Local Food Licensing and Regulatory Issues

Local Food Advisory Committee document 001, version 2.0; April 12, 2016

# **Introduction**

In Minnesota there have been cases of regulatory action or food recalls involving farmers who sold locally- or regionally-produced food to the public. Some of these cases received media attention, but the underlying regulatory issues that could affect direct-marketing farmers were often not made clear in those media reports. The purpose of this document is to explain some of the regulations around local food sales, especially regarding when licensing is required and when licensing is not required.

## Court case, 2005

A Minnesota Supreme Court case in 2005 established that farmers have the right to sell products of their farm without a license, but must follow applicable food safety laws.
[ State of Minnesota vs. Diane Marcella Hartmann et al. July 28, 2005. Docket # A03-1674.
<http://mn.gov/lawlib/archive/supct/0507/opa031674-0728.htm> ] Or, visit this URL for a reprinted PDF of the case: <http://tinyurl.com/plo2tn6>

## Court case, 2013

A Stearns County District Court case in 2013 upheld the Minnesota Department of Agriculture’s position that farmers distributing the products of other farms, not their own, must be licensed for that activity of collecting and distributing products. Case # 73-CR-12-2846; [http://pa.courts.state.mn.us/](http://pa.courts.state.mn.us/CaseDetail.aspx?CaseID=1615200101)

### Note on accessing this 2013 case:

In order to view this case you must search the website above: choose Stearns County from the drop-down list, choose “Criminal/Traffic/Petty Case Records,” type in the security code shown at the top of the next web page, and then enter the case number. Or, visit this URL for a reprinted PDF of the case: <http://tinyurl.com/p8b6ex2>

# Points for direct-marketing farmers and local food buyers to consider:

## **Product of the Farm:**

The right to sell products that you raise on your property (either owned or leased) without a license is protected by the Constitution of the State of Minnesota, Article 13, Section 7:
https://www.revisor.leg.state.mn.us/constitution/#article\_13

If you are selling the products of your farm or garden, you are exempt from needing a license to sell those products either to individual customers or to food businesses.

* You don’t have to have a farm to have “product of the farm.” A backyard garden on your property, or a rented community garden plot, or a backyard chicken coop, can produce “product of the farm.”
* Product of the farm applies to any agricultural or horticultural product that you raise on property that you own or lease, including but not limited to: fruits, vegetables, mushrooms, flowers, eggs, meat and poultry, fish, honey, herbs, fiber, grains.
* In the case of honey, the hives are considered your property and honey from your own hives is product of the farm, even if the hives are sometimes placed on land you don’t own or lease.
* Product of the farm also applies to wild-harvested products from uncultivated land; for example, maple syrup or wild edible mushrooms collected from a wooded area that you own or lease.

This provision is defined as exemption from licensing in Minnesota Statute 28A.15 Subd. 1 & 2: <https://www.revisor.mn.gov/statutes/?id=28A.15>.

## Aggregation and Distribution of Farm Products:

If you are a farmer or other entity who is collecting products from neighboring farms or other sources and then selling those products, or distributing the products to customers on some kind of consignment basis, you are not exempt from licensing for that collection and distribution activity. In order to collect food from other farmers and distribute it to customers, you would need to be licensed as a food handler. This is true even if you are not actually collecting any money, and even if you make no profit on the collection and distribution of the food. Depending on the products handled and who the buyers are, the license you need might be a produce buyer’s license, a wholesale food handler’s license, or a retail food handler’s license.

### Statutory definitions of “sell” and “sale:”

Any time food changes hands in any way, that is considered a “sale” under Minnesota law. Minnesota Statute 34A.01 Subd. 12 defines the meaning of the words “sell” and “sale” of food: <https://www.revisor.mn.gov/statutes/?id=34A.01>

## Subd. 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.

## **Off-Farm Ingredients:**

Any time you sell or offer a product of your farm that includes any off-farm ingredients – even just salt or sugar – then the “product of the farm” exemption from licensing no longer applies. Either you need a license, or the product may fall under a different exemption.

## **Exemptions to Licensing Requirements:**

Minnesota Statute 28A.15 lists several categories of food sales that are exempt from licensing: <https://www.revisor.mn.gov/statutes/?id=28A.15>

The exemption from licensing for offering food samples at a farmers’ market or community event is in Minnesota Statute 28A.151:
<https://www.revisor.mn.gov/statutes/?id=28A.151>

The “Cottage Food Law” exemption from licensing for homemade non-potentially hazardous foods is in Minnesota Statute 28A.152:
https://www.revisor.mn.gov/statutes/?id=28A.152

## **Cottage Food Exemption:**

The exemption from licensing according to Minnesota Statute 28A.152 is generally called the “Cottage Food Law.” It applies to jams, jellies, baked goods, pickles, sauerkraut, salsa, and other non-potentially hazardous foods that are made in home kitchens. Key features of the law:

* Cottage Food products can be sold from the farm premises, at a farmers’ market or community event, or at other locations.
* The maker of the products – the “Cottage Food Producer” – must be physically present at the sale.
* The products can be sold only to individual consumers for their personal or household use.
* Orders can be taken over the Internet or by other means, so long as the Cottage Food Producer personally delivers the product to the customer to complete the sale.
* The exemption applies to individuals. It can be claimed by multiple individuals within the same family or group.
* Each individual claiming the exemption must complete food safety training and register with the MDA as a Cottage Food Producer.

### Annual Dollar Limits for Sales

There are two tiers for annual sales under the Cottage Food Law.

Tier I: Up to $5,000 in gross sales per year, per individual Cottage Food Producer.

Tier II: Up to $18,000 in gross sales per year, per individual Cottage Food Producer.

Food Safety Training & Registration

Cottage Food Producers must take a food safety training course that is approved by the Minnesota Department of Agriculture. Tier I producers can take a basic online course. Tier II producers must take a more in-depth course, but only need take it every three years. Both Tier I and Tier II Cottage Food Producers must register every year with the MDA. The registration is free for Tier I producers. Annual registration is $50 for Tier II producers.

### More Cottage Food Law Information

Minnesota Farmers Market Association’s Cottage Food Law Resources:
<http://mfma.org/pages/MNCottageFoodsLawResources/>

Minnesota Department of Agriculture Cottage Food Producer Registration:
http://www.mda.state.mn.us/licensing/licensetypes/cottagefood.aspx

## **Licensing, Inspection, and Food Safety:**

Even if you are exempt from licensing because you are selling product of the farm, or you are selling exempt Cottage Food items, or doing exempt product sampling at a farmers’ market; you are not exempt from following applicable food safety regulations, and you are not exempt from the possibility of inspection.

## **Food Safety:**

Food safety regulations must be followed no matter what. Products in transport must be in clean, sanitary containers and in clean, sanitary vehicles. Frozen or refrigerated food must be maintained that way during storage, transportation, and handling.

## **Raw Milk:**

Raw (unpasteurized) milk sales are permitted in Minnesota **only if** the customer comes to the farm and brings their own container to pick up the milk. **Any** other arrangement – such as drop-off points, buying clubs, door-to-door delivery – is illegal for raw (unpasteurized) milk. Minnesota Statute 32.393: <https://www.revisor.mn.gov/statutes/?id=32.393>

## **Minnesota Department of Agriculture (MDA) Procedures:**

If you are issued orders for non-compliances by the MDA, you are given an opportunity to correct the problem and/or to appeal the order and to ask for clarification on the regulations. Further action by the MDA only takes place if there are repeated or intentional violations, or if there is no progress toward resolving the issue.

## **Getting a License:**

Many farmers and farmers’ market vendors in Minnesota have licenses to sell their products. If you want to sell food products that require you to have a license, or if you want to sell food in ways or in places or in quantities that require you to have a license, you can get information about licensing from the Minnesota Department of Agriculture’s Dairy and Food Inspection Division. Call the main office for that division at 651-201-6027. Be prepared to explain what you want to do, so that they can direct you to the right staff person.

You can also look up food inspector territories on this map: <http://gis.mda.state.mn.us/food/>

## Publication information:

*This document has been reviewed by the Local Food Advisory Committee and released by that committee in 2016 as an educational document. It is not an official publication of the Minnesota Department of Agriculture or the Minnesota Department of Health.*

*Find more information about the Local Food Advisory Committee:*[*http://www.misa.umn.edu/FarmFoodResources/LocalFood/LocalFoodAdvCmte/index.htm*](http://www.misa.umn.edu/FarmFoodResources/LocalFood/LocalFoodAdvCmte/index.htm)