

SELLING MINNESOTA

AGGREGATION OF FARMERS' PRODUCE



This fact sheet is for Minnesota farmers or others who want to collect products from farmers and distribute those products to buyers. The fact sheet covers regulations for aggregation and distribution of multiple farmers' products to individual consumers or to food facilities in Minnesota.

Definitions

Aggregator. An aggregator is an individual or business entity that collects and distributes product from multiple sources. Some examples of aggregators of farmers' produce: a farmers' market, a food hub, a distributor, or an individual farmer who does the product marketing for several other farmers.

Food facilities. *Minnesota Rules 4626.0020 Subparts 35 and 36, <https://www.revisor.leg.state.mn.us/rules/?id=4626.0020>* Restaurants, caterers, school food service, institutions, day cares, community centers, churches, hospitals, health care facilities, food shelves/banks, grocery stores, food markets, cooperatives, bakeries, convenience stores, temporary food stands, warehouses and wholesale food processors and manufacturers.

Sell or Sale. *Minnesota Statute 34A.01 Subd. 12 (<https://www.revisor.mn.gov/statutes/?id=34A.01>).* "Sell" and "sale" mean keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing,

processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others.

Product of the farm. *Constitution of the State of Minnesota, Article 13, Section 7. (https://www.revisor.mn.gov/constitution/#article_13) and Minnesota Statute 28A.15 Subd. 2 (<https://www.revisor.leg.state.mn.us/statutes/?id=28A.15>).* Products that you grow or raise on land that you "occupy and cultivate." Product of the farm is excluded from licensing requirements.

Food Safety Modernization Act (FSMA) Produce Rule

- If an aggregator purchases > \$25,000/year in produce from a single farmer, that farmer is going to be subject to 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 an aggregator would not meet that qualified exemption because the aggregator would be a wholesaler, which is not a qualified end-user.

Therefore, discussion of aggregators in this fact sheet will be under these assumptions:

1. The aggregator is acquiring produce from individual farmers who each sell <\$25,000/year of produce.
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:

3. The aggregator is dealing with produce only, not any other products that may be for sale by the individual farmers.

Reference for FSMA Produce Rule

FMSA Final Rule on Produce Safety: Standards for the Growing, Harvesting, Packing, and Handling of Produce for Human Consumption. <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>

Licensing for Aggregation & Distribution

Farmers can sell their own product of the farm without a license. If a farmer sells produce s/he has aggregated from other farmers, the farmer who aggregates & sells needs a license. Farmers licensed for re-sale of produce from other farmers could bring the produce of others to an aggregator, unless that aggregator has rules against re-selling. [e.g. A farmers' market acting as an aggregator may prohibit re-selling of produce by vendors. Every farmers' market sets its own rules that market vendors must follow.]

For an aggregator to take possession of produce and sell or distribute it:

- The aggregator needs a license.
- There must be a legal entity that holds the license.
 - o An individual could hold the license.
 - o The license holder could 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.

For a licensed produce aggregation & distribution business:

- The physical address is the location where the aggregation takes place.

- A permanent physical structure is not required to be present at the physical address.
- The business address is a mailing address where the aggregator can receive correspondence from regulatory agencies.

Examples of legal produce aggregation businesses

- An aggregator with a licensed mobile unit picks up produce from various farms and delivers it to area restaurants that have placed orders with the aggregator.
- Farmers bring produce to a licensed farmers' market where it is commingled, sorted, and packed for delivery to area schools.

References for licensing regulations that apply to produce aggregators

License Required. Minnesota Statute 28A.04. <https://www.revisor.leg.state.mn.us/statutes/?id=28A.04>.

Classification. Minnesota Statute 28A.05 <https://www.revisor.leg.state.mn.us/statutes/?id=28A.05>.

Extent of License. Minnesota Statute 28A.06. <https://www.revisor.leg.state.mn.us/statutes/?id=28A.06>.

Some Produce Aggregator Scenarios:

There are three different broad scenarios for how produce comes into an aggregator and is then purchased by buyers:

1. Buyers "pick" their own produce from individual vendor booths at a farmers' market. The market

handles billing of the buyer and distribution of payments to farmers.

2. Aggregator receives pre-boxed produce from farmers. Aggregator handles ordering & billing.
3. Aggregator receives produce from farmers and commingles, sorts and packs it. Aggregator handles ordering & billing.

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

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

Scenarios for how produce comes to an aggregator and is purchased by buyers:

Buyer Scenario #1: Buyers come to a farmers' 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. The market does a 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. See sidebar: "Acceptably clean transport of produce."

Acceptably clean transport of produce

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

1. Delivery equipment is clean, sanitary and in good repair; and designed to prohibit contamination of the produce by dust, etc. during transport.

Examples of acceptable “Delivery equipment:”

- The smooth, cleanable, non-porous interior of a transport vehicle. This would allow transport of produce in open boxes or crates within that vehicle.
 - A clean container with smooth, cleanable, non-porous interior that is sufficiently sealed to prevent contamination of the produce. This would allow use of a transport vehicle that does not meet standards for transport of open crates or boxes of produce.
2. The 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.
 3. Clean transport could be facilitated by a document that describes acceptable transport of produce and is signed by the person transporting to verify that they understand their responsibility for safe transport.

Buyer Scenario #2: Aggregator orders, collects and distributes boxed produce from farmers: no sorting, commingling or packing takes place at the aggregator. Aggregator does the billing to buyers and distributes payments to farmers.

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

License needed by aggregator:
Wholesale Food Handler

Operational Requirements and Practices:

- Recordkeeping of who supplied which box, and a tracking number for each box recorded by the aggregator and supplied to the buyer.

- Acceptably clean transport of produce from the farm to the aggregation site. See sidebar: “Acceptably clean transport of produce.”
- Temporary storage of packed produce in a way that prevents contamination of produce. (e.g. boxes, etc. must not sit on the ground.)
- Acceptably clean transport of produce from the aggregation site to the buyer. See sidebar: “Acceptably clean transport of produce.”

Buyer Scenario #3: Commingling, sorting, packing of produce by aggregator. Aggregator does the billing to buyers and distributes payments to farmers.

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

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

License needed by aggregator:
Wholesale Food Handler

Operational Requirements and Practices:

- Recordkeeping of who supplied product for the commingled box and tracking number for the commingled box, which is to be recorded by the aggregator and provided to the school.
- Acceptably clean transport of produce from the farm to the aggregation site. See sidebar: “Acceptably clean transport of produce.”
- Define the physical boundaries of the packing operation and restrict it to people working in that operation.
 - o Dogs are strictly forbidden in the packing area!
 - o Prevent contamination from overhead sources (birds). Potential way to accomplish this: have a pop-up canopy over the packing area.
- Maintain 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:

- o Have a handwashing station and train people who sort, commingle & pack on handwashing.
- o Set a policy that no one sorts, commingles etc. when they are ill.
- o Make sure that food-contact surfaces (for example, the sorting table) are cleanable and non-porous, and are sanitized before use.
- Pack produce into containers that are clean and in good condition.

Potential ways to accomplish this:

- o Plastic totes & tote-cleaning policy that buyers sign
- o Cardboard boxes that are inspected for cleanliness and condition before use
- o Disposable plastic box liners
- Holding area for packed produce that prevents contamination after sort/commingle/pack activities. (Boxes, etc. must not sit on the ground.)
- Acceptably clean transport of produce from the aggregator to the buyer. See sidebar: “Acceptably clean transport of produce.”

Scenarios for Transport of Produce from Aggregator 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>. Also see sidebar: “Acceptably clean transport of produce.”

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

- The aggregator bears the liability to ensure that produce is transported without contamination and according to Minnesota Rules.
- The aggregator can make use of volunteer drivers and multiple delivery vehicles.
- The aggregator can have its own delivery vehicle.
- Each delivery vehicle, whether the aggregator’s own or a volunteer’s vehicle, must follow requirements for acceptably clean transport of produce.
- Each delivery vehicle is subject to inspection by the MDA.
- If the aggregator has a dedicated delivery vehicle, this will be inspected as part of the aggregator’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 transporting 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 acceptably clean 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 marketing flexibility. Days when produce is coming in may not be the same days that buyers want the product delivered. Produce that is in transport can 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 produce packing and delivery, 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 cantaloupe, 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.

Resources for More Information and Help

Minnesota Department of Agriculture; Food & Feed Inspection. Call this number to request an inspection, obtain contact information for the inspector who serves your area, or begin a conversation about on-farm processing: 651-201-6027.

Minnesota Department of Agriculture Website. <http://www.mda.state.mn.us>. All fact sheets and other documents are searchable using titles; see sidebar on page 6 for instructions on searching the site.

Minnesota Farmers Market Association. <http://www.mfma.org>, (320) 250-5087. Contact MFMA for help with any questions relating to sale of fruits and vegetables at farmers' markets.

Minnesota Institute for Sustainable Agriculture. <http://www.misa.umn.edu>, 612-625-8235, misamail@umn.edu. Contact MISA for help with finding information and resources relating to local or regional fruit and vegetable production, processing, marketing and sales.

Renewing the Countryside, <http://www.renewingthecountryside.org>. Contact Renewing the Countryside for the latest information on aggregation strategies.

Minnesota Local Foods Advisory Committee

This fact sheet was created with input and oversight from the Local Food Advisory Committee (LFAC). LFAC is a forum where issues relating to local food are raised and discussed, information is shared and problem-solving between Minnesota Department of Agriculture, Minnesota Department of Health, and the local food community takes place. Contact: misamail@umn.edu, 612-625-8235. <https://www.misa.umn.edu/resources/local-food-advisory-committee>

Wholesale Produce Dealer License

The Wholesale Produce Dealer license is handled by the Minnesota Department of Agriculture, but is a separate license from the food handler licenses. Wholesale Produce Dealer licenses provide protection to farmers in the event they go unpaid for their produce.

M.S. 27. Wholesale Produce Dealers. <https://www.revisor.leg.state.mn.us/statutes/?id=27.01>

“Produce” in the context of a Wholesale Produce Dealer license means fresh fruits and vegetables, milk, cream, perishable products made with milk or cream, poultry, and poultry products including eggs.

Certain businesses dealing with local food may need **both** a food handler license and a Wholesale Produce Dealer license.

- Generally, wholesale businesses that buy produce directly from farmers and re-sell it, or that distribute farmers’ produce for a fee or commission, need a Wholesale Produce Dealer license if they handle more than \$1,000 per month of farmers’ produce.
- Retail grocery stores that buy produce directly from farmers and re-sell it need a Wholesale Produce Dealer license if they purchase more than \$500 per month of farmers’ produce.

Multi-farm CSAs, farmers’ collaborative marketing arrangements, and farmers’ markets that distribute produce are generally not required to have a Wholesale Produce Dealer license if no commission or handling fees are charged for the distribution services. These types of arrangements are viewed by the Wholesale Produce Dealer licensing unit as partnership agreements rather than sales.

However, the MDA’s Food & Feed licensing unit defines a “sale” more broadly as any time a food item changes hands, or is stored or transported as part of the process of it changing hands, whether money is exchanged or not. This means a multi-farm collaborative marketing arrangement may still need a food handler license, even if it does not need a Wholesale Produce Dealer license.

If you might need a Wholesale Produce Dealer license, contact MDA Wholesale Produce Dealers Licensing: 651-201-6620

<https://www.mda.state.mn.us/licensing/licensetypes/wholproddealer.aspx>

Summary of differences between food handler licenses and Wholesale Produce Dealer licenses:

Type of license	Purpose of license	Meaning of "Produce"	Meaning of "Sale"
Wholesale Produce Dealer	Protect commerce: Ensure that farmers are protected in the event of non-payment for their produce.	"Produce" is defined in M.S. 27.01 Subdivision 2* as: (1) perishable fresh fruits and vegetables; (2) milk and cream and products manufactured from milk and cream; and (3) poultry and poultry products.	A sale is when money is exchanged. A Wholesale Produce Dealer license is not required for collaborative marketing agreements in which distribution of products is done by an entity that doesn't charge a fee for the service.
Food handler	Protect food safety: Ensure that persons selling food are operating with approved facilities and according to safe food handling practices.	"Produce" refers to fruits, vegetables, edible mushrooms, herbs, and nuts. §	A "sale," according to the definition in M.S. 34.01 Subdivision 12 ‡: "... keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others."
<p>* Minnesota Statute 27.01 Subd. 2. https://www.revisor.leg.state.mn.us/statutes/?id=27.01 ‡ Minnesota Statute 34A.01 Subd. 12 https://www.revisor.mn.gov/statutes/?id=34A.01 § Food Safety Modernization Act – Produce Safety Rule, 21 Code of Federal Regulations 112. https://www.federalregister.gov/documents/2015/11/27/2015-28159/standards-for-the-growing-harvesting-packing-and-holding-of-produce-for-human-consumption#p-2070</p>			