

# Farm to Market:

North Dakota's Guide to Direct Farm Marketing



Spring 2013



Farmers markets, roadside and farm stands, U-pick operations, community-supported agriculture (CSAs), direct sales to restaurants and stores, agri-tourism and education, and on-farm recreation are just some of the economic opportunities for farmers to diversify their operations by selling directly their products and services to consumers.

Direct marketing also provides a direct connection between farmers and consumers, offering personal, one-to-one relationships, not often experience in conventional marketing.

This handbook will help you understand and comply with North Dakota state laws and regulations regarding the direct sale of produce, meat products, baked goods and handmade items. Many other resources for beginners as well as seasoned agriculture entrepreneurs are available.

**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.**

## Direct marketing

Farmers can reach their customers through a variety of direct marketing methods. Some are better suited to your operation and products than others. For many farmers, a combination of several marketing outlets is most effective. Examples of direct marketing strategies include:

- Farmers' markets
- U-pick
- Roadside stands
- Community Supported Agriculture (CSA) or Subscription
- Community markets
- Retail outlets
- Chefs and restaurants
- Internet or mail order
- Cooperative marketing
- Consumer cooperatives
- Institutional sales (Grocery Stores, Schools or other Commercial retail options)

## *Farmers Markets*

By far the most popular way to sell produce during the summer is through a farmers market. The North Dakota Farmers Market and Growers Association has information on the benefits of joining or starting a farmers market at: [www.ndfarmersmarkets.com](http://www.ndfarmersmarkets.com).

## *U-pick marketing*

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

## *Roadside and on-farm stands*

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. Good maps and advertising for your on-farm stand are essential.

## *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, and people may be interested in on-farm activities like milking cows or hoeing your garden. 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 increased bookkeeping, staffing, scheduling, advertising and working with the general public. Carefully verify all aspects of an agri-tourism business before investing any money. For more information, visit: [www.ndtourism.com/industry/agritourism/](http://www.ndtourism.com/industry/agritourism/)

## *Community Supported Agriculture (CSA)*

CSAs are the most direct way for growers and customers to build relationships. A customer purchases a share (or half-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 any business relying on Mother Nature, the consumer must understand the possibility of crop failure.

## *Myth vs. fact*

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

**Fact:** Farmers are considered approved sources for all fresh, raw fruits and vegetables that they grow themselves. Under proper inspection and licensing, meat, poultry, dairy and eggs can be marketed. Other regulations apply once these products are processed.

### *What do I need to know about direct farm marketing?*

Many laws and regulations pertain to the sale of food and food products, and these laws and rules 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 sell at farmers markets during the summer months, you are not required to hold a business license.

If you use a business name, however, you should consider registering 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](http://www.nd.gov/businessreg/register)

### *Tips for Successful Marketing*

- Your best source of information may be talking with people who have been there. Network with others to determine what might work best for you.
- Consistent, quality products attract repeat customers.
- Set your prices and stick to them.
- Work with fellow vendors in setting fair prices for products. Everyone needs to work together to establish quality market standards.
- Maintain and update your customer list. Use it to e-mail reminders, market openings, 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 requests, etc.
- Creative packaging, signs and displays can make your business stand out in a crowd.
- Be organized; set up early, and 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 assume customers know you are there. Take advantage of free public service announcements, send press releases and place signs whenever and wherever you can.
- Know your product; you are its best advertising.

# Taxes

## Do vendors need tax permits?

Vendors who sell taxable items must have a sales tax permit. Sales tax permits are free. Application information: [www.nd.gov/tax/salesanduse/forms](http://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

Visit [www.nd.gov/tax](http://www.nd.gov/tax) or send a question by e-mail, [salestax@ndgov](mailto:salestax@ndgov).

## *Examples of taxable versus non-taxable sales*

### *No sales tax collected*

Farmers 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 SNAP or WIC food vouchers.

### *Prepared food is taxable*

Prepared foods are 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's 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.

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.

Special events with 10 or more vendors must provide the tax commissioner's office with a list of names and contact information of the participants within 20 days of the event.

The required form for collecting vendor information - the Special Event Vendor Listing – is available at [www.nd.gov/tax/salesanduse/specialevents/organizer.html](http://www.nd.gov/tax/salesanduse/specialevents/organizer.html). The information may be submitted online or mailed.

Organizers are responsible for requesting all vendor information needed to complete the Special Event Vendor Listing form.

Organizers may be subject to a \$250 penalty for failing to 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 written notification of less than 10 vendors at the event is required. This notification may be mailed or emailed.

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

If you derive income from sources other than your main source of employment, 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 more information, visit: [www.taxesindepth.com/other-taxable-income.html](http://www.taxesindepth.com/other-taxable-income.html)

## **INSURANCE**

### *Do I need special insurance for farm to market sales?*

North Dakota does not require anyone to purchase insurance on anything except motor vehicles. Certain agencies or banks may ask for proof of insurance. 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.

It is better to consult an insurance carrier before an incident than to wait until something happens. 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. Before investing in a new business, you should also contact local governing bodies 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.)*

### *Questions to ask your agent*

It's important that you talk with your agent to have a complete understanding of your risks and liabilities. Here are some questions to ask:

- When 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 direct farm marketing activities, such as roadside stand, U-pick operations, delivery to restaurants and farmer's markets? What activities are excluded as a "separate business" for which I need a commercial policy?
- Could a commercial business policy be better for my activities?
- If my farm liability policy does not cover sales at the farmers 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?

## Health and safety codes

State and local laws governing what can be legally sold without inspection or licensing at a farmers market.

State law (NDCC 23-09.2) enables the North Dakota State Health Department to offer educational support to food preparers not regularly engaged in the business of preparing and selling food to consumers such as through farmers markets, bake sales or similar enterprises in lieu of the availability of facilities designed for food preparation. This support is limited to non-potentially hazardous items.

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 state's, but not less restrictive. Because local health units may have different requirements, there may be discrepancies in what is currently being sold at farmers markets. Check with your districts health department if you have any specific questions.

### *General guidelines for selling food at farmers markets*

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

Baked goods – All non-potentially hazardous baked goods can be sold at farmers markets. Only baked goods sold to be eaten off site are considered non-prepared food items. Anything sold with eating utensils is subject to sales tax.

\*Potentially hazardous baked goods include:

- Kuchen
- Crème pies
- Any item requiring refrigeration

Jams and jellies – Jam and jellies have less potential for contamination because of the high sugar content and are approved to sell at farmers markets.

Pickles – Some health departments forbid the sale of pickles at farmers markets. Check with your local unit.

Eggs – Eggs may be sold directly from the producer to the consumer, either off the farm or at a farmers market. Eggs sold to consumers through institutions, or via retail must be licensed through the North Dakota Department of Agriculture.

The North Dakota Department of Agriculture issues permits for the sale of eggs after inspection of premises. Eggs must be sanitized, candled, placed in new cartons and kept in a refrigerator that does not contain dairy products before sale.

At a farmers market it is suggested, eggs should be cleaned and kept refrigerated with an ambient air temperature of 41 degrees Fahrenheit or less to prevent the spread of bacteria.

Permits to sell eggs are \$10 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](mailto:wcarlson@nd.gov).

Poultry – A farmer may sell up to 1,000 chickens off the farm without inspection provided that the slaughter and processing are conducted under sanitary standards, practices and procedures, and that the producer keeps accurate records of all poultry sold and a producer may also apply for an exemption allowing the sale of up to 20,000 birds annually with a quarterly inspection of the facility. To apply for an exemption, visit: [www.nd.gov/ndda/program/meat-inspection](http://www.nd.gov/ndda/program/meat-inspection).



Officially inspected 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; and
- Safe handling instructions.

Meat – Only meat products processed under federal or state inspection may be sold at farmers markets.

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

State-inspected meat cannot be sold in other states unless the processor operates as a “Selected Establishment.”

A list of North Dakota’s 15 state-inspected processing plants can be obtained from the Agriculture Department website: [www.nd.gov/ndda/program-info/meat-poultry-inspection/north-dakota-meat-processors](http://www.nd.gov/ndda/program-info/meat-poultry-inspection/north-dakota-meat-processors)

State or federally inspected meat must be kept frozen at zero (0) 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. To insure there are no questions the below five arrowed statements all need to be included, nothing should be omitted.
  - *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.

For more information about labeling, visit [www.nd.gov/ndda/program/meat-inspection](http://www.nd.gov/ndda/program/meat-inspection) or 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.

Beverages – Allowed beverages are limited to black coffee, hot teas, iced teas, lemonade, and canned or bottled soda or water. Beverages that are not approved to be sold, include but are not limited to:

- Raw milk
- Sun tea
- Kombucha tea
- Homemade juices
- Espressos, lattes, etc
- Homebrew beer or wine
- Bottled water from a private well
- Any other beverages made from a private well

Products not allowed for sale:

- Canned meats
- Canned vegetables
- Wild game
- Raw milk
- Cut samples without permission and proper training in your health district.

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

Resale – 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:

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

Grading Produce – If you are planning to market to schools and institutions, it is important to understand the USDA’s fruit and vegetable grading standards as many bids will specify grade. All U.S. grade standards are available at: [www.ams.usda.gov](http://www.ams.usda.gov)

## INDUSTRY 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 state and/or federal regulations. Contact appropriate agencies 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. USDA Agricultural Marketing Service has education materials available at: [www.ams.usda.gov/AMSV1.0/gapghp](http://www.ams.usda.gov/AMSV1.0/gapghp)

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

# Directory

## **North Dakota Department of Agriculture**

600 E. Boulevard Ave  
Sixth Floor  
Bismarck, ND 58505  
Phone: (800) 242-7535  
[www.nd.gov/ndda](http://www.nd.gov/ndda)

## **USDA Agricultural Marketing Service**

Email: [amsadministratoroffice@ams.usda.gov](mailto:amsadministratoroffice@ams.usda.gov)  
Website: [www.ams.usda.gov](http://www.ams.usda.gov)

## **North Dakota State Tax Department**

600 E. Boulevard Ave  
Eighth Floor  
Bismarck, ND 58505  
Phone: 701-328-7088 or 877-328-7088  
[www.nd.gov/tax](http://www.nd.gov/tax)

## **North Dakota State Health Department**

(local departments by city, county, region)  
[www.ndhealth.gov/localhd/](http://www.ndhealth.gov/localhd/)

## **North Dakota Secretary of State**

600 E Boulevard Ave  
Dept. 108  
Bismarck ND 58505  
Phone: 800-952-0867  
<http://www.nd.gov/sos/>

## **North Dakota Farmers Market and Growers Association**

105 Simrall Blvd.  
Bottineau, ND 58318  
Phone: 701-228-5649  
<http://www.ndfarmersmarkets.com>

## **North Dakota Department of Health Division of Food and Lodging**

600 E. Boulevard Ave  
Dept. 301  
Bismarck, ND 58505  
Phone: 701-328-1291  
<http://www.ndhealth.gov/FoodLodging/>