Blazing Trails through the Jungle of Local Food Regulations

A project of Minnesota Institute for Sustainable Agriculture,
Renewing the Countryside, and
Minnesota Farmers' Market Association

Funded by:
North Central Sustainable Agriculture Research & Education Program (NCR-SARE)

Who We Are

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Who Is Helping Us

Local Food Advisory Committee

Minnesota Department of Health
- Food, Pools, and Lodging Section
- Statewide Health Improvement Partnership

Minnesota Department of Agriculture
- Food and Feed Safety Division
- Dairy and Meat Inspection Division

Why This Project?

- All three of us have worked with local food systems in Minnesota for many years, and have witnessed and experienced confusion about regulations.

- We have seen good ideas struggle and sometimes fail because of confusion and misinformation about regulations.

- Knowledge is power! We have knowledge to share.

Why Now?

- We have funding from the Sustainable Agriculture Research & Education Program of USDA

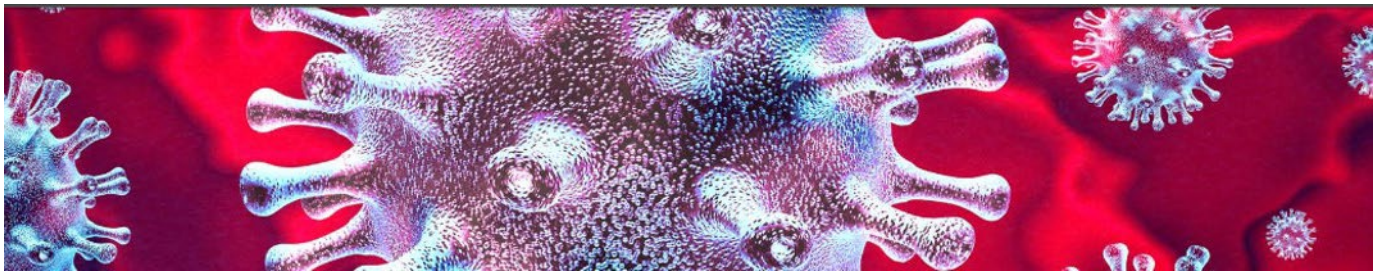
- We have a collection of useful materials created over the past 5 years with assistance from the MN Department of Agriculture and MN Department of Health

- Local food is in demand, innovative food business models are multiplying, and understanding of regulations needs to catch up.

What We Will Do:

- Train farm educators, food system advocates and educators, and leaders in the agriculture and food communities on the basics of regulation of local food enterprises and systems

- Provide reference materials and a PPT presentation to trainees so they can become resource people in their communities
    - Printed binder + flash drive containing key reference materials



Regarding the COVID-19 Crisis:

- This presentation trains to the law as it stands.
- During the COVID-19 crisis, MDA is exercising enforcement discretion around some activities that help reduce physical contact between people.
- Enforcement discretion is limited, and won't last forever. Food businesses need to be prepared to follow the laws that exist

What Topics Will We Cover?

- The landscape of food regulation: federal, state, local (statute & rule)
- Exclusions and exemptions from licensing
- Jurisdiction among regulatory agencies for licensing and inspection
- License types issued by MDA
- License types issued by MDH
- Delegation authorities
- Food Innovation Team

What this IS:

Information about how to navigate the regulations that exist and how to find help if you're stuck

What this is NOT:

Advocacy to change laws, complain about the laws, or figure out how to circumvent the laws

What this IS:

Information to increase your awareness and understanding of how and when to ask questions

What this is NOT:

You won't know everything about the details of the law at the end of this training.

Where and When?

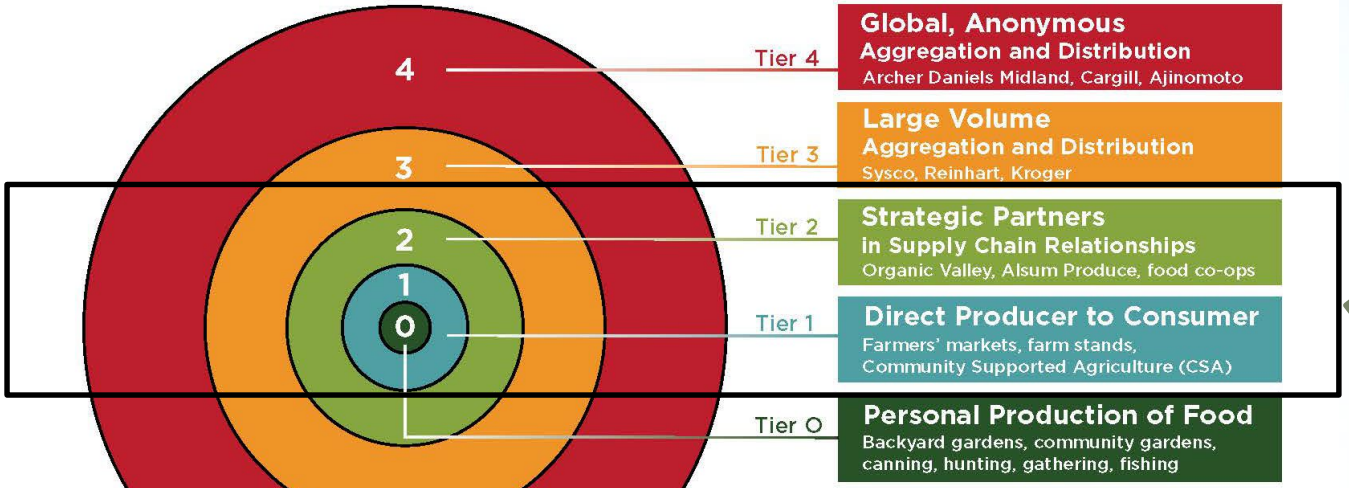
All 87 counties in Minnesota

Tribal Nations

January 2019 through August 2020

Reference Materials

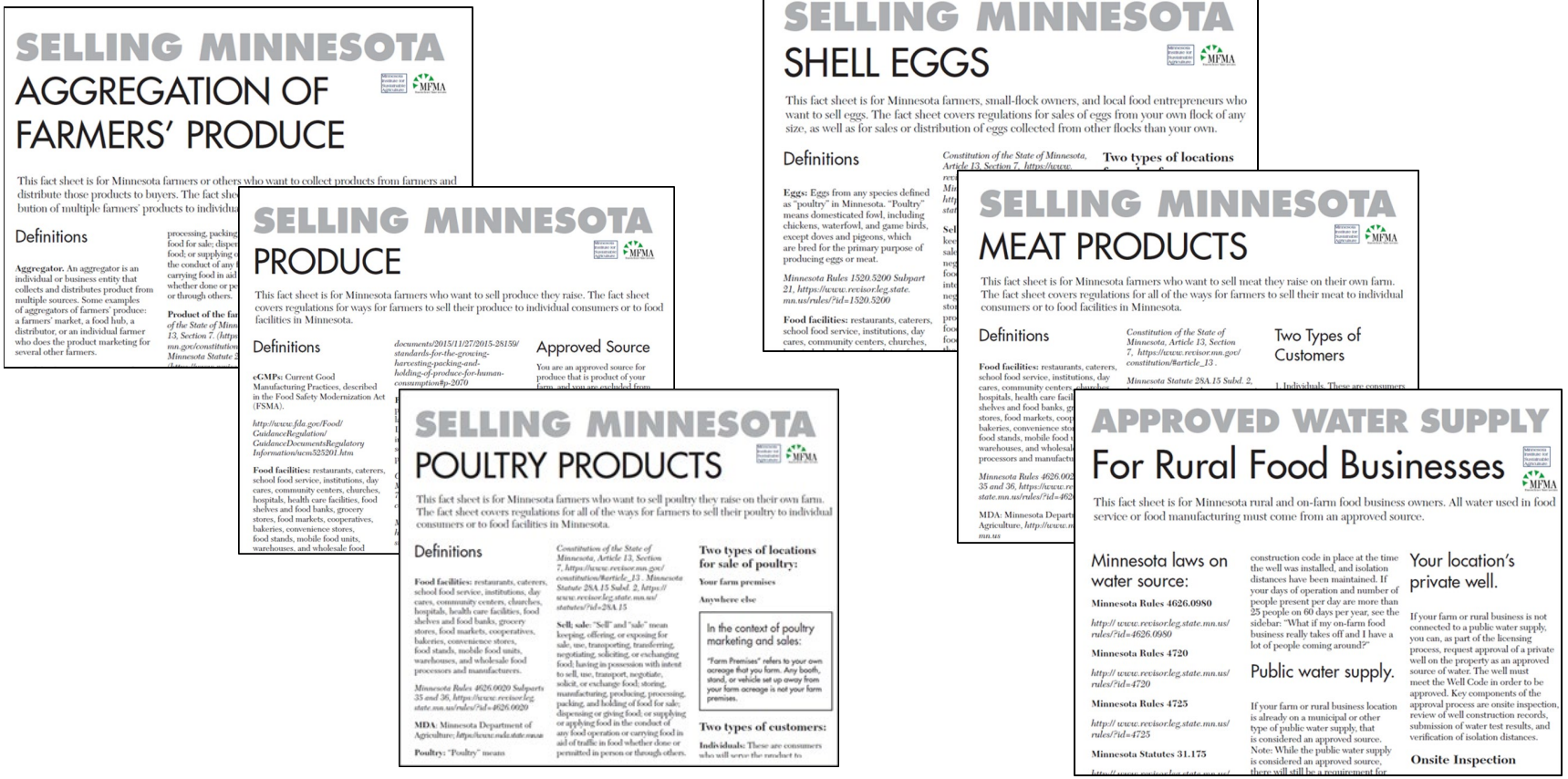
Reference Materials



Tier 1 & Tier 2 are what we will cover

Center for Integrated Agricultural Systems, University of Wisconsin. 2010.

Reference Materials For Farmers:

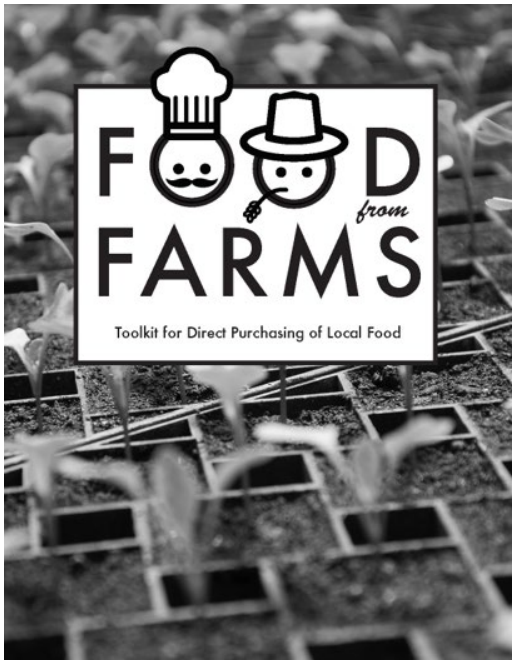


http://www.misa.umn.edu/publications

Reference Materials For Buyers:

DEPARTMENT OF AGRICULTURE

Approved Sources of Meat and Poultry for Food Facilities



DEPARTMENT OF AGRICULTURE
UNIVERSITY OF MINNESOTA | EXTENSION

Sale of Locally Raised Eggs to Food Facilities

MINNESOTA
UNIVERSITY OF MINNESOTA
EXTENSION

Selling or Serving Locally Grown Produce in Food Facilities

Reference Materials: Foraging

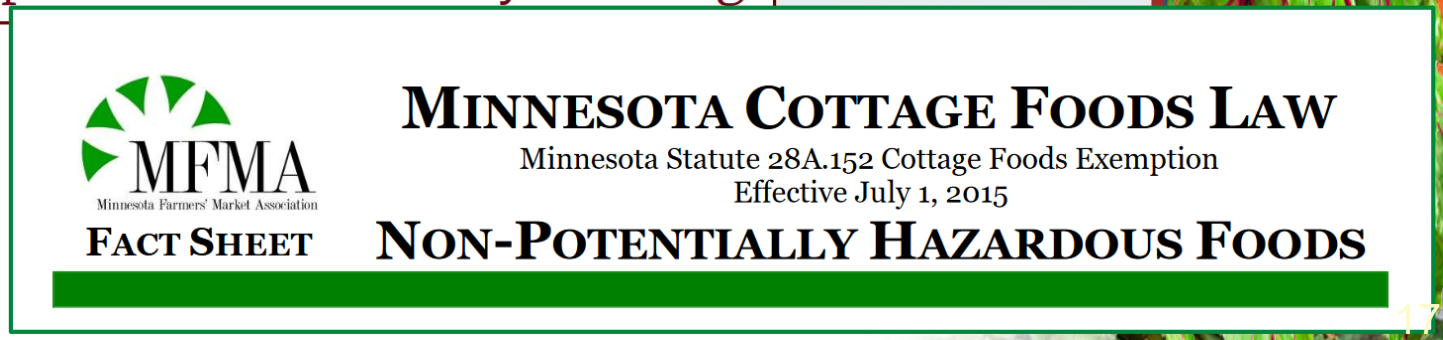
DEPARTMENT OF AGRICULTURE

WILD MUSHROOM FORAGING

Home > Food, Feed > Food Safety > Produce Safety Program > Wild Mushroom Foraging

Produce Safety Program | Resources | **Wild Mushroom Foraging** | FSMA Grower Trai

Reference Materials: Cottage Food



Reference Materials: Other Products

https://www.mda.state.mn.us/food-feed/what-raw-milk

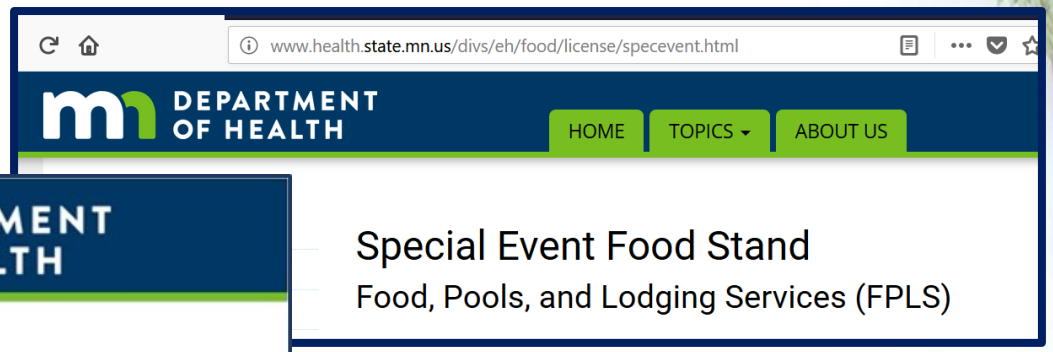
https://www.mda.state.mn.us/food-feed/pet-food-program

Reference Materials: FSMA Produce Safety Rule

ON-FARM READINESS REVIEWS

DEPARTMENT OF AGRICULTURE

Reference Materials: Food & Beverage Service



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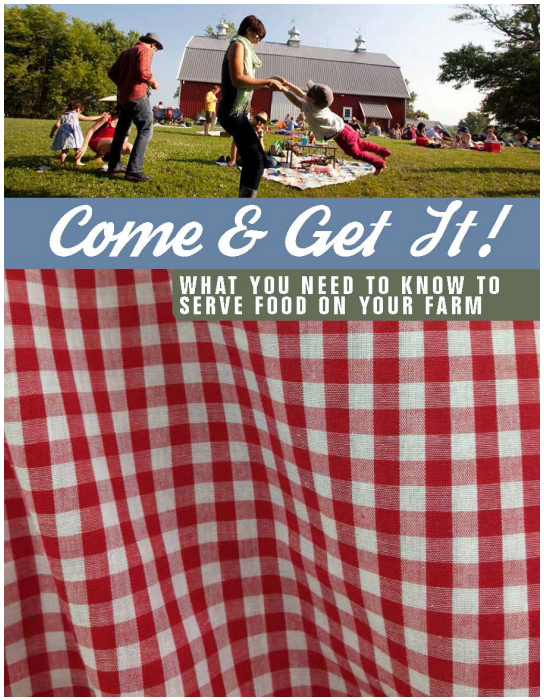
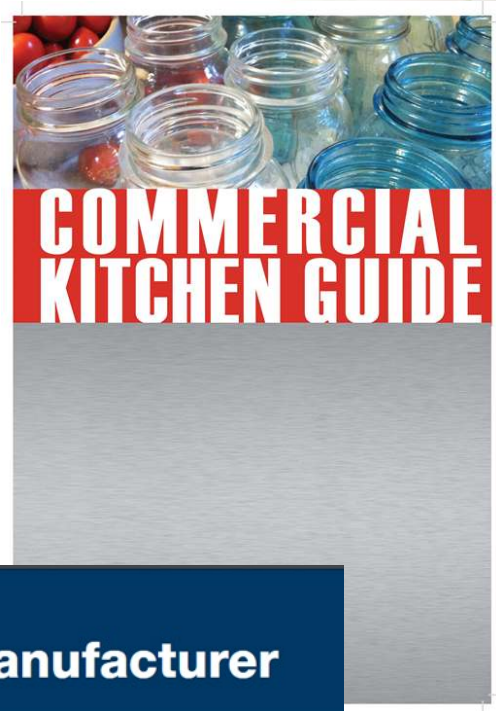


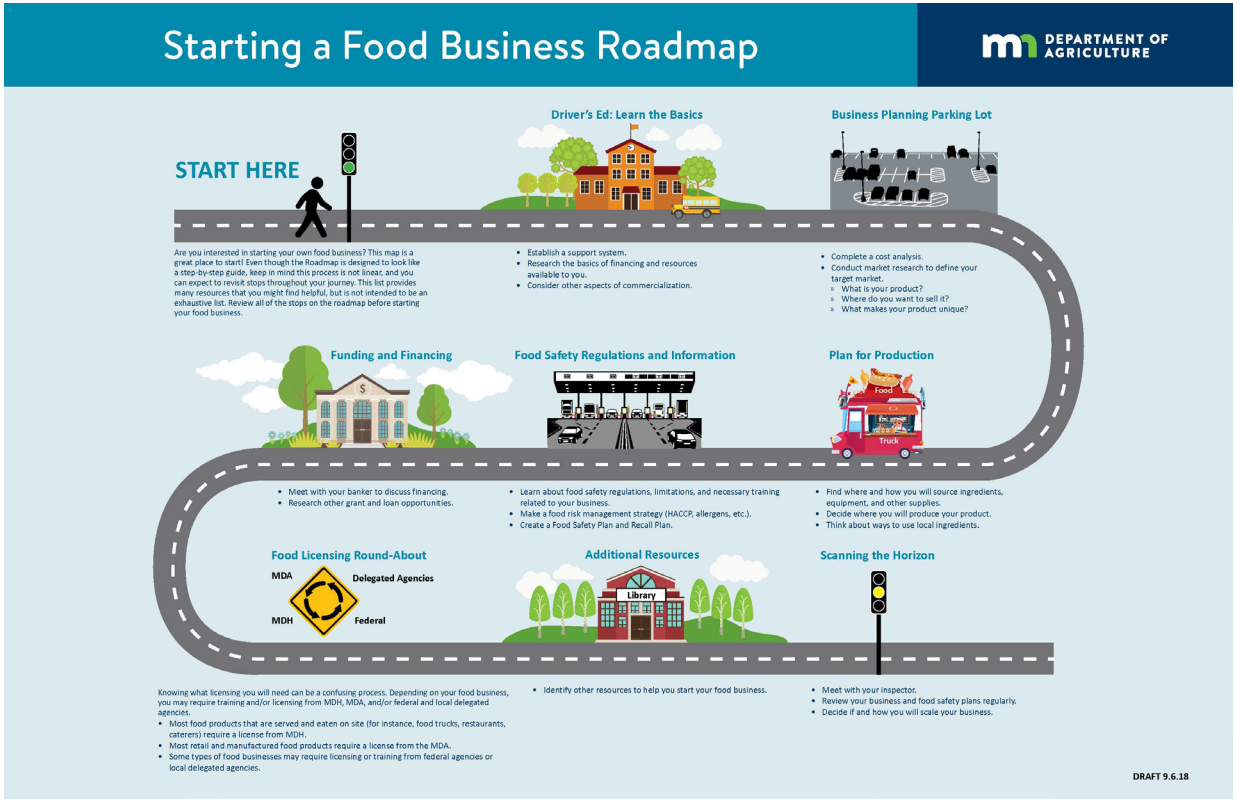
http://www.misa.umn.edu/publications

For Food Manufacturers



https://extension.umn.edu/food-safety/food-processors

Reference Materials: For Food Businesses



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The landscape of food regulation: federal, tribal, state, local (statute & rule)

Landscape of Food Regulation

Food:

"Food" means every ingredient used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for humans or other animals, whether simple, mixed, or compound; and articles used as components of these ingredients.

M.S. 34A.01 Subdivision 4
https://www.revisor.mn.gov/statutes/cite/34A.01

Landscape of Food Regulation

Sell/Sale:

"Sell" and "sale" mean keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others.

M.S. 34A.01 Subdivision 12
https://www.revisor.mn.gov/statutes/cite/34A.01

Landscape of Food Regulation

Definitions:

Food = Every ingredient involved in something humans will eat or drink

Sell/Sale = Any time food changes hands in any way

Landscape of Food Regulation

Definitions:

Person = Any individual, firm, partnership, cooperative, society, joint stock association, association, company, or corporation and includes any officer, employee, agent, trustee, receiver, assignee, or other similar business entity or representative of one of those entities.

Individual = An actual flesh-and-blood human being

M.S. 34A.01 Subd. 10
https://www.revisor.mn.gov/statutes/cite/34A.01

Landscape of Food Regulation

Phrases not defined in Minnesota statute:

“Regularly Engaged in Food Business”

“Community Event”

“Point of Sale”

*** If you run into unknowns, there is help! We’ll talk about the Food Innovation Team in a bit.

Landscape of Food Regulation

Abbreviations:

CFR = Code of Federal Regulations

CGMP = Current Good Manufacturing Practices

PMO = Pasteurized Milk Ordinance

Landscape of Food Regulation

More Terms:

Approved = MN Rules 4626.0020 subpart 4

Exemption = given in statute

Exclusion = carved out of statute

Landscape of Food Regulation

Federal Law:

USDA

- Pure Food and Drug Act (1906)
- Meat Inspection Act (1906)
- Poultry Products Inspection Act (1957)

Landscape of Food Regulation

Federal Law: FDA

Pasteurized Milk Ordinance (1924)

Food, Drug, and Cosmetic Act (1938)

Food Safety Modernization Act (2011)

Landscape of Food Regulation

Food Safety Modernization Act (2011)
7 parts:

* Produce Safety
* Preventive Controls for Human Food
* Preventive Controls for Animal Food
* Sanitary Transportation of Food
* Foreign Supplier Verification
* Accredited Third-Party Certification
* Intentional Adulteration of Food

Landscape of Food Regulation

Creamery Journal, 1907 – Wheeler McMillan
Inspector Under the Act

"Where are you going, my pretty maid?"
I'm going a-milking, sir," she said.
"Dear maiden, I'd like to disclose the fact,
That I'm an inspector under the Act.
So pray remain, for I want to know
A thing or two before you go.
Nay, pretty maiden, you must not weep;
How far away are the pigs you keep?
And what percentage of butter-fat
Does your moo-cow yield? Pray tell me that.
And how is the health of your pretty pet;
Has it anthrax, cancer, blackleg, garget?
Has your sister measles or whooping cough;
Is the water clean in the drinking trough?
I pray thee answer these questions of fact,
For I'm an inspector under the Act.
With the fierce bacilli also I cope
By means of my powerful microscope.
Excuse me, I must examine your hand,
Purely official, you understand."

--accessed from Living History Farms website
https://www.lhf.org/2011/09/pasterization-and-regulation/

Landscape of Food Regulation

Federal Law:

USDA:
meat, poultry, eggs

- MN can be stricter than, but not less strict than USDA

Stricter in MN:
- “Amenable” farm-raised game species
- Fewer types of exemptions for on-farm poultry processing

Landscape of Food Regulation

Federal Law:

FDA:

fish, shellfish, snails, crickets, milk, all other food…

…unless a wholesale food product contains more than 2% meat. Then it's USDA.

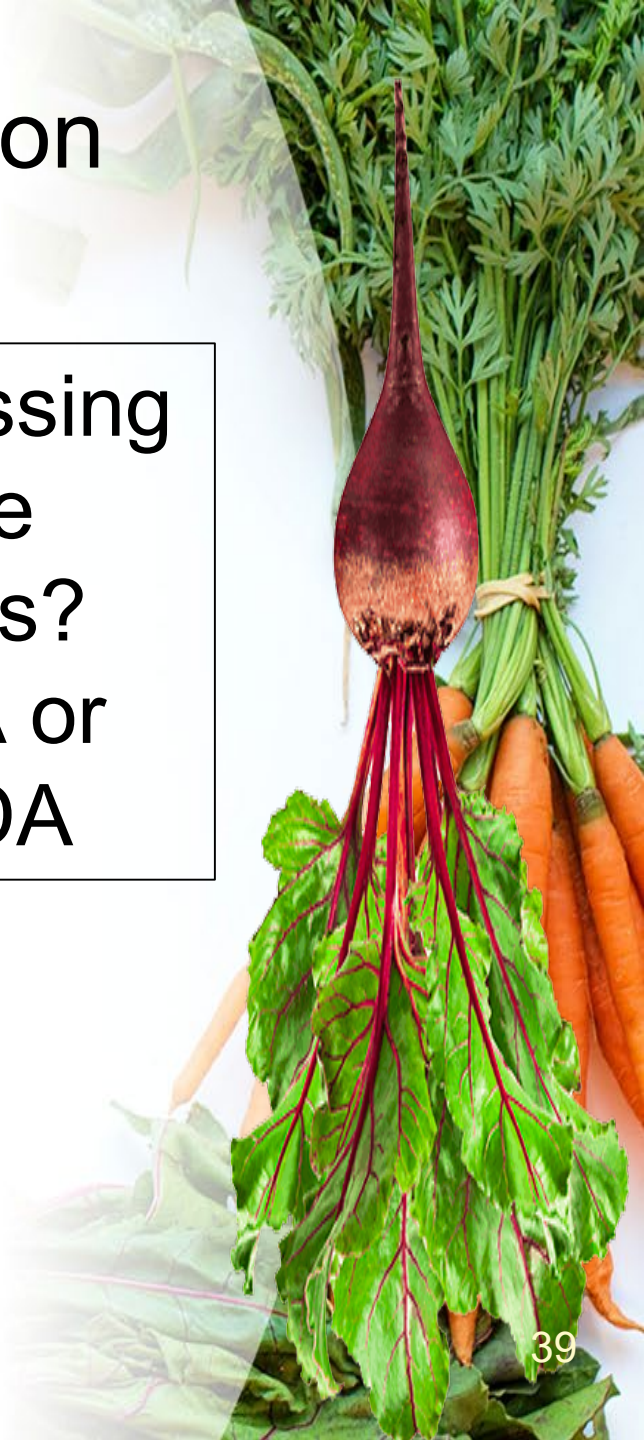
Landscape of Food Regulation

State Statute
- no variances

State Rule
- variances allowed

Minnesota Rule 4626:
Minnesota Food Code

Crossing State Lines? FDA or USDA



Landscape of Food Regulation

Sovereign Nations

In general (may be exceptions):

- Trust Land: Activities subject to tribal law
- Fee Land & Privately Owned: Activities subject to federal, state, and local laws
- Gray area: When a food product is made on trust land but sold elsewhere

Landscape of Food Regulation

Sovereign Nations

Model Ag & Food Code:

https://www.tribalfoodcode.com/

Landscape of Food Regulation

Local Ordinances
- variances
- conditional use permits
- zoning

Best Practices
- GAP

Landscape of Food Regulation

License vs. Inspection

Legal authority of MDA to inspect: M.S. 31.04

Legal authority of MDA to enforce: M.S. 34A.04

Legal authority of MDH to inspect and enforce: M.S. 157.20

Inspection authority flows to delegated authority if specified in the contract for the delegated authority

Landscape of Food Regulation

M.S. 31.04 For purposes of enforcement of the Minnesota Food Law, the commissioner, or any of the commissioner's authorized agents, is authorized upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) to enter at reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food in commerce;

(2) to inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein; and to obtain samples necessary to the enforcement of the Minnesota Food Law; and

(3) to have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; provided, that evidence obtained under this clause shall not be used in a criminal prosecution of the person from whom obtained; and provided, further, that carriers shall not be subject to the other provisions of the Minnesota Food Law by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

Landscape of Food Regulation

M.S. 34A.04 Subdivision 1.Enforcement required.

(a) The commissioner shall enforce this chapter and chapters 28, 28A, 29, 30, 31, 31A, and 34. To carry out the enforcement duties under these chapters, the commissioner may, upon presenting appropriate credentials, during regular working hours and at other reasonable times, inspect premises subject to the commissioner's enforcement and licensing authority; require information from persons with information relevant to an inspection; and inspect and copy relevant papers and records, including business records.

Landscape of Food Regulation

M.S. 157.20

Subdivision 1.Inspections.
It shall be the duty of the commissioner to inspect, or cause to be inspected, every public pool, food and beverage service establishment, hotel, motel, lodging establishment, or resort. For the purpose of conducting inspections, the commissioner shall have the right to enter and have access thereto at any time during the conduct of business.

Subdivision 3.Orders.
When, upon inspection, it is found that the business and property so inspected is not being conducted, or is not equipped, in the manner required by the provisions of this chapter or the rules of the commissioner, or is being conducted in violation of any of the laws of this state pertaining to the business, it is the duty of the commissioner to notify the person in charge of the business, or the owner or agent of the buildings so occupied, of the condition found and issue an order for correction of the violations. Each person shall comply with the provisions of this chapter or the rules of the commissioner. A reasonable time may be granted by the commissioner for compliance with the provisions of this chapter.

Landscape of Food Regulation

Keeping our presentation on track:

Some things are relevant

to Local Food Businesses

But we're not going to talk about them

Landscape of Food Regulation

Taxes?

Visit MN Dept of Revenue Website to find fact sheets

www.taxes.state.mn.us

Fact Sheet # 148: Selling Event

www.revenue.state.mn.us/businesses/sut/factsheets/FS148.pdf

Landscape of Food Regulation

Taxes?

Fact Sheet #102D
Industry Guide: Prepared Food

www.revenue.state.mn.us/businesses/sut/factsheets/FS102D.pdf

Landscape of Food Regulation

Insurance? Business Structure?

Find info for farm-based enterprises:

Secretary of State
Farm Commons
FLAG
Ag Law Ctr @ Drake University
Public Health Law Center/Mitchell-Hamline
Great Lakes Indigenous Law Center

Quiz:

- When were the first federal food laws enacted?
- What's the most recent federal food law?
- What was the main original reason for pasteurizing milk?
- What is food?
- What food exchanges are not considered a "sale?"

Does Safe = Licensed?

Does Licensed = Safe?

Not always!

Locally-grown product of the farm is an **approved source** of food without being licensed.

Exclusions from Licensing

Exclusion from Licensing

Product of the Farm

State of Minnesota Constitution, Article 13, Section 7

MN Statute 28A.15 Subd. 2: https://www.revisor.mn.gov/statutes/cite/28A.15

Product of the Farm

Product of the farm is NOT an exclusion from food safety requirements!

- Follow CGMPs

- Adequate facility
    * Not a private residence
    * Not used for personal activities

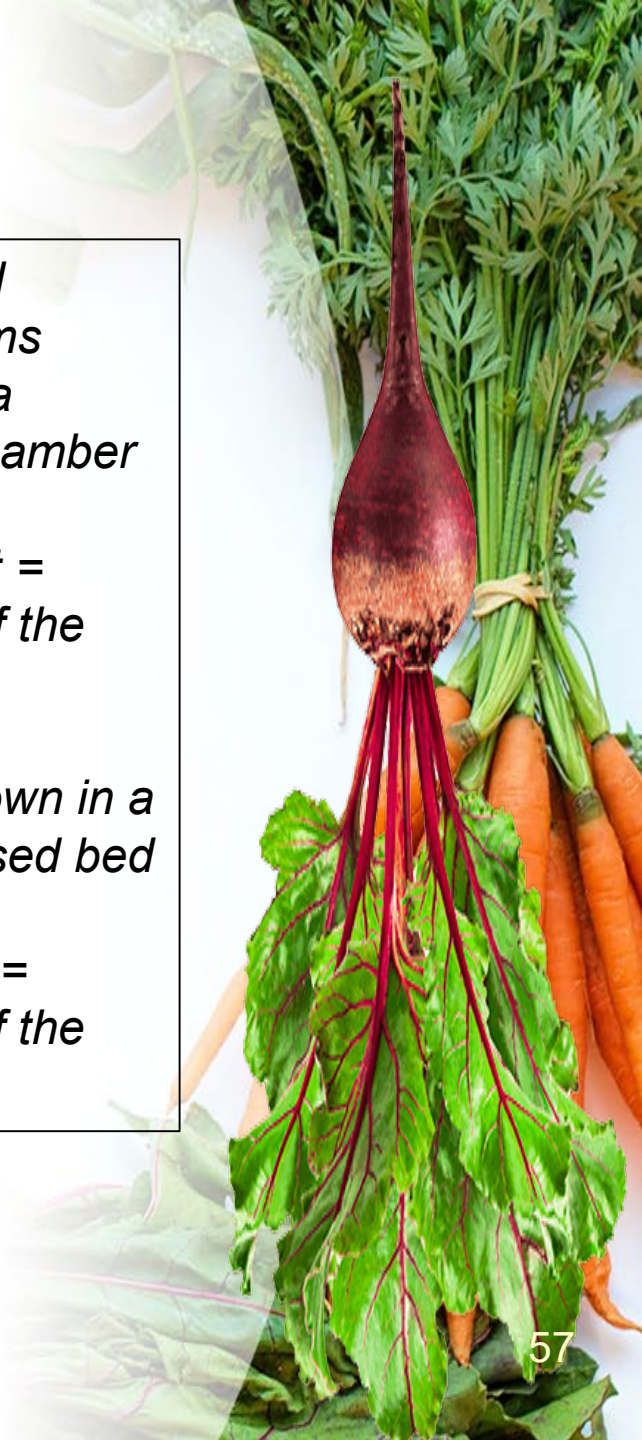
Product of the Farm

People can sell their own product of the farm or garden to any buyer, including food facilities, with no license.

- Has to be from their owned or rented property (any size or configuration)
- No off-farm ingredients added

Cultivated mushrooms grown in a growth chamber in seller's basement = product of the farm.

Herbs grown in a 6' x 6' raised bed in seller's backyard = product of the farm.



Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs
- Fruits
- Vegetables
- Edible flowers
- Cultivated Mushrooms
- Herbs
- Nuts
- Grains
- Dry beans
- Honey
- Maple syrup
- Wild foraged foods from own property

What's missing from this list? DAIRY. Dairy products have additional facilities and inspection requirements under the Pasteurized Milk Ordinance (PMO)

Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

Why are these items blue?

Because regulations for sale of these items depend on your buyer and on where you sell.

Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

If you are selling to a food business:

- the meat or poultry must be processed under inspection (USDA or Minnesota Equal-To)

- shell eggs have grading, candling, & labeling requirements.

Product of the Farm

Meat & Poultry

Locally raised meats and poultry are legal for food facilities to use if slaughtered and processed under continuous (daily) inspection. Two options:

- USDA (can cross state lines)
- Minnesota Equal-To
  (can be sold within MN)

http://misadocuments.info/LFAC_local_meat.pdf

http://misadocuments.info/LFAC_local_poultry.pdf

Product of the Farm

Meat & Poultry

If you buy an animal out of the sales ring at a livestock auction

… and take it straight to a butcher for your meat sales

…is that really product of your farm?

Product of the Farm

Meat & Poultry

Livestock dealers are required to have a license to buy & sell animals. The dealer license is not required for:

"…persons engaged in the business of farming, when purchasing livestock for breeding or herd replacement purposes or feeding programs, and when selling the livestock they have owned and raised, fed out or fattened for slaughter in their specific farming program."

M.S. 17.03 Subdivision 7(b)

Product of the Farm

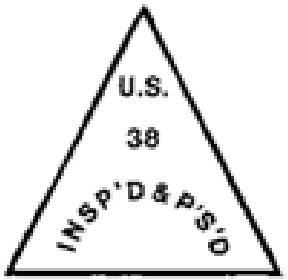
Meat & Poultry

USDA inspection “bugs”

Minnesota Equal-To Inspection “bug”

Product of the Farm

Meat & Poultry



"Non-amenable" species:

- bison
- cervidae (elk, deer)
- rabbit
- guinea pig
- pheasant

Product of the Farm

Meat & Poultry

Kosher or Halal Processing

- Religious bodies must approve the slaughterer to conduct slaughter according to their requirements.
- The slaughterer must submit an application to MDA or USDA that includes a certificate of approval from their religious body.
- The slaughterer must pass a visual inspection of their slaughter technique on the kill floor of a processing plant. They must be able to accomplish humane slaughter with their technique.

Product of the Farm

Meat & Poultry

Wild-harvested game cannot be sold in commerce because it doesn't get a pre-slaughter inspection.*

*May be exceptions in some tribal settings.

Product of the Farm

Meat & Poultry

Farm-raised dangerous animals (elk, bison, bull) can have antemortem inspection on-farm. The inspector witnesses the whole process of killing and transport to the plant. Animal carcass must be left intact & delivered to plant within a limited period of time (1 hr).

Product of the Farm

Meat & Poultry

Donated meat has to be eligible to be sold to a food facility;

UNLESS it's the Venison Donation Program

- Venison donation program – set up through DNR with cooperation from MDA specifically for donation to nonprofit food assistance programs

M.S. 17.035 venison donation

Product of the Farm

Meat & Poultry

OR donation of traditional Native American foods to a food service program in a public facility

- Wild-harvested wild game or fish can be donated to food service programs that serve primarily (more than 50%) Native Americans.
- It is the food service's responsibility to verify the donated game is wholesome and was handled in a sanitary manner.

Product of the Farm

Meat & Poultry

OR donation of wild-harvested wild game to a registered charitable organization.

- The donor of the game must provide a receipt documenting the gift of the game to the receiving organization

- The game meat must be received and processed in an MDA-licensed facility; and handled, stored, prepared, and served according to all sanitary requirements in licensed facilities.

Product of the Farm

Shell Eggs

Locally raised shell eggs are legal for food facilities to use. Eggs are product of the farm if sold by the farmer who owns the egg-layer flock, and can be handled and sold by others with the proper licensing from MDA and/or registration from USDA.

http://misadocuments.info/LFAC_local_eggs.pdf

Product of the Farm

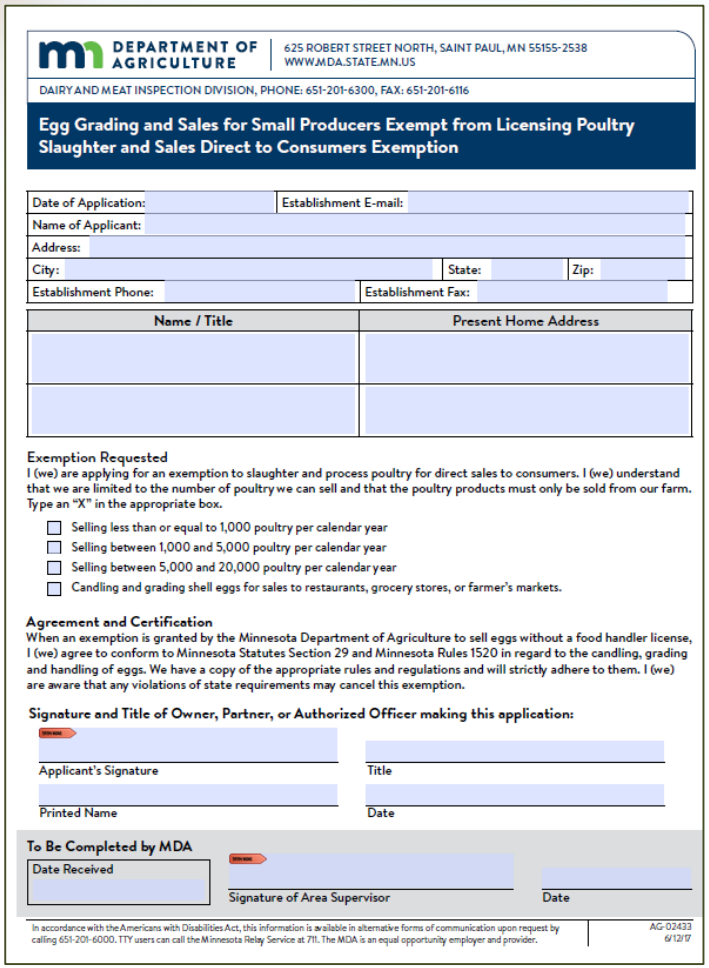
Shell Eggs

Health care facilities may be an exception. Pasteurized eggs are required for some uses at health care facilities because their patients or residents are defined as “highly susceptible populations.”

http://misadocuments.info/LFAC_local_eggs.pdf

Product of the Farm

Shell Eggs



DEPARTMENT OF AGRICULTURE | 625 ROBERT STREET NORTH, SAINT PAUL, MN 55155-2538 WWW.MDA.STATE.MN.US

DAIRY AND MEAT INSPECTION DIVISION, PHONE: 651-201-6300, FAX: 651-201-6116

Egg Grading and Sales for Small Producers Exempt from Licensing Poultry Slaughter and Sales Direct to Consumers Exemption

Date of Application:		Establishment E-mail:	
Name of Applicant:			
Address:			
City:		State:	Zip:
Establishment Phone:		Establishment Fax:	

Name / Title	Present Home Address

Exemption Requested

I (we) are applying for an exemption to slaughter and process poultry for direct sales to consumers. I (we) understand that we are limited to the number of poultry we can sell and that the poultry products must only be sold from our farm. Type an "X" in the appropriate box.

- ☐ Selling less than or equal to 1,000 poultry per calendar year
- ☐ Selling between 1,000 and 5,000 poultry per calendar year
- ☐ Selling between 5,000 and 20,000 poultry per calendar year
- ☐ Candling and grading shell eggs for sales to restaurants, grocery stores, or farmer's markets.

Agreement and Certification

When an exemption is granted by the Minnesota Department of Agriculture to sell eggs without a food handler license, I (we) agree to conform to Minnesota Statutes Section 29 and Minnesota Rules 1520 in regard to the candling, grading and handling of eggs. We have a copy of the appropriate rules and regulations and will strictly adhere to them. I (we) are aware that any violations of state requirements may cancel this exemption.

Signature and Title of Owner, Partner, or Authorized Officer making this application:

Applicant's Signature | Title

Printed Name | Date

To Be Completed by MDA

Date Received | Signature of Area Supervisor | Date

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.

AG-02433 6/12/17

Small Flock Egg Producer Registration Form

http://mda.state.mn.us/sites/default/files/2018-05/ag02433eggx_0.pdf

Questions about meat, poultry, or shell egg sales to food facilities?

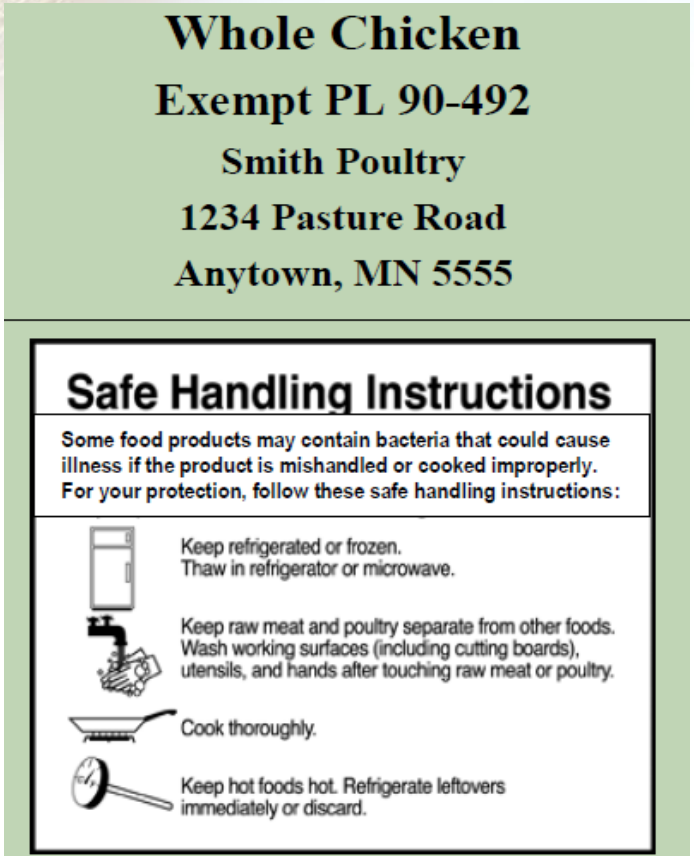
Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

If you are selling to individuals at a farmers' market:

- The meat *must* be processed under inspection
- The poultry can be processed under inspection OR on the farm in an approved facility, and labeled as PL-exempt.
- shell eggs have grading, candling, & labeling requirements.

Product of the Farm



Farmers can process chicken on their own farms, without a license, under approved sanitary conditions, for sale to individual end consumers.

Product of the Farm

Storage & Transport Requirements for meat, poultry, and eggs at farmers' markets:

Meat & Poultry – frozen, 0°F
-- fresh, 41°F + date-marking

Shell Eggs – 45°F

Product of the Farm

Questions about meat, poultry, or shell egg sales at farmers' markets?

Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

If you are selling to an individual customer who comes to your farm:

- Meat packages must have been processed under continuous inspection
- Poultry can be inspected, or processed on the farm
- Eggs need not be candled, graded, or labeled

Product of the Farm

Custom-Exempt Sales

Meat or poultry, sold prior to slaughter and processed at a licensed & permitted Custom-Exempt facility

- The customer gives their cutting & processing instructions to the custom-exempt facility.
- The customer can choose to have ingredients added such as spices, and special processes such as smoking.

Product of the Farm

Custom-Exempt Sales

Packages go to the customer and are labeled “Not for Sale” or unlabeled.

Product of the Farm

Wild foraged foods

* **Wild Mushrooms** can qualify as product of the farm if harvested on the seller's owned or rented property, BUT the seller must have their certificate of training in wild mushroom identification and be registered with the MN Department of Agriculture.

* **Herbs, edible flowers, nuts, other edible plants or portions of plants** can qualify as product of the farm if harvested on the seller's owned or rented property.

Product of the Farm

Wild foraged foods

If you're harvesting wild foods on land you don't own or rent, you need a food handler license for the sale of those products.

If public land or public waters, Natural Resources agency permit may be required (state or tribal)

Processed Product of the Farm?

Product of the Farm

Can include processed fruits & vegetables

2 triggers end product of the farm status & require a license:

1. Sold by someone other than the farmer who grew it.
2. Added off-farm ingredients.

Processing is NOT a trigger to require a license (but maybe an inspection, commercial-grade facility, food safety plan, and other requirements)

http://misadocuments.info/LFAC_local_produce.pdf

Product of the Farm

Making vegetables presentable for sale is not "Processing"

Farmers and gardeners can always do these tasks, using **potable water,** meaning water that is safe to drink.

- Trim roots
- Trim tops
- Wash off soil
- Remove outer husks or leaves

Product of the Farm

What is “processing” of fruits, vegetables, mushrooms, or herbs?

Peeling
Shredding
Dehydrating
Bagging*
Canning*
Fermenting*
Slicing
Wrapping
Freezing
Waxing
Treatment for ripening

*These may be special processes that require additional training, certification, facilities, etc.

http://misadocuments.info/LFAC_local_produce.pdf

Product of the Farm

Farmers can do this, with potable water, appropriate facilities (not a kitchen in a private residence), and appropriate processes. Follow CGMPs.

Examples:

- Shredded, bagged cabbage
- Peeled, sliced carrots
- Chunks of squash
- Frozen blueberries
- Frozen apple slices

http://misadocuments.info/LFAC_local_produce.pdf

Questions about fruit & vegetable processing under the Product of the Farm Exclusion?

Product of the Farm

Fermented product:

- Kombucha
- Vinegar

If your kombucha has too much alcohol, it comes under DPS and taxation. You have to really control your process.

Alcohol is regulated by Department of Public Safety. www.dps.state.mn.us

See fact sheet – DPS - AGTE

Product of the Farm

Alcohol:

- Mead
- Wine
- Beer
- Spirits

Alcohol is regulated by Department of Public Safety. www.dps.state.mn.us

Seek out fact sheets.

Federal Tax & Trade Bureau (TTB)

Product of the Farm

Beverages:
Kombucha
Herbal infusion or Tea
Fruit juice*
Vegetable juice*
Fruit/Vegetable juice blends*
Wheatgrass juice

http://misadocuments.info/LFAC_local_produce.pdf

* These may require special processes: pasteurization, juice HACCP (Hazard Analysis and Critical Control Processes)

Product of the Farm

Mixed-Ingredient Products:

Yes, this can be product of the farm so long as EVERY ingredient is produced by you on your farm or garden.

What if you can't produce every ingredient yourself?

Get a license!

Product of the Farm

Sometimes you might be better off to use the Cottage Food Exemption,

or to use an off-farm ingredient and get a license.

Product of the Farm

You are responsible for the safety of your product that enters commerce.

Even if other people mishandle the product after it leaves you, you may be held liable for injuries that may occur.

(Moral of the story: buy insurance)

Product of the Farm

Traceability requirements don't apply to every enterprise.

Traceability is a best practice **regardless** of requirement, and can help you manage risk

Any more questions about Product of the Farm?

Exclusion from license:

Not Regularly Engaged in Food Business

M.S. 28A.15 Subd 2

* Occasional cakes

Exclusion from license:

Not Regularly Engaged in Food Business

M.S. 28A.15 Subd 2

* Organization's Bake Sale

Exclusion from license:

Principal Mode of Business 28A.15 Subd 7

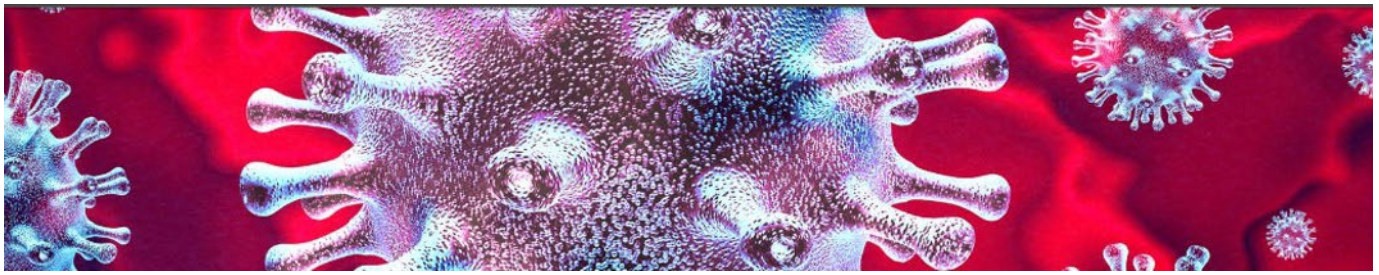
(Read entire section; be careful of “principal mode of business” and location of comma between clauses. Two separate groups of “persons” are described in the statute.)

Exemption from licensing:

Food Sampling & Demonstration

M.S. 28A. 151

At a farmers' market or community event, you can give samples or do a cooking demonstration with samples, with no license.



Except during the COVID-19 Crisis:

- On-site food consumption is forbidden at farmers' markets.
- This includes food sampling.

Follow requirements in MN Rule 4626.1855

(Except you do not need to have hot, pressurized water for ware-washing)

(*But you do need warm water for handwashing*)

MFMA
Safe Food Sampling Kit
IGLOO

Exemption from licensing:

Cottage Food

M.S. 28A.152

Cottage Food: Per Individual

- **Registration with MDA is required!**
- Training is required, online or in-person
- Training is good for three years

Tier 1:

- Up to $5,000 in annual gross sales
- No registration fee

Tier 2:

- Up to $18,000 in annual gross sales
- $50 annual registration fee

https://www.misa.umn.edu/resources/local-food-sales-resources/cottage-food

Cottage Food vs. Licensed Local Food Sales

- Can make it in a home kitchen
- Non-potentially hazardous food
- $18,000 sales cap per individual per year
- ALL sales to individual consumers
- NO sales to businesses or other food facilities
- Product delivery must be in person

- Must make it in an approved commercial-grade kitchen, not a private residence kitchen
- Any food product type is possible with appropriate facilities & training
- No sales cap
- Can sell to food businesses or food facilities
- Product delivery need not be in person

Cottage Food

Examples:

- Bakery products
- Flavored honey or maple syrup products
- Pickles, salsa, fermented products
- Jam, jelly, fruit syrup

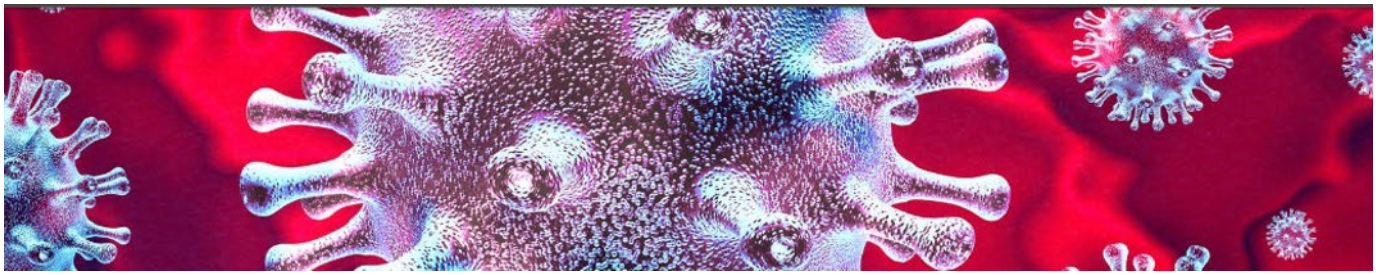
The MN Farmers' Market Association has a long list of allowed Cottage Food items:

https://www.mfma.org/CFL

These product types can be made and sold to INDIVIDUALS under the Cottage Food exemption …

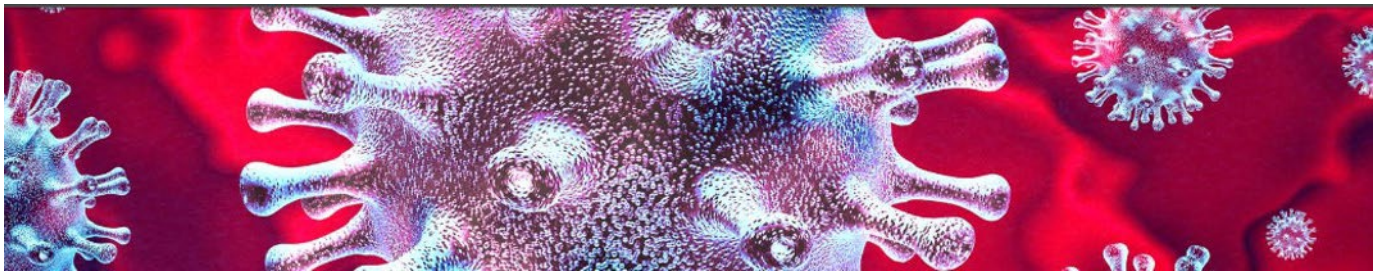
BUT …
If you want to sell items to a food business or food facility, you can't do that under Cottage Food. Items must be made under a license in an approved facility.

Cottage Food can be a stepping stone to licensed food production



Cottage Food During COVID-19 Crisis:

- If you are doing porch pick-up, please protect those packages from the elements.
- Arranging pick up at your location with physical distancing is allowed.
- Delivery directly to your customers with physical distancing is allowed.



Cottage Food During COVID-19 Crisis:

- Still not allowed: cottage food delivery through the mail or any other delivery service –

including FedEx, UPS, meal delivery services like DoorDash; or delivery through a farmers' market, farmer group, or other business entity.

Questions about Cottage Food?

Legal Local Food

Don’t mix exclusions and exemptions!

You must meet all conditions of the exclusion or exemption in order to claim it.

Legal Local Food

Don’t mix exclusions and exemptions!

EXCEPT: The exemption for sampling & demonstration can be combined with either Cottage Food or Product of the Farm.

Licensed Local Food Sales

Individual farmers or others can get licensed by the Minnesota Department of Agriculture to sell:

- Foods they didn't grow themselves on their owned or rented land
- Foods with off-farm ingredients added

Licensed Local Food –
But what if food is donated?

"Sell" and "sale" mean keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others.

M.S. 34A.01 Subdivision 12
https://www.revisor.mn.gov/statutes/cite/34A.01

Licensed Local Food –

But what if food is donated?

Cottage Food can be donated to a fundraiser bake sale.

Venison can be donated to a food bank/food shelf/feeding program through the Venison Donation Program

Traditional Native American foods, including wild game, can be donated to a public facility

Wild game can be donated to a registered charitable organization (facility and processing requirements)

Licensed Local Food –

But what if food is donated?

Other than these specific examples, food that is donated must be eligible to be sold. It must be approved source.

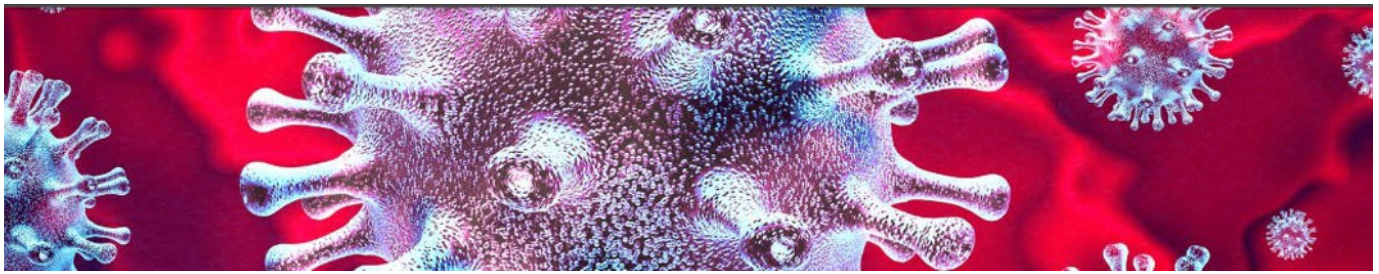
<u>Not Approved Source:</u>

Cottage Food
Custom-Exempt Meat & Poultry
Shell eggs not candled/graded/labeled
Wild-harvested wild game

Licensed Local Food –

products sold by others than the farmer who grew it:

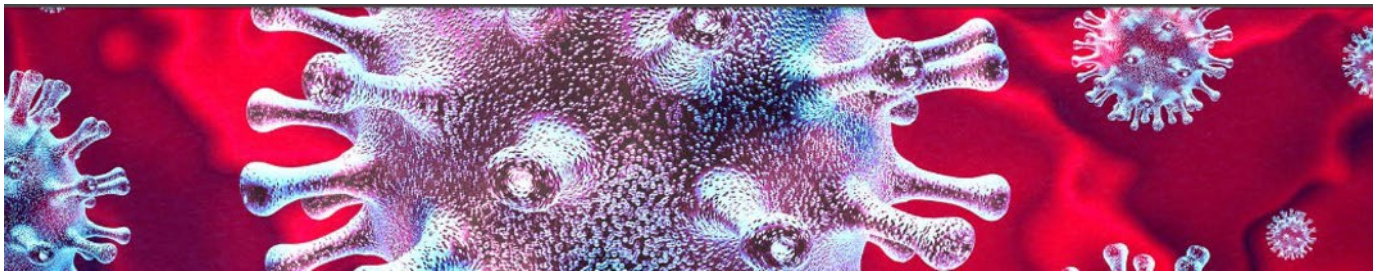
- Community Supported Agriculture in which one farm buys from other, separate farms to fill their CSA box for customers
- Farmers' Market Aggregation
  (Products from multiple vendors are collected and sold by the farmers' market entity)
- Food hub sales
  (Products from farmers are collected and sold by a public or private entity with a goal of providing a market channel for local farmers and food makers)
- Broker/distributor sales
  (Businesses that purchase and resell or arrange for sale of large volumes of product)



Aggregation of Products During COVID-19 Crisis

The MDA plans to exercise licensing enforcement discretion for short-term, reasonable measures taken to comply with the COVID-19 requirements for social distancing and limiting the gathering of people, provided general food safety practices are maintained. Enforcement discretion is specifically because of COVID-19 and public health control measures.

Farmers' markets or groups of farmers, even without licenses, could do some multi-farm bundling and delivery of orders now to support social distancing, but would have to get licensed to keep up those practices after the enforcement discretion period ends.



Aggregation of Products During COVID-19 Crisis: Cottage Food not included

Enforcement discretion for aggregation of products does not extend to cottage food items.

- Cottage Food Producers (CFPs) still have to personally deliver their products to their customers.
- Entities that aggregate products can help CFPs advertise their products, but cannot handle payments on behalf of the CFPs.

Licensed Local Food –

products sold by others than the farmer who grew it:

Wholesale Produce Dealer License

* Totally separate from food licenses!
* Protects COMMERCE, not food safety.

Licensed Local Food –

products sold by others than the farmer who grew it:

Wholesale Produce Dealer License

Covers produce, poultry products, egg products, milk and milk products

Licensed Local Food –

products sold by others than the farmer who grew it:

Wholesale Produce Dealer License

Does not apply to collaborative arrangements among farmers (i.e. farmers' market aggregation)

Licensed Local Food – added off-farm ingredients

- Bakery products
- Flavored honey or maple syrup products
- Pickles, salsa, fermented products
- Jam, jelly, fruit syrup
- Multi-ingredient products: soups, salads, sandwiches, sauces, spring rolls

http://misadocuments.info/AppendixB_LocalFood_Sourcing_Produce_Other.pdf

WATER

Water

APPROVED WATER SUPPLY

For Rural Food Businesses

This fact sheet is for Minnesota rural and on-farm food business owners. All water used in food service or food manufacturing must come from an approved source.

Minnesota laws on water source:

Minnesota Rules 4626.0980

http:// www.revisor.leg.state.mn.us/ rules/?id=4626.0980

Minnesota Rules 4720

http:// www.revisor.leg.state.mn.us/ rules/?id=4720

Minnesota Rules 4725

http:// www.revisor.leg.state.mn.us/ rules/?id=4725

Minnesota Statutes 31.175

http:// www.revisor.leg.state.mn.us/

construction code in place at the time the well was installed, and isolation distances have been maintained. If your days of operation and number of people present per day are more than 25 people on 60 days per year, see the sidebar: "What if my on-farm food business really takes off and I have a lot of people coming around?"

Public water supply.

If your farm or rural business location is already on a municipal or other type of public water supply, that is considered an approved source. Note: While the public water supply is considered an approved source, there will still be a requirement for

Your location's private well.

If your farm or rural business is not connected to a public water supply, you can, as part of the licensing process, request approval of a private well on the property as an approved source of water. The well must meet the Well Code in order to be approved. Key components of the approval process are onsite inspection, review of well construction records, submission of water test results, and verification of isolation distances.

Onsite Inspection

Water

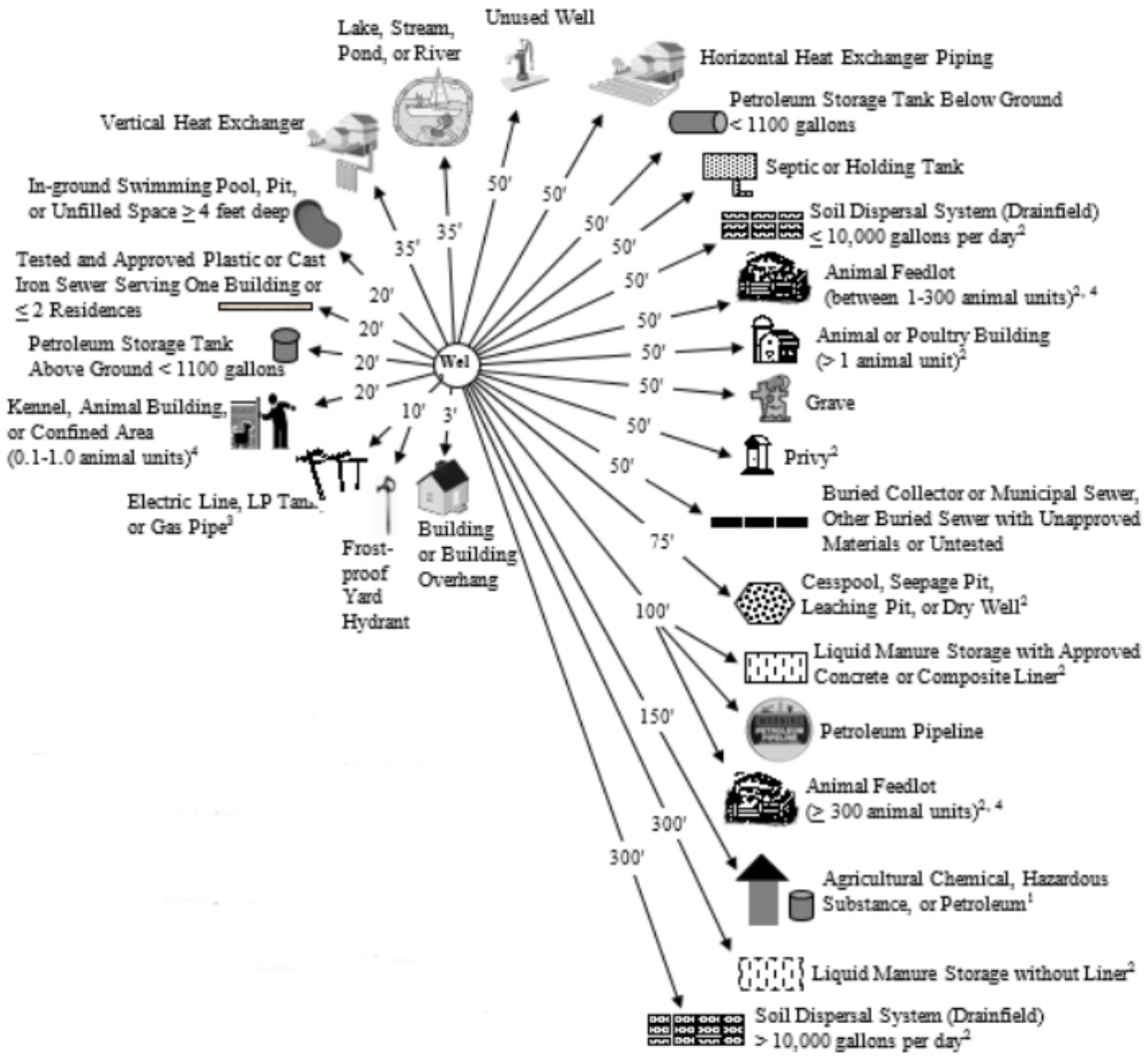
Private Well?

- Must be constructed to Well Code
- Must have construction record (these were required after 1974)
- Must maintain isolation distances
- Water test for total coliform bacteria, nitrites/nitrates

Protecting Your Well

Selected Well Isolation Distance Requirements

(See Minnesota Rules, chapter 4725 for a complete list of requirements.)



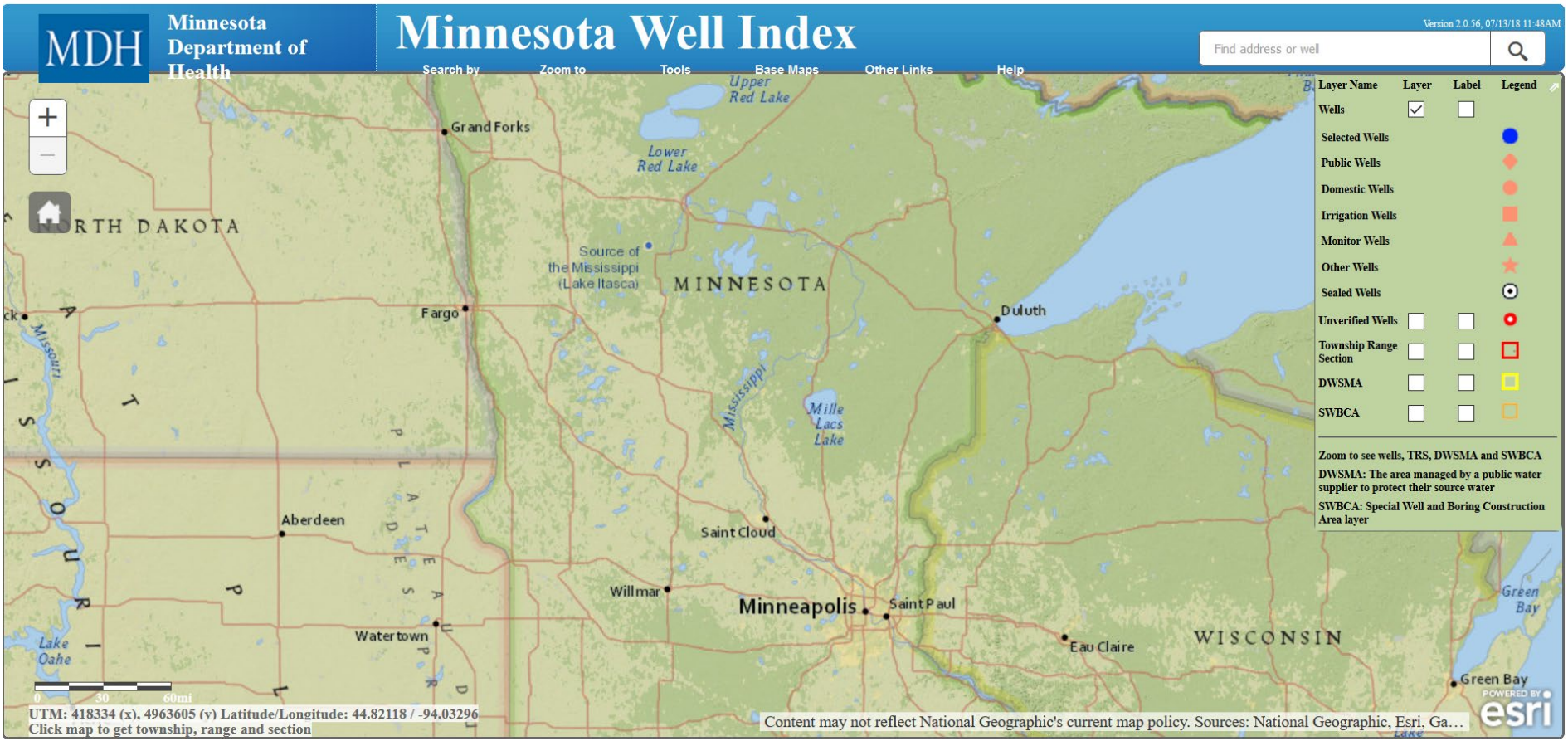
Water

Private vs. Public Water Supply Threshold:

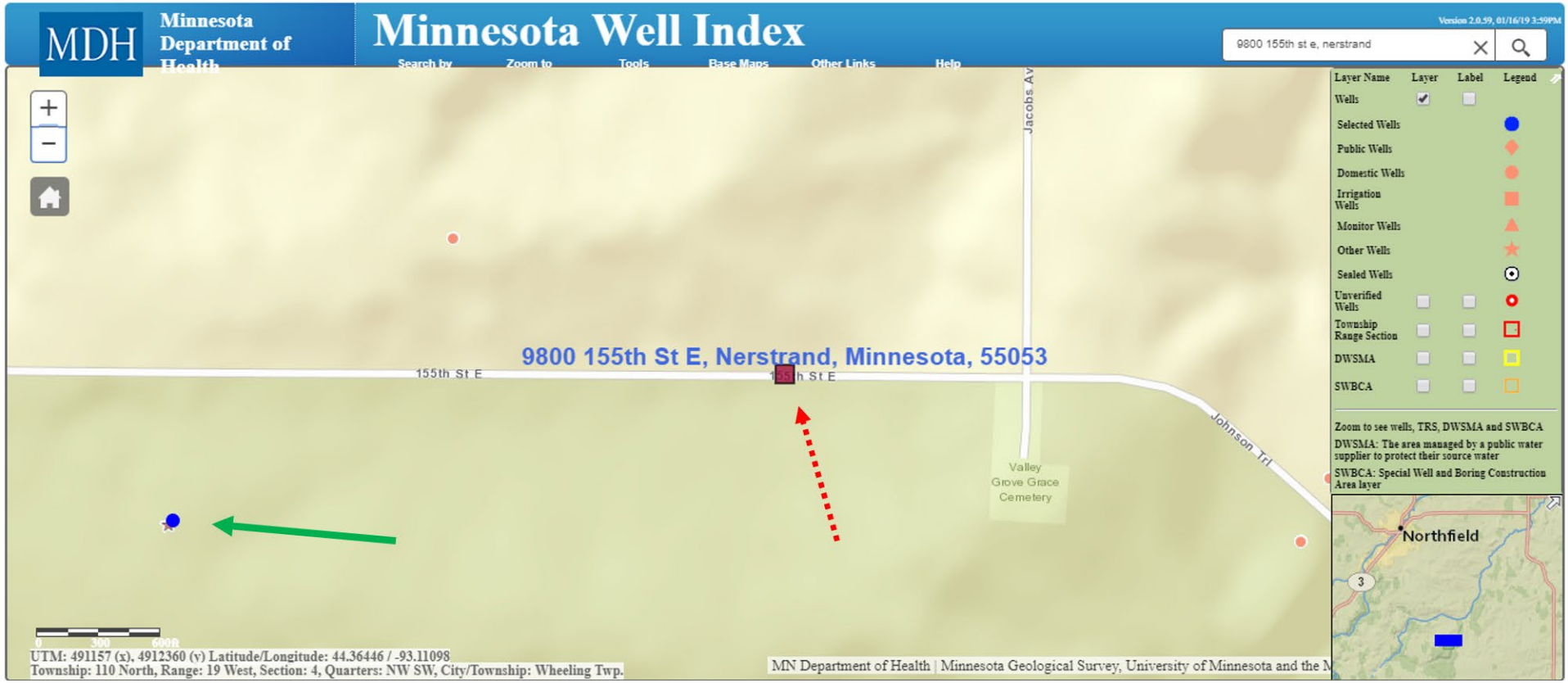
25 people served on 60 or more days of the year

Water

“Serving” means having those people physically present in the location. You may have a rural meat processing plant that sends thousands of pounds of meat out the door per year, but the 25 people and 60 days applies only to people such as employees who are regularly present at the plant.



https://www.health.state.mn.us/communities/environment/water/mwi/index.html



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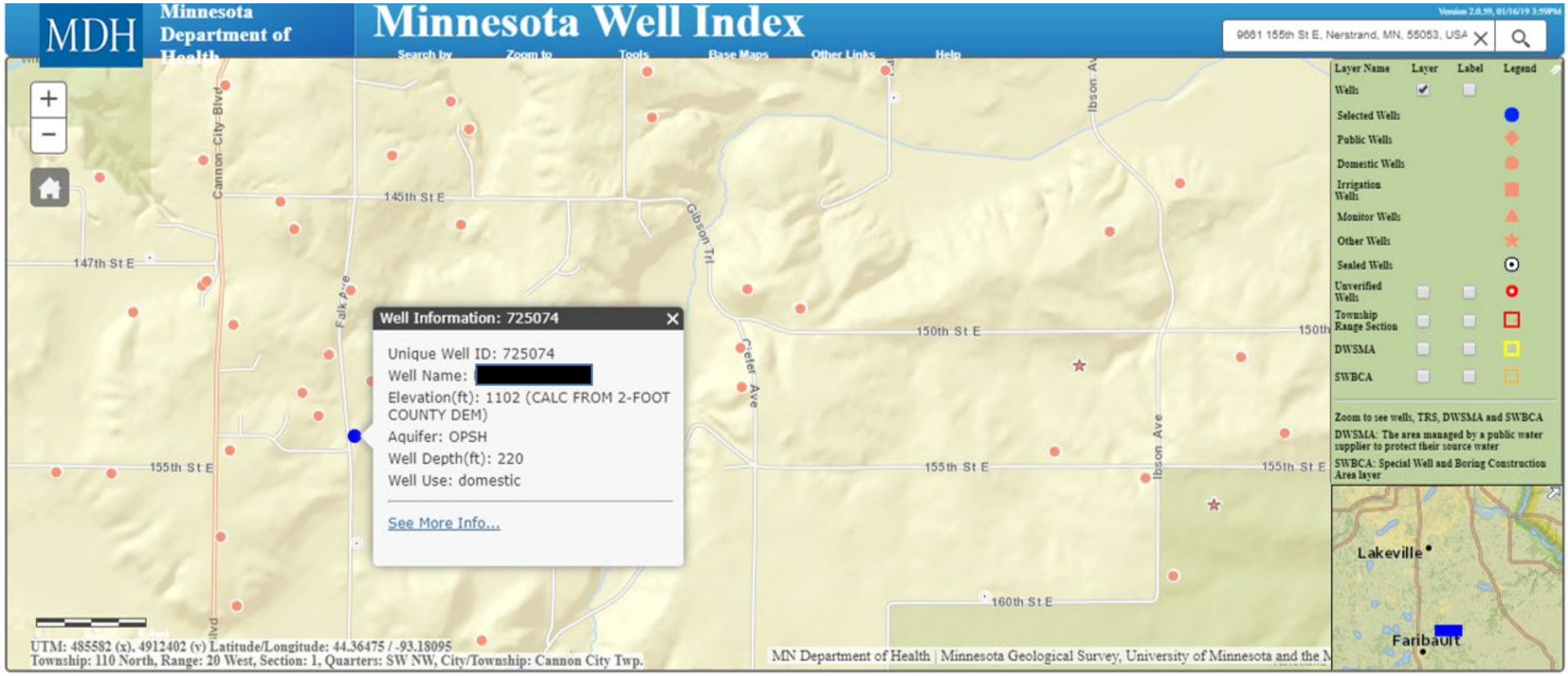

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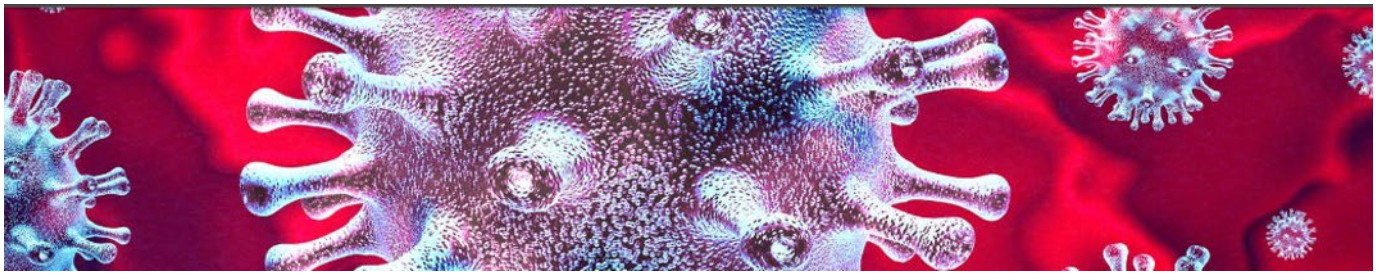
Food & Beverage Service



No Dining-In during COVID-19 Crisis:

- Food & beverage service establishments can still operate, with ordering and take-out only.
- Food & beverage service establishments still must be properly licensed.
- Food deliveries are allowed.

Come and get it!

DO I NEED A LICENSE?

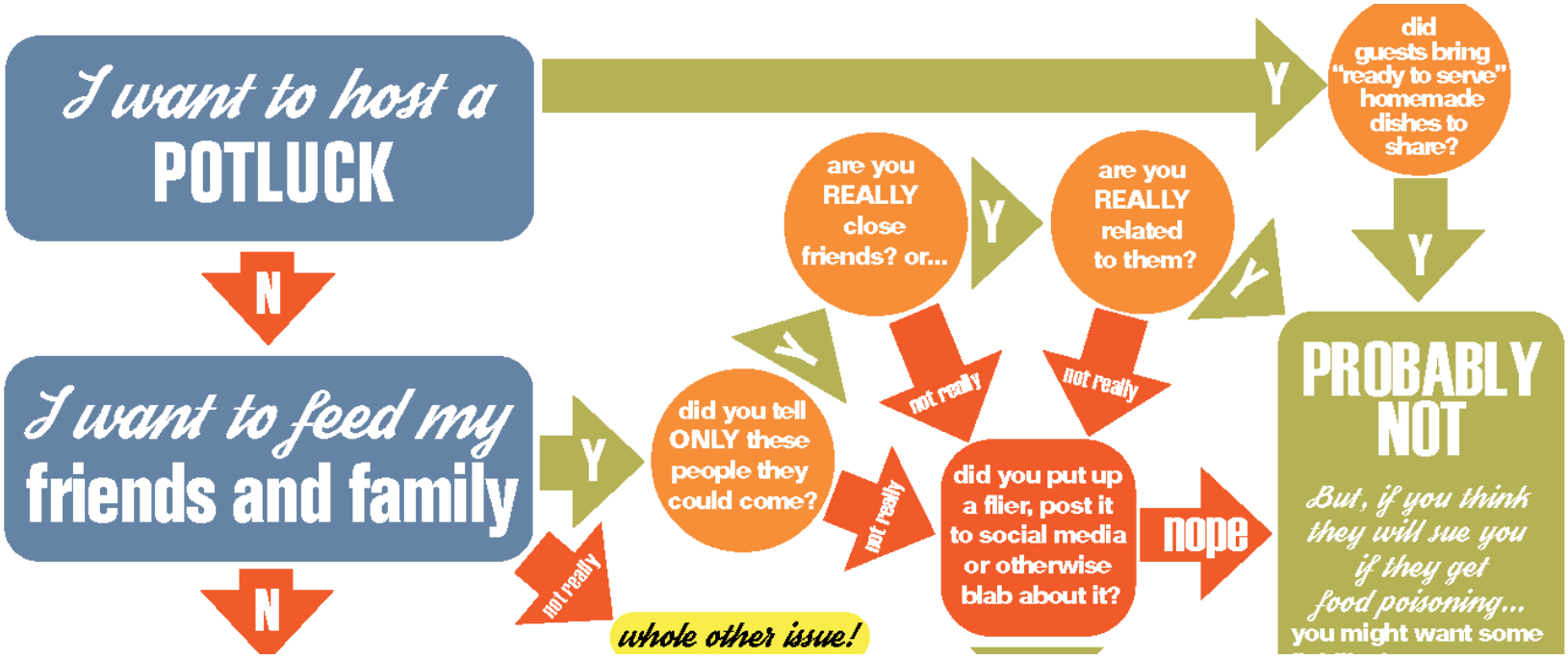
Before you ring the dinner bell - Let's discuss what you want to do.

MINNESOTA STATUTES 157: FOOD, BEVERAGE, AND LODGING ESTABLISHMENTS

Minnesota Statute 157.16: License Required

Minnesota Statute 157.22: Exemptions

https://revisor.mn.gov/statutes/cite/157


I want to host a POTLUCK
Y
did guests bring "ready to serve" homemade dishes to share?
Y
N
are you REALLY close friends? or...
Y
are you REALLY related to them?
Y
I want to feed my friends and family
Y
did you tell ONLY these people they could come?
not really
not really
not really
did you put up a flier, post it to social media or otherwise blab about it?
nope
PROBABLY NOT
But, if you think they will sue you if they get food poisoning...
you might want some
N
not really
whole other issue!

What is a potluck?

What is a potluck?

Minnesota Statute 157.22 (Subdivision 8):

[No license is required for] food not prepared at an establishment and brought in by individuals attending a potluck event for consumption at the potluck event. An organization sponsoring a potluck event under this clause may advertise the potluck event to the public through any means. Individuals who are not members of an organization sponsoring a potluck event under this clause may attend the potluck event and consume the food at the event. Licensed food establishments other than schools cannot be sponsors of potluck events. A school may sponsor and hold potluck events in areas of the school other than the school's kitchen, provided that the school's kitchen is not used in any manner for the potluck event. For purposes of this clause, "school" means a public school as defined in section 120A.05, subdivisions 9, 11, 13, and 17, or a nonpublic school, church, or religious organization at which a child is provided with instruction in compliance with sections 120A.22 and 120A.24. Potluck event food shall not be brought into a licensed food establishment kitchen.

Church Lady Law

Minnesota Statute 157.22, Subdivisions 2 & 12

Weddings, funerals, fellowship meals

Since 1995, a licensing exemption has been in place that allows faith-based communities to serve food at weddings, funerals, and fellowship meals within the house of worship. Those are considered private events for the faith-based community “family,” even if visitors may attend.

Church Lady Law 2012

In 2012, an exemption was added to allow faith-based communities to serve food at fundraisers or community events conducted in the building or on the grounds belonging to the faith-based community.

Church Lady Law

- There must be a certified food protection manager or a trained volunteer who trains food preparation workers in food safety

- U of MN Extension offers “Cooking Safely for a Crowd”

Fraternal, Sportsman, & Patriotic Organizations Exemption

Tax-exempt fraternal, sportsman, or patriotic organizations can hold fundraiser meals in their building or on their grounds; with home-prepared, donated food.

M.S. 157.22 Subdivision 7

University & College Exemption

Colleges and Universities that have gone through a process to establish their own health code are exempt from food licensing in buildings they own or operate.

M.S. 157.22 Subdivision 3

Soup & Chili Cookoff Exemption

Cook-off contests run as fundraisers by non-profit organizations are exempt from licensing. The language of the statute does specify “soup or chili.”

M.S. 157.22 Subdivision 14

2019: Food Stand Exemption

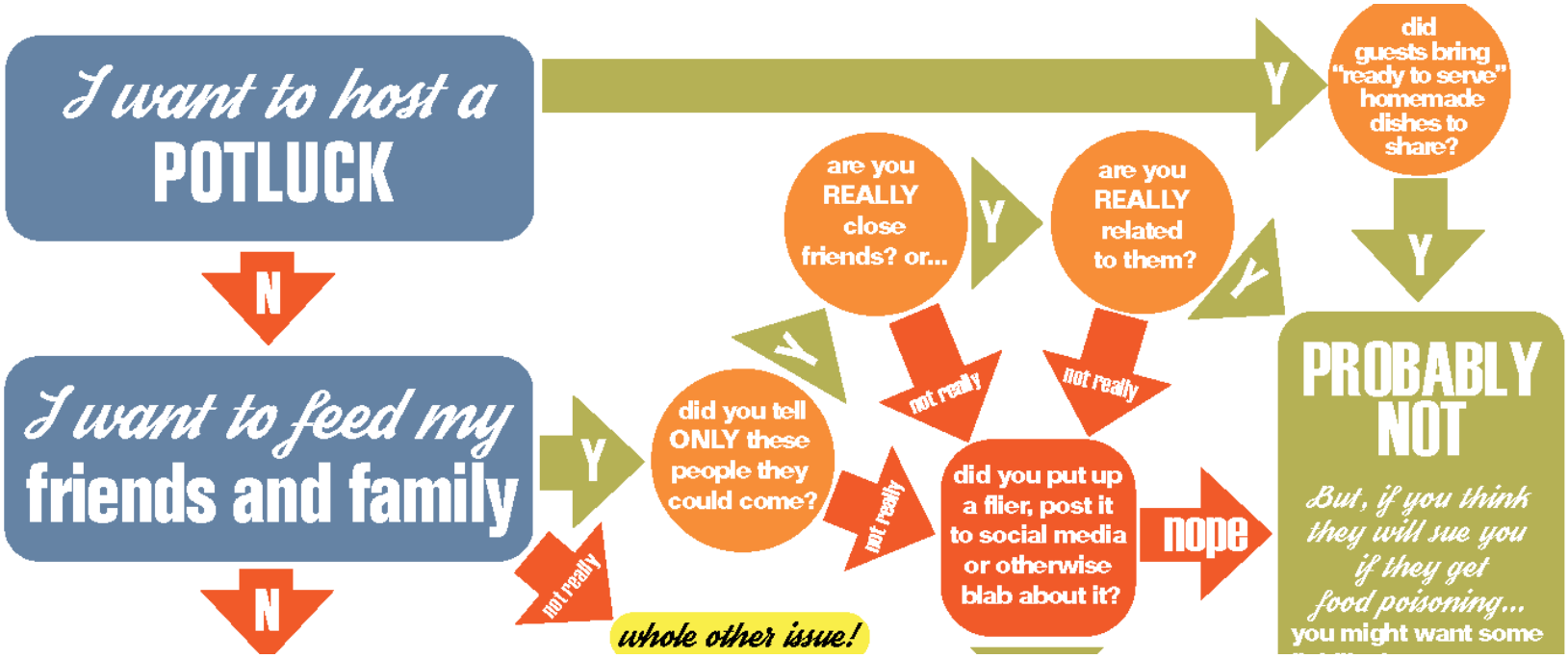
- Less than $1,000/year in sales
- Operated as a Special Event or Seasonal Temporary Food Stand, with the 10- or 21-days of operation restrictions
- Operated on private property

M.S. 157.22 Subdivision 15

2019: Food Stand Exemption

- No restrictions on type of food; food need not be approved source.
- If potentially hazardous food is served, there must be a sign:

"The products sold at this stand are not subject to state inspection or regulation"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Y
I want to feed my friends and family
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did you tell ONLY these people they could come?
not really
not really
not really
did you put up a flier, post it to social media or otherwise blab about it?
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But, if you think they will sue you if they get food poisoning...
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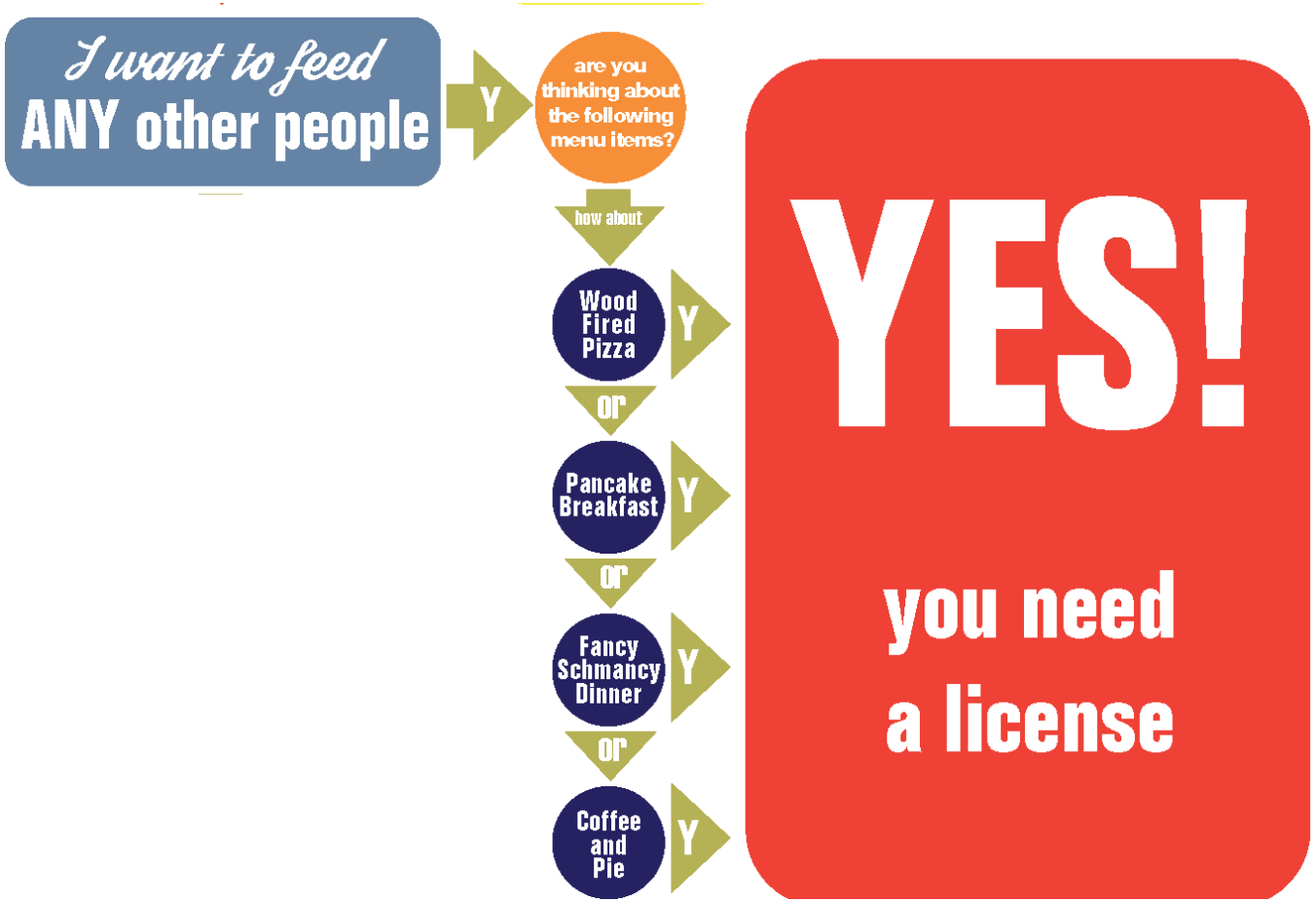
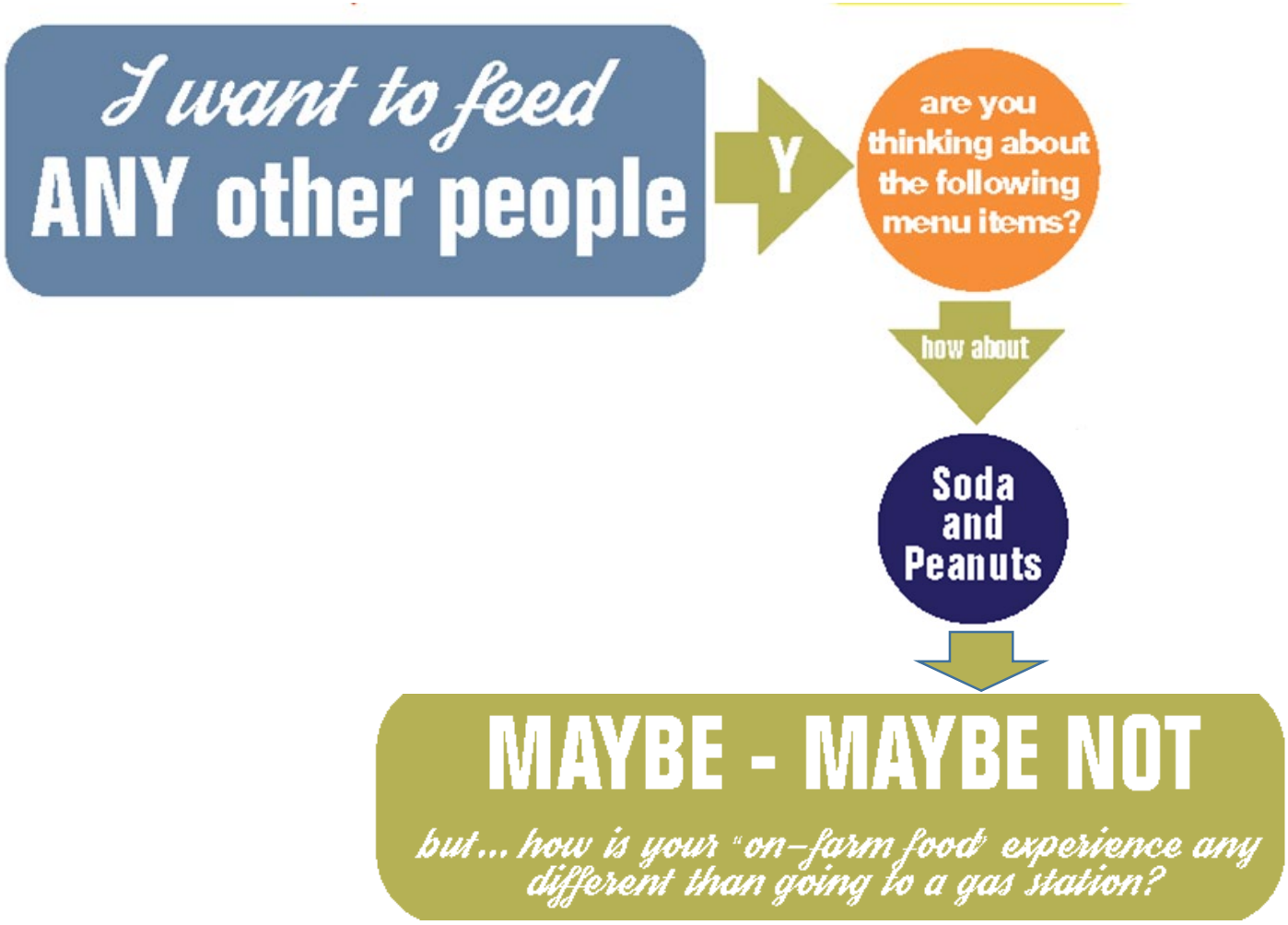

I want to feed
ANY other people
Y
are you thinking about the following menu items?
how about
Wood Fired Pizza
Y
or
Pancake Breakfast
Y
or
Fancy Schmancy Dinner
Y
or
Coffee and Pie
Y
YES!
you need a license


I want to feed
ANY other people
Y
are you thinking about the following menu items?
how about
Soda and Peanuts
MAYBE - MAYBE NOT
but... how is your "on-farm food" experience any different than going to a gas station?

I want to feed
ANY other people

But, what if...

there's just food around
and people eat it

or...

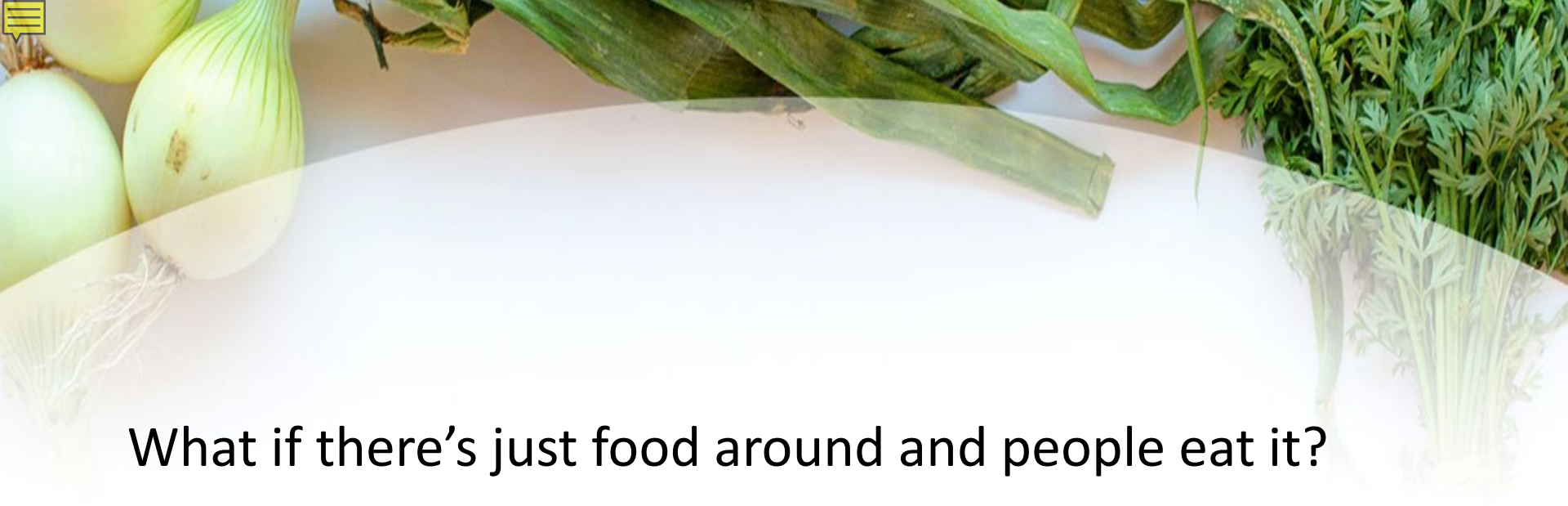
I don't take money, just donations

or...

I have everyone sign a waiver

and...
and...

If ands or buts were candy and nuts, then every day would be Christmas.



What if there's just food around and people eat it?

"If your farm business is serving food to the public, the licensing process applies. Serving food on your farm may be done for business reasons even if the product is free. If serving food boosts your farm's name recognition, builds awareness, advertises products, or simply builds goodwill in the community for your farm, it is part of the business."

-- Attorney Rachel Armstrong, Farm Commons; quoted in *Come & Get It!* (p. 8)

What if I just take donations?

Minnesota Statute 34A.01 Subdivision 12:

Sell; sale.
"Sell" and "sale" mean keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others.

https://revisor.mn.gov/statutes/cite/34A.01

What if I have everyone sign a waiver?

"The law applies regardless of whether the guests want it to apply or not. Asking individuals to waive their rights or give your farm permission to serve from an unlicensed facility will not defeat the law."

--- Attorney Rachel Armstrong, Farm Commons, quoted in Come & Get It! (p.8)

I want to feed
ANY other people
Y
But, what if...
there's just food around
and people eat it
or...
I don't take money, just donations
or...
I have everyone sign a waiver
and...
and...
If ands or buts were candy
and nuts, then every day
would be Christmas.
hm
you STILL
need a license

Certified Food Protection Manager

If you need a license, you may also need to employ or become a Certified Food Protection Manager (CFPM).

M.S. 157.011;
MN Rules 4626.0025 – 4626.0035

Certified Food Protection Manager

* The CFPM is responsible for ensuring food safety in your food and beverage service operation.

* The CFPM trains other staff in food safety, and appoints a Person in Charge (PIC) for each shift.

* There must always be a PIC present when the business is operating.

CFPMs are not required for:

- Low-risk food establishments
- Special event food stands
- Establishments licensed as “Retail Food Vehicle/Portable Structure or Cart”
- Establishments with very limited types of food handling

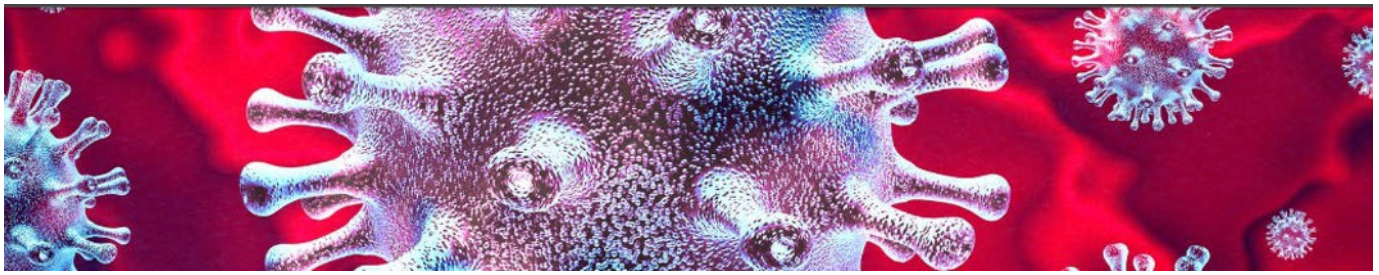
MN Rules 4626.0033

How do you become a CFPM?

- Take training class and pass an approved exam.
- Receive your exam certificate
- Send an application, your exam certificate, and a $35 fee to the Minnesota Department of Health.

Questions?

Okay, how do I get a license?



New licenses may not be issued during the COVID-19 crisis

The following information will apply when new licensing resumes.

Jurisdiction

Ag

Product Sales

Wikipedia Commons

Minnesota Statute 28A

Health

Food & Beverage Service

The Wallpaper Co.

Minnesota Statute 157

Jurisdiction

Ag: Food Processing

* Food manufacturing:

processing of raw ingredients into packaged foods such as jars of pickles, frozen pizzas, boxes of cereal, cartons of milk

Jurisdiction

Ag: Product Sales

* Food handling:

Buying and selling of packaged food products, bakery products, bulk food in dispensers, raw meats, or whole, raw fruits & veggies

Jurisdiction

Ag: Product Sales

* Farmers' sales of their own farm products

Jurisdiction

Ag: Other Commercial Food Activities

* Other food things that don't fall under the jurisdiction of the Minnesota Department of Health

(example: meat slaughter & processing)

Jurisdiction

MN Department of Health

Food and beverage service: preparing and serving foods to individuals

Jurisdiction

Health

Food & Beverage Service

Minnesota Statute 157

Jurisdiction

Physical Location

51% Rule

Jurisdiction

Physical Location:

1 food license
(either Ag or Health)

- per location

- per legal entity

Jurisdiction

51% Rule:

The majority of dollar sales at a location determines the license type

Jurisdiction

51% Rule:

Applies to Licenses, not Facilities and not Processes.

(You always need the appropriate equipment and process for what you're doing.)

Licenses

Minnesota Department of Health

License Types:

Licenses

Special Event Food Stand

Food cart

Seasonal Temporary Food Stand

Seasonal Permanent Food Stand

Mobile unit (food truck)

Food & Beverage Establishment – Category 1, 2, or 3

Minnesota Statute 157.16 https://revisor.mn.gov/statutes/?id=157.16

Licenses

MDA License Types:

* Retail Food Handler

* Wholesale Food Handler

* Wholesale Food Manufacturer/Processor

* Food Broker

License Fees

What do MDH licenses cost?

Special Event Food Stand: $55/yr

Seasonal or Mobile: $85/yr

Food Establishment:
Annual base fee: $165/yr + additional $110 to $385 depending on risk category

License Fees

Additional one-time cost for Plan Review for retail licenses.

MDH Plan Review fee:

- Not required for Special Event Food Stand
- $250 to $500 for other license types, depending on risk category

License Fees

What do MDA licenses cost?

Retail Food Handler: $77/yr

Wholesale Food Handler: $57/yr

(These are the lowest rates. Fees increase as annual revenue increases.)

License Fees

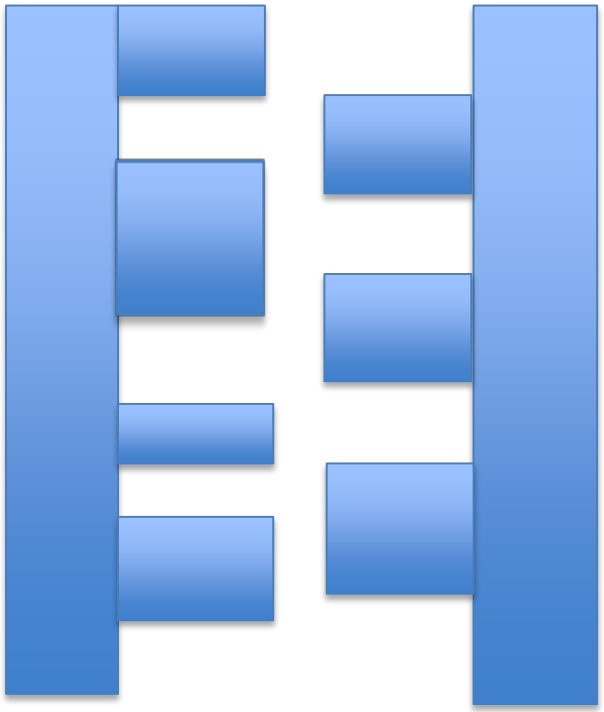
Additional one-time cost for Plan Review for retail licenses.

MDA Plan Review fee: $200 to $425, based on square footage

Getting Stuck in the Food Licensing System

Ag

Product Sales



Health

Food & Beverage Service

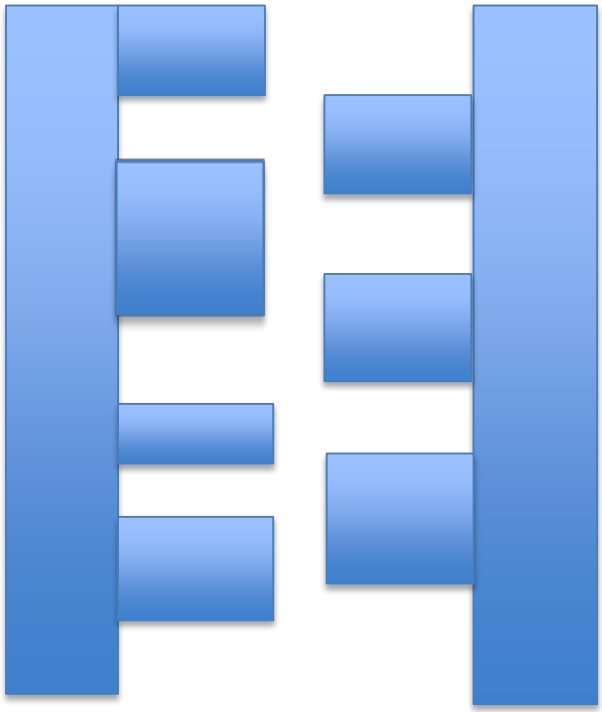
Local Food System

Be alert to situations that need clarification!

Ag

+

Delegated Authorities



Health

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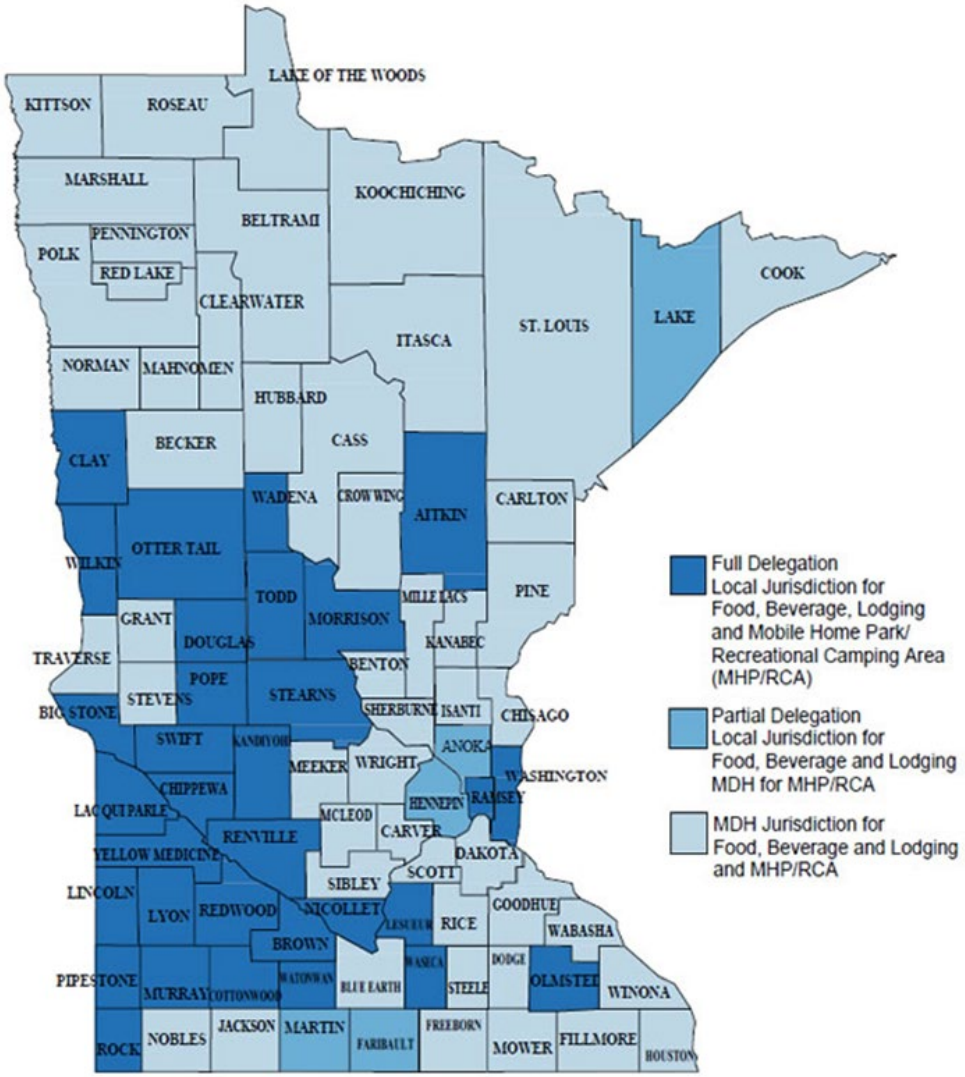
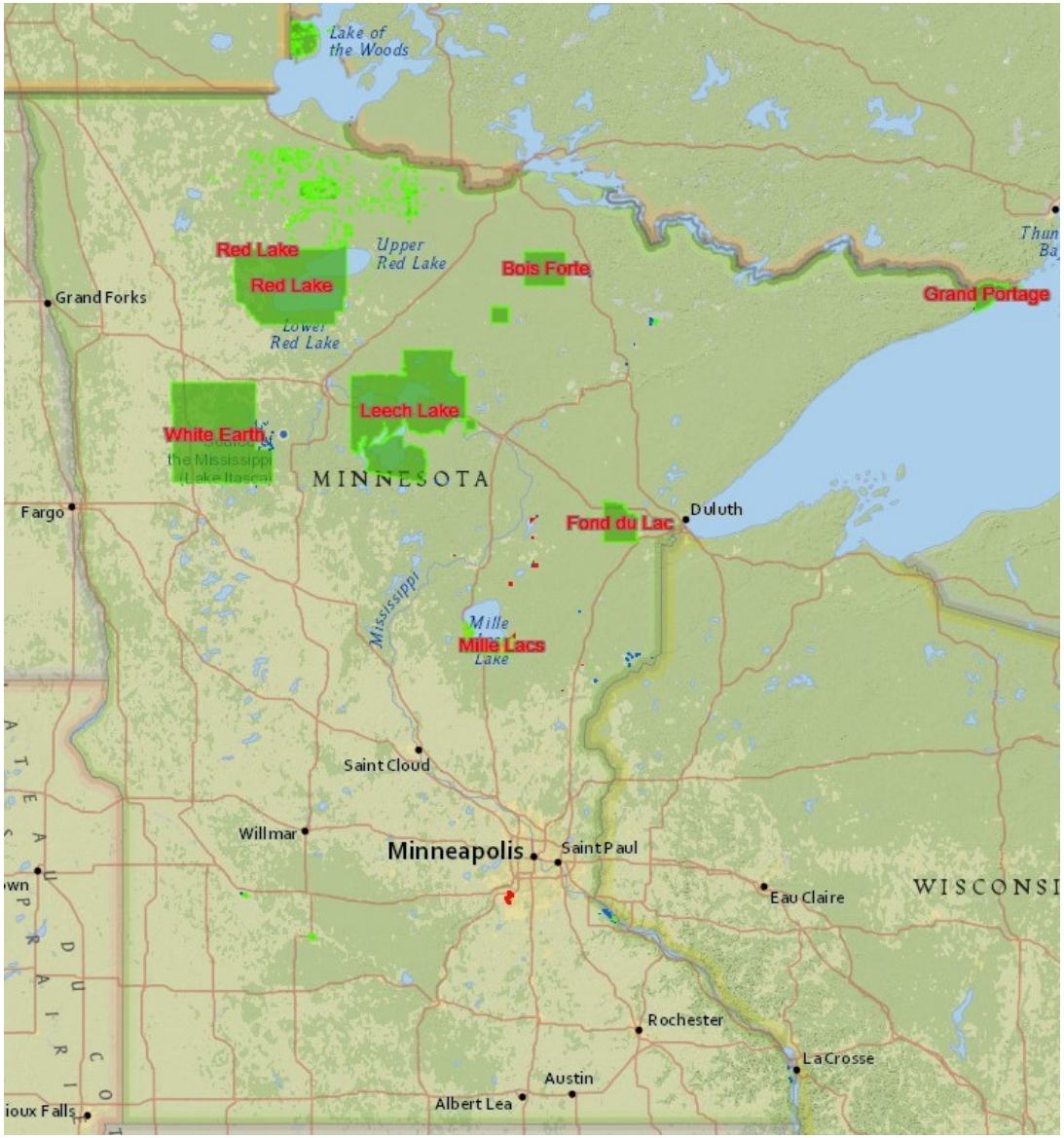
Delegated Authorities



MN Dept. of Health Map of Delegated Authorities

www.health.state.mn.us/divs/eh/food/license/delegation.html



Tribal lands within MN state boundaries

MDA has 7 delegated authorities

BUT only delegates authority for retail food facilities

(No delegation for wholesale handling or manufacturing or meat)

MDA delegated authorities cannot be more restrictive than the MDA. The state food code is a minimum *and* maximum code for MDA.

M.S. 28A.06

* Delegated Authorities under both MDA and MDH may have different license names and fee structures

Break – followed by scenarios to be discussed in small groups

1. A farmer wants to construct an on-farm commercial-grade kitchen to manufacture a food product for local and regional sales.

[County with Health delegation]

KZ - The K family is putting in a commercial kitchen on the farm. County guy says commercial kitchen is a restaurant so needs a hood; MDA says no hood ..... no resolution.

J. - Is this a commercial kitchen for food processing/product manufacturing, or are they doing on-farm food service?

KZ - They are doing: food processing/product manufacturing.

J. - In that case the local delegated authority shouldn't have jurisdiction over it -- it's MDA jurisdiction. The only thing County should be dealing with is the zoning, septic, and water.

KZ – K. is reluctant to really piss off his local - because that's who he has to deal with long term, right?

J. - Why does he have to deal with his local guy in either the short or the long-term? If he's doing food manufacturing/processing, his inspector should be an MDA inspector -- not the local guy.

Epilogue, 3/21/17:

K. had gone back and forth between the local delegated authority and the MDA inspector over the ventilation hood requirement, and finally the local delegated authority person had thrown up his hands and agreed it was MDA's call.

2. Multi-location food service with central office space wants to set up a walk-in cooler at the office for collection & distribution of local veggies to their own feeding sites.

[City with both Ag and Health delegation authority]

3. Food entrepreneur wants to manufacture a packaged dry snack product out of a rented commercial-grade kitchen and sell it to grocery and convenience stores.

[City without delegation authority]

4. Local farmers' market wants to collect produce from multiple vendors to fill orders from schools, hospitals, & restaurants in that county and adjacent counties.

[County without delegation authority]

5. Event planner wants to arrange an on-farm festival that includes a dinner with ingredients sourced from several local farms, plus a pop-up farmers' market.

[County with Health delegation]

6. County SHIP coordinator wants to establish a Farm to School program in a school district, with direct purchasing of food from area farmers.

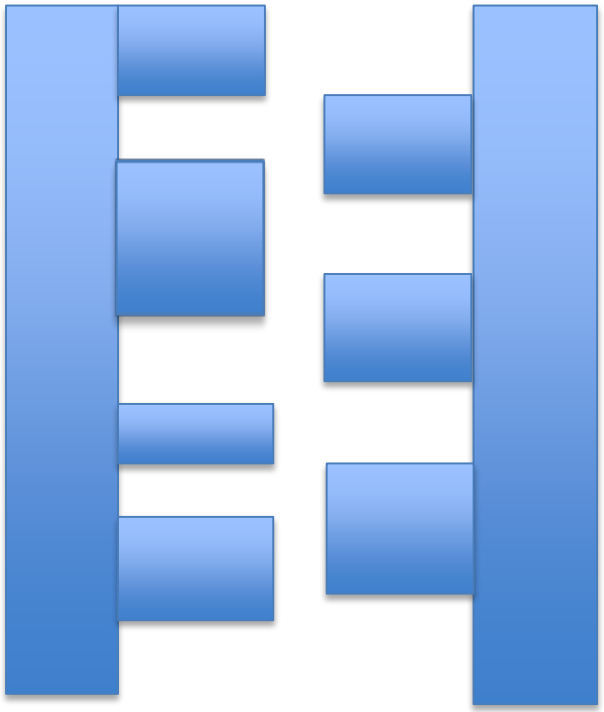
[County with delegation]

7. Local civic group wants to offer a summer lunch program for area youth on three days per week.

[County with delegation]

Ag

Product Sales



Health

Food & Beverage Service

Local Food System

Don’t Stay Stuck!

Reach out for help:

- Agree with your inspector to ask for clarification from agency supervisors
- Contact agency supervisors on your own
- Contact an organization to help you get clarification from agencies

MFMA
Minnesota Farmers' Market Association

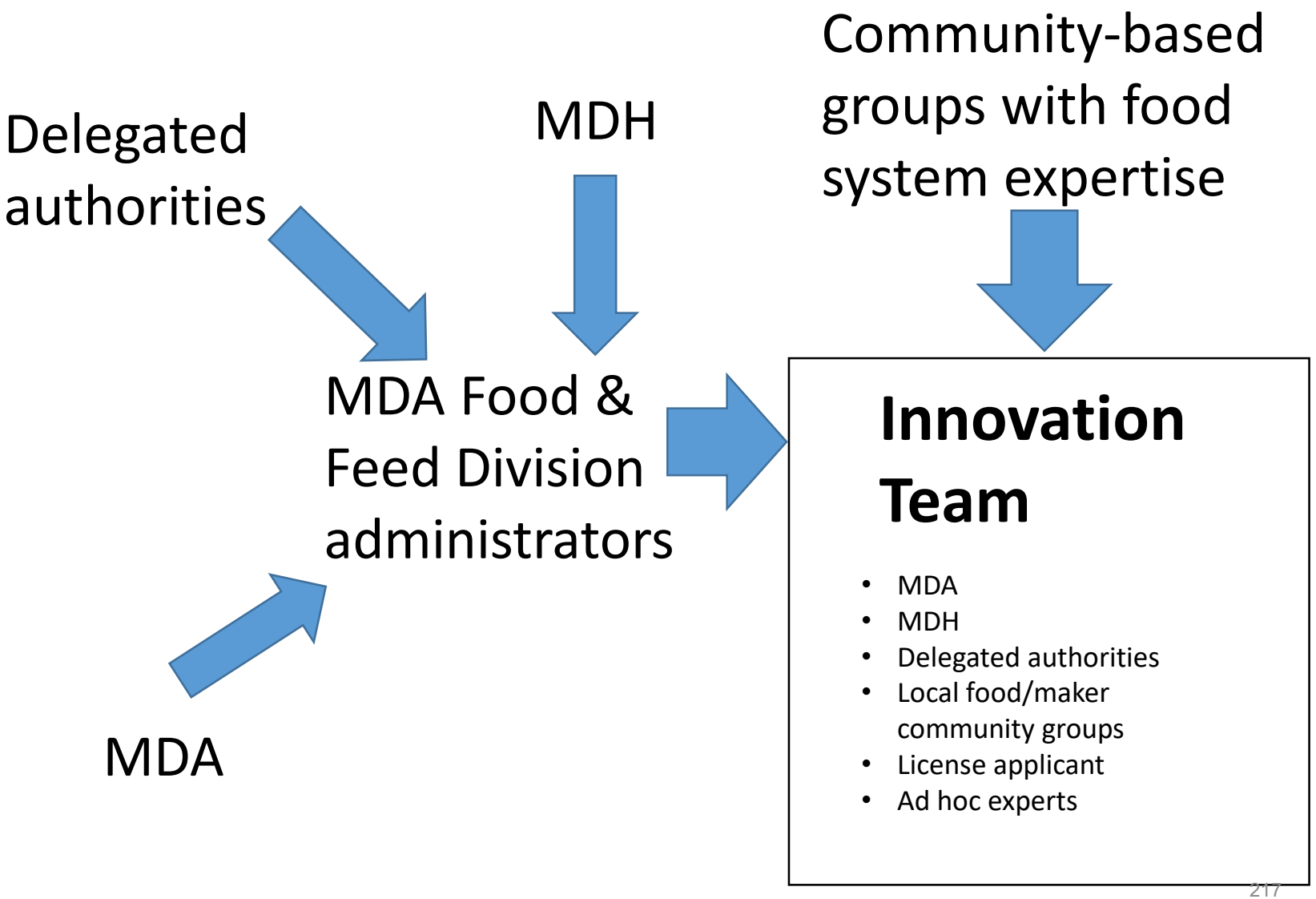
University of Minnesota
EXTENSION

Renewing the Countryside

MISA

Food Innovation Team

Innovation Team Intake Pathways



Thank you!

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Blazing Trails through the Jungle of Local Food Regulations

www.misa.umn.edu/resources/blazing-trails

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