



Farm to Market:
North Dakota's guide to selling local food

Many opportunities exist for selling directly to consumers or “direct farm marketing,” such as: farmers markets, roadside and farm stands, u-pick operations, community supported agriculture, direct sales to restaurants and stores, agri-tourism and education, and on-farm recreation are just a few of the economic opportunities farmers to diversify and/or sell directly to consumers.

This handbook is meant to assist farmers and other producers with North Dakota state laws and regulations regarding the sale of produce, meat products, bakery, and handmade items sold at farmers markets, distributors or through direct marketing. There are many resources for beginners as well as seasoned agriculture entrepreneurs and this publication is only the beginning.

All information provided here is subject to change. In the event a law has changed since this book was printed, or a conflict does arise, the applicable state or federal law always prevails.

I. DIRECT MARKETING

Direct marketing is a vital part of new and emerging food systems, with the proper information and appropriate licenses, farmers can begin selling their wares and working to stay on their farms.

Farmers Market

By far the most popular way to sell produce during the summer is through a farmers market. North Dakota farmers markets have grown from just a handful to more than 50 in about five years. The North Dakota Farmers Market and Growers Association has information on the benefits of joining or starting a farmers market at: www.ndfarmersmarkets.com.

U-pick marketing

U-pick means that farmers invite the public onto a farm to harvest their own food. Small fruits, pumpkins, gourds and Christmas trees are examples of good crops for U-pick operations. U-pick can eliminate time harvesting crops, but may take some additional time to manage the business end. Good maps and advertising for your U-pick operation are key.

On-farm stands

There are several variations of on-farm stands. It's best to check with your county about zoning laws that may apply to this type of on-farm business. If you chose to sell more than locally grown produce, additional laws and regulations may apply to the business. Good maps and advertising for your on-farm stand are key.

Agri-tourism

Entertainment farming has become increasingly popular as tourists look for authentic experiences. Cultural heritage and eco-tourism are buzz words in the travel industry. While people may be interested in an on-farm activity like milking a cow or hoeing a row in your garden, please check with local and state agencies about insurance, zoning, ordinances, and business licenses that may be necessary for this type of business.

Turning your farm into an entertainment venue requires additional duties such as managing increased bookwork, staffing, scheduling, advertising, and working with the general public. Be sure to carefully verify all aspects of an agri-tourism business before investing any money. For more information, visit: www.ndtourism.com/industry/agritourism/

Community Supported Agriculture (CSA)

CSAs are one of the most direct ways to market a wide variety of crops. They are also the most direct way for growers and customers to build relationships. A customer purchases a share (or ½ share) in a farm and in return receives a weekly allotment of in-season produce. Produce may be delivered straight to the doorstep or made available at a central pick-up location, along with recipes or information about the farmer.

As with all businesses relying on Mother Nature, the consumer also agrees to the possibility of potential crop failure.

Myth: Some farmers believe they cannot sell their produce directly to food service and retail customers. There are food service and retail customers who believe it is illegal to purchase fruits and vegetables directly from farmers.

Fact: Neither of these is true. Farmers are considered to be an approved source for all fresh, raw fruits and vegetables that they grow themselves. Other regulations apply once these products are processed, but even those hurdles are not insurmountable. Under proper inspection and licensing, meat, poultry, dairy, and eggs may also be marketed.

What do I need to know about direct farm marketing?

Like most business ventures, there are many laws and much misinformation pertaining to the sale of food and food products. Laws and regulations vary from state to state. Local law can be more strict than federal law, but never less strict.

When in doubt, ask. Please refer to the contact information behind each section to learn more about the laws pertaining to your locale.

Do I need a business license to sell at farmers markets?

No.

If you occasionally do farmers markets during the summer months, you are not required by North Dakota law to hold a business license.

However, if you are using a business name, it may be wise to register that name with the state. For a \$25 fee you can register your business name for five years. You do not have to physically open a business. Registering a business name prevents someone from using the same or a similar name. At the end of five years, you have the option of allowing the registration to lapse or renewing for another five years. Information on types of businesses, a business name search engine and forms to register your business name can be found at the North Dakota Secretary of State's web site at:

www.nd.gov/businessreg/register

II. TAXES

Do vendors need tax permits?

If vendors are selling taxable items, they are required to have a sales tax permit. Sales tax permits are free. Application information: www.nd.gov/tax/salesanduse/forms

The permit requires filing a return, by paper or electronically, at least once per year depending on sales volume.

If a vendor attends a special event and does not have a permit number or did not provide their permit number to the organizer, they *may* be contacted by the tax department. If the tax department determines their product is taxable, vendors will have the opportunity to apply for a permit. If their sales are nontaxable, they will have the opportunity to explain why.

If you have other questions, please contact the North Dakota State Tax Department at:

600 E. Boulevard Ave.

Bismarck, ND 58505-0599

Phone: 701-328-7088 or 877-328-7088

Or visit www.nd.gov/tax to send a question by e-mail.

Here are some examples of taxable versus non taxable sales

No sales tax collected

Farmer's market vendors who sell only fresh produce to be cooked or consumed at a later date do not need to apply for a sales and use tax permit. Produce vendors selling tangible personal property other than produce may have a sales tax collection responsibility and should comply with the rules above. This would include any handmade or hand-crafted items.

Bakery items, such as bread, rolls, muffins, cookies and bars, are not taxable unless they are sold with eating utensils by the seller or sold in a heated state.

Sales of food supplies and groceries to either a public or private school for the operation of a school lunch program are exempt from sales tax.

No sales tax applies when purchases are made using Food Stamps or WIC food vouchers.

Prepared food is taxable

Prepared foods remain subject to sales tax. Prepared food includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller.

Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils.

Taxable food also includes meals, sandwiches, or other food intended for consumption on or near the seller's premises. Be aware that health code regulations would become applicable to items such as these.

What is the farmers market manager responsibility to the tax department?

Farmers markets are considered to be special events if they are held at the same location on a reoccurring or irregular basis.

North Dakota has implemented some new reporting laws for special events. Promoters of special events, including farmers market managers, are required to collect certain information from the vendors on behalf of the North Dakota State Tax Department.

According to a recent law, special events with 10 or more vendors are required to provide the North Dakota Tax Commissioner's office with a list of names and contact information of the participants. This list must be in the hands of the tax department within 20 days of the event.

A convenient form for collecting vendor information can be found at:

<http://www.nd.gov/tax/salesanduse/specialevents/organizer.html>. This information may be submitted online or by mail.

Organizers are responsible for requesting that all vendors fill out the Special Event Vendor Listing form.

Organizers may be subject to a \$250 penalty if they do not provide the Special Event Vendor Listing form to the tax department. If there are less than 10 vendors at the event, the form is not required but the tax department does need to be notified about the event.

Reporting income from sale of produce or other items at farmers markets

Yes, if you derive income from sources other than your job, the Internal Revenue Service wants to know.

Income from the sale of any products, independent of the sales tax collection requirements, must be reported.

Keeping records of input costs and sale of goods at farmers market or directly from your farm can be beneficial at tax time. Taking the time to keep good records can pay off in the long run as you begin to build your business.

For help with recording keeping for hobbies, check out this web site:

<http://www.answerbag.com/articles/How-to-Calculate-Taxes-for-Hobby-Expenses-and-Income/ae577ecd-4c3b-6974-2dcb-b8e7ad0438fb>.

A virtual library of resources for home-based business record keeping can be found at:

<http://www.umext.maine.edu/hbbsite/html/record.htm>.

Do I need special insurance for farm to market sales?

North Dakota does not require anyone to purchase insurance on anything except motor vehicles. That does not mean that certain agencies or banks may ask for proof of insurance. In certain instances, conditions of a license may be hinged on insurance.

A farmers market organizer, city, or the owner of the property used for a market may ask for proof of insurance before allowing a market to operate. The owner or individual vendor should never assume coverage.

It is better to ask questions of an individual insurance carrier before an incident than wait until something happens. Also ask yourself “how much can I afford to lose?”

Every insurance company differs in what it can and cannot insure. There are many types of insurance coverage, riders and special one-time policies available on today’s market. The best advice is to contact your insurance agent with questions. It is also a good idea when before investing in a new business to contact local agencies such as the county or city to inform them of your plans.

The North Dakota Insurance Department oversees individual companies that do business in the state, but they do not have information about individual coverage.

Here are some questions to ask your agent

At what point does my homeowner’s policy no longer cover my involvement with direct farm marketing?

Can my homeowner’s policy be extended to cover my activities (with additional premiums)?

Is there a limit to the amount or type of direct farm sales I can make and still have them considered as incidental to my farm operation?

If I have a farm policy, does my liability cover my direct farm marketing sales, such as at my roadside stand, U-pick operations, delivery to restaurants and farmer’s markets? What activities are excluded as a “separate business” for which I need to buy a commercial policy?

Are there reasons why a commercial business policy might be better for my activities?

If my farm liability policy does not cover sales at the farmer’s market, what type of policy should I buy for this purpose? Would it cover product liability?

Does my farm liability policy cover agri-tourism? (customers who pay to visit my farm, customers who sleep on the premises)

Does my farm liability policy include coverage for product liability?

Does my automobile insurance cover the use of farm vehicles for deliveries made by employees and family members?

How should I insure my buildings and equipment? Is there a “co-insurance” provision in my policy, which requires me to pay part of any loss?

When I decide to hire employees for my activities, do I need to change my insurance policy from homeowners to farm or commercial?

Are volunteers and interns covered by my policy?

Is my policy a “claims and occurrences” policy; when does coverage end and what happens if I change insurers?

(Insurance questions and hold harmless agreement taken from the USDA Risk Management
http://www.communityagcenter.org/Risk_Liability/Insurance.htm)

Hold Harmless Agreement: A waiver or release is a way to shift liability to someone else. When appropriate, you are better off having a release than not. The release will not be useful if you have not taken precautions and reduce the possible risks of harm to your customers.

Sample Hold Harmless Agreement:

RELEASE AND ACCEPTANCE OF RESPONSIBILITY AND ACKNOWLEDGMENT OF RISKS

ACKNOWLEDGMENT OF RISKS I understand and acknowledge that the activity that I am about to engage in bears certain known risks and unanticipated risks which could result in injury, death, or damage to myself, my property, or to other third parties. I understand and acknowledge those risks may result in personal claims against _____ or claims against me by other third parties.

ACCEPTANCE OF RISK AND RESPONSIBILITY - Being aware that this activity entails risks of injury to myself and to third parties as a result of my actions, I agree to accept and assume all responsibility and risk for injury, death, or damage to myself or to my property arising from my participation in this activity. I agree, covenant, and promise to accept and assume all responsibility and risk for injury, death, or damage to other third parties and their property arising from my participation in this activity. My participation in this activity is purely voluntary and I elect to participate in spite of the risks.

RELEASE - I hereby voluntarily release _____, its agents or employees, and all other persons or entities from any and all liability, claims, demands, actions or rights of action, which are related to or are in any way connected with my participation in this activity, including specifically but not limited to the negligent acts or omissions of _____, its agents or employees, and all other persons or entities, for any and all injury, death, damage to myself or to my property. I further agree, promise, and covenant to hold harmless and indemnify _____, its agents or employees, and all other persons or entities from all defense costs, including attorney's fees, or from any other costs incurred in connection with claims for bodily injury or property damage which I may negligently or intentionally cause to other third parties in the course of my participation in the activity. I further agree, promise, and covenant not sue, assert or otherwise maintain or assert any claim against _____, its agents or employees, and all other persons or entities, for any injury, death or damage to myself or to my property, arising from or connected with my participation in this activity or from any claim asserted against me by other third parties. In signing this document, I fully recognize that if anyone is hurt or property is damaged while I engage in this activity, I will have no right to make a claim or file a lawsuit against _____, or its officers, agents, or employees, even if they or any of them negligently caused the bodily injury or property damage.

EFFECT OF THIS RELEASE AGREEMENT - I understand and acknowledge that by initiating and/or signing this document I have given up certain legal rights and/or possible claims which I might otherwise assert or maintain against _____, its agents or employees, and other persons, entities, including specifically, but not limited to, rights arising from or claims for the acts or OMISSIONS, negligent in any degree, of _____, its agents or employees, and all other persons or entities.

I understand and acknowledge that by initiating and/or signing this document, I have assumed responsibility and legal liability for the claims or other legal demands, including defense costs, which may be asserted by spectators or other third parties against me as a result of participation in this activity. I understand that this is the entire Agreement between myself and _____, its agents or employees, or agent of _____ or by me. My signature below indicates that I have read this entire document, understand it completely, and agree to be bound by its terms.

SIGNATURE _____

SIGNATURE OF PARENT OR GUARDIAN (under 18) _____

Complying with local health codes

Fresh, nutritious and quality vegetables are some of the highest ranking selling points for local foods and farmers markets. While the North Dakota State Health Department acknowledges farmers markets were designed for selling

fresh produce to individual customers, there are additional state and local laws governing what can be legally sold without inspection or licensing at a farmers market.

North Dakota Century Code (23-09.2) supports legislative intent for the health department to offer educational support to food preparers not regularly engaged in the business of preparing and selling food to consumers such as farmers markets, bake sales or similar enterprises in lieu of the availability of facilities designed for food preparation.

This is limited to non-potentially hazardous items as identified by the state health department or local health district. These entities regulate food safety.

North Dakota has three city/county health departments; one city/county health district; seven multi-county health districts; six single county health departments; and 11 single county health districts in the state. These health units can implement local ordinances that are more restrictive than the states, but not less restrictive.

That explains the discrepancies in what is currently being sold at farmers markets.

These are a few general guidelines for selling food at farmers markets

PRODUCE – all produce sold for individual consumer use is acceptable to sell at a farmers market.

BAKERY – all non-potentially hazardous baked goods can be sold at farmers markets. Remember only baked goods sold to be eaten off site are considered non-prepared food items. Anything sold with eating utensils will be subject to sales tax.

Potentially hazardous baked goods include:

- Kuchens
- Crème pies
- Any item that would require refrigeration

JAMS AND JELLIES – Jam and jelly have less potential for contamination because of the high sugar content and are okay to sell at farmers markets.

PICKLES – Some health departments do not allow the sale of pickles at farmers markets. Be sure and check with your local unit. Contact information can be found following this chapter.

EGGS – eggs may be sold directly to the consumer off the farm without violating any state laws. Eggs that are sold to consumers, grocery stores, schools, etc. are subject to some regulation. The North Dakota Department of Agriculture issues permits for the sale of eggs after inspection of premises. After licensing, eggs may be sold but must be sanitized, candled and then placed in new cartons. Eggs for sale must be kept in a refrigerator that does not contain other dairy products. Permits are \$5 and can be obtained by contacting the North Dakota Department of Agriculture at 701-328-2231 or Wayne Carlson, Program Manager/Dairy, 701-328-4761, or e-mail: wcarlson@nd.gov.

When selling eggs at a farmers market, they must be kept refrigerated with an ambient air temperature of 41-degrees Fahrenheit or less.

POULTRY – A farmer may sell up to 1,000 chickens off the farm without inspection of any kind. A producer may also apply for an exemption from the North Dakota Department of Agriculture. This allows a farmer to sell up to 20,000 birds annually with a quarterly inspection of the facility.

Poultry must be kept frozen at zero degrees Fahrenheit and must be labeled with:

- The true name of the product
- Ingredients if applicable
- Name and address of processor
- Net weight
- Inspection legend

- Safe handling instructions

MEAT – meat products may be sold at farmers markets only if they have the USDA or North Dakota state mark that indicates processing has been done under inspection.

Sale of meat in North Dakota also requires a retail meat license available from the North Dakota State Health Department at: Food and Lodging Division, 701-328-1291, toll free 800-472-2927.

Remember, state inspected meat cannot be sold across state lines.

There are 15 state inspected processing plants. The complete list of plants can be obtained from the ag department website: <http://www.agdepartment.com/Programs/Livestock/NDMeatProcessors.html>.

Meat must be kept frozen at zero degrees Fahrenheit and must be labeled with:

- The true name of the product
- Ingredients if applicable
- Name and address of processor
- Net weight
- Inspection legend
- Safe handling instructions

Safe Handling Instructions: This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

Keep refrigerated or frozen. Thaw in refrigerator or microwave.

Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.

Cook thoroughly.

Keep hot foods hot. Refrigerate leftovers immediately or discard.

If you have questions, please contact Dr. Andrea Grondahl, DVM, at the North Dakota Department of Agriculture, 701-328-4762 or 800-242-7535.

FISH – fish may not be sold unless commercially farmed or legally caught and harvested.

MUSHROOMS – Species harvested in the wild must be individually inspected and deemed safe by an approved mushroom identification expert.

NO-NOs

NO CANNED MEATS

NO CANNED VEGETABLES

NO WILD GAME

NO RAW MILK

NO CUT SAMPLES without permission and proper training in your health district.

FOOD DONATED TO CHARITIES

North Dakota Century Code (19-05.1-01-05) allows for gleaners of agricultural crops can donate perishable food items to local food pantries. Pantries are allowed to distribute these donations free of charge. The state and local health departments are available to inspect the food before distribution if questions about its safety arise.

BUY/SELL ITEMS

If you are purchasing large lots of products such as dried fruits or nuts and creating smaller packages for sale you must label individual lots with:

1. Common name of food or identifying statement
2. If multiple ingredients, a list in descending order of the predominance by weight
3. Any artificial color or flavorings
4. An accurate weight
5. Name and place of the food source for each major food allergen in the food unless that ingredient is part of the name
6. Name and place of business of manufacturer, packer or distributor.

GRADING FRUITS

If you are planning on expanding your business and market to schools and institutions, it will be helpful to understand the USDA's fruit and vegetable grading standards as many bids will specify grade.

All U.S. grade standards are accessible for free on the internet at: <http://www.ams.usda.gov/>

Commodity specific Inspection Instruction handbooks and all other publications are also available for a nominal fee. Orders for handbooks must be accompanied by a check or money order made payable to "Agricultural Marketing Service, USDA." Credit Card orders are now available. Individual standards range in price from 70 cents for broccoli to \$12.80 for grapes.

Please send your request to:

USDA, AMS, Fruit and Vegetable Programs
Fresh Products Branch
Watt Eighty Business Park
3355 Myrtle Avenue, Suite 240
North Highlands, CA 95660
Telephone: 916-332-4566, Ext. 4568
Fax: 916-332-4572

For additional information:

USDA, AMS, Fruit and Vegetable Programs
Fresh Products Branch, Standardization Section
100 Riverside Parkway, Suite 101
Fredericksburg, VA 22406
Telephone: 540-361-1120
Fax: 540-361-1184

Helpful Definitions

Approved source – Acceptable to the state health department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

Allowed with inspection – items for sale that have been prepared, processed or canned according to USDA, North Dakota state or federal regulations. Please contact the appropriate agency for assistance in compliance with these laws.

Allowed with proper handling – items or services allowed at farmers markets with proper training in handling or preparation.

GAP – Good agricultural practices. Cornell University Department of Food Science has education materials available online www.gaps.cornell.edu/FSBFeng.html. The recommended publication for growers is “Food Safety Begins on the Farm English.”

Special event – Entertainment, amusement, recreation or marketing events that occur at a single location on a reoccurring or irregular basis.

Tips for Successful Marketing

- Your best source of information may be in striking up a conversation with someone who has been there. Remember there are no hard and fast rules, do what works best for you.
- Consistent, quality products attract repeat customers.
- Set your prices and stick to them. Be professional in your marketing efforts.
- Work with your fellow vendors in setting fair prices for products. Everyone needs to work together to establish high market standards.
- Maintain and update a list of your customers. Use it to e-mail reminders, market openings or special events and new product information. This builds relationships that last a lifetime.
- Watch market trends. Read about food trends and be flexible and willing to try new things.
- Consider adding value to your products with gift cards, specialty items, newsletters, recipes, special request, etc.
- Creative packaging, signs or displays can make your stand “stand out” in a crowd.
- Be organized, set up early, be prepared to make that first sale of the day.
- Tell your story with photos of your day-to-day operation. A picture is worth a thousand words.
- Advertise, advertise, advertise – never, ever assume customers know you are there. Take advantage of free public service announcements, send press releases and place signs when and where ever you can.
- Know your product; you are its best advertising.