

# **Selling Fruits and Vegetables to Local Retailers and Restaurants**

## **An Overview of Legal Issues**

CAUTION: This is an outline for educational purposes only. To learn the details about any certain point, read the current statutes, regulations, and policy notices, which can change frequently. These materials cannot substitute for an experienced lawyer who is up-to-date on the latest changes in federal laws and regulations.

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## **An Overview of Legal Issues**

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### **I. Introduction**

These materials provide a general overview of the types of issues farmers should consider if they are planning to sell their produce to local restaurants and retailers. For more information about these subjects, farmers may contact Farmers' Legal Action Group, Inc. (FLAG), an attorney experienced in the particular area of law about which farmers have questions, or the agency responsible for implementing and enforcing that law.

### **II. Protecting Your Right to Get Paid**

In Minnesota, farmers' rights to be paid for their fruit and vegetable crops have four primary sources: the farmers' contracts with buyers, state contract laws, the Perishable Agricultural Commodities Act, and the Wholesale Produce Dealers Act.

#### **A. General Contract Law Principles**

1. The most important source of a farmer's right to be paid for fruit and vegetable crops is the agreement, or contract, between the farmer and the buyer. Farmers will want to be sure that the agreement includes all of the required and desired details, or "terms," and that the agreement is enforceable in case there is a dispute.
2. Any written contract should define and reflect the farmer's and the buyer's mutual understanding of their duties and responsibilities under their agreement. Important subjects to include in a contract include: identification of the farmer and buyer, price, quantity, when payment must be made, and a description of any circumstances that will relieve the farmer or the buyer of their obligation to do what they agreed to in the contract.

3. If a buyer does not fulfill his or her side of the bargain, or if an unexpected problem arises, having an enforceable contract allows the farmer to go to court to force the buyer to fulfill his or her promises or pay money for the broken promise. Even if a farmer does not want to take a buyer to court to enforce their contract, it is still important to have a contract that could be enforced in court because if the buyer knows a contract is enforceable, the buyer will have more of an incentive to work with the farmer to resolve any contract issues.
4. Farmers' contracts for the sale of fruits and vegetables will almost always have to be in writing to be enforceable. This is because most states, including Minnesota, have a law requiring that agreements for the sale of goods worth \$500 or more generally need to be in writing to be enforceable.<sup>1</sup> For a contract to be enforceable against a buyer, it is also required that the buyer sign the contract.<sup>2</sup> Therefore, farmers should always make sure they receive a signed copy of the contract from the buyer.
5. Typically, where there is a written contract, only that contract can be considered as evidence of the parties' agreement. Thus, spoken changes to the agreement and spoken side agreements will generally not be considered part of the contract and will not be enforceable.
6. FLAG's publication, *Understanding Farmers' Rights to be Paid for Their Fruit and Vegetable Crops*, contains a more detailed description of contract issues that might arise for farmers selling produce. The article can be obtained through FLAG's website, and is available at <http://www.flaginc.org/topics/pubs/index.php#paca01>. Copies of the article may also be ordered by calling FLAG's toll-free number at **877-860-4349** (Minnesota callers only) or **651-223-5400**.

## **B. The Perishable Agricultural Commodities Act**

1. The PACA is a federal law designed to protect farmers from unfair business practices in the produce industry.<sup>3</sup> The PACA strives to meet this goal by: (1) establishing rules of fair play in the produce industry, (2) creating a streamlined alternative to the court process for farmers to seek payment under their fruit and vegetable sales contracts, and (3) protecting farmers' rights to be paid under their fruit and vegetable sales contracts when their buyers file for bankruptcy or go out of business.
2. The PACA prohibits commission merchants, dealers, and brokers from engaging in unfair conduct.<sup>4</sup> Failure to promptly and fully pay for fruits and

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<sup>1</sup> Minn. Stat. § 336.2-201.

<sup>2</sup> Restat. 2d of Contracts, § 135 (explaining that the person against whom a written contract is being enforced generally must have signed the contract to be charged with any obligation arising under the contract).

<sup>3</sup> 7 U.S.C. §§ 499a-s (2007).

<sup>4</sup> 7 U.S.C. § 499b (2007).

vegetables after accepting them is unfair conduct that violates the PACA. The timeframe in which farmers must be paid under the PACA varies, depending on who the buyer is and how the sale is structured. Where a farmer sells produce directly to a buyer, payment is required within 10 days after the date the buyer accepts the produce.<sup>5</sup> Where a farmer delivers produce to a broker or commission merchant who acts as an intermediary between the farmer and the ultimate buyer, the timeframe for payment will typically be longer than 10 days. In general, farmers must be paid within 5 to 20 days from the date on which a buyer accepts produce.<sup>6</sup>

3. Some small local grocery stores, cooperatives, and restaurants are unlikely to be regulated under the PACA because they do not purchase a volume of produce large enough to trigger the PACA's requirements. In addition, the PACA only regulates the sales of produce in "interstate commerce." Therefore, buyers who purchase produce from a local farmer whose operation is located within the state, and who sell the produce solely to an in-state market would not be regulated by the PACA.
  - Small local grocery stores, cooperatives, and restaurants not regulated under the PACA are likely to be regulated under the Minnesota Wholesale Produce Dealers Act, discussed in Section C, below.
  - Large grocery stores should generally be regulated under the PACA.
4. The agency authorized to enforce the PACA and investigate complaints of violations is USDA's Agricultural Marketing Service (AMS), which has a special PACA Branch. The USDA's PACA Branch has a toll-free number **(800-495-7222)** that you can call to report possible violations of the PACA or ask general PACA questions.
5. Farmers' rights under the PACA are described in FLAG's publication, *Understanding Farmers' Rights to be Paid for Their Fruit and Vegetable Crops*. The article can be obtained through FLAG's website, and is available at <http://www.flaginc.org/topics/pubs/index.php#paca01>. Copies of the article may also be ordered by calling FLAG's toll-free number at **877-860-4349** (Minnesota callers only) or **651-223-5400**.

### **C. The Minnesota Wholesale Produce Dealers Act**

1. Like the PACA, the Minnesota Wholesale Produce Dealers Act is designed to protect farmers who do not receive payment after selling their produce.
2. Under the Minnesota Wholesale Produce Dealers Act (the Act) and the rules implementing that law, any retailer who purchases more than \$500 worth of fresh fruits and vegetables per month directly from Minnesota farmers (or

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<sup>5</sup> 7 C.F.R. § 46.2(aa)(5) (2007).

<sup>6</sup> See generally, 7 C.F.R. § 46.2(aa) (2007).

contracts to make such purchases) must be licensed and bonded as a wholesale produce dealer.<sup>7</sup>

- Wholesale buyers who purchase more than \$12,000 annually, and brokers or agents who deal in produce with a Minnesota farmer for a commission or fee, must also be licensed and bonded as wholesale produce dealers.<sup>8</sup>
  - To ensure a buyer is licensed, farmers can check the Minnesota Department of Agriculture's (MDA) list of licensed and bonded dealers through MDA's website, available at <http://www2.mda.state.mn.us/webapp/lis/default.jsp>. Farmers may also call MDA at **651-201-6620** to ask if a buyer is licensed or for general information about the Act.
3. A farmer who markets produce for other farmers must be licensed if the value of the products the farmer obtains from the other producers exceeds \$25,000 in a year.<sup>9</sup>
  4. Buyers who are licensed under the Act must pay farmers by the date specified in the agreement between the farmer and the buyer.<sup>10</sup>
    - An invoice specifying a due date is sufficient to show the due date agreed to by the farmer and the buyer.<sup>11</sup> The invoice must be signed by the buyer of the produce.<sup>12</sup>
    - Where the due date is not specified in the contract, payment is due ten days from the date of delivery.<sup>13</sup>
    - Payments received after the due date must include 12 percent annual interest prorated for the number of days the payment is past due.<sup>14</sup>
  5. Complaints for nonpayment must be submitted to MDA's Commissioner within 40 days after the payment due date.<sup>15</sup>

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<sup>7</sup> Minn. Stat. § 27.01, subd. 8(c)(5). The Act also applies to purchasing or contracting for milk and cream and products manufactured from milk and cream, and poultry and eggs.

<sup>8</sup> Minn. Stat. § 27.01, subd. 8(a). Farmer-owned cooperatives do not need to be licensed if 75 percent of the cooperative's business is with members or stockholder patrons. See Minn. Stat. § 27.01, subd. 8(c)(2).

<sup>9</sup> Minn. Rules § 1500.3400.

<sup>10</sup> Minn. Stat. § 27.03, subd. 4.

<sup>11</sup> Minn. Stat. § 27.01, subd. 5 (defining due date).

<sup>12</sup> Minn. Rules § 1500.0301.

<sup>13</sup> Minn. Stat. §§ 27.03, subd. 4; 27.01, subd. 5. Where produce is consigned, payment is due ten days from the date the produce is sold by the broker or handler. Minn. Stat. § 27.01, subd. 5.

<sup>14</sup> Minn. Stat. § 27.03, subd. 4.

<sup>15</sup> Minn. Rules § 1500.0801, subp.1.

- Complaints must be in writing and describe the facts that show a violation of the Act.<sup>16</sup>
  - The complaint and copies of any proof of payment owed, such as invoices, contracts, delivery receipts, or canceled checks, should be sent to: Minnesota Department of Agriculture, Attention: Wholesale Produce Dealers, John Malmberg, 625 North Robert Street, Saint Paul, MN 55155-2538.<sup>17</sup> Complaint forms can be obtained through MDA's website, and are available at <http://www.mda.state.mn.us/news/publications/licensing/food&dairy/ag03171produce.pdf>, or by calling **651-201-6620**.
  - Provided MDA is able to verify a farmer's payment claim, the payment will be made to the farmer from the buyer's bond surety. According to MDA, payments should typically be made within 90 days.
  - The Commissioner may choose to hold a contested case hearing to determine if the Act was violated. The contested case hearing procedures are set forth in Chapter 14 of the Minnesota Statutes, and Chapter 1400 of the Minnesota Administrative Rules. Copies of these rules can be obtained through the website for the Minnesota Office of the Revisor of Statutes and are available at <https://www.revisor.leg.state.mn.us/statutes/?id=14> and <https://www.revisor.leg.state.mn.us/rules/?id=1400>, respectively.
  - The Commissioner is also authorized to require the parties to mediate or arbitrate the dispute.<sup>18</sup>
6. The Commissioner can assess a civil fine of up to \$500 for each violation of the Act. Criminal penalties may also apply. The Commissioner can also suspend or revoke a buyer's license, thus preventing the buyer from continuing his or her produce business.<sup>19</sup>
7. Farmers can also seek reimbursement from a buyer through the Wholesale Produce Dealers Trust. The trust operates like a lien against the buyer's assets and gives the farmer a priority over other types of creditors.
- To preserve trust assets, a farmer must complete a form called a "Beneficiaries Notice to Preserve Trust Assets Form."
  - The form must state the name and address of the farmer; the name and address of the buyer; the amount of produce; the amount to be paid the

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<sup>16</sup> Minn. Stat. § 27.13; Minn. Rules § 1500.0801, subp.2.

<sup>17</sup> Minn. Rules § 1500.0801, subp. 3.

<sup>18</sup> Minn. Rules § 1500.0901.

<sup>19</sup> Minn. Stat. § 27.19.

farmer; and the payment due date(s).<sup>20</sup> Copies of the form can be obtained through MDA's website, and are available at <http://www.mda.state.mn.us/licensing/dairyfood/wholproddealer.htm>, or by calling **651-201-6620**.

- The form must be sent to: (1) the buyer who owes the money; (2) the Wholesale Produce Dealers Program at MDA; (3) the County recorder for the buyer's county; and (4) the Minnesota Secretary of State. A \$20 filing fee must also be submitted to the Secretary of State.<sup>21</sup>
- The claim must be filed within 40 days from the date payment was due.<sup>22</sup> For example, if produce is delivered to the buyer and there is no specified payment due date, produce must be paid for within ten days from the delivery date. Should the buyer in that case fail to make payment, the farmer must file the trust claim within 50 days from the date of delivery.

### III. Minnesota's Retail Food Handler's License

MDA's Dairy and Food Inspection Division administers Minnesota's retail food handler's licensing requirements. Farmers who plan to start a new food sale business or make changes to their existing business, such as adding a processing component, may wish to contact MDA's Food and Dairy Inspection Division at **651-201-6027** to ensure they understand any licensing requirements which might apply to their operation.

#### A. A Retail Food Handler's License is Generally Required For Anyone Selling Food Within the State of Minnesota

1. A retail food handler's license is **not required** for a farmer selling raw, unprocessed produce that the farmer has grown on his or her land.<sup>23</sup> Farmers can therefore sell any quantity of fresh produce to any person or business without having to obtain a retail food handler's license.
  - Even if not required to get a retail food handler's license, farmers are still required to follow all applicable health and safety regulations. Therefore, all food sold to the public must still be handled in a sanitary manner, and safe food handling practices must be followed. Additionally, even if a

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<sup>20</sup> Minn. Stat. § 27.138, subp. 3.

<sup>21</sup> See, Minnesota Department of Agriculture, *Notice of Intent to Preserve Trust Assets Under Wholesale Produce Dealers Act – Standard Form*, available at <http://www.mda.state.mn.us/licensing/dairyfood/wholproddealer.htm>.

<sup>22</sup> Minn. Stat. § 27.138, subp. 2.

<sup>23</sup> Minn. State Const., Art. 13, § 7; Minn. Stat. § 28A.15, subd. 1; Minn. Rules § 4626.0130(B). People selling food "that is not potentially hazardous" at farmers' markets or community events whose gross receipts are less than \$5,000 per calendar year are also exempt from the licensing requirements, as are people selling low acid home-canned foods whose gross receipts are less than \$5,000 per calendar year (provided certain labeling and customer information requirements are met). Minn. Stat. § 28A.15, subds. 9, 10.

farmer does not need to obtain a retail food handler's license, the farmer is still subject to inspection by MDA's Food and Dairy Inspection Division to ensure safe food handling practices and other regulations are being followed.<sup>24</sup>

2. According to MDA, a license may be required if foods are processed.<sup>25</sup> Sorting, trimming, or cleaning that takes place as part of the harvesting process should not be considered as processing.<sup>26</sup>
  - State law seems to indicate that no license is required so long as a farmer is selling only products the farmer grew on his or her farm, regardless of whether those products are processed.<sup>27</sup> Specifically, state law provides that farmers selling the products of their garden or farm are not required to obtain a license in order to sell those products. Therefore, it would seem that if a processing operation does not add any outside ingredients to the produce grown by the farmer, no retail handler's license should be required. It appears, however, that MDA may seek to require a retail handler's license be obtained for any processing operation, regardless of whether outside ingredients are added as part of the processing.<sup>28</sup>
  - Farmers who want to sell fruits and vegetables that have been processed in some way (e.g., cut and packaged, or frozen) should contact MDA's Food and Dairy Inspection Division at **651-201-6027** to determine whether they need to obtain a retail food handler's license.
  - Farmers considering starting a processing operation should be aware that even if no retail food handler's license is required, the processing facility must comply with all applicable food safety regulations, and it will be subject to inspection by MDA.<sup>29</sup>

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<sup>24</sup> *State of Minnesota v. Hartmann*, 700 N.W.2d 449 (2005).

<sup>25</sup> Minnesota Department of Agriculture, *Providing Safe Locally-Grown Produce to Commercial Food Establishments and the General Public*, available at <http://www.mda.state.mn.us/food/business/safelocalproduce.htm>; Minnesota Department of Agriculture (2008), page 21, *Starting a Food Business in Minnesota*, available at <http://www.mda.state.mn.us/news/publications/food/business&marketing/startingfoodbiz.pdf>.

<sup>26</sup> Minnesota Department of Agriculture, *Providing Safe Locally-Grown Produce to Commercial Food Establishments and the General Public*, available at <http://www.mda.state.mn.us/food/business/safelocalproduce.htm>.

<sup>27</sup> Minn. State Const., Art. 13, § 7; Minn. Stat. § 28A.15, subd. 1; Minn. Rules § 4626.0130(B); *State of Minnesota v. Hartmann*, 700 N.W.2d 449 (2005)..

<sup>28</sup> Minnesota Department of Agriculture, *Providing Safe Locally-Grown Produce to Commercial Food Establishments and the General Public*, available at <http://www.mda.state.mn.us/food/business/safelocalproduce.htm>.

<sup>29</sup> Minn. Stat. § 28A.07; *State of Minnesota v. Hartmann*, 700 N.W.2d 449 (2005).

## **B. The Process for Obtaining a Retail Food Handler's License**

1. No specific training or experience is required to obtain a retail food handler's license; farmers must simply complete MDA's application form and be approved for a license by MDA. For more information about obtaining a retail food handler's license, farmers should call MDA's Food and Dairy Inspection Division at **651-201-6027**.
2. Prior to issuing a license, MDA must inspect and approve the processing facility.<sup>30</sup> In addition, if a farmer has any paid employees, the farmer must provide proof of workers' compensation insurance coverage; otherwise, MDA will not issue the license.<sup>31</sup>
3. The license fee is determined by the anticipated gross annual food sales for the first year of business.<sup>32</sup> Thereafter, the fee is based on the actual gross food sales from the previous year. The length of the licensing process typically takes from fifteen to forty-five days.<sup>33</sup>
4. Any person who fails to comply with the licensing requirements is guilty of a misdemeanor.<sup>34</sup> In addition, MDA is authorized to suspend or revoke a license if it has reason to believe the law relating to the processing, distribution, handling, or sale of the food has been violated.<sup>35</sup>

## **IV. Food Safety and Food Handling Requirements**

Farmers are required to follow safe food handling practices and to take reasonable care to avoid contaminating their produce. In addition, buyers of a farmer's produce will typically want assurances that the produce they are purchasing from the farmer was safely handled. Therefore, farmers should expect that local restaurants and retailers who buy their produce will want to know about the farmers' food handling and delivery practices.

When deciding how to market their produce, farmers should familiarize themselves with any food safety regulations that might apply to their operation. These materials provide a very general overview of the basic regulatory framework governing food safety as it relates to the production and sale of produce.

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<sup>30</sup> Minn. Stat. § 28A.07.

<sup>31</sup> Minnesota Department of Agriculture (2008), page 22, *Starting a Food Business in Minnesota*, available at <http://www.mda.state.mn.us/news/publications/food/business&marketing/startingfoodbiz.pdf>.

<sup>32</sup> Minn. Stat. § 28A.08

<sup>33</sup> Minnesota Department of Agriculture (2008), page 23, *Starting a Food Business in Minnesota*, available at <http://www.mda.state.mn.us/news/publications/food/business&marketing/startingfoodbiz.pdf>.

<sup>34</sup> Minn. Stat. § 28A.12.

<sup>35</sup> Minn. Stat. § 28A.13.

### **A. Overview of the Types of Laws Regulating the Production and Sale of Food: Federal, State, and Local Laws May Apply**

1. The array of laws governing the production and sale of food can be complex and may involve enforcement by a variety of local, state, and federal agencies. The specific laws that apply to an operation will vary depending on the type of food a farmer produces and sells; the degree to which that product is processed; where the product is sold (e.g., different regulations may apply where produce is sold on the farm versus elsewhere); and who the buyer is (e.g., a consumer, restaurant, or grocery store).
2. In turn, the laws that apply to an operation determine which agencies are responsible for enforcing those laws. In most cases, the agencies responsible for regulating the production, processing, and sale of food by Minnesota farmers will include some combination of local and county zoning and health departments, the Minnesota Department of Agriculture, the Minnesota Department of Health, the United States Department of Agriculture, and the federal Food and Drug Administration.
3. In general, farmers selling fresh, unprocessed fruits and vegetables are subject to less regulation than farmers who sell fruits and vegetables that have been processed (e.g., cut and packaged, juiced, canned, or frozen). In addition, farmers selling directly from their farms or directly to consumers will typically be subject to less regulation than farmers selling to restaurants and retailers.
  - Farmers are considered an “approved source” for raw, unprocessed produce they grew themselves. “Approved source” generally means that the farmer is in compliance with state food regulations.

### **B. Minnesota’s Food Code Does Not Typically Apply to Farmers Selling Fresh Produce or to Processing Operations Without a Retail Component**

1. Minnesota’s food safety laws are primarily found in Chapter 4626 of the Minnesota Administrative Rules, known as the “Minnesota Food Code” and Chapter 31 of the Minnesota Statutes, known as the “Minnesota Food Law.”<sup>36</sup> Copies of these laws can be found on the website for the Office of the Minnesota Revisor of Statutes, and are available at <https://www.revisor.leg.state.mn.us/rules/?id=4626> and <https://www.revisor.leg.state.mn.us/statutes/?id=31>, respectively.
2. Minnesota’s Food Code is generally aimed at food retailers and restaurants, not food processors.
  - Businesses that are not required to obtain a retail food handler’s license are exempt from the requirements of the Food Code.<sup>37</sup> Therefore,

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<sup>36</sup> Some food handling rules can also be found in Minnesota Administrative Rules, Chapters 1520-1555.

<sup>37</sup> Minn. Rules § 4626.0017, 4626.0020, subp. 35 C.

**Minnesota’s Food Code does not apply to farmers who sell raw, unprocessed produce**, as these farmers are not required to obtain a retail food handler’s license.

- **The Food Code does not apply to wholesale food handlers, or wholesale food processors or manufacturers.**<sup>38</sup> “Wholesale food handlers” are “persons who sell to others for resale.”<sup>39</sup> “Wholesale food processor or manufacturer” means “persons who process or manufacture raw materials and other food ingredients into food items, or who reprocess food items, or who package food for sale to others for resale, or who commercially slaughter animals or poultry.”<sup>40</sup>
- **The Food Code does not apply to food processing plants** that manufacture, package, label or store food, so long as the plants do not provide food directly to a consumer.<sup>41</sup>

**C. Minnesota’s Laws Prohibiting the Adulteration or Misbranding of Food Apply to Farmers Selling Produce**

1. Unlike Minnesota’s Food Code, Minnesota’s Food Law, which is set forth in Chapter 31 of the Minnesota Statutes, does not contain an exemption for farmers who sell fresh, unprocessed produce. Nor does it exempt food processors. Therefore, **Minnesota’s Food Law does appear to apply to farmers selling fresh and/or processed fruits and vegetables.**
2. The Food Law adopts federal regulations, making federal and state food safety laws uniform.<sup>42</sup> Therefore, farmers must follow any applicable federal food safety laws that apply to their operation.
3. Minnesota’s Food Law generally requires that food not be adulterated or misbranded.<sup>43</sup> That means food must be safe and uncontaminated, produced and processed under sanitary conditions, and that the labeling of food products must not be false or misleading.

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<sup>38</sup> Minn. Rules §§ 4626.0017; 4626.0020, subp. 35 C. Nor does the Food Code apply to food brokers (i.e., people who negotiate sales between a buyer and seller of food).

<sup>39</sup> Minn. Stat. § 28A.05(c).

<sup>40</sup> Minn. Stat. § 28A.05(c).

<sup>41</sup> Minn. Rules §§ 4626.0017; 4626.0020, subp. 35 C; 4626.0020, subp. 36.

<sup>42</sup> Minn. Stat. §§ 31.002; 31.101.

<sup>43</sup> Minn. Stat. § 31.02.

#### **D. The Primary Federal Regulations Governing Food Safety: The Hazard Analysis and Critical Control Points System and the Current Good Manufacturing Practices**

1. The Hazard Analysis and Critical Control Points (HACCP) is a protocol for ensuring food safety. Many of the procedures taught to restaurants and food service personnel are based on HACCP, so farmers selling produce to these types of businesses should expect that their buyers will be familiar with HACCP and may ask farmers whether they follow HACCP procedures. HACCP principles generally apply to the following food processes or operations: smoking or curing food; using food additives or adding food preservation components (including vinegar); and using a reduced oxygen method of food packaging.<sup>44</sup>
  - HACCP **does not apply** to the sale of fresh, unprocessed fruits and vegetables.
  - HACCP **does not apply** to fruits and vegetables that are minimally processed, such as those that are cut and packaged.<sup>45</sup>
  - HACCP **does apply** to the production of juice. The HACCP rules for juice can be obtained through the Federal Drug Administration's website, and are available at <http://www.cfsan.fda.gov/~comm/haccpju.html>.
2. The federal Current Good Manufacturing Practices (CGMPs) establish food safety standards that apply to processors who manufacture, process, pack, or hold human food. The CGMPs were adopted as federal regulations and can be found in Part 110 of Title 21 of the Code of Federal Regulations. These regulations can be obtained at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/21cfr110\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/21cfr110_08.html).
  - The CGMPs **do not apply** to fresh, unprocessed fruits and vegetables.<sup>46</sup>
  - The CGMPs **do apply** to cut and packaged fruits and vegetables.<sup>47</sup>
  - The CGMPs **do apply** to fruits and vegetables that have been subject to other forms of processing, such as freezing, dehydrating, cooking, or canning.<sup>48</sup>

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<sup>44</sup> Minnesota Department of Agriculture (2008), page 19, *Starting a Food Business in Minnesota*, available at <http://www.mda.state.mn.us/news/publications/food/business&marketing/startingfoodbiz.pdf>.

<sup>45</sup> United States Food and Drug Administration, *Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables* (February 2008), page 5, available at <http://www.cfsan.fda.gov/~dms/prodgui4.html>.

<sup>46</sup> Federal Food, Drug, and Cosmetic Act, § 201(r); 21 CFR § 110.19.

<sup>47</sup> Federal Food, Drug, and Cosmetic Act, § 201(gg); 21 CFR § 110.3.

<sup>48</sup> Federal Food, Drug, and Cosmetic Act, § 201(gg).

## **E. Enforcement of Food Safety Laws**

1. In Minnesota, food safety requirements are generally enforced by MDA's Food and Dairy Inspection Division, provided the sale of produce occurs within the state. Where the sale of produce is across state lines, the federal Food and Drug Administration is responsible for enforcing compliance with food safety laws.
2. MDA is authorized to inspect food processing facilities to ensure compliance with food safety laws, and to impose penalties for violations of Minnesota's food regulations.<sup>49</sup> Penalties may include monetary fines, the suspension or revocation of licenses, and criminal penalties.<sup>50</sup> Prior to imposing penalties on a farmer, MDA will typically hold an informal administrative meeting with the farmer and try to work with the farmer to correct the violations.
3. If MDA issues a citation or penalty, MDA's decision must be in writing and must state the nature of the violation, the law that was allegedly violated, the amount of time for correcting the violation, and the amount of any fine.<sup>51</sup>
4. MDA's decision to impose a penalty can be appealed. Farmers must provide MDA with a written notice that they wish to appeal the decision. Notice of the appeal must be provided to the Commissioner of MDA within 30 days from the citation date.<sup>52</sup> Appeals are heard under the contested case rules set forth in Chapter 14 of the Minnesota Statutes, and Chapter 1400 of the Minnesota Administrative Rules. Copies of these rules can be obtained through the website for the Minnesota Office of the Revisor of Statutes and are available at <https://www.revisor.leg.state.mn.us/statutes/?id=14> and <https://www.revisor.leg.state.mn.us/rules/?id=1400>, respectively.

## **F. Food Safety Resources**

1. Food safety questions may be addressed to your local health department, the Minnesota Department of Agriculture (**651-296-2627**), or the Minnesota Department of Health (**651-215-0870**).
2. Information about food safety issues relating to the production and processing of produce, including a grower's guide and farm safety practices checklist, can be obtained through the website for Cornell University's Good Agricultural Practices Project, available at <http://www.gaps.cornell.edu/>.
3. The Federal Drug Administration (FDA) has issued recommendations to minimize food safety hazards related to fresh-cut fruits and vegetables. These

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<sup>49</sup> Minn. Stat. §§ 17.037; 17.045; 17.983, subd. 1.

<sup>50</sup> Minn. Stat. § 17.983, subd. 1.

<sup>51</sup> Minn. Stat. § 17.983, subd. 1.

<sup>52</sup> Minn. Stat. § 17.983, subd. 1.

recommendations are nonbinding, and farmers are not required to follow them. However, buyers may request farmers to follow FDA's recommendations to ensure the safety of their products. The recommendations can be obtained through FDA's website and are available at <http://www.cfsan.fda.gov/~dms/prodgui4.html>.

4. The FDA's National Food Safety Programs division provides information on the safe production and processing of fruits and vegetables, including specific guidelines for the safe production of tomatoes, lettuce, and melons. <http://www.cfsan.fda.gov/~dms/fs-toc.html>.
5. Farmers who want more information about the standards that restaurant and food service personnel are required to follow may wish to review materials provided in the food safety course that restaurant and food service personnel must take. These materials can be accessed through the website for the University of Minnesota Extension, available at [www.extension.umn.edu/foodsafety](http://www.extension.umn.edu/foodsafety), or through the website for the National Agricultural Library, which has a free online training class, available at [sop.nfsmi.org/HAACPBasedSOPs.php](http://sop.nfsmi.org/HAACPBasedSOPs.php).

## V. Labeling Laws

### A. Minnesota State Laws

Minnesota's labeling laws are primarily found in Chapter 1550 of the Minnesota Administrative Rules. Generally, these rules prohibit misleading or deceptive labeling and require that all packaged products contain some description of the product. Copies of these rules can be obtained through the website for the Minnesota Office of the Revisor of Statutes and are available at <https://www.revisor.leg.state.mn.us/rules/?id=1550>.

### B. The Federal Country of Origin Labeling Law

1. The Country of Origin Labeling Law (COOL) is a federal law that requires retailers to inform their customers of the country of origin of certain agricultural products, called "covered commodities," by labeling those products. COOL also requires suppliers of covered commodities to:  
(1) provide buyers with information verifying the country of origin of the supplier's products, and (2) maintain records proving the country of origin of their products.
2. Farmers are considered suppliers if they directly or indirectly supply covered commodities to retailers. For example, when a farmer sells a covered commodity to a packinghouse, and the packinghouse later sells the covered commodity to a retailer, the farmer is considered an indirect supplier and is therefore required to provide the packinghouse with information about the product's country of origin and to maintain records substantiating that information. Therefore, although COOL does not generally require farmers to

label their products, it does require them to provide country of origin information to the buyers of their covered commodities if those products will ultimately be sold to a retailer.

3. Farmers are not considered retailers with respect to the sale of products they raised themselves. Therefore, farmers who sell only their own products are not considered as retailers under COOL and do not have to label their products.
4. The agency authorized to enforce COOL and investigate complaints of violations is the USDA's Agricultural Marketing Service (AMS). Farmers with questions about COOL may contact AMS for more information by calling **202-720-7046**. Farmers may also submit e-mail inquiries about COOL to [COOL@usda.gov](mailto:COOL@usda.gov).
5. More details about COOL can be obtained through Farmers' Legal Action Group's upcoming article, *Understanding How the Country of Origin Labeling Program Affects Farmers*, which will soon be available on our website, located at [www.flaginc.org](http://www.flaginc.org).

### **C. Federal Nutritional Labeling Requirements**

The FDA requires nutritional labeling for those who do more than \$50,000 in business annually. More information about these requirements can be obtained through the FDA's website, available at <http://www.cfsan.fda.gov/label.html>.

**Nutritional labeling is not required for fresh, unprocessed produce**, but farmers may choose to label their produce if they wish to do so.

## **VI. Local Ordinances**

County, city, and township ordinances likely regulate some aspects of your farming operation. For example, a local zoning ordinance might limit a farmer's right to install a processing operation on the farmer's property or contain rules about where and how the processing facility may be built. Before expanding an existing farm operation, adding additional farm buildings, or starting a new farm operation, farmers should make sure they are familiar with what local ordinances require. Farmers should contact their local zoning and planning authority to obtain a copy of local ordinances and to determine what types of operations are allowed in their area. If you are unaware of who your local zoning and planning authority is, you may wish to contact the county, city, or township clerk to determine this.

## **VII. Insurance**

Farm businesses typically need several different types of insurance. Examples of the types of insurance farmers may wish to obtain include property insurance, product liability insurance, insurance for liability to farm workers, insurance coverage for the value of crops grown, liability insurance for visitors to the farm, business interruption insurance, and insurance for vehicles used to distribute farm products. All farmers should work directly with an insurance agent to ensure their insurance meets the needs of their farming operation.

### **A. Property Insurance**

Property insurance is designed to protect your farm against losses caused by destruction or harm to the property. Farmers should ensure their property insurance also covers lost and damaged farm equipment.

### **B. Product Liability Insurance**

Liability insurance for the products you sell is called product liability insurance. Such insurance is designed to protect you if someone becomes sick from your food. Farmers selling produce directly from their farm might not need to obtain separate product liability insurance if their property insurance covers product liability. Farmers should ask their insurance agent if their property insurance covers product liability issues. Farmers selling to restaurants and grocery stores might be asked by the buyers to obtain product liability coverage if they do not already have it.

### **C. Insurance for Employees**

Most employers in Minnesota, including farmers, are generally required to carry workers' compensation insurance for their employees. Farms that pay only a small amount of wages to their employees may be exempt from the workers' compensation requirements. For more information about this exemption, farmers should contact Minnesota's Department of Labor and Industry (MDLI) at **800-342-5354** or **651-284-5005**. Information about the exemption is also available through MDLI's website, and is available at <http://www.doli.state.mn.us/farm-er.html>.

It is important to note that even if a farmer is exempt from Minnesota's workers' compensation requirements, the farmer can still be held liable for injuries that occur to his or her employees or for injury the employees cause to others. Farmers should consult with their insurance agent to ensure they have insurance coverage for these needs. Additionally, farmers should be aware that having employees makes farmers subject to regulation under a wide range of state and federal laws. To ensure they understand and are complying with these laws, farmers should consult with an attorney experienced in labor and employment law issues. Farmers can also obtain information about state employment laws from the Labor Standards Division of the MDLI by calling **800-342-5354** (minimum wage requirements) or **651-284-5005** (OSHA compliance).

### **D. Crop Insurance**

Crop insurance is available for many fruit and vegetable crops. Farmers purchase crop insurance through private insurance providers who have been approved by the Federal Crop Insurance Corporation (FCIC) to offer federally backed insurance policies. Farmers in Minnesota may be eligible for many different types of crop insurance. The most common insurance policies provide coverage for only a single crop and can cover either yield losses or revenue losses (yield and price combined). It is also possible to purchase "whole farm" coverage for revenue losses under a single crop insurance policy, called Adjusted Gross Revenue-Lite (AGR-Lite). More information about the different types of crop insurance and the AGR-Lite program can be found in FLAG's

publication, *Farmers' Guide to Disaster Assistance*, available on our website at <http://www.flaginc.org/topics/disaster/index.php#FGDA>.

#### **E. Liability Insurance for Visitors to the Farm**

Farmers can be held responsible for injuries to those who visit their farm. Farmers whose operations include having visitors to their farm (e.g., farm tours for local chefs or retailers) should ask their insurance agent if their property insurance covers injuries to visitors. If it does not, farmers should consider obtaining additional insurance to cover these needs.

#### **F. Business Interruption Insurance**

This type of insurance protects farmers against lost earnings if their business is interrupted because of health issues, or property damage or destruction.

#### **G. Insurance for Vehicles Used to Distribute Farm Products**

Farmers who own vehicles used for transporting and distributing their farm products should ensure their vehicles are insured. Ideally, this insurance should cover losses or damage to the farm products in the event of an accident. Where a number of different people may perform deliveries, farmers should make sure their insurance covers all possible drivers.

### **VIII. Additional Resources**

**Minnesota Institute for Sustainable Agriculture**, *Marketing Local Food*, available at [http://www.misa.umn.edu/Marketing\\_Local\\_Food2](http://www.misa.umn.edu/Marketing_Local_Food2). Print copies may be obtained by calling **800-909-6472**. This handbook is designed to help Minnesota farmers explore the various options for marketing local food. It explains the basics of different marketing systems, suggests resources, and includes information and profiles about selling to retail food establishments or food services.

**Minnesota Department of Agriculture**, *Starting a Food Business in Minnesota*, available at <http://www.mda.state.mn.us/news/publications/food/business&marketing/startingfoodbiz.pdf>. Print copies may be obtained by calling **651-201-6027**. This handbook provides an overview of the considerations relevant to starting a food business in Minnesota, including: zoning and local licensing compliance; Minnesota Food Code requirements; the Retail Food Handler's License requirements; the Minnesota Wholesale Produce Dealer's License; and insurance issues.