Chapter 1

Introduction

"We must all hang together, or assuredly we shall hang separately."
Benjamin Franklin at the signing of the Declaration of Independence, July 4, 1776.

American farmers are known for their deep streak of independence. This streak comes from a desire to make their own decisions and control their own destinies. One conjures images of individual families striking out to the prairies of North America to forge a better life: clearing the forests, plowing the land, and raising their own food.

Yet farmers also have a long history of working together. When the challenge required it, those in agriculture often realized the only way to get the job done was to join forces. From early barn raisings, to coming together to establish rural communities, to the rural cooperative movement, farmers recognized the advantages of pooling resources and everyone pulling in the same direction. This spirit of community and cooperation are the very roots of many rural institutions.

Farmers today face challenges that again call for a movement toward cooperation. With commodity agriculture becoming ever more concentrated, many farmers who raise crops or animals for these markets are reconsideing a theme that has resonated in agriculture through the decades: the need to join together to increase farmers' bargaining power relative to the sellers and buyers with which they deal.

Other participants in the food and agriculture sector, those who deal with food products or specialty crops, also see the need to join together. These farmers are not so much attempting to balance market power as they are concerned with accessing the capital and expertise needed to be part of these emerging markets. At the end of the day, whether it is raising soybeans in Illinois or gathering maple syrup in Vermont, farmers are looking for more options. Producer marketing associations can provide these options.

This book looks at some of the issues raised when farmers decide to work together. The book is focused on legal issues, yet it also looks at some of the business fundamentals and marketing issues farmers need to consider as they approach a producer marketing association.

Let's start with some of the basics:

What is a producer marketing association?

A producer marketing association is created when farmers enter into an association for selling, marketing, processing, promoting, or certifiying for the group. The group can be legally formed as a cooperative, limited liability company, or limited partnership, or it may be an informal network of neighbors working together toward a common goal.

Who should read this book?

Any farmer who is interested in working with other producers to further business goals. The book is designed with both big and small farmers in mind. As discussed earlier, there is a need to consider the greater use of joint producer associations in almost any type of agriculture. Farm advisors and others who are interested in rural economic development will also find the book useful because it contains information that will be valuable to their clients or communities. The book uses straight-forward language to explain some complicated legal and business ideas.

What are the goals of this book?

The intent of this book is to give farmers the tools needed to understand any producer association they might be interested in creating or joining. These tools include increased knowledge that will provide the farmer the ability to make sound decisions and avoid needless risk. Hopefully the book will answer many of the basic questions involved with producer associations. It is also intended to raise a number of questions that only the farmer, other members of the group, or its advisors will be able to answer.

Contents

The next chapter focuses on business fundamentals, a subject that has always been important to any farm or marketing group wanting to thrive. The close study of business fundamentals is even more important for groups trying to create new markets or use new business models. As a rule, the more novel the idea, the more important it is a farmer have a plan. The chapter considers some of the basic exercises people go through when considering any type of business venture – the feasibility study and the business plan. The chapter concludes by focusing on a particularly important part of the business plan – the marketing approach.

When considering a marketing approach, farmers should look at already existing models. A marketing model is simply a plan for how the farmers interact with each other and within the group in their effort to sell their goods. Chapter Three surveys different types of marketing systems farmers use to work together - from marketing associations where farmers market collectively but do not coordinate their production, to more integrated systems where producers coordinate the entire line of production. The decision on what type of marketing model to use will drive the next big decision –

Starting a producer group

As will be highlighted a number of times in the book, exactly what a group should do to get started will depend on the particular circumstances. In any event, it will require a lot of hard work. The USDA Rural Business Cooperative Development Service recommends these steps to start a cooperative. Most of the steps would also apply to organizing joint producer ventures other than cooperatives, such as limited liability companies or limited partnerships:

1. Determine an economic need and the potential for the business to fulfill that need.
2. Hold an initial exploratory meeting to gauge the support of other possible members to begin to form the general approach of the venture.
3. Select a steering committee of producers to direct a feasibility study and to create a business plan from that study; the steering committee may need to rely on outside experts for much of this work.
4. Conduct a producer survey and market analysis to determine producers' needs, anticipated business volume, how the venture will deliver its goods or services, and what business form the producers would like the business to adopt.
5. Hold a second exploratory meeting that allows possible participants to review the producer survey and feasibility study and decide whether they want to continue the project.
6. If the producers decide to proceed, prepare a business plan that explains the operations and other structural issues of the business.
7. Draft legal papers such as the articles of incorporation and bylaws.
8. Hold a third member meeting to allow members to review the articles of incorporation before filing with the State.
9. Hold first annual meeting of the partners, shareholders or members to allow the producers to approve bylaws and elect a board of directors.

Adapted from *How to Start a Cooperative*, USDA-RBCDS, Cooperative Information Report 45, sec. 14 (Sep. 1995). www.rurdev.usda.gov/rbs/pub/cir4514.pdf.

how farmers should organize legally. Chapter Four looks at this issue. Will the group be a cooperative, a limited liability partnership, or limited liability company? What are the legal implications in working together and choosing not to worry about the legalities of creating a formal business structure? The choice of the type of legal entity determines such important details as who controls the group, who receives profits and suffers losses, how the group will be taxed, and whether the group needs to register with the Securities and Exchange Commission.

The need for capital is another important factor in determining what type of business organization to form. For example, if the group's business plan requires the group to build a major processing facility, this will determine how much capital will be needed and in turn will be an important consideration for the type of business organization the group chooses. The capital question is considered in Chapter Five, which surveys the different forms of capital available within both debt and equity financing. The availability of capital will be influenced by how much risk is involved with the business.

Risk is the focus of Chapter Six, which looks at different types of risk farmers and producer associations face and ways to address these risks. In one way, merely by joining a producer association a farmer is managing risk because the association will help deal with risks associated with production, costs, or market access. The chapter concludes with a discussion of different types of crop insurance.

One way state and federal policy makers deal with certain types of risk is through regulatory schemes that address issues such as risk of nonpayment. Chapter Seven looks at some of these regulatory regimes, in particular, the Packers and Stockyards Act and the Perishable Agricultural Commodities Act. Chapter Eight then addresses basic contract law groups may need to consider in their relationships.

By joining together, farmers can create opportunities that otherwise are not available. Whether by necessity or by choice, many farmers feel now is the time to create these opportunities. As people consider creating or joining producer associations, they need to think about a range of legal and business issues to ensure they make sound choices. The chapters that follow are designed to help you consider these issues and raise questions particular to your own joint producer association.

Additional Internet Resources
For Introduction

This book was made possible by:

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