handle this issue through notifications on your websites, newsletters, or social media accounts.
- But contract needs to include language on how this is potentially going to be handled.
 - Remember the Parol Evidence Rule
 - Want to make sure member is aware of how this could be handled.
- Language could be what we have in the model contract to simply reminding them to pay attention to newsletters/ social media/website for announcements



MEMBERSHIP FEES

Membership Fees

- It is important that your members understand and know the cost of each individual share and what it is paying for.
- This takes away surprises down the road



Membership Fees



- Pricing the fee can be difficult
- Factors to consider:
 - Market for products
 - Size of share
 - Cost of production
 - Etc.



COMMUNICATIONS BETWEEN FARM AND MEMBER

Communications Between Farm and Member

- Lets face it farming can change from day to day depending on conditions.
- Spell out how you expect to communicate with them
 - Most likely will be email but communication preferences can change



Communications Between Farm and Member



- Remember to highlight newsletters or social media accounts that they will have access to see what is going on on the farm.
- Both can keep members aware of day-to-day conditions



INDEMNIFICATION AND HOLD HARMLESS

Indemnification and Hold Harmless

- Just additional protection included in many contracts.
- This clause will reduce the farmer's legal exposure if a member is injured while visiting the farm, in the event of crop failure or if a member cracks a tooth on a piece of produce from the farm.
- Ex of language:
 - by signing this Agreement, the Member hereby releases, indemnifies and agrees to hold harmless the Farm, its agents and employees from any and all claims and/or liability from being on the Farm property, being at any of the CSA pick-up locations, from the purchase of a CSA membership or the use or consumption of food provided by the Farm.



Conclusions

- CSA contract is not a simple document.
- Contract is going to need to address:
 1. Growing Practices
 2. Products and Delivery
 3. Risk of Crop Failure
 4. Crop Surplus
 5. Membership fees
 6. Communication
 7. Indemnification and Hold Harmless



Conclusions

- Will your contract include all these sections?
 - All going to depend on your operation.
- Need to bare in mind the Parol Evidence Rule and make sure that you reference or specifically include areas from your website into the contract



Conclusions



- When using the model contract, you are free to use whole thing or pick and choose portions you want to use.
- Or feel free to modify them to fit your operation.
- Consider having an attorney review what you come up with



THANKS ANY QUESTIONS?

Contact info:

Website: www.extension.umd.edu/aglaw

Blog: www.aglaw.umd.edu

SSRN: <http://ssrn.com/author=1948372>

Phone: 301-405-3541

Twitter: @AgLawPaul

Email: lgoering@umd.edu



COLLEGE OF
AGRICULTURE & NATURAL RESOURCES
DEPARTMENT OF AGRICULTURAL &
RESOURCE ECONOMICS