

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).

<https://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.mn.gov/rules/4626.0020>

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

MDA: Minnesota Department of Agriculture *<https://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.mn.gov/statutes/cite/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/cite/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 handler license to sell that produce to either individuals or food facilities.

Minnesota Statute 28A.15 Subd.2,

<https://www.revisor.mn.gov/statutes/cite/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.

https://misadocuments.info/LFAC_aggregation_produce.pdf

Two types of customers

Individuals: Consumers who will serve the product to members of their household and/or non-paying guests.

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

- Sell produce that is product of your farm to any buyer, either food facility or individual.

- Sell at farmers' markets or through CSAs.
- Set up a farm stand at the end of your driveway or on a city street, provided local zoning ordinances allow it.
- Put ads on social media and take orders via the Internet. You can sell your produce across state lines.
- Sell fresh, raw, whole produce.
- 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.
- Process your own produce for sale. This can be done under either the Cottage Food Exemption or without a license or registration; depending on where the processing takes place, your sales, and your sales outlets.

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.

Cottage Food Exemption

This exemption, which requires a registration, 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 and / or on-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/cite/28A.152>

Cottage Food Law Resources, Minnesota Farmers' Market Association:
<https://www.mfma.org/CFL>

Cottage Food Producer Registration, MDA:
<https://www.mda.state.mn.us/food-fed/cottage-food-producer-registration>

Cottage Food Producer Training and Frequently Asked Questions, University of Minnesota Extension:
<https://extension.umn.edu/food-saf>

Licenses, Exemptions, & Exclusions

- If you acquire products from other farmers to distribute, you must have an MDA food handler license. If you want to distribute products from other farmers, see the fact sheet, "Aggregation of Farmers' Produce." https://misadocuments.info/LFAC_aggregation_produce.pdf

If you add any ingredients that you acquire from elsewhere than your own farm; even from other farmers; and 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.

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 may process produce in your private residence kitchen under the Cottage Food Exemption provided you meet the requirements of the Cottage Food Law. If you do not meet the sales or product limits of the Cottage Food law, or if you wish to sell your processed produce to food facilities you must follow Current Good Manufacturing Practices (cGMPs).

To follow cGMPs, processing cannot take place in a private residence kitchen and you will be subject to inspection of your processing facilities by the Minnesota Department of Agriculture. See the Current Good Manufacturing Practices sidebar for more information.

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).*

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

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).*

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

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

- Freezing of fresh berries is a low-risk activity that requires only cleaning and bagging of the berries.
- Freezing of certain other fruit such as apples or rhubarb requires cutting and/or peeling 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 according to Current Good Manufacturing Practices
- Registration of your facility and filing of your canning process information with the federal Food and Drug Administration (FDA). An 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.

Process Authorities in Minnesota:

<https://extension.umn.edu/food-safety/food-processors#step-2%3A-processing-authority-1102561>

- A certificate of passing a Better Process Control School appropriate for the kind of canned product you want to produce.

Better Process Control School, Consumer Brands Association.

<https://consumerbrandsassociation.org/about-us/programs-initiatives/better-process-control-school/>

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 is potentially hazardous (for instance, cut cantaloupe or shredded bagged lettuce), you must have refrigeration equipment that is capable of holding the product at 41°F or below.

Sales to Food Facilities

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

- safe on-farm food production and handling practices
- adequate facilities for any processing
- you follow Current Good Manufacturing Practices if you process produce
- storage of product is in approved facilities
- 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. 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 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.

https://www.mda.state.mn.us/sites/default/files/inline-files/fs-produce_0.pdf

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 Producers 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.

<https://www.revenue.state.mn.us/sites/default/files/2021-09/FS102D.pdf>

Food Safety Modernization Act (FSMA)

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

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

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

FSMA Final Rule on Produce Safety.

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

FSMA Final Rule for Preventive Controls for Human Food.

<https://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 and therefore be subject to mandatory produce safety inspections.

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.

Resources for More Information and Help

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

with questions about the Produce Safety Rule or produce safety inspections: 651-539-3648.

Minnesota Department of Agriculture website. <https://www.mda.state.mn.us> All fact sheets and other documents are searchable using titles.

Minnesota Farmers Market Association. <https://www.mfma.org/>, (507) 664-9446. Contact MFMA for help with any questions relating to sale of produce at farmers’ markets.

Minnesota Institute for Sustainable Agriculture. <https://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.

<p>Minnesota Local Foods Advisory Committee</p>	<p>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</p>
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Summary Table of Produce Sale Scenarios: (next page)

	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 to food shelf/food bank/feeding site	YES	YES Unless Cottage Food	YES Unless Cottage Food	YES	YES Unless Cottage Food
Donate to fundraiser sale	YES	YES	YES	YES	YES
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/cite/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	NO	MAYBE	MAYBE	NO	MAYBE

Controls Rule					
Wholesale Produce Dealer license	NO	NO	NO	MAYBE	MAYBE