



FARMERS' LEGAL
ACTION GROUP
INCORPORATED

Understanding Farmers' Market Rules

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Farmers' markets are booming in popularity around the country. They are popular with consumers seeking fresh, local food. They are popular with farmers moving toward direct marketing of their products. And they are popular with beginning farmers and immigrant farmers. This article is intended to help farmers understand their responsibilities and rights as vendors at a farmers' market. The article begins by looking at some of the commonly used rules of the market that most often give rise to misunderstandings. In addition to market rules, a vendor's rights and responsibilities may also be governed by federal, state, and local laws. This article highlights some of the relevant laws which might apply.

Read and understand the rules. The starting point for understanding the rules applicable in *your* market should be reading *your* market rules or your contract. If you do not have a copy of your market rules to review and keep in your records, you should request a copy from the market manager.

This article is written for educational purposes only and cannot substitute for an experienced lawyer who is up to date on the latest changes in relevant local, state, and federal laws and who has reviewed your market rules. For legal advice about your own situation, consult an attorney in your area.

Farmers' Market Rules

To help the market run smoothly, farmers' markets generally set out the rights and responsibilities of the vendors in the market rules. Understanding the rules of the market can help farmers comply with the rules and prevent misunderstandings. Understanding the rules can also help farmers to know if they are being treated like other vendors at the market.

An agreement or contract signed by a farmer and a market, stating the farmer's intention to comply with all of the market rules in order to participate as a vendor, creates a legally binding agreement between the farmer and the market. Provisions setting forth a farmer's rights and responsibilities as a farmers' market vendor may be contained in the farmers' market rules, or in an agreement or contract between the market and the farmer. If a farmer must join a producers' association in order to sell at a



market, the rules of the producers' association, often referred to as by-laws, may set forth additional rights and responsibilities. In general, this article uses the term "market rules" to refer to all of these sources.

We reviewed several sets of market rules, agreements, and contracts for this article. Each market's rules were different, but some terms were common to many of them. Below is a discussion of some of the commonly used rules and some of the rules that most often give rise to misunderstandings.

Note: Like laws, market rules may change. The process for changing market rules is generally addressed in the rules, producers' association by-laws, or contract.

Eligibility

Each market has different guidelines to establish who can participate as a vendor in the market. Below are four of the most common factors for vendor eligibility.

1. "Producer Only" Markets

To ensure that the benefits of the local market go directly to the local producers of the products, some markets limit their vendors to producers only. A "producer only" market is a market in which participating vendors may only sell what they produced themselves.

2. "Carrying"

"Carrying" is selling or distributing products that the vendor did not produce. Put another way, if a vendor is carrying, he or she is selling products produced by other people. Such vendors are called dealers. Some markets allow carrying, other markets do not.

Cooperatives and Carrying. Whether a farmer cooperative is eligible to participate as a vendor in a farmers' market may depend on whether the farmers' market allows carrying. Some farmers' markets consider cooperatives to be vendors who are carrying because many producers contribute products to be sold by the cooperative, and the person representing the cooperative at its stall would not have produced all of the goods offered for sale. Other farmers' markets consider cooperatives to have produced the food themselves, as if the cooperative were a single producer. In that case, the cooperative is not carrying, as long as the food was produced by a member of the cooperative.

3. Production Location

Farmers' markets are often created to benefit local farmers, to maximize freshness, and to minimize the distance and travel required to connect the products with the consumer. In order to achieve that goal, many markets limit eligibility to farmers who produced their food within a certain region, county, or number of miles from the market.

4. Product Diversity

In order to establish a market with diverse products, some markets have rules for farmer eligibility based on what they wish to sell. A market may provide a list of specific products which may or may not be sold. Other markets may require farmers to submit applications listing what products they will sell. That list is then reviewed by the market to determine whether the listed items are needed. Eligibility to sell products at these markets may depend on whether the farmer's products, or similar products, are already being sold by a vendor at the market.

Market Operations

Market rules establish how the market is going to operate from the management of the market to details related to the stalls and resolution of disputes. It is important for a vendor to comply with the market's stated operational rules since failure to comply may affect the farmer's ability to sell at the market. Below are several of the common terms used in market rules to address market operations and areas where questions may arise.

1. Management

Day-to-day management of a farmers' market is generally the responsibility of the market manager. However, farm inspections, dispute resolution, and other management decisions may also involve the producers' association, the market's board of directors, or a committee of vendors from the market selected to be a governing body. Vendors with questions or conflicts with the market manager may seek out assistance from those groups as well.

◆ **Market Manager.** Most farmers' markets have a market manager who is responsible for running the market. Depending on the size of the market, the market manager may be a volunteer or a full-time employee. The market manager usually has the authority to enforce the market rules, and the responsibility to ensure that all of the vendors are treated in a manner consistent with the rules. Market managers can also be a useful resource

for vendors with questions regarding the operation of the market and the market rules.

◆ **Inspections.** Many market rules have a provision requiring farmers to agree to allow the market to inspect their farms to ensure compliance with the market rules. For example, if a farmer is participating in a market that requires all of the products sold to be raised within 20 miles of the farmers' market, the rules may also provide for the market manager or another person to visit the farm and confirm that it is within that distance, and that it appears to have the capacity to produce the amount of food the farmer plans to sell.

2. Fees

Participation in a farmers' market as a vendor usually requires paying a fee, but fee requirements vary considerably. Some markets require payment of dues for membership in the market or producers' association, charge annual fees for use of the stall, or charge rental fees at a monthly or daily rate. Other fees may be assessed for things like maintenance and electricity for refrigerators. Markets which allow carrying may also have different fees for farmers and dealers.

Most markets require that the fee be paid before selling at the market, although some allow the fee to be paid in installments. Generally, failure to pay the required fee by the due date or payment of less than the full amount due will result in the market denying the farmer the right to sell at the market. However, one set of market rules reviewed for this article had a provision for relief from the fee deadline because of a hardship due to health or natural disaster.

3. Stalls

Farmers' markets have rules for the process of assigning stalls to vendors so that each vendor will have a defined place to display and sell items. The market rules should clearly spell out whether specific stalls will be assigned, the duration of that assignment, and how the stall assignments will be made. Some markets may operate simply on a "first-come, first-served" basis for each day the market is open. Other markets may promise that the vendor will get a stall, but may not promise a particular stall to the vendor. Still other markets may assign a specific stall to a vendor for the season. Some markets give priority for stall space to vendors based upon seniority, or how long they have sold at that market. Other markets may assign stalls based on the products sold or based on the order in which vendors sign up and pay the fee each season.

Stall assignments can be a source of confusion and misunderstandings. Because vendors may desire particular stalls, they often have questions about these rules. First, vendors should try to understand their market's rules regarding stall assignments. Then they should try to find out whether the rules are being applied to all vendors. If the rules are not being applied to all vendors, the vendor may want to raise this concern with the market manager. If the problem is with the market manager, the vendor may want to raise his or her concerns with the producers' association or the governing body of the market, such as a board of directors. If the vendor believes the rules themselves are unfair, he or she may try to change the rules, again by approaching the market manager, the producers' association, or the governing body of the market.

◆ **Occupation of Stalls.** Many farmers' markets have rules setting a specific time by which vendors must be present and ready for business on market days. Rules that require vendors to occupy stalls by a certain time on market days create opportunities for the unoccupied stalls to be rented to temporary and daily vendors.

◆ **Vacancies.** In addition to assigning market stalls at the beginning of the year, a market may also have rules for assigning or renting stalls when vacancies occur. Short-term vacancies are usually rented to temporary or daily vendors. Long-term vacancies may be made available to current annual stallholders before being made available to others. Market rules may also address whether any of the fees paid by the vendor who originally had the stall assignment will be refunded.

◆ **Daily/Temporary Vendors.** Most farmers' markets allow daily or monthly rentals of stalls in addition to seasonal rentals. As discussed above, an opportunity for daily rental may arise when seasonal renters do not occupy their stalls by the required time, or some stalls may be reserved for short-season products. Market rules generally provide procedures or priorities for stall assignments to temporary or daily renters. Vendors should check the rules or clarify with the market manager whether daily or temporary rental to a vendor is for one day or whether it is for the whole market weekend. Eligibility for temporary or daily stall assignments is typically similar to those for annual vendors, and markets often set a fee for such vendors.

◆ **Subleasing.** Vendors often wish to keep their stall even if they will be unable to use it at a given time.

Most market rules address whether a stall can be sublet or assigned to another individual. A “sublease” occurs when another person rents the stall from the original vendor for a particular period, but the original vendor maintains responsibility under the contract or agreement. “Assignment” of the right to occupy the stall is similar, but the responsibilities under the contract are assigned to the new vendor.

Some markets allow subleases or assignment of the right to occupy the stall only with approval of the market manager, or only to a family member. Other markets do not allow subleasing or assignment of the right to occupy the stall at all. One farmers' market contract reviewed for this article revoked the right to participate in the market if a vendor attempted to assign his or her rights under the contract. However, even if a farmers' market's rules do not allow for subleases or assignments, they may allow for a stall to pass to a family member upon the death of the vendor.

◆ **Electricity/Refrigeration.** Markets may provide access to electricity for some or all stalls. Many market rules address the need for electricity in stalls for vendors who sell products requiring refrigeration. Most markets require the vendor to pay for the electricity costs for his or her stall. The market may charge either a flat fee or a fee based upon actual electricity used.

4. Markets and Minor Children

Markets have a variety of approaches to the role of children in the market. For example, some markets allow children under the age of 18 to be involved in sales at vendor stalls, but only if supervised by a parent or other adult. Market rules regarding children participating in the market are in addition to any child labor laws that may apply.

5. Dispute Resolution

Market rules generally provide a means for resolving disputes. Common disputes may be between two vendors at the market, or vendors or potential vendors and the market or market manager. The market rules likely provide a process for resolving disputes between vendors. The market manager generally has a role in resolving disputes between vendors which may be as informal as trying to resolve the dispute by speaking with each vendor. However, some market rules provide a more formal process, which may or may not involve the market manager as the decision maker regarding the dispute. The more formal process may include specific complaint procedures for vendors to follow or may establish a committee of participating vendors to review

disputes. Additionally, some markets' formal process for resolving disputes allows for appeal of decisions made by the market manager. In some cases, mediation may be available.

In general, farmers' markets which are government-sponsored must provide vendors with due process of law. Although there are few reported court decisions involving farmers' markets, the market rules may also contain provisions regarding attorney fees or costs in the event a dispute leads to a lawsuit or requires the services of an attorney.

Disputes between a vendor and the market manager may arise.

That kind of dispute can be difficult to resolve if the market rules require the market manager to resolve disputes. To resolve the dispute, a vendor should first try to understand his or her market's rules regarding the disputed matter. The vendor should also try to understand the market's rules about dispute resolution, and if there are specific provisions for the process of resolving a dispute if the dispute is with the market manager. Vendors may want to raise their concerns with the producers' association or the governing body of the market, such as a board of directors. If a vendor believes the rules being enforced by the market manager are unfair, he or she may try to change the rules by approaching the market manager, the producers' association, or the governing body of the market.

6. Penalties and Contract Termination

Market managers are often authorized to take a variety of actions to enforce the rules of the farmers' market. Two of the most commonly provided actions for enforcement of market rules are financial penalties and termination of the right to sell at the market.

◆ **Penalties.** Some farmers' market rules set out penalties for vendors who fail to comply with the rules of the market. Penalties may include monetary fines. Fines may increase with the number of violations a vendor has committed. Penalties may also include having to appear before members of the producers' association.

◆ **Contract Termination.** Market rules often address when, how, and by whom the contract between the market and the vendor can be terminated.

Some market rules may have provisions labeled “termination.” However, whether or not a set of market rules includes a section labeled “termination,” it is a

good idea to read the market rules and become aware of provisions that could lead to termination. Some market rules provide specific examples of actions or failures to act that could cause termination. For example, if a vendor does not pay a required fee by the date it is due, that failure could result in termination of the right to sell at that farmers' market. Some market rules state that several absences from the market may lead to termination of the right to participate in the market. Another example, discussed above, involves termination of the right to sell if a vendor attempts to sublease or assign his or her stall to another individual.

Under some market rules, a vendor who seeks to end the contract, or who simply ceases to participate in the market, may forfeit the fees he or she paid. Under other market rules, such a vendor may be eligible for a refund of some of the fees.

7. Insurance

There are risks involved in participating in a farmers' market. For example, an employee could be injured while working on your farm or bringing your products to the market. A customer could be injured while purchasing something from your stand, or a customer could become sick from a product you sold to him or her. There are also risks of crop loss due to bad weather or disease.

◆ **Liability Insurance.** Many farmers' markets require vendors to purchase their own liability insurance. Some market rules require a specific amount of insurance coverage. They may also require that the farmer provide proof of insurance. The required proof of insurance is typically a document that shows insurance coverage for sales activities at the market. A few farmers' markets or farmer associations provide a group insurance policy rather than requiring the vendors to purchase individual policies.

Farmers with questions regarding obtaining a policy to address their specific business needs may want to consult an insurance agent. Even farmers whose markets do not require insurance may want to consider whether to purchase premises and liability insurance. Farmers who already have a farm premises or liability insurance policy should check with their insurance agents to see if it will cover the risks related to their business at the market.

◆ **Crop Insurance.** While generally not required by market rules, one other form of insurance farmers may want to consider is coverage for their crops. Many commercial crops are eligible for either the Federal Crop

Insurance Program, or for the Non-Insured Crop Disaster Assistance Program (NAP) administered by the United States Department of Agriculture. Farmers who are interested in crop insurance or NAP coverage should contact their local Farm Service Agency office to find out whether they are eligible. The Farm Service Agency can provide a list of crop insurance agents. The Farm Service Agency can also provide a list of insurance or NAP application deadlines by crop. In general, farmers must apply for coverage during the eligibility period (before the start of the crop year) and maintain records that will allow them to prove their acreage and yield history.

A note about record keeping. In addition to keeping a record of the market rules for their market, it is also a good idea for farmers to keep records of their production and performance, including acres (or fields or rows) planted, yields, expenses, produce sold, price per unit sold, and produce not sold and brought home after a day at the market. Records can be helpful if conflicts arise and for planning purposes for the following season. Records may also help to show if a farmer qualifies for a loan. Records of crop production history are also essential if natural disaster strikes a crop.

Local, State, and Federal Laws

In addition to the market rules, a farmer's participation in the market may be governed by local, state, and federal laws. Depending on the state, county, city, or town where the market is located, farmers may need to comply with laws regarding many things, including licensing and permits, food handling and safety, collecting and reporting sales tax, labor issues, and farming practices.

In many of the market rules reviewed for this article, the markets placed the burden of compliance with relevant laws on the vendor. However, a farmer must comply with relevant laws whether or not the market rules indicate that compliance is necessary. The market manager may be able to provide information regarding relevant laws, but it is the farmer's responsibility to obey them. Farmers may need to contact state and local agencies to find out the requirements and then take the necessary steps to comply.

It is not possible in this article to discuss all of the local, state, and federal laws that might apply to farmers' market vendors across the United States. To provide an ex-

ample of the types of laws that might apply, this section briefly discusses some relevant federal laws and state laws in Minnesota. For Minnesota farmers, this discussion is general and does not constitute legal advice. For farmers in states other than Minnesota, keep in mind that laws in your state may be different. For advice about your particular situation, consult an attorney.

Licensing Laws

Many state and local governments generally require persons to obtain a license before selling food. Applicants for a food vendor's license in these states and localities may need to demonstrate knowledge of safe food handling, be inspected, and pay a fee. However, some food licensing laws include exemptions for farmers selling at farmers' markets. For example, in Minnesota there are exceptions that may apply to farmers selling products of the farm or garden.

Farmers should consult authorities in their state to find out whether they are required to obtain a license in order to sell food at a farmers' market. In addition to contacting state officials, farmers may also want to contact local officials where the market is located to find out about any additional licensing requirements. For example, vendors selling processed or prepared foods at the Saint Paul Farmers Market in Minnesota are required to have a City of Saint Paul "Farmers Market" license.

Food Safety Laws

A variety of food safety laws could apply to farmers participating as vendors in farmers' markets. Those laws might address a variety of issues including the storage, display, and transportation of food. Food safety rules are often addressed in farmers' market rules. However, a vendor must comply with any relevant state and federal laws as well.

Labeling

There are many laws related to labeling of food products. In general, persons must comply with government requirements for labeling of food products. However, some exemptions from those rules may apply to market vendors.

In addition to including their farm or "brand" name on labels, some farmers may seek approval to make a particular label claim to certify production methods or production location. Examples of these types of claims might include "USDA Organic" or "Minnesota Grown."

For more information on food labeling in Minnesota, including the Minnesota Grown label, contact the Minnesota Department of Agriculture, Dairy and Food Inspection Division at 651-201-6027.

Tax Laws

Tax law is extremely complex, and it can be difficult to know exactly what is required in order to comply with the tax requirements under state and federal law. Many farmers' market rules discuss tax issues, and most market rules explicitly require vendors to comply with state and federal tax laws. State and federal tax laws may include laws regarding income, employment, sales, and use taxes. Vendors may be required to collect and maintain records regarding sales tax. Tax requirements may vary based on what products the vendor sells. Some cities and counties have sales tax requirements as well. For more information on tax requirements, farmers should contact the state and federal departments of revenue. Farmers should also consider seeking expert tax advice for their particular situation.

For more information about license requirements in Minnesota, and whether exceptions to the requirements apply to you and your products, contact the Minnesota Department of Agriculture, Dairy and Food Inspection Division at 651-201-6027. The general rules regarding requirements to obtain a license in order to sell food in Minnesota can be found in Minnesota Statutes Chapter 28A. Under an exception to Minnesota's rules requiring a license to sell food, farmers need not obtain a license to sell products of the farm or garden occupied and cultivated by them. The meaning of this exception was addressed by the Minnesota Supreme Court in 2005 in the case of *State of Minnesota v. Hartmann*. In general, the court ruled that farmers are exempt from the requirement to obtain a license to sell products of their farms, but farmers may still be bound by other laws about production and sale of food products. The Minnesota Department of Agriculture has apparently taken the position that farmers must obtain a license to sell food products, if those products contain even some ingredients that were not produced on the farm. However, other exemptions may apply to sales at farmers' markets or community events, as well as to certain home-processed and home-canned foods.

For more information about Minnesota tax requirements, contact the Minnesota Department of Revenue (MDR) at 651-282-5225 or www.taxes.state.mn.us. The following helpful fact sheets are available on the MDR website:

Agricultural Production, Sales Tax Fact Sheet 100

Food and Food Ingredients, Fact Sheet 102A

Prepared Food, Sales Tax Fact Sheet 102D

Food Stamps, Sales Tax Fact Sheet 115

Local Sales and Use Taxes, Sales Tax Fact Sheet 164

For more information on federal tax requirements, contact the United States Internal Revenue Service (IRS) at 1-800-826-1040 or www.irs.gov.

Labor Laws

Labor law is also extremely complex. Farmers who hire employees to assist with production or sales must comply with any applicable labor laws. However, many labor laws have exemptions for agricultural work. Some of these exemptions may apply to farmers' market activities.

For more information about labor laws, including child labor laws, contact the Minnesota Department of Labor and Industry (DOLI) at 800-342-5354 or www.doli.state.mn.us and the United States Department of Labor, Employment and Standards Division at 612-370-3371 or www.dol.gov.

Discrimination

In addition to laws that must be obeyed by farmers' market vendors, other laws may protect vendors. For example, laws against discrimination may protect farmers. State and federal laws prohibit discrimination based on factors such as race, color, national origin, sex, marital status, sexual orientation, religion, age, receipt of government benefits, or physical or mental handicap in some situations. These laws may apply to your farmers' market. If you believe the farmers' market has unlawfully discriminated against you because of one or more of these factors, you may seek to resolve the dispute as provided in the market rules, or you may want to consult an attorney.

Federal Support for Farmers' Markets

1. USDA's Farmers' Market Nutrition Programs (FMNP)

Congress and USDA established two Farmers' Market Nutrition Programs (FMNP) to provide access for low-income persons to fresh, uncooked, and nutritious food produced by local farmers, while expanding the use and awareness of farmers' markets. The two programs are the Women, Infants, and Children (WIC) Farmers' Market Nutrition Program and the Senior Farmers' Market Nutrition Program. These programs are funded by state and federal money but are administered through state agencies. Individual farmers and farmers' markets can participate in this program. The FMNP provides program participants with coupons or Electronic Benefit Transfer (EBT) debit cards to use only at farmers' markets. Market vendors may accept the coupons and debit cards and redeem them for money. Farmers interested in participating in the program should contact their market manager and/or their state department of agriculture, and inquire about what they need to do to be able to accept and redeem the coupons and debit cards.

2. Food Stamps

Food stamps are provided to low-income individuals to use at participating retailers. Although not exclusively for use at farmers' markets, they may be used by customers at most farmers' markets. Market vendors interested in participating as retailers in the food stamp program should contact their market manager and/or their state department of agriculture. 🍎

For more information please contact:

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Related FLAG publications available at <http://www.flaginc.org/topics/pubs/index.php>

- ◆ "Terms Used in Minnesota Farm Law"
- ◆ "Resources for Hmong Farmers"
- ◆ "Before You Sign on the Dotted Line...Questions for Farmers to Ask Before Entering Into a Direct Marketing Agreement," by Jill E. Krueger (October 2005)
- ◆ *Farmers' Guide to Disaster Assistance* (Fifth Edition, 2004), available online and in print
- ◆ *Farmers' Guide to Minnesota Lending Law* (Second Edition, 2003), available online and in print

Financially distressed farmers in Minnesota should contact the following organizations for legal assistance:

Mid-Minnesota Legal Assistance
(Minnesota Family Farm Law Project)
830 W. Germain, Suite 300
P.O. Box 886
St. Cloud, MN 56302
Phone: 320-253-0121 / Toll-Free: 888-360-2889

Southern Minnesota Regional Legal Services
(Minnesota Family Farm Law Project)
12 Civic Center Plaza, Suite 3000
P.O. Box 3304
Mankato, MN 56002-3304
Phone: 507-387-1211 / Toll-Free: 800-247-2299

Legal Services of Northwest Minnesota, Inc.
1015 Seventh Avenue North
P.O. Box 838
Moorhead, MN 56560
Phone: 218-233-8585 / Toll-Free: 800-450-8585



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For additional information:

Farmers' market operation, rules, and contracts

- ◆ USDA's Agricultural Marketing Service (AMS) at www.ams.usda.gov/farmersmarkets/.
- ◆ *Operational Guidelines for Vendors at the Farmers' Market and Starting a Food Business in Minnesota*, by Minnesota Department of Agriculture, available by calling 651-201-6000 / toll-free 800-967-2627 and requesting a copy, or visit www.mda.state.mn.us.
- ◆ *The New Farmers' Market, Farm-Fresh Ideas for Producers, Managers & Communities*, by Corum, Rosenzweig, and Gibson (2001), published by New World Publishing.
- ◆ *Farmers' Markets: Rules, Regulations and Opportunities* by Neil D. Hamilton (2002), published by the National Agricultural Law Center and available at www.nationalaglawcenter.org/assets/articles/hamilton_farmersmarkets.pdf.
- ◆ *Farmers' Markets* by Janet Bachman (October 2002), published by ATTRA, Appropriate Technology Transfer for Rural Areas, available at <http://attra.ncat.org/attra-pub/PDF/farmmarket.pdf> or by calling 800-346-9140 (English); 800-411-3222 (Spanish).

Direct marketing

- ◆ *The Farmer's Legal Guide to Producer Marketing Associations* by O'Brien, Hamilton, and Luedeman (2005), published by Drake University Agricultural Law Center.
- ◆ *The Legal Guide for Direct Farm Marketing* by Neil D. Hamilton (1999), published by Drake University.
- ◆ *Building a Sustainable Business: A Guide to Developing a Business Plan for Farms and Rural Businesses* (2003), at www.sare.org/publications/business.htm.

