Farmers’ Market Aggregation of Produce

FSMA Produce Rule

* If a farmers’ market is purchasing > $25,000/year in produce from a single farmer, that farmer is going to fall under the Produce Rule.
* The individual farmer could come under a different FMSA Produce Rule exemption category that allows up to $500,000 in food sales to “qualified end-users,” if sales are done directly by the farmer to the buyer
* HOWEVER, sales to the farmers’ market would not meet that qualified exemption because the farmers’ market would be a wholesaler, not a qualified end-user.

Therefore, discussion of the farmers’ markets as aggregators in this fact sheet will be under these assumptions:

1. The farmers’ market is aggregating produce from individual farmers who each sell <$25,000/year at the market.
2. Farmers at a larger sales volume will pursue their own sales to institutional, restaurant, or grocery store buyers.

Further, this fact sheet assumes that:

1. The farmers’ market is doing aggregation of produce only, not other products that may be for sale by individual vendors at the farmers’ market.

Licensing for Aggregation & Distribution

Farmers can sell their own produce without a license. If a farmer sells produce s/he has aggregated from other farmers, the farmer who aggregates & sells needs a license. Farmers could bring either their own produce or the produce of others to the farmers’ market, depending on farmers’ market rules on re-selling.

For the farmers’ market to take possession of produce and sell or distribute it:

* The farmers’ market needs a license to do that
* There must be a legal entity that holds the license.
	+ An individual could hold a license and do aggregation and sales from the farmers’ market.
	+ The license holder could also be a 501(c) entity, a local government, an LLC, or other business entity.

The entity holding the license must have:

1. A physical address tied to a location and mode of business, OR a mobile unit that serves as the sole location of business activities.
“Mode of business” = where and how business activities are conducted.
2. A business address where mail can be received.

Aggregation of farm produce could be achieved by a licensed mobile unit picking up produce from various farms.

Aggregation of produce could be achieved by farmers bringing produce to a farmers’ market. For a licensed farmers’ market aggregation & distribution business:

* The physical address would be the location where the farmers’ market takes place.
* A permanent physical structure is not required to be present at the physical address.
* The business address would be a mailing address where the farmers’ market can receive correspondence.

# Some Market-as-Aggregator Scenarios:

There are three different broad scenarios for how produce comes into the market and is purchased by buyers:

1. Buyers “pick” their own produce from individual vendor booths; the market handles billing.
2. Market receives pre-boxed produce from farmers; the market handles ordering & billing.
3. Market receives produce from farmers and commingles, sorts and packs it; the market handles ordering & billing.

There are two different broad scenarios for transport of produce from the market to the buyer:

1. The market is responsible for delivery of produce
2. Entities other than the market are responsible for delivery of produce.

## Scenarios for how produce comes to the market and is purchased by buyers:

### A. Buyers come to the market with clean containers and do their own “picking” from individual vendor booths, documenting picks with a receipt to each vendor and duplicate to market manager. Market does single billing to buyers and distributes payments to farmers.

#### License needed by market: Broker

#### Operational requirements and Practices:

Acceptably clean transport of produce from the farm to the farmers’ market aggregation site. Specific requirements are in Minnesota Rules 1550.0930 – 1550.1020:
<https://www.revisor.leg.state.mn.us/rules/?id=1550.0930>

- Delivery equipment is clean, sanitary and in good repair; and designed to prohibit contamination of the produce by dust, etc. during transport. This “delivery equipment” could be the interior of a transport vehicle of produce that is in open crates; or could be a clean container that is sufficiently sealed to prevent contamination of the produce.

- The market manager or other individual responsible for the aggregation & distribution business is not a trained inspector to be tasked with “inspection” of transport vehicles. However, any buyer who receives produce from any source is expected to look and verify that the transport vehicle is generally clean and not contaminating the produce being transported.

- Clean transport could be facilitated by a document that describes acceptable transport of produce and is signed by the person transporting that they understand their responsibility for safe transport.

### B. Market orders, collects and distributes boxed produce from farmers: no sorting, commingling or packing takes place at the market. Market does the billing to buyers and distributes payments to farmers.

Scenario: School orders carrots, market sends order to farmers, 3 boxes of carrots come in, all 3 boxes are delivered as-is to the school.

#### License needed by market: Wholesale Food Handler

#### Operational Requirements and Practices:

1. Recordkeeping of who supplied which box, and a tracking number for each box recorded by the market and supplied to the buyer.
- Use the sample form provided on the last page of the Serving Locally Grown Produce in Food Facilities fact sheet:
<https://www.mda.state.mn.us/food/safety/~/media/Files/food/foodsafety/fs-produce.ashx>
2. Acceptably clean transport of produce from the farm to the farmers’ market aggregation site. Specific requirements are in Minnesota Rules 1550.0930 – 1550.1020:
<https://www.revisor.leg.state.mn.us/rules/?id=1550.0930>

- Delivery equipment is clean, sanitary and in good repair; and designed to prohibit contamination of the produce by dust, etc. during transport. This “delivery equipment” could be the interior of a transport vehicle of produce that is in open crates; or could be a clean container that is sufficiently sealed to prevent contamination of the produce.

- The market manager or other individual responsible for the aggregation & distribution business is not a trained inspector to be tasked with “inspection” of transport vehicles. However, any buyer who receives produce from any source is expected to look and verify that the transport vehicle is generally clean and not contaminating the produce being transported.

- Clean transport could be facilitated by a document that describes acceptable transport of produce and is signed by the person transporting that they understand their responsibility for safe transport.
3. Temporary storage of packed produce at the market in a way that prevents contamination of produce. (e.g. Boxes, etc. must not sit on the ground.)
4. Acceptably clean transport of produce from the farmers’ market to the buyer. Same requirements as #2, transport from farm to farmers’ market.

### C. Commingling, sorting, packing of produce at the farmers’ market. Market does the billing to buyers and distributes payments to farmers.

Scenario: School orders carrots, market sends order to farmers, 3 boxes of carrots come in, they are repackaged into 1 box for delivery to the school.

Scenario: Multiple flats of multiple varieties of tomatoes come in; they are sorted into uniform lots and packed for delivery to restaurants.

#### License needed by market: Wholesale Food Handler

#### Operational Requirements and Practices:

1. Recordkeeping of who supplied product for the farmers’ market box and tracking number for the farmers’ market box, which is to be recorded by the market and provided to the school.
* Use the sample form provided on the last page of the Serving Locally Grown Produce in Food Facilities fact sheet:
<https://www.mda.state.mn.us/food/safety/~/media/Files/food/foodsafety/fs-produce.ashx>
1. Acceptably clean transport of produce from the farm to the farmers’ market aggregation site.

Specific requirements are in Minnesota Rules 1550.0930 – 1550.1020:
<https://www.revisor.leg.state.mn.us/rules/?id=1550.0930>

- Delivery equipment is clean, sanitary and in good repair; and designed to prohibit contamination of the produce by dust, etc. during transport. This “delivery equipment” could be the interior of a transport vehicle of produce that is in open crates; or could be a clean container that is sufficiently sealed to prevent contamination of the produce.

- The market manager or other individual responsible for the aggregation & distribution business is not a trained inspector to be tasked with “inspection” of transport vehicles. However, any buyer who receives produce from any source is expected to look and verify that the transport vehicle is generally clean and not contaminating the produce being transported.

- Clean transport could be facilitated by a document that describes acceptable transport of produce and is signed by the person transporting that they understand their responsibility for safe transport.
2. Define the physical boundaries of the market’s packing operation and restrict it to people working in that operation. Dogs strictly forbidden!

- Canopy recommended to prevent contamination from overhead sources (birds)
3. Sanitary conditions during sorting and commingling of produce.

Potential way to accomplish this: Follow the FSMA Produce Rule requirements for on-farm packing houses. These are in the “FDA at a Glance” Produce Rule fact sheet items #5 and #6:
<http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM472887.pdf>

Excerpts from those Produce Rule standards:
- Have a handwashing station and train people who sort, commingle & pack on handwashing.
- Have a policy that no one sorts, commingles etc. when they are ill.
- Cleanable & sanitized food-contact surfaces (for example, the sorting table)

1. Pack produce into containers that are clean and in good condition. This requirement could be met in several ways:
- Plastic totes & tote-cleaning policy that buyers sign
- Cardboard boxes that are inspected for cleanliness and condition before use
- Disposable plastic box liners
2. Holding area for packed produce that prevents contamination after sort/commingle/pack activities. (Boxes, etc. must not sit on the ground.)
3. Acceptably clean transport of produce from the farmers’ market to the buyer. Same requirements as #2, transport from farm to farmers’ market.

## Scenarios for Transport of Produce from Farmers’ Market to Buyers

Specific regulations on transport of food can be found in Minnesota Rules 1550.0930 – 1550.1020: https://www.revisor.leg.state.mn.us/rules/?id=1550.0930

### A. Transport Scenario #1: The Market is responsible for transport to buyers.

* The market bears the liability to ensure that produce is transported without contamination and according to Minnesota Rules (above).
* The market can make use of volunteer drivers and multiple delivery vehicles.
* The market can have its own delivery vehicle.
* Each delivery vehicle, whether the market’s own or a volunteer’s vehicle, must follow requirements for transport of produce.
* Each delivery vehicle is subject to inspection by the MDA.
* If the market has a dedicated delivery vehicle, this will be inspected as part of the market’s licensing inspection.

### Transport Scenario #2: Another entity is responsible for transport to buyers.

\* This entity could be a buyer, a non-profit organization, an agency, a business, or an individual.

\* An entity other than the buyer or the seller who transports food, and doesn’t qualify as a common carrier, will need to be licensed as a wholesale food handler.

\* The entity bears the liability to ensure that produce is transported without contamination and according to Minnesota Rules (above).

\* The entity can make use of volunteer drivers and multiple delivery vehicles.

\* Each delivery vehicle must follow requirements for transport of produce.

\* Each delivery vehicle is subject to inspection by the MDA.

# Produce in transport

Produce that has been loaded into a delivery vehicle is considered to be “in transport.” Being in transport is a condition that can last for several days.

* There is no specific number of days that produce can be “in transport.”
* This allows markets flexibility. Market days when produce is coming in may not be the same days that buyers want the product delivered. Produce that is in transport can be remain in the delivery vehicle until that desired day of delivery.
* There are limits. “Transport” is not intended to mean the same thing as “storage.” If produce remains in the transport vehicle for longer than the day or few days between the market day and delivery day, then it’s really “storage” rather than “transport,” and needs to be inspected and licensed as a storage facility.
* There may be a temperature requirement for the delivery vehicle if a potentially hazardous type of produce, such as melons, is being transported.
* Even if there isn’t a temperature requirement, produce quality will suffer if kept too long in a delivery vehicle that isn’t cooled.