

Come & Get It!

MINNESOTA

**What you need to know
to serve food on your farm**

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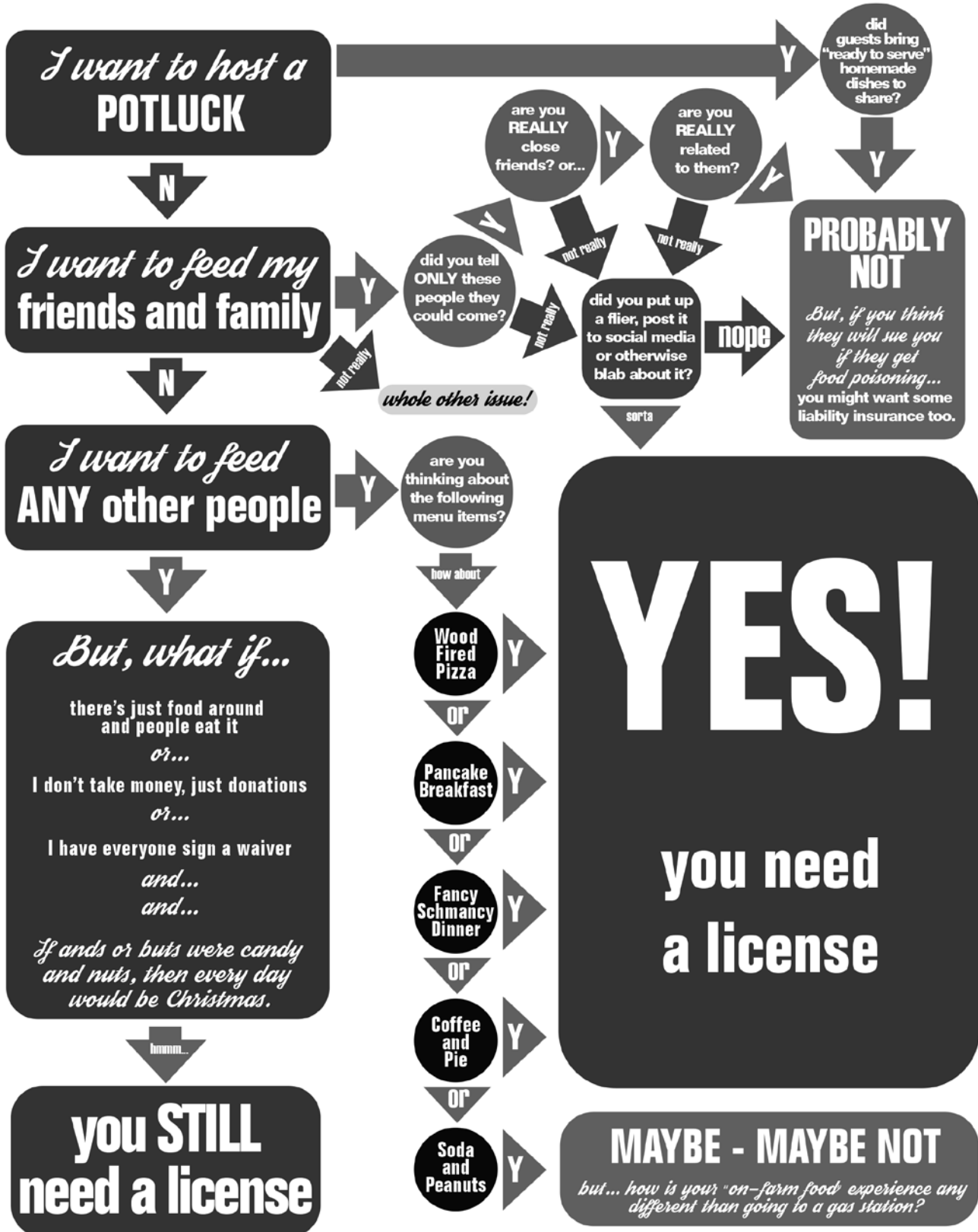
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Come and get it!

DO I NEED A LICENSE?

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



Chapter 1

In the Kitchen

Serving Safe Food and Legal Concerns within Kitchens

Understand that a food service venture must be licensed if it is public.

Grasp the sometimes subtle process of distinguishing between private and public food service events.

Identify which food service licenses are best suited to accomplishing a wide variety of farm goals.

Understand the process a farmer must follow to obtain food service licenses.

Introduction

There's nothing like gathering around a table to create a sense of community. And while providing a meal on your farm may boost your community image and bottom line, it is critical to understand the pros and cons of such an endeavor.

Because consumer safety has been compromised in the past, national and state lawmakers have created food service standards that are enforced through inspections and documented with licenses. These licenses give members of the public assurance that, even though they cannot watch over the details of each step of production, the food they are about to consume has been produced in a manner that meets specific standards for safety.

Prepared foods today are vastly safer than before food production regulations were passed. In this way, the laws surrounding food production have increased the trust between food producer and customer. Few consumers ever think twice about the safety of prepared foods. This is good for you and your customers alike.

The increased public trust does come at some cost. If you want to serve food to the public, you must spend some

time understanding and complying with detailed rules and regulations and in many instances must pay specific licensing fees in order to serve food legally. These are costs of doing business in the food service world, and your business plan should take these costs into account.

When do I need a license to provide prepared food?

A license is always needed to provide prepared food to the public.*

(Minnesota Statute 157.16.

www.revisor.leg.state.mn.us/statutes/?id=157.16)

**Almost always. See exemptions available to farmers on the following pages.*

Because the shared goal of safe food is so important to public health and economic activity, food production and food service regulations have a very broad reach. Most times that food is made available within a business or commercial context, a license is required. It doesn't matter if the food is free, if it is included in some sort of club membership, or if customers have signed an agreement.

Minnesota farmers have a constitutionally protected right to sell the products of their farm (Constitution of the State of Minnesota, Article XIII, Section 7: www.revisor.leg.state.mn.us/constitution/#article_13). This right is important but limited. It applies only to the products of the farm. Any purchased ingredients such as salt, pepper, and sugar are not products of the farm, so when they are added to any food item, the constitutional exemption from licensing does not apply.

Having been very forthright about the extent to which you will need a license to conduct any food service operation, there are some very narrow exemptions to licensing requirements. Because the regulations are complex and depend on very precise circumstances, farmers should read this entire section rather than just individual exemptions to get the full picture.

Is my event a potluck?

- Do the guests bring *ready-to-serve* dishes to share that they prepared in their own homes or bought from a licensed food business?

Yes = potluck

- Is a licensed kitchen used for any of the on-site food preparation, reheating, etc.?

Yes = NOT a potluck

- Is there a charge to attend the event? This includes a request for donations.

Yes = NOT a potluck

- Is anyone paid for the food they provide for the event?

Yes = NOT a potluck

***EXEMPTION: ...Except for potlucks**
(Minnesota Statute 157.22;
www.revisor.leg.state.mn.us/statutes/?id=157.22)

Hosting a potluck is perhaps the easiest way to create a community food event at your farm without a license or a facility for food preparation. If individuals prepare their potluck dishes at their own home and bring the prepared dish to an event, no license is needed. It is important to note that the food guests bring cannot be prepared at the event location, which means that guests should bring their dishes ready to serve (i.e. no reheating or finishing dishes in the farmhouse kitchen). However, your own contribution to the potluck meal can be prepared at your farm.

The potluck exemption is a great option if you want to host community events at your farm. As the sponsor of the potluck, you can advertise it publicly under your farm's name. For example, many CSA farms host potlucks as a way to recruit new members. Although these events are permissible without a license, you should read:

1. The additional legal implications detailed in Chapter 2 of this section; and
2. The Minnesota Department of Health's fact sheet, "Potluck Events: Safe Food is Good Business," www.health.state.mn.us/divs/eh/food/dfs/potluck.html

Note that the law does not offer a definition of what a potluck is, exactly. Generally, a potluck is an event, without an admission charge, where food is brought to the event ready to eat and where no one is paid to bring food. Until the question of what a potluck is and is not goes before a court of law, we don't have a legal definition. In the meantime, take note of the Minnesota Department of Health's interpretation of a potluck with respect to fees and payments, as summarized in the side bar. The agency enforces the law, and the agency's opinion on the definition of a potluck will be persuasive in court.

If your farm becomes a licensed food establishment, then the option of sponsoring a potluck is no longer available. Per Minnesota Statute 157.22, Subd. 8, "Licensed food establishments other than schools cannot be sponsors of potluck events."

What if the only place in town where I could have a potluck meal is a licensed food establishment—do I need a license?

At times of the year when an on-the-farm meal isn't feasible because it's too cold, too snowy, too muddy, etc. – a farmer who wants to host a community potluck meal needs to find a different place to do it. In some rural communities and small towns, the local café may be the only space available to hold an event.

Yet, Minnesota Statute 157.22 says that licensed food establishments other than schools cannot be sponsors of potluck events.

BUT – licensed food establishments can provide a space for potluck events if some other entity is the sponsor of the event, **AND** if no food is brought into the licensed establishment's kitchen.

So, for example, there could be Farmer John's Potluck End-of-Season Dinner at Sam's Burger Bar.

***EXEMPTION:** ...Except for a private (non-business, non-commercial) event

Everyone knows that a family hosting a reunion, wedding, or birthday party doesn't need a license before they invite friends and neighbors over. But yet, this chapter begins with the broad statement that anytime farmers prepare and make food available, they need to go through the licensing process. So, what's the difference between the two?

Consider the example of a farm family who hosts a cookout to celebrate a child's graduation one week and the farm's autumn harvest party the next week.

Perhaps the farm family's relatives are also customers and customers are also friends; perhaps the same folks show up to both parties. Regardless, the first cookout likely does not need a food service establishment license while the second cookout likely does. Why?

The difference is that the farm's autumn harvest party is a business event and the child's graduation party is a personal event. When legislators were writing food service laws, they decided that the law should center on those who "engage in the business" of serving food and beverages. For farms where personal and business activities merge seamlessly, the distinction can be difficult to draw. In practice, the distinction between a personal and a business enterprise centers on whether the event is open to the public.

Graduation parties are not seen as public events while farm festivals are. In close-knit communities, the same people might attend both events. Still, society implicitly recognizes that perfect strangers don't normally pull into a graduation party and start eating the chips. If the farm family is hosting a festival, it's likely the family is looking to boost the reputation of the farm, advertise their products, and reach a wider audience. That makes the event a business venture. The general public *can* attend even if they don't.

Simple examples like a graduation party versus a farm festival make the distinction look clear! In reality, it's much murkier than that. Farmers are innovative folks who are deeply rooted in their communities. The diversity of farm business models can make for some difficult distinctions. When there is a question about whether an event is private or public, the safe route is to ask the licensing authorities for their guidance.

Examples to help tease out the differences between public and private events

Example 1: What if the food is free?

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 generates goodwill in the community for your farm, it is part of the business. If free food service is provided as part of a charitable non-profit operation or school, some exemptions may be available that are beyond the scope of this publication.

Example 2: What if I only accept donations for the food?

Asking for donations rather than charging a set amount does not turn a public event into a private one. If you are serving food to the public, the licensing process applies.

Example 3: What if no one actually eats the food?

The license obligations apply to those who make food service available to the public. Even if no one takes advantage of the food offered, the fact that it is offered to the public triggers the license obligations. Although this is an unlikely example, it helps illustrate the focus of the regulations.

Example 4: What if I invite only my CSA members to an exclusive meal on the farm?

This gets a little complicated. Let's say that you sell CSA memberships in the spring and then host a members-only dinner in the fall. That event isn't open to the public because only members can attend, right? You would not need a license, right?

Not exactly. If anyone can join the CSA, then the event is actually open to anyone so long as they join the CSA first. You might then argue that the CSA membership has been closed for years because everyone renews and no new memberships are created. Is a license

required then? The safe answer is likely still "yes." The event serves a business purpose for the farm; it is not strictly a private social gathering. In that situation, you should ask for guidance from the appropriate regulatory agency. Having the correct license and treating this as a business-related event may be some protection against liability if someone were to get sick. Possessing and following the terms of a food service license could help support an argument that you were not negligent.

Example 5: What if I organize a dinner club?

Many innovative farmers around the country are starting dinner clubs where club members purchase tickets that enable them to attend an event. Folks are using a variety of models such as charging for admission to the club and hosting free events, or making membership free but selling tickets for meals. Regardless of the precise business arrangement, if you prepare food for club members, you need to be licensed because this is not a private event and it serves a business purpose.

Now, if you coordinate with a group of your friends, and you all throw parties for each other, and you call yourselves the "Farm Dinner Club;" as long as those events are truly private parties, no license is needed. Whether a group calls themselves a "club" or some other name makes no difference as to whether a license is needed. The distinction is whether it's public or private.

Example 6: What if I ask guests to 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.

Work with Inspectors Early

Approaching regulators pro-actively with a positive, cooperative attitude is more likely to give you a smoother path towards licensing. Some of the tasks and review processes leading up to a license take time, and starting the process well in advance of when you need the license will likely reduce stress for both you and your regulator.

Example 7: What if I set out refreshments for volunteer workers?

This can get complicated. If you have a couple of friends who regularly volunteer and you prepare sandwiches and lemonade at the end of a long day, it would be difficult to say the event was public. Clearly, it was only open to the volunteers and the volunteers were your personal friends. But, let's say the following week you recruit a crew of 20 CSA customers who donate a couple hours of volunteer work in return for lunch on the farm. Is this a public event? Reasonable people could disagree on the answer to that question. Even if you consider those volunteers to be friends, they are also customers. The work event may serve a business purpose and it does edge more toward the public aspect than the example of your personal friends helping out for a day. You should speak with your regulatory authorities for further guidance in this situation.

Example 8: What about setting out beverages and snacks at my open house, field day, or pasture walk?

A farm open house or field day is by its nature a public event, so food served at one of these events should be done under a license. What kind of license is needed depends on what foods and beverages you will offer. See the Special Event Food Stand section for more information about food types that fall under MDA or MDH licensing. There is a very narrow exemption that allows offering purchased single-serving bottles or cans of soft drinks, packaged candy, or packaged nuts without a license. The exemption is further narrowed by who can claim it. It is only available to persons whose primary business is not food handling. If your farm sells produce, processed meats, or value-added products for human consumption, you would not qualify for the exemption. This exemption is found in M.S. 28A. 15 Subdivision 7; www.revisor.leg.state.mn.us/statutes/?id=28A.15.

Find the inspector for your location:

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

MDA directory: <http://gis.mda.state.mn.us/food/>

My event will require a license. What now?

Understand Safe Food Handling Principles!

There are five key risk factors in the serving of any kind of food. These were identified by the Centers for Disease Control as common elements in many foodborne illness:

- Food from Unsafe Sources
- Poor Personal Hygiene
- Inadequate Cooking
- Improper Holding Temperatures
- Contaminated Equipment/Lack of Protection from Contamination

Source: FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types. 2009. www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/UCM224682.pdf. Accessed online, 6/12/15.

These five risk factors should be addressed for any type of food service, licensed or not. The ways in which the risk factors can be managed in licensed food establishments can vary with the type of establishment and with the type of food being served. Temporary food establishment licenses have less strict requirements for equipment than permanent establishments do.

Regardless of the type of license and type of food, having a plan to manage and mitigate the risk factors is something that you will need for any food license. Before we get into the details of what license you need, it is important to know that there are several agencies that do licensing of food businesses. Figuring out what license you need and who to get it from takes some patience and diligence. While this publication is meant to help, if you get stuck and want to talk through it with a non-regulator first, contact the Minnesota Institute for Sustainable Agriculture for assistance: misamail@umn.edu, 612-625-8235.

We will be exploring the following licenses later in this chapter:

Safe Food Service: A New Skill Set

As a farmer, you are likely very knowledgeable in growing/raising high quality, safe food. You may not, however, have as much experience in the service aspects of safe food.

Preparation of ready-to-eat foods takes skills and knowledge that are very different from the skills needed to grow or raise food. While some aspects of preparing safe food are common sense, others are not at all obvious unless you have been trained in food service. Make sure you seek out the training you need to serve food safely to the public!

The Minnesota Department of Health provides a list of organizations that offer Food Manager training. Completion of one of these courses and passing the test earns you a “course completion certificate,” which can then be submitted to the MDH to acquire your Certified Food Manager certificate. Special Event Food Stands do not require a Certified Food Manager. Special event food stands, seasonal permanent food stands, and most seasonal temporary food stands and mobile food units do not require a certified food manager. It is still a good idea to have the training course, but operators of those types of food stands may choose not to pursue the official Certified Food Manager status.

Certified Food Manager course information:
www.health.state.mn.us/divs/eh/food/cfm/

University of Minnesota Extension offers an MDH-approved certified food manager training course:
www.extension.umn.edu/food/food-safety/

If you want to study food safety principles and procedures on your own, informational materials are available online:

Food Business Safety website, Minnesota Department of Health. www.health.state.mn.us/divs/eh/food/

1. Special Event Food Stand License
2. Transient or Temporary Food Service Licenses, including:
 - a. Mobile Food Unit,
 - b. Seasonal Temporary Food Stand, and
 - c. Seasonal Permanent Food Stand
3. Regular Food Establishment License

Learn as Much as You Can about Licensing

Many of the regulations that affect on-farm food service are inherently complex. Farmers, inspectors, and attorneys can all get confused. Although this guide is meant to help, everyone needs to communicate together in exploring new food service options. You can help yourself by reading this guide carefully, reviewing the Minnesota Food Code, and exploring the resources available from the Minnesota Department of Health on food service licensing. You may also need to help educate the inspector who works with your farm. Individual inspectors may not have handled a unique on-farm food service operation before and may be on a learning path themselves.

Minnesota Food Code.
www.health.state.mn.us/divs/eh/food/code/

Who licenses food businesses?

The food establishment licenses discussed in this chapter are issued by the city, county, or state departments of health, depending on where an operation will be conducted. This guide briefly touches on the Retail Food Handler License, which is administered through Minnesota Department of Agriculture rather than through departments of health.

For more detailed information about how agencies divide up responsibility for food licensing within Minnesota, see the following report:

A Guide to Regulations for Local Food Entrepreneurs. 2013. Megan O'Hara, Endowed Chair in Agricultural Systems. Contact the Minnesota Institute for Sustainable Agriculture. www.misa.umn.edu

What type of food will you serve?

Find the right inspector based on type of food to be sold:

Certain items commonly sold from food stands at festivals or fairs are regulated by the Minnesota Department of Agriculture, and other items by the Minnesota Department of Health. If you want to sell some things from each category, which inspector you work with depends on what percent of your sales fall under MDA or MDH. The inspector comes from the agency with authority over >50% of your sales.

This following list is compiled from page 31 of *Starting a Food Business in Minnesota* (2008) www.mda.state.mn.us/~media/files/food/business/startingfoodbiz.ashx; from the original Memorandum of Agreement between the Minnesota Departments of Agriculture and Health; and from communication with MDA and MDH regulatory staff.

Minnesota Department of Agriculture

1. Candy Floss / Cotton Candy
2. Popcorn
3. Caramel Corn
4. Caramelized Apples
5. Candy Manufacturing
6. Bakery Manufacturing
7. Fruit Concessions
8. Ice Cream Bars (wrapped)
9. Sno Cones
10. Retail Food Sales (prepackaged milk, meats, peanuts, fruits, etc.)

Minnesota Department of Health

1. Beverage Concessions (Soft Drinks and Beer)*
* dispensing only; cans & bottle sales regulated by Ag
2. Ice Cream Dipping
3. Ice Milk
4. Food Service Concessions (sandwiches and/or meals)
5. Milk (poured or dispensed from original containers)

Also available in print (160 pages) from Minnesota's Bookstore: www.comm.media.state.mn.us/bookstore/mnbookstore.asp 651-297-3000 or 800-657-3757

Licensing. Minnesota Department of Health; Food, Pools and Lodging Services. www.health.state.mn.us/divs/eh/food/license/index.html

Work with Your Local Inspector

Who your inspector will be depends on where you are located and what type of food establishment you are proposing. Start with the Minnesota Department of Health directory to find out whom to contact. The directory can be found at www.health.state.mn.us/divs/eh/food/license/delegation.html

In a few instances, you may need to work with an inspector from the Minnesota Department of Agriculture (MDA), but the inspectors at the Department of Health will let you know that. If they refer you MDA, its directory can be found at: <http://gis.mda.state.mn.us/food/>.

When you contact your inspector, be professional and willing to work with them, but keep in mind you may need to be persistent and assertive as well. Working with your local inspector should always be your first strategy. If you find that an individual inspector is not responsive to questions or requests for clarification, you should seek input from the inspector's supervisor. If an interpretation of the regulations seems unworkable or unfair, it's worth asking a higher-up authority for a second opinion.

Plan Your Menu

At the beginning of this process you will need to establish exactly what you would like to serve. The menu drives the licensing process, and likely the first questions the inspector will have for you will be about the menu. Be prepared to provide the inspector with a specific list of food items, and whether those foods will be made from scratch or purchased from a licensed food business.

Serving a menu of pre-prepared items such as grilled hot dogs and packaged cookies will likely result in less stringent equipment, process, and serving standards than items prepared from scratch – but may not meet your goals of showcasing your farm products and promoting locally grown food. If you are dedicated to making dishes from raw ingredients, you will have a longer list of obligations in order to address the five risk factors for food safety.

Address Risk Factor: Food and Water from Unsafe Sources

This risk factor for food-borne illness is the one that you have the most connection to as a farmer. If you want to serve the products of your farm and use your farm's well as a water source, then part of your task is ensuring and documenting that those items from your

farm meet the definitions of approved source.

You should be prepared to list for your inspector your source for each ingredient or food item that you will use. All ingredients and food items must come from approved sources.

This requirement is designed to ensure that the food served was produced under safe conditions. In a typical food establishment, approved source means that the food is sourced from a grocery store or a distributor; and that situation may be what your inspector is most familiar with. However, the approved source requirement does not prevent you from buying produce directly from farmers, growers, or backyard gardeners; or from using products grown on your own farm. Fresh, raw fruits and vegetables may be purchased directly from a grower or may be grown on your farm: a farm is an approved source for these products.

The situation is a little different with animal products. Meat, dairy, and eggs must be handled according to stricter requirements if they are to be used in a food establishment. This is also true for meat, dairy and eggs from your farm. It may be helpful to think about your farm's production operation as a separate business from the food service operation, and consider that anything you use from your own farm must meet the same requirements as if you were purchasing these ingredients from other sources.

What if my on-farm food service business really takes off and I'm serving a lot of people?

If a farm serves at least 25 people on at least 60 days of the year, for “approved water source” purposes that puts it into the category of “Restaurants, Resorts, Campgrounds (Transient).” Establishments in that category are required to use a public water source. If your farm is not connected to a municipal water supply, you may be able to get your private well re-classified as a “transient noncommunity public water source.” An inspector from the Minnesota Department of Health's Drinking Water Protection Program will review the well's construction record, isolation distances, facilities, maintenance, and operation to make sure that it meets the current standards for a public water supply. MDH will also test the water on a regular basis for bacterial and nitrate contamination; and possibly other contaminants also. You can learn more about the process at MDH's webpage for noncommunity public water supply systems: www.health.state.mn.us/divs/eh/water/ncom/

See the sidebar below on approved source for more information about the regulations for using your farm's own products for food service. You can download and print these fact sheets as needed; they may be helpful for the conversation with your inspector about your ingredient sources.

All water used in the food service must come from an approved source.

Minnesota Rules 4626.0980
www.revisor.leg.state.mn.us/rules/?id=4626.0980

Minnesota Rules 4720
www.revisor.leg.state.mn.us/rules/?id=4720

Minnesota Rules 4725
www.revisor.leg.state.mn.us/rules/?id=4725

Minnesota Statutes 31.175
www.revisor.leg.state.mn.us/statutes/?id=31.175

Water used in food establishments, including temporary ones, must be from an approved source, but that does not necessarily mean a public water supply. There are several options for sourcing water:

Fact Sheets for more information about “approved sources” of ingredients for food service:

Produce:

Serving Locally Grown Produce in Food Facilities. www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-produce.ashx

Meat and Poultry:

Approved Sources of Meat and Poultry for Food Facilities. www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/meatpoultry.ashx

Shell Eggs:

Sale of Locally Raised Eggs to Food Facilities. September 2011. Minnesota Department of Agriculture. www.mda.state.mn.us/licensing/inspections/~media/Files/food/foodsafety/eggssales.ashx

1. Municipal water supply. If your farm is already on a municipal or 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 documentation that the plumbing that delivers the water to the food service site is up to code.
2. Your farm's private well. If your farm is not connected to a municipal or 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 approval process has two main components: well construction records and isolation distances.
 - a. Construction records for the well are required for it to even be considered as an approved water source. These records have been collected by counties or the State of Minnesota since 1974. These records are available in the County Well Index Online: www.health.state.mn.us/divs/eh/cwi/ If the well is older than the mid-1970s, the contractor who constructed it may still have a construction record — or a copy of that record may be found in your farm's older files. If the well construction record is not available, the well cannot be approved as a water source. Testing of the water or inspection of the interior of the pipe cannot substitute for the construction record.
 - b. Onsite inspection to verify isolation distances is required for approval of a water source. New wells are constructed with the correct isolation distances from potential sources of contamination like a septic system or a cattle pen, but over time the uses of the area near the well can change on the farm. If a well meets construction standards but isolation distances have been violated since it was constructed, it cannot serve as an approved source of water. Isolation distances are available on the Minnesota Department of Health website: www.health.state.mn.us/divs/eh/wells/construction/isolate.html
 - c. The size and frequency of operations of your on-farm food establishment also affects whether your private well can be an approved source of water. If your food establishment will serve fewer than 25 people per day on fewer than 60 days per year, your private residential well can be an approved water

source for that licensed establishment -- IF that well meets the construction standards that were in place at the time the well was constructed and meets required isolation distances. If your days of operation and number of people served are more than that threshold of 25 people on 60 days per year, see the text box on page 12: "What if my on-farm food service business really takes off and I'm serving a lot of people?"

3. Farmers who are not on a public water supply and who cannot provide the required documentation for approval of their private well, could haul in municipal water or bottled water. The water must be transported in clean, food-grade containers or vessels.
4. Construction of a new well on the farm is another option. The Minnesota Department of Health estimates that a water well has a lifetime of 50 to 60 years. If your well is approaching that age and lack of a construction record for it is holding you back, it may be time for a new well. If this is your choice, consider the information about size and frequency of your business in point 2c, above and in the sidebar: "What if my business really takes off?" Is your business likely to grow to the point that a public water supply will eventually be required? If that is possible, you should have your new well constructed to those higher public water supply standards so that the well is eligible to be re-classified as a public water supply once that becomes necessary.

Address Other Risk Factors

The remaining common risk factors for food-borne illness are:

- Poor Personal Hygiene
- Inadequate Cooking
- Improper Holding/Time and Temperature
- Contaminated Equipment/Protection from Contamination

I would like the easiest license. Does that work?

No single license is the easiest or has the fewest obligations. Every license carries the same goal: safe food service. License holders for smaller or less frequent operations shoulder the same responsibilities in addressing food safety risk factors as larger or more frequent operations. Although smaller operations may potentially expose fewer people to problems, food safety problems develop in the same exact ways as larger operations. This means that smaller or temporary operations still need to follow safe food handling procedures when preparing and serving food.

These risk factors are not as closely tied to your farm as the previously discussed risk factor of approved sources of food and water. Rather, these are common risk factors for any kind of food service and you will address them through your licensing process. The details of the way that these are addressed is different for different types of licenses. For example, you address the risk factor of contaminated equipment by having clean equipment. For a Special Event Food Stand with no ware-washing sinks, that could mean bringing extra clean utensils so that you can keep changing out dirty for clean; then washing everything at the end of the day at an approved facility. For a regular Food Establishment, the requirement for clean equipment means having NSF-approved triple-wash sinks and a hot, pressurized water supply.

As we go through the different license types in the next section, keep in mind the risk factors and the concept that different licenses offer different ways to address those risk factors — but they must always be addressed.

Which License? It Depends on Your Goals

Every farmer who operates a food service venture for the public will need at least one license. The best place to start in exploring licenses is with your farm's goals in hosting food service. If you can identify clear goals first, it is easier to narrow in on the correct license to accomplish those goals. Putting goals on paper may seem like limiting your options, but when it comes to food service licensing, you will save time and frustration by choosing the most appropriate license on the first try.

You may have a wide variety of goals in serving food. Perhaps you have a strong personal interest in cooking or want to develop a new income stream, or maybe you are looking for a value-added use for surplus farm products. These goals are all good, but food service licenses are grouped according to the frequency of operation and the type of product served. You may need to reframe your goals in terms of a broader business strategy to find the right license.

The rest of this chapter is organized by the goals you may have in starting a food service venture. Each goals section also outlines the license requirements. This is not an exhaustive list of the requirements for

Goal Example 1:

I'd like to add food service to my pumpkin festival. I don't want full-time food service and I'm happy with a simple menu. I'd really like to serve the food myself rather than hire a caterer. What license should I consider?

Answer:

A *Special Event Food Stand* License may be right for these goals.

Similar examples:

- Serve apple pie at your farm's autumn festival
- Host a picnic with hot dogs and chips after a farm tour
- Sell sandwiches during an annual barn dance

each license type, but rather is intended to help you determine if the venture is a possibility within your farm's capital resources and farm situation. You will still need to contact the appropriate regulatory agency and speak directly with an inspector. Depending on the exact circumstances of what you want to do, the inspector may determine that a different or additional license is necessary.

Special Event Food Stand

Minnesota Statutes 157.15, Subd. 14
www.revisor.leg.state.mn.us/statutes/?id=157.15

Minnesota Statutes 157.16, Subd. 3 (c) and (g)
www.revisor.leg.state.mn.us/statutes/?id=157.16

With a Special Event Food Stand License you can serve food at up to three separate events, for up to 10 days total, counting all events. As with all food service licenses, the Special Event Food Stand License requires you to follow high standards for food safety. The Special Event Food Stand License has a streamlined application and inspection process, and less stringent facilities and equipment requirements than other licenses. No official plan review is required for construction or remodeling of a Special Event Food Stand.

How does the menu affect the Special Event Food Stand License process?

The menu will be the single most important element of your process to receive a Special Event Food Stand license. Earlier in this chapter (See Example 8 on page 9), we talked about regulators' emphasis on managing risk factors for food safety. Foods that are potentially hazardous require more attention. If you are serving a shelf-stable, prepared food item, little is needed to maintain the item's safety. But, if you are handling potentially hazardous foods that need temperature maintenance, risks rise, along with the equipment and processes needed to mitigate those risks.

Consider Goal Example 1 from the beginning of this section. Suppose you are interested in serving pumpkin-themed items at your harvest festival. The Special Event Food Stand License is a good option for you because you will only be serving food for a few days. You will need to know exactly what you want to serve to fully understand your potential obligations.

Let's say you would like to give pumpkins to your friend with a commercial bakery. The bakery staff will make pumpkin pie, slice the pies, and put the slices into cartons. You will simply sell the packaged slices. In this example, your inspector will want to know how you intend to keep the slices cold up to the point of sale, and how the slices will be distributed. If, on the other hand, you want to bake the pies yourself, the inspector has many more concerns. How is the pumpkin prepared and held prior to pie preparations? What type of oven is used? How are the pies held before and after slicing? Where are the other pie ingredients coming from? The demands of operating under a Special Event license will be greater if you choose to make your own items.

What is the process for getting a Special Event Food Stand License?

Unlike the process for receiving other food establishment licenses, the Special Event Food Stand license does not require you to first submit a facilities plan before submitting an application. Instead, you can go straight to submitting the application. This must be done at least 14 days before the event and it's always wise to allow more time than required. The steps involved are listed here:

- 1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place.** The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See text boxes on pages 9 and 11 for more information about how to locate the correct inspector.
- 2. Contact the licensing authority for an application.** Different agencies may use different applications and they are not interchangeable.
- 3. Complete the application.** The application will ask many general questions about what you plan to serve, how you plan to serve it, where the hand washing stations will be located, where water comes from, where waste water goes, and much more. Keep in mind that the application is a bit like a test. The regulatory authority doesn't just want to know that you have a plan- they want to know that you have a plan that meets the requirements of the Minnesota Food Code. If the

responses don't demonstrate that the food stand will comply with the Food Code, the application will be returned for modification. It is best to talk with an inspector early in the process to discuss a precise plan that will meet the Food Code requirements.

- 4. Submit the application with the appropriate fee.** Different licensing authorities charge different fees for the license.
- 5. Receive the license and post during operations.** If the application meets the requirements, a license will be issued.

What is needed for the Special Event Food Stand facility?

The food stand must have protection from weather and other potential hazards from its surroundings. There must be a floor surface (mats over dirt ground are acceptable) and overhead protection. If the stand doesn't have walls to protect from wind and rain, food service has to stop during adverse weather. Screening to keep out insects is desirable. If you want to serve food from a barn or shed, the facility needs to offer protection from dust and debris. Some farm facilities cannot provide that, even though the building has a floor, walls, and ceiling. If you lease or rent your farm or do not have control over the buildings, these facility requirements could pose a problem.

Special Event Food Stands do not require a formal Plan Review process for either construction or remodeling. Even so, the facility will be part of your discussion with your inspector. Some farms may not be able to meet the gas, electrical, plumbing, and fire code standards that are required with this license. If a barn does not have the electrical capacity to operate cooking equipment safely, for example, an electrical fire could result. That would certainly be bad for everyone. If your farm facility is less than modern and hasn't been upgraded recently, your business plan may need to include the cost of upgrades.

To receive a Special Event Food Stand License, you must describe the food served and the equipment, service ware, and facilities used to serve it. All food preparation must occur either at the special event food stand or in another licensed facility. All food must be held, transported and served in accordance with the

Minnesota Food Code. You as the operator of the food stand must designate a Person in Charge (PIC) to monitor operations and be responsible for food safety if you will not personally be present during the entire time the food stand is operating. A Special Event Food Stand does not require a Certified Food Manager (CFM).

The following are a few, select requirements that may be of special interest if you are considering a special event food stand at your farm. Note: this is not a complete list of requirements.

Goal Example 2:

I want to serve food, but I don't want to do all the cooking and serving myself. I am happy to pay another business to do the cooking and serving. In fact, I'd love if another business could handle as much of the logistics as possible. What license might work for me?

Answer:

These situations still require licenses. However, if you work with food businesses such as caterers and food trucks to provide the food service, you may be able to rely on those food business to hold the necessary licenses. For example, a food truck should already be licensed as a mobile food unit to prepare food in the truck and serve it from the truck. Caterers who perform all the food preparations in their licensed kitchen and simply dispense the food at the farm site can rely exclusively on their licensed facility. No additional license is needed in either of these cases.

Similar examples:

- Hire a local company to orchestrate a meal event
- Work with a local restaurant to host an upscale dinner on the farm
- Rent the barn or farm facilities out for weddings and receptions that are catered
- Bring a food truck to the farm for a movie night.

- **Handwashing** stations must be provided with, among other standards, potable (drinkable) water at between 70 and 110 degrees Fahrenheit.
- If **hoses** are used for water, the hose must be food grade.
- **Wastewater** cannot be dumped onto the ground. It must go into a sewer system, sewage treatment system, or into a wastewater holding tank.
- **Disposable** service utensils such as plates, forks, and napkins must be used. Farmers may not collect the disposable single-use service items for washing and future re-use.

For more information about the requirements for Special Event Food Stands, see these fact sheets from the Minnesota Department of Health:

Special Event Foods Stands.

www.health.state.mn.us/divs/eh/food/license/specevent.pdf

Special Event Food Stand Checklist. www.health.state.mn.us/divs/eh/food/license/sefsopcklst.pdf

Catering or Food Truck

If the food truck or caterer/restaurant does any food preparation at your farm and outside of their licensed facility, then an additional license may be necessary. In that case, a Special Event Food Stand License is the most likely license needed.

Food truck operators, caterers, and restaurants should be very familiar with their licensing obligations. The ability to handle the licensing process is part of the service these businesses usually provide. Although caterers and food trucks generally handle any needed licenses, assumptions aren't a good business strategy. If you work with one of these types of businesses, you should communicate with the business about who is handling license obligations. As with any important conversation, it's always wise to create a paper trail or email documentation so everyone has a reference after memories fade. Before the event actually starts, you should double-check that caterers and food trucks have secured the necessary licenses.

Even if the food business handles the license application, you may need to be involved in the process. The food business may need further information on water sources, electrical capacity, septic system, or other infrastructure issues to make sure they comply. If there are any problems with your farm infrastructure, you may still need to work with regulatory agencies to meet the requirements.

Although you may be able to offload the lion's share of duties related to the license, you will still have plenty of legal concerns. All the legal issues detailed in Chapter 2 of this section may apply when working with caterers and food trucks.

Steps involved in working with a food truck, caterer, or restaurant:

1. Communicate with the caterer or food truck about where food prep will occur and whether the caterer/food truck's existing license will fully cover all preparation and serving activities.
2. If additional on-site or out-of-truck food prep will occur, arrange responsibility for securing the appropriate license with the caterer or food truck.
3. Work with the caterer or food truck on any license obligations that affect farm infrastructure such as water sources, electrical supply, or wastewater disposal, among other factors.
4. Before the event, check that the license has been applied for and received.

For more information on writing contracts between businesses, such as a farmer and buyer or farmer and caterer, see *Sales Contracts for Farm Produce: Why and How*. Farm Commons. www.farmcommons.org

Retail Food Handler License with Added Food Service

If you are considering a food service operation that's part of a broader retail or grocery operation, you are in a slightly different licensing position than farms considering just food service. When an operation is more than 50% retail (including bakery and deli operations), the business needs a Retail Food Handler license. Retail Food Handler licenses are administered

Goal Example 3:

I already have a Retail Food Handler License, and I just want to add food service to my existing retail operation on a limited basis. Or, I'm on track to get a Retail Food Handler License. I'm now thinking about serving a few prepared items as a small part of my future retail store.

Where should I start?

Answer:

If you have Retail Food Handler License, you should work with your current inspector to add food service to the existing license.

Similar examples:

- Already selling jam, salsas, and baked goods but would like to start serving sandwiches to order
- Opening a retail store to sell farm products but wish to serve brunch on weekends

through the Minnesota Department of Agriculture. By contrast, the food establishment licenses for food service are administered by the Minnesota Department of Health, although they may be delegated to local units of government.

If your farm currently has a Retail Food Handler license and food service will be less than 50% of the total operation, a separate license for food service is not needed. You will work with your current inspector to add food service. You must contact your local inspector to discuss exactly what needs to be done to serve food. If your retail operation is currently very modest, such as sales of only prepared and packaged foods, the upgrades needed may be significant. But, if your retail operation is already preparing foods like salad mixes, the upgrades may be moderate. It all depends on what the farm is currently doing under its retail license.

If your farm is still in the planning stages for a retail operation, you should contact the inspector you are currently working with. The inspector will want to

know which operation will generate the majority of the revenue - retail or food service. If retail sales will make more than 50% of the income, you will need to work with MDA on a Retail Food Handler license. If your retail sales are less than half of total sales, you may need to work with MDH to obtain a different license. This is one of those areas where the regulations are confusing, so work closely with your regulator, and keep good notes.

The details behind a Retail Food Handler license are beyond the scope of this resource. The objective of this section is simply to emphasize that if you already have a retail operation, you should work with your current inspector.

If you already have a Retail Food Handler License and want to add food service you should:

1. Contact your local inspector about adding food service under your existing license.

Goal Example 4:

I want to serve food to guests more than a few times... but I'm not looking to open a restaurant. I want something in between. I'd also like to do my own cooking. Serving on non-disposable dishware and offering a more diverse menu is important to me. Where should I begin?

Answer:

A Temporary Food Establishment license may be right place to start.

Similar examples:

- Cook an elegant dinner on the farm 10-20 times per year from a small kitchen constructed onsite.
- Prepare and serve picnic dinners from the week's produce from an on-site kitchen facility.
- Build a permanent outdoor pizza oven and cook up pizzas on weekends.

If you are in the planning stages for a Retail Food Handler license and want to add food service to your plan:

1. Contact your local MDA inspector about adding food service to your plan if food service will be <50% of total sales.
2. Contact the appropriate MDH inspector or inspector with a delegated authority about developing a plan and obtaining the correct license if food service will be >50% of total sales.

Temporary Food Establishment License

The term Temporary Food Establishment is actually an umbrella term that encompasses five different licenses. The Special Event Food Stand license is one, but it was handled earlier in this section. The Food Cart will not be relevant to many farmers so it is not discussed in this resource. This section explores the Mobile Food Unit, the Seasonal Temporary Food Stand, and the Seasonal Permanent Food Stand, which are collectively called Temporary Food Establishments here. From a practical perspective it is a bit easier to break these license categories down into two options: Food Trucks and Food Stands.

Food Trucks

Food trucks are self-contained food preparation units, either motorized or pulled on a trailer. They come in many different shapes, sizes, colors, and capabilities. Different truck owners use their trucks in different ways. Some may do all the cooking inside the food truck. Others may prepare most of their food at a commercial kitchen in advance and do only final preparations in the truck. The confines of a food truck can impose practical limitations on the type and variety of foods that can legally be prepared inside. Food trucks that lack sufficient wastewater holding capacity might actually be licensed as Seasonal Temporary Food Stands.

Food trucks are increasing in popularity so you may find local options to purchase or rent a food truck. A food truck isn't necessarily more affordable or more expensive than building a licensed kitchen on your farm. It all depends on the local market and the truck under consideration. However, trucks do have the added advantage of portability. If you wanted to get several farms together to cooperatively purchase and manage a food truck, the costs could be spread across

What is a Temporary Food Establishment?

Temporary Food Establishments cannot operate for more than 21 days in each calendar year at each location. However, there is an exception: a Temporary Food Stand may operate for more than 21 days at a single location if the local regulating agency authorizes it. If operating for 21 days or fewer won't meet your objectives and the authorities won't authorize longer usage, you will have to move up to a regular Food Service Establishment License, described below. (A Temporary or Transient Food Establishment can operate for another 21 days at a different location. This may be an advantage in the case of a cooperative purchase of a food truck that moves from farm to farm, for example).

Temporary Food Establishment licenses come with generally lower fees, a different inspection schedule, and less stringent facilities and equipment requirements than a regular Food Establishment license.

Even though the **Mobile Food Unit**, **Seasonal Temporary Food Stand**, and **Seasonal Permanent Food Stand** licenses come with different names, applicants will follow the same basic safe food handling procedures.

Equipment and facilities requirements are similar for these three license types, and are detailed in this publication:

Mobile Food Unit, Seasonal Temporary Food Stand, and Seasonal Permanent Food Stand Construction Guide. Minnesota Department of Health.

www.health.state.mn.us/divs/eh/food/license/mfuseaconguide.pdf

the farms. A cooperatively managed food truck could boost the visibility of all the farms in an area, as well.

Food Stands

Food stands are another option within the Temporary Food Establishment arena. Anyone who has purchased fried cheese curds or similar items at a county fair has likely patronized a food stand. Food stands may also exist where a restaurant serves food next to a golf course or a beach on a regular, but seasonal, basis. Food stands that can be disassembled and moved are licensed as Seasonal Temporary Food Stands while those that cannot be moved are licensed as Seasonal Permanent Food Stands.

Licensing Process for Food Trucks and Food Stands

If you want to integrate a food truck or food stand into your enterprise to be used for food service, you will need to work with your local regulator and go through the process of applying for appropriate licenses. If you find a food truck that is licensed in your town or county, and you plan to run it with a similar menu and equipment, then the process may be expedited.

The first step is to determine who the appropriate licensing authority is.

See the description of how to find the right regulator by location and by food type on page 9 and 11.

This information is the same for Special Event Food Stands and for other Temporary Food Establishments.

After locating the appropriate agency, you should call and ask to meet with the inspector. This is an opportunity to share your plans and build a working relationship with this person. You will want to ask about the process and application for a Plan Review. Plan Review is a formal process that the agencies use to determine if your food stand meets the standards in the Minnesota Food Code.

The second major step is the longest and most significant: prepare the Plan Review Application.

The Plan Review Application may request many items such as a copy of the intended menu, detailed blueprints, information sheets on all equipment used, details on construction finishes, and more. While it can seem overwhelming, it is just a matter of going step-by-step through the process.

It is important to note that the facility, whether a food truck or a food stand, needs to comply with the Minnesota Food Code. If it doesn't comply, the regulating agency will hand the application back and ask for modifications. While farmers are geniuses at making their own or modifying equipment, that ingenuity is not often acceptable when it comes to food service. If you are unfamiliar with food service, you may need to seek expert advice to help you prepare an application that will be approved and that you have the ability to implement.

But wait, that's not all! A Permanent Food Stand (and possibly even a Temporary Food Stand) may require a building permit from the local zoning authority. A food truck might need a permit to operate within a municipality.

Even if there is no local zoning, other state agencies take an interest in food service facilities. You may need to have the plumbing approved by the Minnesota Department of Labor and Industry (DOLI). At the same time that you are submitting a plan to the appropriate food licensing authority, you should contact DOLI about submitting the plumbing plan for approval.

And then there is the local fire marshal, who may need to approve the plans with respect to fire codes. You should contact each of these agencies before

submitting your Plan Review Application to limit the chances that changes will be needed after construction has already begun.

A Temporary Food Establishment must meet the food code, plumbing code, and fire code to receive its needed licenses. Some people are willing and able to follow detailed, technical codes when designing their facility. Others will only be frustrated by the detail orientation and engineering skills required. Remember, you can always work with a professional contractor who can help you to design plans that will meet with inspectors' approval.

You should allow a minimum of 30 days for approval after submitting your Plan Review Application to the correct food licensing authority. Sometimes it takes longer, especially if the reviewers send it back for modifications, so submitting plans well in advance of when you need to begin construction is a good idea.

Your third major step is to begin construction or remodeling of the food truck or food stand.

This step cannot begin until the Plan Review Application has been approved. After the construction is complete, submit the license application and fees. After the facility is inspected and approved, the license is awarded.

Training of Food Service Staff

Minnesota Rules 4626.2010 Subpart 4, C.
www.revisor.leg.state.mn.us/rules/?id=4626.2010

Temporary Food Establishments are not required to have a Certified Food Manager.

Regardless of the CFM requirement, you as the owner and any employees or volunteer help should be trained in safe food handling practices for food service. See the sidebar on page 10, "Safe Food Service - a New Skill Set" for more information about training opportunities.

If you will not be personally present during all operations of your Temporary Food Establishment, you must designate a "Person in Charge" who is responsible for ensuring food safety when you are absent.

Summary of steps to get a Temporary Food Establishment License for a Food Truck or a Seasonal or Permanent Food Stand:

1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place. The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See sidebars on pages 9 & 10 for more information about how to find the right inspector.
2. Inquire with the regulatory agency about the Plan Review Process. The agency may have a Plan Review Application of their own or they may use MDH's application. If the facility is currently licensed in Minnesota for a similar menu and no changes are planned, a plan submission may not be necessary. Ask your local regulating agency about this.
3. Prepare all elements of the Plan Review Application. The packet will require blueprints, information sheets on equipment, a menu, and many other elements. It may take some time to assemble an accurate and thorough packet, and working with a professional may be necessary. If the plan does not meet the regulations, it will be returned for modification.
4. Inquire with the Minnesota Department of Labor and Industry, the local fire marshal, and the local zoning authority as to whether they need to review the plan. Ask whether a building permit is needed, as well. If a Seasonal Permanent Food Stand is being built, it likely needs a building permit and an accompanying review by these agencies.
5. Submit the Plan Review packet to the licensing authority along with the Plan Review fee.
6. Await approval. If the plan meets the regulations, it will be approved. If there are problems it will be returned for modification.
7. Do construction. Construction may begin only after the plan has been approved.
8. Get inspected. After construction is complete, the food stand or food truck must be inspected. This

process assures everything was installed as planned.

9. Receive the license. After a successful inspection, submit your license fee and the license will be issued.
10. Ensure that food service staff receive appropriate training and appoint a Person in Charge to take responsibility for food safety at times when you are absent from the operation.

Goal Example 5:

My vision is for a more traditional farm café or restaurant. I want to be able to serve food frequently, and I don't want to move from place to place. I might be interested in serving complex and innovative dishes that require special equipment. What might be the best license for me?

Answer:

A regular Food Establishment License may meet these goals.

Similar Examples:

- Hosting pizza nights and farm dinners year-round or multiple times per week over the summer.
- Serving farm dinners that highlight new chefs and challenging or trendy cooking techniques.
- Opening a regular full-time farm café that serves sandwiches and other prepared foods.

Food Establishment License

If your vision includes regular food service, a Temporary Food Establishment license won't work. For food service at a permanent location for more than 21 days of service during the year, a regular Food Establishment License is typically needed. Also, if you want to prepare very complex dishes, the types of equipment required may not be feasible in a temporary establishment.

The process for planning a licensed on-farm facility

for food service isn't so much difficult as it is time-consuming. You will need to know what you intend to serve and to how many guests, and how frequently. The menu and the scale of your operation will dictate the type of equipment needed, the volume of storage space, and the size of the coolers, countertops, and more. If you think you would prefer to get a kitchen installed first and figure out the menu later, you will find the process frustrating. The process for planning and construction is driven by the menu.

After you have a good idea of what will be served, when, and to how many individuals, your conversation with the local licensing authority will identify the necessary equipment and space needs.

The water source for food service operations will need to be considered. If your food establishment serves at least 25 people on at least 60 days per year, it must use a public water supply. If your water source is a private well, it may be possible to get that well re-classified as a non-community public water supply in order to satisfy the requirement for a public water source. See the sidebar on page 12 for more information.

As a general overview, the following equipment will likely be needed:

- A commercial grade refrigerator or walk-in cooler with enough capacity for your envisioned food service operation. (If your farm's production side is a produce operation with a modified or homemade cooler, that cannot do double duty for the food service operation.)
- A commercial grade stove and oven are necessary for a wide variety of menus, although many a restaurant operates with just a flat-top grill and a fryer.
- If you will hold ingredients for preparing dishes (such as sliced tomatoes for sandwiches or pizza, shredded cheese, spreads, and meats), the ingredients must be held in a refrigerated unit; generally with a roll-top lid and slots for each ingredient container.
- Utensils, food storage containers, pots, pans, and cutting boards must all be made of approved materials.

- The kitchen must have a three-basin sink for washing, rinsing, and sanitizing.
- Countertops, tables, and cabinetry must be made of approved materials and there must be enough space to prepare foods and air-dry equipment.

All equipment must be manufactured for the purpose for which it is used. Homemade and modified equipment is not acceptable. Find more detailed information about construction specifications and equipment requirements in the Minnesota Food Code: Minnesota Rules 4626
www.revisor.leg.state.mn.us/rules/?id=4626

You may find it challenging to meet some of the plumbing, fire code, and water source requirements for a food service kitchen, especially if you are remodeling a farm building. Expensive remodeling might be needed to meet the codes. However, if the remodeling is coupled with development of a new packing shed, employee washrooms, or other upgrades, it might be more cost effective. It may be useful to work with a building contractor who knows the relevant codes already. The process for receiving a Food Establishment license includes most of the same steps as for a Temporary Food Establishment license. The Plan Review Application may request many items such as a copy of the intended menu, detailed blueprints, information sheets on all equipment used, details on construction finishes, and more.

While it can seem overwhelming, it is mainly a matter of going step-by-step through the process. If you are unfamiliar with food service, you may need to seek expert advice to prepare an application that will be approved and that you can abide by. After the plan is approved, construction may begin. After the construction is finished, the facility is inspected. If it passes the inspection, the operator receives the license. Food establishments are inspected on a regular schedule, with the frequency of inspection based on their "risk category" as defined in Minnesota Statute 157.20:
www.revisor.mn.gov/statutes/?id=157.20

Certified Food Manager and Training of Food Service Staff

Minnesota Rules 4626.2010

www.revisor.leg.state.mn.us/rules/?id=4626.2010

Regular Food Establishments have additional requirements beyond those of Temporary Food Establishments to ensure that food service staff are trained in food safety practices. Each Food Establishment must have a Certified Food Manager (CFM) on staff. The CFM doesn't have to be the owner, but it often is. This person is in charge of training staff in food safety and monitoring food safety conditions.

To become a CFM, a person must pass an approved food safety exam and then submit their exam completion certificate to the Minnesota Department of Health. See the sidebar on page 10 for information about available courses. Some of the approved courses are available online, but the test is taken in person at a testing location. Although each establishment needs a CFM, the CFM does not have to be on-site during operation at all times. To ensure the safety of food when a CFM is not present, a Person In Charge (PIC) must be present each time food is served. A PIC is an individual trained by the CFM to know the food safety rules and ensure they are followed.

Steps involved in getting a Food Service Establishment License:

1. Determine the appropriate licensing authority for the type of food sale and location where the food preparation will take place. The licensing authority may be the local Minnesota Department of Agriculture inspector; or the city, county, or state department of health. See the sidebars on pages 9 & 11 for information about how to find the right inspector by your location and by food type.
2. Inquire with the regulatory agency about the Plan Review Process. The agency may have a Plan Review Application of their own or they may use MDH's application.
3. Determine if the water source will comply with state drinking water regulations. If the food service enterprise serves enough people on enough days, it must use a public water supply. If

necessary, initiate the process for re-classification of a private well to a non-community public water supply. See page 13 for the section on approved source of water.

4. Prepare all elements of the Plan Review Application. The packet will require blueprints, information sheets on equipment, a menu, and many other elements. It may take some time to assemble an accurate and thorough packet, and working with a professional engineer or contractor may be necessary. If the plan does not meet the regulations, it will be returned for modification.
5. Inquire with the Minnesota Department of Labor and Industry, the local fire marshal, and the local zoning authority as to whether they need to review the plan as well. If a food establishment is being built, it likely needs a building permit and review by these agencies.
6. Submit the completed food establishment Plan Review packet to the licensing authority.
7. Await approval. If the plan meets the regulations, the plan will be approved. If there are problems it will be returned for modification.
8. Do construction. Construction may begin only after the plan has been approved.
9. Get inspected. After construction is complete, the food service facility must be inspected. This process assures everything was installed as planned.
10. Receive the license. After a successful inspection, submit your license fee and the license will be issued.
11. Ensure that food service staff, including yourself, receive the required food safety training and that you have a Certified Food Manager.

Conclusion

Farmers and their customers share an interest in safe food service. To help meet this goal, those who offer food to the public are required to comply with specific standards as to where the food is sourced, how it is prepared, and the conditions under which it is served. By working together with you local inspector, you can integrate food service into your farm safely and efficiently.

Chapter 2

Beyond the Kitchen

Risk Management and Legal Concerns Beyond the Kitchen

Spot ways a farm food service operation might violate the local zoning code.

Understand how farmers might become liable for their guests' injuries.

Determine the best insurance policies to protect against slip-and-fall injuries as well as food safety injuries.

Identify the differences between agricultural labor and non-agricultural labor, including the different minimum wage and workers' compensation laws that apply to the different types of labor.

Be familiar with the farm's obligation to make public services accessible to folks with varying abilities.

Know the role business entities play in protecting personal assets from business liabilities.

Introduction

The decision to integrate food service into a farm business should not be taken lightly. While there may be economic and community benefits, there are also risks and legal concerns that must be considered. Understanding these risks can help guide decision-making so that any plans you make comply with relevant regulations, and steps are taken to make your event safe for guests.

Mitigating risks and complying with laws and regulations will take some time, money, and effort. There will be some things that just cannot be done legally, while others may be too cost-prohibitive to make sense from a business perspective. While an ostrich can bury its head in the sand, the wise entrepreneur will take the time and effort to understand what is involved from

a legal and safety perspective.

This chapter discusses a few significant risks but it is by no means comprehensive. Entrepreneurs should continue their exploration through conversations with insurance agents, local government, business partners, lenders, and experienced food service entrepreneurs.

Zoning

Whether hosting a white table cloth event or a pizza dinner on the farm, zoning may be a significant legal issue. Traditional zoning separates land uses into different geographic regions. For example, residential homes are in a different location than businesses. In theory, separating the two uses will make both homeowners and business owners happier. Neither will have to deal with the concerns of the other.

Minnesota cities, towns, and counties each have the authority to zone lands under their jurisdiction. When a unit of government chooses to zone, it does two things. First, it creates a map that delineates different geographic zones. Then, it writes ordinances describing the uses allowed within each zone. Although the framework of the zoning code is universal, the details within the code vary tremendously from location to location. For example, one county's agricultural zone may allow activities that a neighboring county's agricultural zone does not allow. Zoning is very location specific. You will have a hard time generalizing from the experience of other farmers if you are not located in the exact same zone.

Many communities welcome the increased revenue from farm food service and would love to see an on-farm café or pizza shop in the neighborhood. Other neighbors, though, may not appreciate the increased traffic, noises, or interruption of pastoral views that they expect from agricultural and residential communities. If your farm food venture attracts hundreds of guests, you may become a victim of your own success when the neighbors call the local zoning or law enforcement authorities. The zoning authority, in turn, may decide the event violates the code and order you to stop. This would be a devastating turn of events, especially if you have invested in infrastructure or marketing for an on-farm food service enterprise.

You may ask, why are zoning codes relevant to on-farm dinners, pizza farms, and parties? Your local zoning code may prohibit your farm from hosting a food-related event or starting a food service operation. Admittedly, rare is the zoning code that says something like, "farm dinners are not allowed." Instead, a restriction on food events generally occurs in two ways.

1. Restriction on food service in agricultural zones

Food-related ventures may not be seen as an agricultural use of the land. Many zones define agriculture as the production and marketing of crops and livestock. While a dinner that showcases farm-raised produce may seem like a marketing strategy, that may not be how the local authority defines marketing of crops. That authority may define marketing of crops as the sale of the crop in raw or unprocessed form to a wholesale or retail buyer. Farm dinners and other on-farm food service events may be considered commercial, retail, or restaurant uses rather than

agricultural uses. Zoning restrictions are generally enforced through the building permit process. You should be aware of the use restrictions on your property generally, as zoning agents can and do enforce the rules even when no new construction occurs.

2. Restriction on food service in residential zones

If your farm is located in residential or suburban zone, you may also run into problems. Residential zones are even more likely than agricultural zones to prohibit commercial, retail, or restaurant uses. Even when residential zones allow agricultural uses, the allowance doesn't usually extend to food service. Instead, only the production or marketing of crops and livestock are allowed. F

Farms located in commercial or retail zones are much less likely to run into zoning problems with on-farm food service. It is wise to do your homework ahead of time to learn if your plans fit within current zoning codes.

Determine who has zoning authority over the exact location of your planned food service venture.

To start the process, first determine the correct zoning authority from amongst the city, town, or county in which you are located. This is very important! Some farmers make the mistake of checking with the wrong authority, and that can be a disaster. If your farm is located within a town or township that has elected to zone, asking about the county zoning code will not help.

Many townships and counties have websites with maps and descriptions of their jurisdiction. You can also determine which zoning authority covers your farm by calling the local offices and asking. Zoning offices go by various names such as the Planning and Zoning Office, Building and Zoning Department, or simply the Planning Office. Once you identify the correct office, the staff there should be able to look up your address and determine if it is within their jurisdiction.

Determine which zone your farm is located within.

Some local governments have their zoning maps online. If the map is not online, farmers may need to go to the zoning office to consult a map. Having your street address or the tax identification number of your property can be helpful in looking up what zone your farm is in. The zone designation will likely be a combination of letters and numbers. For example, agricultural zones may be called “A-1” while residential zones generally begin with an R.

Find the allowed activities within that zone.

Many governments have their ordinances posted online and each Minnesota county has a law library which should have local ordinances on the shelf.

While trying to decipher the code yourself is an option, it will likely be easier to call or visit the zoning office, give details of your proposed venture, and ask as to whether it will be allowed. Local attorneys can also offer perspective on how local codes are interpreted or enforced.

Conditional Use Permits

It is useful to know that the zoning ordinance will often prohibit a farm food service venture unless you receive a Conditional Use Permit. Conditional Use Permits may require you to show that you have plans to put the necessary traffic, parking, restroom, trash, and crowd control accommodations in place. The Conditional Use Permit process requires a public hearing where neighbors can voice concerns about a Conditional Use Permit application. There is usually a fee for a Conditional Use Permit, in addition to any building permit fee. The investment of time and energy required to obtain a Conditional Use Permit may be worth it only if you are confident that the food service venture will be financially viable.

Variances

If the local zoning ordinance appears to prohibit farm events entirely, all is not lost. You might ask for a variance, which provides an exception to the rules. Variances are granted for many different reasons.

Changing the zoning rules

If no other options seem to work, and you are very determined, you could consider an effort to get the zoning ordinance amended. Community-based farmers are in a position to make this happen by recruiting neighbors to attend meetings or write letters. Changing the zoning ordinance may seem like an onerous task — but it certainly has happened in the past. Many urban agriculture organizations have advocated for zoning changes to allow food production within city limits. Food truck operators have also managed to change the local ordinances to allow food sales from parking lots and curbsides. As noted earlier, though, not everyone will agree with your proposed changes and you may encounter local opposition as well as support. The experiences of other groups will be valuable if you see a need to change the zoning ordinances before offering on-farm food service. For additional information and an example of a successful effort to change local ordinances, see *A Guide to Regulations for Local Food Entrepreneurs*. Further Resources, below.

Manage Zoning Risk Checklist

1. Investigate your local zoning ordinances, to learn how the zoning authorities will treat a proposed farm food service venture: read the code, call the office, or consult a professional.
 - a. If the venture is allowed, it can move forward within the zone’s constraints.
 - b. If the venture is allowed only with a Conditional Use Permit, determine what you need to show, have, or do to receive the permit.
2. If the venture is not allowed, research the possibility of a variance from the zoning ordinance.
3. As a last resort, if other avenues seem closed, you might consider starting a campaign to change the local zoning ordinance.

Further Resources on Zoning:

Minnesota State Law Library: Minnesota County and Municipal Ordinances Online
mn.gov/lawlib/ordinance.html

A Guide to Regulations for Local Food Entrepreneurs. 2013. Megan O’Hara, Endowed Chair in Agricultural Systems. www.misa.umn.edu

Injuries

After you invite customers onto your farm property, especially if those customers include children, injuries are usually a matter of “when,” rather than “if.” This isn’t to say that your farm is particularly hazardous. Rather, customers’ unfamiliarity with farms in general makes them especially blind to your farm’s natural hazards. Further, hosting a food service event means creating an intimate space where people are encouraged to share in your home and livelihood. That intimacy is exactly what many customers want. But coziness also has a negative side: folks feel more comfortable taking liberties with your farm space, equipment and facilities. To put it another way- visitors do things they shouldn’t. Injuries, no matter how they happen, are a legal concern deserving of close attention.

After spending any amount of time on a farm, a person acquires a kind of sixth sense about farm risks. This keeps you safe but it also makes you conscious of natural hazards. Visitors are much quicker to trip over rough ground, fall into depressions or holes, or fail to recognize the dangers associated with equipment and livestock. You can manage these risks, but the first step is realizing that these risks are real for visitors.

From a legal perspective, you aren’t necessarily responsible every time a visitor trips or falls. The primary (but by no means exclusive) way that you might become legally liable for a guest’s injury is through negligence. Negligence is a complex legal concept but suffice it to say, negligence is the failure to be as careful and prepared as any other farmer would have been under similar circumstances. For example, say a guest falls through rotting floorboards in a barn during a potluck dinner. If most farmers would have roped off the rotting boards, replaced the boards, or held the dinner elsewhere, and you didn’t do those things, you may be negligent. If your negligence led to the guest’s injury, you may be responsible in whole or in part.

As you might guess, using other farmers as a yardstick for anything makes for a very unpredictable measuring device. This is why personal injury lawsuits are expensive and time consuming -- they require detailed analysis on subjects over which reasonable people can disagree. This is also why many businesses exercise an abundance of caution. If negligence is being less

careful than others, the best way to avoid negligence is to be more careful than others. As the bar goes higher, everyone exercises more caution. This can be a good thing for customer safety but it can be hard for you to identify a reasonable limit.

Buy an appropriate insurance policy

When it comes to injuries and negligence, the single most important step you can take is to buy an appropriate insurance policy. When a covered injury occurs, the insurance company steps in to handle the legal matters. If the case comes back with a judgment against your business, the insurance company pays the bill up to the limits of the policy. You might be tempted to think, “I don’t need insurance because I won’t be negligent.” The harsh reality is that you can be sued even if you did nothing wrong. Innocent people can be hauled into court to establish their innocence. That takes time and money, which an insurance policy provides. You need insurance even if you take every precaution to protect guests.

The insurance company will inspect your property in order to protect their ability to defend and win lawsuits. Insurance agents are (ideally) trained to understand where risk exists and to help you minimize it. If they find conditions considered too hazardous (or simply difficult to quantify in terms of risk) the insurance company may choose not to offer or renew your policy. If you have particular risks - including derelict buildings or some types of processing operations - this can present a very difficult situation. Insurance companies will be very hesitant to insure your operation because the conditions will likely be seen as negligence in court. If you have uninsurable conditions, you can ask around to several insurance companies, but you may need to fix the risky situation first.

How can you know if you have the right insurance policy?

Getting the right policy for an on-farm food service venture can be tricky. Most farmers carry only farm liability insurance. Farm liability insurance acts as a homeowner’s policy by covering both your residence and injuries to personal guests. It also acts as a business policy by covering your farm operation’s facilities or buildings and injury to business guests. You might mistakenly think that food service guests will be

covered by a farm liability policy. Unfortunately, this is often not the case. The business portion of a farm liability policy will usually only cover the risks extending from the production and marketing of crops or livestock- not from food service.

If you are relying on a farm liability insurance policy to cover food service events, you are taking a risk: food service-related injuries may not be covered by the insurance company. To resolve this risk, you should communicate in detail with your insurance provider about your food service operations. This communication should be in writing. Communicating over email and maintaining a regular phone log are good ways to create records of important communications.

You should ask your insurance agent the following questions before hosting any type of food service:

1. “Will an injury that extends from my event be covered under my current insurance package?” You should describe the event in detail. For example, it may not be enough to ask, “Is a potluck covered under my insurance policy?” An end-of-season “potluck” party for 200 Community Supported Agriculture members, for example, will be handled quite differently than a potluck with a few volunteers. You should note whether the event is free or for a charge, whether and how alcohol will be available, how many people will be attending, and whether the guests have an existing relationship with your farm or not; for example, whether they are existing farm customers or suppliers.
2. “Do I need an event endorsement or a commercial policy to cover injuries from my food service event?” Very likely, an additional insurance product will be necessary to cover a food service venture. If your food event is only occasional, an event endorsement added to the farm liability policy may be adequate. For more regular events, a full commercial policy is probably necessary.
3. “Does my policy require that I follow any specific procedures for hosting this event?” The insurance policy or event endorsement may set specific conditions for coverage such as posting warning signs or restricting access to certain areas.
4. “Does my policy provide coverage for legal

defense and judgments for potential injuries?” As discussed above, an insurance policy is valuable in part because it pays for a defense in court. Even perfectly safe farms need this kind of protection. Make sure your policy offers it.

Insurance is a worthwhile expense when it covers the risks a farm incurs. Commercial policies can be cost effective as an addition because most of the farm’s risks are still covered under the existing farm liability policy. Farms working with another entity- such as a farm-to-table event management company- have another option. The farm can ask the other company to add the farm as an “additional insured” on the company’s insurance policy. For a one-time event, this may be a more affordable option.

Create a safe on-farm environment

Of course, you do not want an injury to occur even if your insurance policy will cover it. Injuries are sad, bad for your farm’s reputation, and will likely result in higher insurance premiums going forward. Be proactive. Create safe environments and help guests protect themselves. Here are several steps you can take to reduce the risk of injury.

- Clearly communicate with customers about safety procedures to prevent accidents. Use verbal instructions and signage.
- Put hazardous areas off-limits, and make this abundantly clear with physical barriers and signage.
- Assume that guests do not have any basic understanding of farm safety and will not recognize hazards. Just like toddler-proofing a house, you should guest-proof all guest areas. Remove, block, or secure anything that could hurt guests.
- Separate food service and any contamination sources while providing basic sanitation facilities to guests.

Use a waiver as a communication tool

Although enforceability isn't necessarily an efficient goal, waivers may still be worthwhile as a communication mechanism. A waiver demands the kind of attention that signs and verbal instructions can't compete with. Putting a signature on a document might inspire guests to pay more attention to the risks and rules. This can be a positive thing for preventing injuries.

Waivers

Should you be using a waiver to release yourself from liability if a farm visitor is injured? The short answer is that legally effective waivers are difficult to write. The law does not look fondly on the waiver of one's rights and scrutinizes any attempt of a party causing injury to disclaim responsibility. When it comes to youth under 18 years of age, it is highly unlikely that a waiver will be effective at all. Although a parent may be able to waive a child's rights, it isn't easy. If a legally sound waiver is still desired, you might talk with your insurance agent. As the insurance company is familiar with the exact contours of liability for your farm's situation, the company may have a recommended waiver. An attorney is another option for creating a waiver. Attorneys are the best possible source for a specific and legally binding waiver, but the service comes at a cost.

Even if the waiver is legally sound, the farmer will still need to establish in court that the waiver complies with the standards for a legally permissible waiver of liability. For this reason alone, farms still need an insurance policy that covers the food service venture. Insurance will provide a defense in court and will pay on a judgment if the waiver is proved invalid. If legal protection is the goal, waivers are generally not the most efficient way to achieve it.

Manage Injury Risks Checklist:

1. The first line of defense against the legal aspects

of injury is preventing injury itself. Install barriers, repair hazards, and generally adopt high standards for site safety. Use communication tools such as signs and verbal instructions to warn visitors of the farm's safety expectations.

2. As the second line of defense, buy an insurance policy that will cover slip-and-fall type injuries that relate to the farm food service operation. The right insurance policy may be one of these:
 - current farm liability policy
 - current farm liability policy plus an event endorsement
 - inclusion as an additional insured on another enterprise's commercial policy
 - separate farm commercial insurance policy.

Further Resources on Injuries:

Farm Commons Webinar: *Efficiently Manage Your Farm's Risks With Insurance*, available at www.farmcommons.org

Food Safety Incidences

It goes without saying that you will strive to provide safe food to your guests, whether it's a fresh apple or a farm-prepared meal. When you work directly with customers, and especially when you are using the products of your own farm, you feel directly responsible and highly motivated to protect the quality of the food you serve.

But accidents still happen. Even if it's not your fault, a food safety incident is a tremendous liability. From a marketing perspective, even a suspicion that your food is unsafe can damage your business. If it is a situation where you are, in fact, at fault, legal liability can make things much worse. As with slip-and-fall injuries, it is important to be proactive and focus both on prevention and on insuring against such incidences.

Can you become legally responsible for a food safety incident when other people have prepared the food (such as a potluck, a business that implements on-farm dinners, or a food truck offering food on site?) In a word, yes. Although the liability possibilities are multiple, perhaps the most likely avenue for liability is negligence (just as with physical injuries.) If you are negligent in how the event is structured, you may become liable for food poisoning that results.

Negligence

You may be legally negligent if your food service structure makes cross contamination likely. As an example, suppose you are hosting an apple fritter fry-off. To add to the fun, you arrange a goat petting area right next to the fritter sampling station. People, and especially children, may consume harmful bacteria if there is little physical distance and insufficient opportunity to wash up between the goats and the fritters. Individuals who get ill as a result could claim that any reasonable farmer would have provided soap and water or sanitizing gel and would have separated the petting areas from the eating areas.

The same argument could be made if you host a potluck for guests. If your event schedule or set-up fosters unsafe practices, you may be legally liable (in whole or in part) for an injury that results. For example, if guests bring their prepared dishes to a potluck and you have scheduled a three-hour tour of the gardens before the meal on a warm day, dishes that can support rapid bacterial growth may have become unsafe to eat by the time the meal takes place. A reasonable person could argue that you should have been aware of that possibility and scheduled the meal first, tour later.

This isn't to say you are automatically liable for all contamination accidents or that the law prohibits offering food in the vicinity of animals. But, when your actions make it more likely that contamination will occur, you can expect to be held at least partly responsible when it occurs. These are just a couple of examples of the kinds of problems you may be expected to prevent. Even if you aren't supplying the food, it's important to think about event structure and timing to avoid food-borne illness.

Culpability

When you are the one preparing or serving food, the legal landscape changes. Your liability potential is much greater as compared to food supplied by guests or other businesses. You may be responsible for negligently causing contamination while serving the food. You may be responsible for any injury resulting from the product itself. Foreign objects might fall into the food or the items may be contaminated with allergens, chemicals, bacteria, or viruses. The basis for liability under these circumstances is different than

negligence, and simply adopting high standards may not be enough to avoid legal liability. Depending on the exact injury, you may be liable simply because it occurred. The bad news is that legal liability for food products is complex, variable, and far beyond the scope of this resource.

Protecting yourself: food safety and insurance

The good news is that you can protect yourself in two ways. You should learn and implement careful food safety practices. Especially where the applicable food service license requires a procedure, you should make certain the procedure is followed every time. Not following legal obligations might easily be negligent. Going above and beyond the legal standards is always a good idea. You should talk with inspectors and food safety professionals to learn the latest food safety techniques. (See page 10 in the previous chapter for more information about training courses.) Another good resource is the "Minnesota School Garden & Farm to Cafeteria Manual," which outlines basic farm-to-table food safety techniques. Find it on the Olmsted County website: www.co.olmsted.mn.us/OCPHS/reports/Pages/MNSchoolGardenandFarmToCafeteriaSafety.aspx

Insurance is just as important as good food safety practices. Even if you offer perfectly safe food and structure an event to reduce contamination risks, you can still be hauled into court to prove that you did exactly that. Defending yourself is expensive, time consuming, and beyond the skills of most non-attorneys. Insurance addresses this problem by providing a defense as soon as the incident is reported. If a judgment results, you are covered up to the limits of the policy. The peace of mind from a good insurance policy can be worth the cost.

Farm liability policies are not intended to cover food service ventures. Some farm liability policies may offer some protection under very narrow circumstances. For example, it may cover bacterial contamination that results from a tornado. This is not the kind of risk that you will frequently encounter. You should talk with your insurance agent about each of the insurance questions discussed in the above section. Don't be surprised to learn that insurance coverage for farmer-provided food is either non-existent or uncertain. A commercial

restaurant insurance policy is much broader and is intended to cover the many risks unique to a restaurant, such as disease transfer from employees to customers. If you are dedicating resources and effort to building a food service venture, a commercial policy may be a wise investment.

Manage Food Safety Legal Risks Checklist:

1. If you are hosting an event with food supplied and served by others such as a potluck, catering business, or food truck:
 - a. Create a clean environment where sanitation is readily available and cross contamination potential is limited, and
 - b. Contact your insurance company to verify that any liability for food safety incidences will be covered under your farm's current liability policy.
2. If you are preparing or serving food yourself, you should contact your insurance company to purchase coverage for the unique risks of preparing food. You may need to purchase a business endorsement or a full commercial policy for the broadest protection from the increased liability exposure.

Further Resources on Injuries:

Farm Commons Webinar: *Food Safety Liability and Regulations for the Farm*, available at www.farmcommons.org

Host Safer, More Legally Secure Farm Events manual, available at www.farmcommons.org

Employment Law

If you are considering diversifying your farm operation with food service, you should read this section carefully. Different rules affect farm labor as compared to food service labor. The law often treats agriculture differently than non-agriculture. For example, this chapter has already discussed how agriculture and non-agriculture are handled differently under zoning and insurance policies. Employment law is a third area where the rules change as a farm broadens beyond just the production of crops or livestock. If

you are not aware that the rules change once food service operations begin you may expose yourself to enforcement action. This section explores the shifting overtime, unemployment insurance, and workers' compensation requirements as new ventures are added to your farm, such as food festivals, dinners, and pizza nights.

This section does not discuss many important employment law concerns. For the sake of space, a host of other vital concerns are not addressed at all: minimum wage, youth employees, family employees, hiring procedures, and discrimination issues. These issues are very important, but as this resource is specifically intended for the diversifying farmer, the focus is solely on the transition point between farm and food service. It is not a general summary of farm employment laws.

Overtime pay

As a farmer, you may know that you don't have to follow the same overtime rules as non-farm businesses. However, if your farm is taking advantage of any exemption from overtime, you must be very cautious about using the same employees for food service. A farm employee who also does food service work is not eligible for an exemption. Instead, standard overtime rules apply. The standard overtime rules depend on the business size and sales. If your farm's products are sold across state lines or your farm has annual gross sales of more than \$500,000, you must pay overtime for all hours over 40 in one week. If your farm's products are sold entirely within the state of Minnesota and your farm grosses less than \$500,000 annually, you must pay overtime for all hours exceeding 48 in the work week.

There is an agricultural exemption to overtime rules that is based on the farm employee's salary: you are exempt from paying overtime for a work week only if 1) your farm employee is paid the guaranteed salary rate specified by state law; AND, 2) your farm worker performs exclusively agricultural labor in that week. See the fact sheets listed in the Further Resources section below for more detail on the agricultural exemptions.

Labor relating directly to a food service venture is not agricultural labor. If you have been claiming an agricultural exemption from overtime, once you venture into food service you cannot claim those

same exemptions for employees who work in the food service. You should note that careful records are required to demonstrate compliance with the rules. For example, your farm employee timesheet should show more than just the hours worked- it needs to show which tasks were performed as well. Clear, complete records will show regulators that your farm is within an agricultural exemption or that you are properly applying overtime pay to non-exempt employees.

Employment law can be easier to understand with examples. Pretend for a moment that you want to host a pizza night once per month at your vegetable farm. You currently employ two friends to help plant, cultivate, and harvest vegetables at your farm. You have high tunnels and deep winter greenhouses, and operate year-round. You pay them the applicable guaranteed salary rate and you do not pay overtime. If you have these two employees help out with pizza night on your farm, the exemption no longer applies. You must now follow regular overtime rules for all the hours those employees worked during the week of the pizza night. If the friends happened to work a total of 50 hours that week, their pay would be at least time and a half for the overtime hours. The overtime hours total either 10 or 2 hours, depending on where your products are sold and your farm's gross revenue. You cannot say, for example, that the extra hours were for farm labor and avoid overtime. All hours over the threshold must be paid at time and a half if any non-farm labor was performed in that week.

The key question is, does your farm use its regular farm employees for the food service venture?

- If no, agricultural overtime exemptions may apply.
- If yes, regular overtime rules apply.

Note that these categories are only a limited illustration of an on-farm food service venture's effect on overtime. Overtime is a complex legal issue and many other factors are not presented here. See Further Resources on Employment Law to find fact sheets with more detail about agricultural exemptions from overtime.

Unemployment Insurance

As with overtime pay and workers' compensation, you need to be aware of their changing unemployment

insurance responsibilities as you diversify into food service. Unemployment insurance is a state-run system for compensating individuals who, through no fault of their own, are let go from their jobs.

Generally, you must begin contributing to unemployment insurance when:

- Your farm pays \$20,000 or more in wages during any calendar quarter of the year; OR
- Your farm pays wages to 4 or more employees in any 20 calendar weeks of the year.

Two examples may help illustrate these requirements. If four employees work on your farm each Monday for 20 weeks, you must pay into the unemployment insurance program. Alternatively, your farm might hire three employees who earn a total combined payroll of \$22,000 between July and September. Generally speaking, both these situations would be subject to unemployment insurance. As this guide is not a thorough introduction to farm employment laws, you should seek more information to confirm whether your farm must contribute to the unemployment insurance program for non-food service activities.

When you diversify into food service, you may be responsible for unemployment insurance well before your farm meets the above thresholds for payroll and total number of employees. This is because the rules for farms technically only apply when farm labor is performed. Hosting a food service operation has not historically been a farm activity and isn't seen as agricultural labor. For non-agricultural labor, businesses have to register and pay into unemployment insurance as soon as they pay any wages to even a single employee.

What if your farm's employees spend part of their time on farming and part of their time on food service? Does your farm owe unemployment insurance? First, the answer is "yes" if your farm crosses either of the two thresholds above involving 4 employees or \$20,000 in payroll.

If your farm is under both thresholds, whether unemployment insurance is owed depends on the proportion of time an employee spends on agricultural and non-agricultural tasks, per pay period.

- If your farm employee spends less than fifty

percent of his or her time on non-agricultural labor, unemployment insurance tax doesn't apply in that pay period.

- If your farm employee spends fifty percent or more of his or her time on non-agricultural labor, your farm needs to pay unemployment insurance tax on all wages paid to that employee during that period.

Your farm's unemployment tax rate depends on factors specific to your farm, farming as an industry, and on the economy as a whole. Businesses paying unemployment insurance tax for the first time often pay a rate of 2% or less.

If you think you may need to pay unemployment insurance tax, you should contact the Minnesota Department of Employment and Economic Development (DEED), Unemployment Insurance Program for more information. www.uimn.org/uimn/

Workers' Compensation

Workers' compensation is another important focus area for any farmer considering diversification into food service. Minnesota's workers' compensation laws allow some small farm operations to go without workers' compensation if the farm carries a liability insurance policy that covers employees. If your farm is relying on this exemption, you should be cautious as you diversify. The more that your farm is involved in activities that are not the production of crops and livestock (such as food service), the more you should follow the rules for non-farm businesses. Non-farm businesses are required to have workers' compensation when they have one employee.

If you are relying on the small farm exemption from workers' compensation you should know that covering farm employees through a liability insurance policy may require a commercial policy. As with a farm liability policy and injuries to guests, farm liability coverage for workers only extends to farm activities. Food service is likely not considered a farm activity. If your employees are injured while preparing food or running the food service event, your farm liability policy may not cover their injuries. A general commercial policy covers the broader risks of food service, but not all policies will cover employees. Generally, a commercial policy will only cover the risk of injury to a seasonal and temporary employee. If your farm's employees are employed year-round, a workers' compensation policy may be the only

option. If you don't get the right policy, not only does this leave you exposed to liability for the injury itself, but you also may be exposed to a steep fine for violating workers' compensation laws. It is essential to make certain that employee injuries are covered whether you do that through workers' compensation or a commercial policy.

Employment Legal Issues Checklist:

1. Determine the appropriate overtime rate for agricultural and food service workers
2. Determine your obligations for filing and paying unemployment insurance for your workers.
3. Implement careful record-keeping practices to demonstrate compliance with employment laws.
4. Consider an investment in workers' compensation insurance to ensure coverage for employee injuries

Further Resources on Employment Law:

Minnesota Department of Labor and Industry (MN DOLI), at 1-800-284-5005, www.dli.mn.gov

Labor Standards - Agricultural Workers. MN DOLI. www.dli.mn.gov/LS/AgWorkers.asp

Labor Standards - Overtime Law. MN DOLI. www.dli.mn.gov/LS/Overtime.asp

A Guide to Minnesota's Recordkeeping Laws. MN DOLI. www.dli.mn.gov/ls/Pdf/recordkeeping.pdf

Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms. Farmers' Legal Action Group. www.flaginc.org/topic/labor-and-employment/

Making Employment Law Work for Your Farm webinar. Farm Commons. www.farmcommons.org

Minnesota Department of Employment and Economic Development (DEED, Unemployment Insurance Program). www.uimn.org/uimn/

Sales Tax

When you begin a food service venture, you are wading headlong into the issue of sales tax. If you sell only fresh or raw agricultural products, you do not need to collect Minnesota sales tax. That doesn't hold true for prepared food products. Food service is subject to sales tax. The line between "food" and "prepared food" can be thin. Four general guidelines lay out when a food becomes "prepared" and is subject to sales tax.

1. Foods sold with napkins, plates, forks, straws, cups, or other utensils are taxable.
2. Food items that are mixes of ingredients (for example: fruit salad, sandwiches, ice cream on a cone) are taxable.
3. Foods heated by the seller and then given to the customer are taxable.
4. Foods sold ready for display and serving, such as vegetables arranged on a tray, are taxable.

The details certainly add some complexity. As for utensils (the first guideline), simply setting out napkins on the counter is enough to make food taxable. You do not have to go as far as placing a fork in a to-go box for food to be considered "prepared." Regarding mixed ingredients (the second guideline), even salad mix, jam, and cheese are taxable when sold by the same person who made the item. Anything that is a combination of two or more ingredients is taxable when sold by the preparer. If a separate business prepares the food item and you subsequently sell it, the item is not taxable under the second guideline. However, if the fruit salad, sandwich, etc. is sold with a fork it becomes taxable under the first guideline even if it's prepared by a different business. Each of the guidelines above is a separate basis for taxability. For example, if you heat a dish for sale but do not also include utensils the item is still taxable.

You may choose to set up your food event with an admission or cover charge. Even though the sale is for access to an event rather than for an item itself, these sales are subject to sales tax. For example, your farm might host several food trucks on the farm and sell tickets to customers for entry. The ticket sales are taxable.

If you are new to taxable sales will need to apply for

a sales tax permit. The process is quite easy and can be done over the phone or with a paper application. Contact the Minnesota Department of Revenue to begin the process. After the application has been filed, the department will issue your farm a sales tax account number and permit. Sales tax is collected by your business and then reported to the state either by phone or online. The sales tax payment can be sent by check, or paid online by direct withdrawal from a checking account. Your business' average taxable sales for each month in the previous year determine whether you must pay sales tax to the state on a monthly, quarterly, or annual basis. Detailed information on registering for, collecting, and remitting sales tax is at the Minnesota Department of Revenue's website (see below.)

Sales Tax Checklist

1. Determine if your food service operation will be making taxable sales.
2. If taxable sales will be made, apply for a sales tax permit and implement a system to track and remit sales tax.

Further Resources on Sales Tax:

Minnesota Department of Revenue at 1-800-657-3777 or visit their website at www.revenue.state.mn.us

Food and Food Ingredients Fact Sheet. Minnesota Department of Revenue. www.revenue.state.mn.us/businesses/sut/factsheets/FS102A.pdf

Prepared Food Fact Sheet. Minnesota Department of Revenue. www.revenue.state.mn.us/businesses/sut/factsheets/FS102D.pdf

Americans with Disabilities Act

The Americans with Disabilities Act (the ADA) requires that places of public amusement be accessible to those with disabilities. The ADA is a federal law that prohibits discrimination and ensures folks with a range of abilities can participate fully in American life. This law affects farmers, too. If your farm offers events open to the public, you must accommodate disabled individuals as much as is reasonable. For example, a person in a wheelchair may not be able to roll from the parking lot to the meal site if the ground is deeply rutted. If more accessible routes can be reasonably

installed, the law may require it. The ADA does not require that every individual feature be fully accessible, and it does not require that business owners completely remodel at great expense.

Minnesota has also adopted a state law that prohibits businesses from denying protected individuals the same enjoyment of the business' services as are provided to other guests. The Minnesota law is similar to the federal law in many respects. Both laws clearly prohibit places of public accommodation from failing to make reasonable accommodations for disabled persons. "Places of public accommodation" includes farms that offer food service to the public. For example, you cannot prohibit blind or deaf individuals from coming to your on-farm food event if there are safety practices that might easily protect that person.

Generally, the requirements of the ADA are put into place when a business applies for a building permit, whether for new construction or remodeling. Then, the permit-granting agency will check the building plans to see that they meet accessibility standards. However, it is important to note that the law is enforceable even against public farm events that have not done any remodels or gone through the building permit process.

Exactly what your farm should do to satisfy the ADA and Minnesota requirements depends on when you began your food service operation, the nature of the event, and the cost of retrofitting facilities. At a minimum, you should make sure that people in wheelchairs are not prevented from attending the event or using a restroom. Installing smooth, wide pathways accomplishes the first part of this goal. (At the same time, this is also a good practice to avoid injuries to people who are not disabled.) You could consider meeting the second part of the goal by renting at least one handicapped-accessible portable restroom. You can consider other techniques to ensure people of all abilities can enjoy the event. For example, benches or chairs placed throughout the property will allow guests with limited mobility to rest.

Disabilities accommodations are always a good idea. But when does a good idea become a legal obligation? With such uncertain requirements, the starting point is recognizing that the ADA may apply to on-farm events if they are open to the public and it might be useful to do some research. Unfortunately, it can be

hard to figure out exactly what you must do to comply with the ADA. You should review the Department of Justice's "ADA Guide for Small Businesses." You can call the Department of Justice's toll-free hotline at 800-514-0301 or the Minnesota Department of Human Rights with specific questions. The Small Business Administration (SBA) also helps businesses understand how to comply with the ADA. See the "Further Resources on the ADA" section on this page.

ADA Issues Checklist:

1. Consider whether the food service operation is accessible to individuals with a wide range of abilities. If it is not, create a plan to make it more accessible.
2. Contact the Small Business Administration and the Minnesota Department of Human Rights for more information on whether the accessibility plan meets the law's requirements.

Further Resources on the ADA and the Minnesota Human Rights Act:

U.S. Department of Justice at 800-514-0301

ADA Guide for Small Businesses. Department of Justice. www.ada.gov/smbusgd.pdf

Minnesota Human Rights Act. Minnesota Department of Human Rights. 800-627-5329; mn.gov/mdhr/

Small Business Administration, Minnesota District Office. www.sba.gov/offices/district/mn/minneapolis

Business Structure

Choosing the right business entity can help you achieve your risk management objectives as you diversify into value-added enterprises like food service. Across the United States, the majority of farmers organize their businesses as sole proprietorships or general partnerships. Although these entities are easy to establish and have fewer paperwork concerns, they come at a cost. The sole proprietorship and the general partnership both leave your personal assets available to satisfy a business judgment. For example, if you have a sole proprietorship, buy seed on credit, and then fail to pay

your bill, the seed company could demand both your business assets and your personal assets to get paid back (assuming the seed company gets a successful legal judgment against you). By contrast, the LLC (Limited Liability Corporation) and corporation business entity shield your personal assets from business judgments.

The protection offered by LLCs and corporations are important but should not be overstated. In terms of risk management, insurance is far more important than establishing an LLC or a corporation. Even if your business is organized as an LLC or corporation, a disgruntled individual or creditor may still argue that you as the owner are personally liable for the judgment. If you haven't followed best practices in managing the LLC or corporation (including keeping separate bank accounts, following established procedures, fully capitalizing the business, and more), the court may look right past the entity and take your personal assets anyway. When it comes to creditors, many will require a personal guarantee before extending any credit to a farmer. An LLC or corporation provides no protection when a debt has been personally guaranteed. Lastly, some protections for personal assets would be extended to you, even if your farm is a sole proprietorship or partnership, through the bankruptcy process. Some farmers see diminishing value in an LLC or corporation in comparison to the fee and accounting costs.

You should also note that business assets are always available to satisfy business liabilities. Creating an LLC won't protect farm items like tractors, planters, or washing equipment as those items are clearly assets of the business. Successful creditors can get at those assets to satisfy debts.

Organizing as an LLC or corporation may be a smart move for starting a food service venture. An LLC or corporation is an excellent last line of defense. For example, you may not have purchased the correct insurance policy or might have violated terms of the insurance policy, thus losing coverage. If you also lost your case in court, you could be at risk of losing your personal assets. Further, separate entities can help manage risk in diverse enterprises. You can cordon off the risks of the food enterprise to just the food enterprise's assets. As explained above, business assets are always available to satisfy judgments against the business. If your farm creates a separate LLC for a food service venture, only the food service equipment will be available to satisfy the judgment (assuming, of course, that best business practices are followed.) Starting an

LLC or corporation is a straightforward procedure and is quite affordable in Minnesota. The Minnesota Secretary of State's Office handles the paperwork for forming business entities.

If you choose to establish one or more LLCs or corporations, proper management of the entity is essential to maintain the entity's protections. The business should be sufficiently capitalized. You should maintain separate bank accounts and books for each entity. Negotiating, writing down, and following an operating agreement or bylaws establishes legitimacy as well. Keeping up-to-date with annual renewal paperwork through the Minnesota Secretary of State's office is also important to keep the protections of the entity. Consulting with an attorney who has expertise in farms and in small business structures could be very valuable.

Business Structure Checklist:

1. Consider forming an LLC or corporation for your farm's food service operation to further insulate personal assets and farm assets from the food service operation's liabilities.
2. If you organize as an LLC or corporation, do your research and adopt best practices to maintain the entity's protections.

Further Resources

Minnesota Secretary of State. www.sos.state.mn.us

Business Structure Comparison. University of Wisconsin-Madison. www.uwcc.wisc.edu/whatisacoop/BusinessStructureComparison/

Sec. 36. [604A.40] AGRITOURISM; IMMUNITY FROM LIABILITY.

Subdivision 1. Definitions.

(a) For the purposes of this section, the terms in paragraphs (b) to (g) have the meanings given them.

(b) "Agricultural products" means livestock, aquacultural, poultry, horticultural, floricultural, viticultural, silvicultural, or other products of a farm or ranch.

(c) "Agritourism activity" means activity carried out on a farm or ranch that allows organizations or members of the general public, for recreational, entertainment, charitable, or educational purposes, to view, enjoy, or participate in rural activities, including, but not limited to: farming; viticulture; winemaking; ranching; and historical, cultural, farm stay, gleaning, harvest-your-own, or natural activities and attractions. An activity is an agritourism activity whether or not the participant pays to participate in the activity.

(d) "Agritourism professional" means a person who is engaged in providing one or more agritourism activities, whether or not for compensation.

(e) "Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting, or processing of agricultural products.

(f) "Inherent risks of agritourism activity" mean dangers or conditions that are an integral part of an agritourism activity including but not limited to:

- (1) natural hazards and conditions of land, vegetation, and waters including surface and subsurface conditions;
- (2) the behavior of wild or domestic animals; and
- (3) ordinary dangers of structures or equipment ordinarily used in farming or ranching operations.

(g) "Participant" means a person, other than an agritourism professional, who engages in an agritourism activity and who has the capacity to understand the inherent risks of agricultural tourism.

Subd. 2. Liability limited.

(a) Except as provided in paragraphs (b) and (c), an agritourism professional is not liable for injury, damage, or death of a participant resulting from the inherent risks of agritourism activities.

(b) Nothing in paragraph (a) prevents or limits the liability of an agritourism professional if the agritourism professional:

(1) commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death of the participant;

(2) has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity;

(3) intentionally injures the participant; or

(4) fails to comply with the notice requirement of subdivision 3.

(c) Nothing in paragraph (a) affects a claim under chapter 340A, or a claim arising out of the sale or use of alcohol at an agritourism facility.

Subd. 3. Posting notice.

An agritourism professional shall post plainly visible signs at one or more prominent locations in the premises where the agritourism activity takes place that include a warning of the inherent risks of agritourism activity.

EFFECTIVE DATE.

This section is effective August 1, 2015, and applies to actions arising from incidents occurring on or after that date.

References

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- Constitution of the State of Minnesota, Article XIII, Section 7: www.revisor.leg.state.mn.us/constitution/#article_13
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- Potluck Events: Safe Food is Good Business. Minnesota Department of Health.
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- Licensing Jurisdiction. Minnesota Department of Health directory to inspectors and delegated authorities.
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- Certified Food Manager course information. Minnesota Department of Health.
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Also available in print (160 pages) from Minnesota's Bookstore: www.comm.media.state.mn.us/bookstore/mnbookstore.asp
Order by phone: 651-297-3000 or 800-657-3757
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Sales Contracts for Farm Produce: Why and How. Farm Commons.
www.farmcommons.org

Mobile Food Unit, Seasonal Temporary Food Stand, and Seasonal Permanent Food Stand Construction Guide. Minnesota Department of Health.
www.health.state.mn.us/divs/eh/food/license/mfuseaonguide.pdf

Certified Food Manager Requirements for Food Establishments. Minnesota Rules 4626.2010
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