

# **LEGAL STRUCTURE RULES & REGULATIONS FOR DIRECT MARKETING ENTERPRISES**

*by Richard D. Gibson<sup>1</sup>*

**N**early all marketing activities are affected by federal, state, county, and city ordinances, rules or regulations. They are simply a fact of life. In view of the current public interest for a safe-quality environment, it is just good business to be aware of regulatory necessities and to show good faith in attempting to comply with them.

Because each direct marketing enterprise is different, and because regulations vary from location to location, it is impossible to provide a complete list of regulations that will apply every where all the time. However, it is possible to provide a generalized list of common laws and regulations that direct marketing operators work with in the process of operating their businesses. **Please check the box at the end of this section entitled “Confused? Where To Go For Help!!!”. It provides valuable sources of information which can help ease the process of complying with the appropriate regulatory agencies.**

***A few general rules that almost always apply in any situation:***

1. Always check with local, state and federal authorities before trying to market any product, especially food items. Food items are almost always carefully regulated.
2. Check with the officials before you start so that there are no unpleasant surprises down the road. Make

yourself knowledgeable about rules and regulations far enough in advance to allow adequate time to comply with them.

3. Rules and regulations are constantly changing, so communicate regularly with local and state officers. Keep abreast of changes.
4. Make government inspectors your allies rather than your adversaries. They will often give you valuable free advice on many aspects of your operation. If you are constructing a building, for example, your consultations with inspectors will ensure that what you are building is something they will approve.
5. Nearly all regulations add time, effort and cost to your marketing operations. These can have an undesirable effect on your ability to do business. If you feel that certain legal requirements are extraneous or detrimental, bring this to the attention of the proper authorities and work with them to resolve the situation. You may be able to obtain a waiver in certain situations.
6. Remember that safety is always of paramount importance. You can improve the opportunity for success if you will 1) make your enterprise as safe as possible for clientele and 2) carry adequate insurance for the size and type of your operation.

***In case you are inspected:***

1. When you are inspected, accompany the inspector while he/she is walking around your property.
2. Ask questions and seek advice and assistance in meeting any regulations that apply to your business.

3. Ask for a business card. It is important to know how to contact the inspector for follow-up purposes. You may need to obtain copies of regulations, clarify a specific situation with an inspector, or speak with someone else in the agency.
4. In case of violations or citations, find out completely as to why you are being cited. Read the regulation so that you understand it thoroughly and how it applies to your situation. If the warning is obviously justified, communicate to the officer that you understand and will comply. If you feel you are being wrongly cited, talk to the enforcement officer.
5. If there is still disagreement, follow up with the appropriate agency and ask for help from their representatives. The next step is to go to your board of supervisors and try to work the problem out. As a last resort, call or write your elected state senator or representative. He or she may be looking for a case, and all of them are sensitive to public opinion, especially when a bill is coming up for a vote.
6. In all cases, be polite but persistent. Agency representatives have regulations they have to abide by. If we get angry or overbearing with them, our attempts at working through difficulties can have an adverse outcome.

### **Requirements To Consider**

The following list of requirements are commonly considered by direct marketing managers as they start up, expand, or conduct their operations. The list, however, may not necessarily include all of the rules and regulations that may apply in a given situation.

**State Workmen's Compensation:** If you pay a salary to one (1) or more

employees, you must carry workmen's compensation insurance. You may obtain it from the state or from private carriers. If you have family members working for you and do not pay them a salary, you do not have to follow this regulation. The state will mail an application to you at your request.

**Insurance:** The amount and kind varies by location, type of operation, number persons employed, and the volume of business. Every operator should discuss their particular needs with their insurance agent. You might start your discussion by considering these types of coverage: (1) **Product liability insurance** for injuries which may arise out of products that are raised and/or sold by you. (2) **Premises liability insurance** to protect you if you should cause injuries to the public or damage property belonging to the public. (3) **Employer's liability insurance** (either legal or statutory) to protect you in event of injuries to your employees. (4) **Physical damage insurance** to protect against loss to the property owned by the operator, such as buildings, equipment and merchandise. The following are some guidelines to think about. Again, your situation may require more or less than these amounts. Do not assume that your regular homeowner or private automobile insurance will be sufficient. Contact an insurance agent that deals in business insurance needs. [Don Cook, Farm Bureau Insurance]

**State Board of Economic Security:** Get a copy of the "Handbook for Workmen's Compensation and Unemployment Insurance." Ask for the appropriate forms.

**Building Safety Department:** If your building is permanent, a portion of the land where it is located should be commercially zoned. It should be at least 25 feet from the edge of the property to allow for room to pull off the highway.

**Weight and Measures:** Have a copy of their handbook for businesses. You will need a license and the agency will also need to check all scales and equipment

for accuracy on items being sold by weight. Generally, if you sell packages or units this will not apply.

**County Planning and Zoning:** If the market site is outside municipality corporate limits, you will need to contact your local office.

**Municipality Planning and Zoning:** If the market is to be located inside corporate limits of a municipality, the municipal office will need to be contacted.

**Small Business License:** A business license may not be needed if you are selling on your own property. A state sales tax permit will be needed. If you are located within city limits, you need a sales tax permit from the city, and you must comply with the zoning laws of the city.

**State Department of Revenue:** State tax withholding is a critical area. Save yourself financial stress by complying with all tax withholding requirements. Be sure to register as a business.

**Internal Revenue Service:** Federal withholding information for social security and income tax can be obtained from this agency. This will include both employees and business inheritance.

**Social Services; County:** Procedures for redeeming and obtaining reimbursement for food stamps.

**Federal Agencies:** There are never any guarantees that you will never be inspected by the Environment Protection Agency (EPA) or the Occupational Safety and Health Agency (OSHA). You should be aware of their regulations and respond accordingly.

**Organic Produce:** If you plan to market organic labeled produce, you should know that the Organic Foods Product Act (OFPA) of 1990 was adopted as part of the 1990 Farm Act to establish national uniform standards for organic foods, which would provide assurance to consumers that food marketed as organic meets a prescribed set of uniform standards.

OFPA provided for the appointment of a National Organic Standards Board (NOSB) of private sector individuals to advise USDA on materials for organic production and other aspects of program implementation. Since March 1992, the NOSB has been developing its recommendations through an intensive public-input process.

NOSB finalized most of its basic program recommendations on organic production and product-handling standards, and the accreditation process for certifying agents, at its meeting in Santa Fe, New Mexico, in June 1994. NOSB recommendations on the national list of allowable synthetic and prohibited natural materials are underway. Proposed regulations promulgated by USDA for implementation of the program are expected this fall with final regulations by summer 1995. USDA's Agricultural Marketing service is currently studying the demand for organic products. [Information was provided by Julie Anton, AMS. (202) 720-8331]

**Perishable Agricultural Commodities Administration (PACA):** This agency has licensing and bonding requirements for persons buying and/or selling produce across state lines. This helps provide financial responsibility without recourse to court suits.

**State Standardization:** This agency controls quality standards of fruit and vegetables being sold through roadside markets. Markets are subject to periodic inspection.

**State Highway Department:** If your business is outside the incorporated limits of a municipality along any state or federal highway, they will want to check the following items of concern:

- is the market off the legal road right-of-way?
- do your advertising signs obstruct a driver's visibility?
- the number of access points and how access to the property is controlled.
- distance from intersections.

**New Food Labeling Law:** On May 8, 1994, a new mandatory nutrition labeling program will go into effect for most processed products (including vegetables) sold at retail. The Nutrition Labeling and Education Act of 1990 (NLEA), administered by the Food and Drug Administration (FDA), will require most food processing firms to conform to new food labeling regulations. A listing of fourteen nutrients and food components must be provided to consumers, with disclosure of several other nutrients (such as thiamin and niacin) being optional. Products packed prior to May 8, 1994, may be sold in the market without the new labels. However, any product packed for retail sale after May 7, 1994, must be packed in containers bearing the new comprehensive nutrition-information labels.

NLEA regulations are expensive and can be categorized as follows:

- Mandatory ingredient labeling for standardized foods and certified colors (effective on May 8, 1994).
- Voluntary labeling of raw fruit, vegetables, and fish.
- All other labeling regulations, including mandatory nutrition labeling, percent-juice labeling, nutrient-content-claim definition, health-claim labeling, format changes, and others.

The NLEA does provide some exemptions from mandatory nutrition labeling. Exemptions exist for:

- Small businesses
- Foods served in restaurants and other food service establishments,
- Foods to be processed, labeled, or repacked at another site,
- Foods prepared at retail level,
- Food containing insignificant amounts of all required nutrients.

Modifications to nutrition labeling rules are allowed for foods sold in small packages. Processors will have to provide required nutrition information at the point of consumer purchase. For foods sold in intermediate-sized packages, use of a modified labeling format will be allowed. Foods sold from bulk containers will have nutrition information prominently and conspicuously displayed at the point of purchase.

Many consumers base their initial purchase of a product in part on nutrition information provided on the label. A 1990 survey indicated that about three-fourths of respondents reported at least sometimes reading and being influenced by nutrition labels when considering the purchase of a product for the first time. However, other factors such as habitual buying, brand loyalty, and price are also important determinants of purchase and consumption patterns. Supermarket promotions that feature point-of-purchase nutrition labeling have been found to encourage purchases of frozen and canned products when accompanied by selection and preparation tips. [Based on material prepared by Elizabeth Prazao, ERS. 202-219-9864]

**Health Department, County:** County health department regulations apply whenever the health of clientele could be affected. Fruit stands or other types of food distribution are common examples. Every county has different regulations but the following tips may help direct marketing operations preparing to sell food products to the public.

1. Keep all foodstuffs off the ground. Different counties require different heights.
2. Usually home-canned materials are not allowed to be sold.
3. Raw honey should be labeled as such for the seller's protection.
4. Necessary methods to ensure against contamination of food

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| <p>by insects, rodents and other animals must be taken.</p> <p>5. Store empty crates in a clean and sanitary manner.</p> <p>6. Ensure that garbage is properly disposed.</p> <p>7. Properly refrigerate all perishable foods such as milk, eggs, and meat.</p> <p>8. Do not cut fresh fruit to serve as samples to clientele.</p> <p>9. Comply with all building codes and permits.</p> | <p>Extension Marketing Committee. University of Delaware, Cooperative Extension. 1975. 66 pages.</p> <p>Hall, Charles R. and David W. Moorman. Handbook For Establishing And Operating Farmers' Markets. Texas Agricultural Extension Service. B-1665. 52 pages.</p> <p>Ingalsbe, Gene and James L. Goff. How To Start A Cooperative. U. S. Department of Agriculture. Cooperative Information Report No. 7. 1987. 51 pages.</p> <p>Olmi, Antonio M. Selecting The Legal Structure For Your Firm. U.S. Small Business Administration. Management Aids Number 6.004. 5 pages.</p> |
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**CONFUSED? WHERE TO GO FOR HELP!!!**

**SMALL BUSINESS ASSISTANCE OFFICE, ARIZONA STATE GOVERNMENT (1-800-542-5684)**

The Arizona State Government Commerce Department of Small Business Assistance\* will help make up a customized package concerning: licenses, insurance, taxes, and laws. Before calling answer the following questions.

1. Structure of ownership? (company, private, corporation, etc.)
2. Location of actual operation?
3. Building structures?
4. Sales by unit or by weight?
5. Employees?
6. Personally grown or resale?

**THE UNIVERSITY OF ARIZONA COOPERATIVE EXTENSION:** We provide educational assistance to any individual or group interested in marketing agricultural products direct. There is a county office in each county of Arizona. Check the government listings in your area.

**FROM:**

Direct Farm Marketing and Tourism Handbook.

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