

SELLING MINNESOTA PRODUCE



This fact sheet is for Minnesota farmers who want to sell produce they raise. The fact sheet covers regulations for ways for farmers to sell their produce to individual consumers or to food facilities in Minnesota.

Definitions

cGMPs: Current Good Manufacturing Practices, described in the Food Safety Modernization Act (FSMA).

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm525201.htm>

Food facilities: restaurants, caterers, school food service, institutions, day cares, community centers, churches, hospitals, health care facilities, food shelves and food banks, grocery stores, food markets, cooperatives, bakeries, convenience stores, food stands, mobile food units, warehouses, and wholesale food processors and manufacturers.

Minnesota Rules 4626.0020 Subparts 35 and 36, <https://www.revisor.leg.state.mn.us/rules/?id=4626.0020>

FSMA: Food Safety Modernization Act. <http://www.fda.gov/Food/GuidanceRegulation/FSMA/>

MDA: Minnesota Department of Agriculture, <http://www.mda.state.mn.us>

Produce: Fruits, vegetables, edible mushrooms, herbs, and nuts.

Food Safety Modernization Act – Produce Safety Rule, 21 Code of Federal Regulations 112.3 <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

Product of the farm: Farm products that you grow or raise on land that you “occupy and cultivate.” Land that you “occupy and cultivate” includes land that you rent or lease, so long as you have control over the production on that land.

Constitution of the State of Minnesota, Article 13, Section 7, https://www.revisor.mn.gov/constitution/#article_13

Minnesota Statute 28A.15 Subd. 2, <https://www.revisor.leg.state.mn.us/statutes/?id=28A.15>

Sell; sale: “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.

Minnesota Statute 34A.01 Subd. 12 (<https://www.revisor.mn.gov/statutes/?id=34A.01>)

Approved Source

You are an approved source for produce that is product of your farm, and you are excluded from requirements to have an MDA food handlers license to sell that produce to either individuals or food facilities.

Minnesota Statute 28A.15 Subd. 2, <https://www.revisor.mn.gov/statutes/?id=28A.15>

The exclusion from licensing applies *only* to the product of *your own* farm. If you acquire and use off-farm ingredients in your products, or if you acquire and distribute products from other farmers, you are **not excluded** and must be **licensed** for those activities.

See the fact sheet “Aggregation of Farmers’ Produce” for more information about distributing the products of other farms.

http://misadocuments.info/LFAC_aggregation_produce.pdf

Two types of customers

1. **Individuals:** Consumers who will serve the product to members of their household and/or non-paying guests.
2. **Food Facilities:** Any entity receiving your product that is not an individual consumer buying food to serve to their household, is a food facility.

What You Can Do with Your Produce

You can sell produce that is product of your farm to any buyer, either food facility or individual. You can sell at farmers' markets or through CSAs. You can set up a farm stand at the end of your driveway or on a city street, provided local zoning ordinances allow it. You can put ads on social media and take orders via the Internet. You can sell your produce across state lines.

- You can sell fresh, raw, whole produce.
- You can trim roots, cut off tops, wash, husk, sort, package, or otherwise make whole, raw produce presentable for sale. You do not need a license or special facilities to do this, but your facilities must be sanitary and the water you use must be potable (drinkable).
- Sanitizers used in wash water do not count as off-farm ingredients.
- You can process your own produce for sale. You are not required to have an MDA food handlers license to process your own produce for sale unless you are: 1) adding off-farm ingredients; or 2) using produce that you acquired from other farmers.
- Processing of produce may include peeling, slicing, shredding, bagging or wrapping of cut pieces, dehydrating, freezing, or canning.

Licenses

- If you acquire products from other farmers to distribute or to use as ingredients in a product that you sell, you must have an MDA food handlers license.

If you want to distribute products from other farmers, see the fact sheet, "Aggregation of Farmers' Produce." http://misadocuments.info/LFAC_aggregation_produce.pdf

- If you add any ingredients that you acquire from off-farm; even minor ingredients like salt, pepper, or vinegar; you must have an MDA food manufacturer's license in order to make and sell the products.*

* Unless you make and sell products under the Cottage Food exemption. See "Cottage Food Exemption" sidebar.

Cottage Food Exemption

This exemption allows you to make non-potentially hazardous foods in your home kitchen and sell to individual customers in face-to-face transactions, up to \$18,000 per year in gross sales. You can use off-farm ingredients to produce products under the Cottage Food exemption. You cannot sell products to food facilities under the Cottage Food exemption.

More information:
Cottage Food Exemption, Minnesota Statute 28A.152,
<https://www.revisor.mn.gov/statutes/?id=28A.152>

Cottage Food Law Resources, Minnesota Farmers' Market Association:
<http://mfma.org/pages/MNCottageFoodsLawResources/>

Cottage Food Producer Registration, MDA: <http://www.mda.state.mn.us/licensing/licensetypes/cottagefood.aspx>

Cottage Food Producer Training and Frequently Asked Questions, University of Minnesota Extension:
<http://www.extension.umn.edu/food/food-safety/courses/cottage-foods/index.html>

Sales Tax

Food isn't taxed, right? Actually, sometimes it is. If a person **both makes and sells** a multi-ingredient product, other than baked goods, that product is subject to Minnesota sales tax. This affects Cottage Food operators or licensed food manufacturers who both make and sell products like jam, jelly, salsa, and pickles.

Prepared Food – Taxable Subcategory of Food. Minnesota Department of Revenue.
<http://www.revenue.state.mn.us/businesses/sut/factsheets/FS102D.pdf>

If you want to do processing of your own produce for sale, and add no off-farm ingredients, you are **excluded** from MDA food handlers licensing – BUT – you are still obligated to ensure food safety and to follow requirements that relate to food safety. You must follow Current Good Manufacturing Practices (cGMPs), and in most cases you must have an inspection of your processing facilities by a Minnesota Department of Agriculture (MDA) inspector.

Get in touch with your local MDA inspector by contacting the Minnesota Department of Agriculture, Food and Feed Inspection Division. 651-201-6027

Inspection

Usually licensing and inspection go together. In the case of *product of the farm*, you are not required to have a license -- BUT you may still need an inspection of your facilities. Contact the MDA to ask about inspection of your facilities if you want to:

- Process produce for sale

- Store and/or transport processed produce for sale

Be aware that it may take longer to get a voluntary inspection than it would for a mandatory licensing inspection, due to inspector workloads.

Contact the MDA Food and Feed Safety Division: 651-201-6027

Processing of Produce

Peeling, Cutting, Slicing, Shredding, Wrapping, Bagging

These processes must be done in a clean and adequately equipped facility and according to Current Good Manufacturing Practices (cGMPs). Contact your local MDA inspector to get inspection and approval of your facilities for the processing of produce, and for the holding of product prior to delivery to a buyer. If you do the transport and delivery of the product, your delivery equipment must be inspected as well.

Freezing or Drying

Washing, cutting, blanching and freezing, or dehydrating processes must be done in a clean and adequately equipped facility and according to Current Good Manufacturing Practices (cGMPs). Contact your local MDA inspector to get inspection and approval of your facilities both for preparation of the produce for freezing or drying, and for storage of frozen or dried product.

- Freezing of fresh berries is a low-risk activity that requires only cleaning and bagging of the berries.
- Freezing of certain other fruits

Current Good Manufacturing

Practices are described in the Food Safety Modernization Act (FSMA) Preventive Controls Rule. On-farm food processing may be exempt from other provisions of FSMA, but the cGMPs are food safety practices that are applicable to any food processing or manufacturing. Find the cGMPs on pages 27-38 of:

Guidance for Industry: What You Need to Know About the FDA Regulation: Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food; Small Entity Compliance Guide.
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm525201.htm>

such as apples or rhubarb requires cutting and/or peeling of the fruit before bagging and freezing.

- Freezing of most vegetables requires blanching and cooling before bagging and freezing. Depending on the vegetable, peeling and cutting may be needed before blanching.
- Dehydrating of any produce requires equipment and a process that prevents microbial or mold growth on the produce being dehydrated.

Canning

Canning is a process that is complex, requires specialized equipment, and can result in serious or fatal food-borne illness if not done properly. If you want to can produce for sale to food facilities, you will need:

- Equipment and facilities approved by your MDA inspector.
- Registration of your facility and filing of your canning process information with the federal Food

and Drug Administration (FDA). Your MDA inspector can provide more information about this requirement.

- You must work with a Process Authority who will review your ingredients and canning procedures, analyze critical control points in your process, thoroughly explain how to maintain food safety throughout your process, and recommend a testing procedure to verify product safety.
- The Process Authority will write a letter describing your process in detail. This Process Authority letter is what you must file with the FDA.
- A certificate of passing a Better Process Control School appropriate for the kind of canned product you want to produce.
 - Online Better Process Control School: http://ucfoodsafety.ucdavis.edu/Better_Process_Control_School_Online/
 - In-person Better Process Control School programs: http://www.gmaonline.org/file-manager/Events/Bro_BPCS-011411.pdf

Customers: Individuals or Food Facilities?

Sales to Individual Consumers

Sales of fresh, whole, raw, or processed produce that is product of your farm can be made to individual customers from your farm, a farm stand, at farmers' markets, by delivery, in a CSA box, by online order, or in any other venue where you can make a transaction with an individual.

If you are selling processed produce that are potentially hazardous (for instance, cut cantaloupe or shredded bagged lettuce), you must have refrigeration equipment that is inspected and approved by the MDA.

Sales to Food Facilities

Sales to food facilities may require some extra work on your part to document:

- you have safe on-farm food production and handling practices
- you have approved facilities for any processing
- you follow Current Good Manufacturing Practices if you process produce
- your storage of product is in approved facilities
- your transport of the product is done in a sanitary manner

Buyers might not be aware that you as a farmer are not legally required to have a license to sell produce grown on your farm. You can copy and use this fact sheet to educate potential buyers. You can also download and copy this MDA fact sheet to show to buyers:

Selling or Serving Locally-Grown Produce in Food Facilities. 2016. Minnesota Department of Agriculture.

<http://www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-produce.ashx>

Some buyers may be uncomfortable with purchasing produce, especially processed items, from an unlicensed individual. If you are selling produce that is product of your farm, you are **excluded** from licensing. You can undergo a voluntary inspection by the MDA and request a copy of the inspection report. You can show the inspection report to a buyer to verify

that you are operating in a manner approved by the MDA.

Food Safety Modernization Act (FSMA)

The federal Food Safety Modernization Act has two segments that may apply to produce farmers in Minnesota:

- 1) FSMA Produce Rule applies to raw produce.
- 2) FSMA Preventive Controls Rule applies to processing of produce or making food products containing produce.

The FSMA requirements and exemptions for farmers are very complex. Resources from the federal Food and Drug Administration (FDA) are available to explain FSMA rules:

FSMA Final Rule on Produce Safety.

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>

FSMA Final Rule for Preventive Controls for Human Food.

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334115.htm>

The categories that determine whether a farm is subject to FSMA are different from Minnesota categories for licensing. A farm or enterprise could be excluded or exempt from licensing in Minnesota, but yet be subject to FSMA.

Four possible regulatory configurations for Minnesota produce farms or enterprises:

- No Minnesota food license required: Not subject to FSMA

- No Minnesota food license required: Subject to FSMA
- Minnesota food license required: Not subject to FSMA
- Minnesota food license required: Subject to FSMA

The Minnesota Department of Agriculture administers FSMA in Minnesota. If you have a food license from the MDA, your inspector will determine whether you are subject to FSMA requirements. If you are exempt or excluded from an MDA food license, you can contact MDA to find out if you are subject to FSMA.

Search the MDA website for fact sheets:

- Go to <http://www.mda.state.mn.us>
- Find the "Search" button in the upper left corner of the web page, right underneath the MDA logo.
- Type a few words of the fact sheet title into the box to the left of the "Search" button.
- Click on the "Search" button.
- The fact sheet you want should be near the top of the list of items that comes up on the web page.

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 4 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 produce 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 produce production, processing, marketing and sales.

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>

Summary Table of Produce Sale Scenarios

	Whole, raw produce grown on your own farm	Processed produce grown on your own farm; no off-farm ingredients	Processed produce grown on your own farm; off-farm ingredients added	Purchase and re-sale of whole, raw produce from other farms	Processed produce from other farms
Food Handlers License	NO	NO	YES Unless Cottage Food	YES	YES Unless Cottage Food
MDA Inspection	NO Unless subject to FSMA	YES Unless Cottage Food	YES Unless Cottage Food	YES	YES Unless Cottage Food
Sell at farmers' market or community event	YES	YES	YES	YES (if farmers' market rules allow)	YES (if farmers' market rules allow)
Sell via Internet	Orders may be taken over the Internet but delivery or customer pick-up must be in accordance with the regulations for the type of product.				
Sell from farm premises	YES	YES	YES	YES	YES
Sell to food businesses	YES	YES Unless Cottage Food	YES Unless Cottage Food	YES	YES Unless Cottage Food
Donate	YES	YES Unless Cottage Food	YES Unless Cottage Food	YES	YES Unless Cottage Food
Sell across state lines	YES	YES Unless Cottage Food	YES FDA registration required	YES	YES FDA registration required
Label required	MAYBE (if subject to FSMA)	YES	YES	MAYBE (if subject to FSMA)	YES
	Note: Buyers may require labeling of raw produce to meet their traceability requirements.				
Package	MAY	YES	YES	MAY	YES
Charge sales tax	NO	MAYBE	MAYBE	NO	MAYBE
Sampling & demo	YES. See the sampling exemption, M.S. 28A.151. https://www.revisor.leg.state.mn.us/statutes/?id=28A.151 You must have an adequate system for cooking and sanitation in order to protect public health.				
MDA jurisdiction	YES	YES	YES	YES	YES
FSMA Produce Rule	MAYBE	NO	NO	MAYBE	NO
FSMA Preventive Controls Rule	NO	MAYBE	MAYBE	NO	MAYBE
Wholesale Produce Dealer license	NO	NO	NO	MAYBE	MAYBE

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>			