

Introduction

Agricultural and consumer trends in Minnesota and across the nation are driving significant changes in Minnesota's food environment. On the human health front, food-borne illness outbreaks across the country capture public attention, raise alarms about our food system and trigger closer scrutiny and regulation at the national and state level. Nutrition concerns have taken center stage as obesity and diabetes have risen to epidemic proportions, with the attendant impact on health costs. On the environmental side, there is significant concern among farmers and communities about the impacts of intensive, industrial-scale agriculture: soil erosion and toxic runoff, groundwater contamination and pesticide impacts on wildlife and beneficial insects. On the economic front, recession and corporate downsizing have driven many Americans into entrepreneurial activities like food enterprises to support themselves and their families.

Access to healthy and affordable food has become a major focus for public health agencies nationally as diet-related illnesses have become a major public health threat. Unprecedented consumer attention has focused on our food system and desire to know where our food comes from, as well as the conditions for farmers and workers, animals and communities. This consumer attention and interest is driving up demand for local and healthy food sources. It's bringing together farmers and consumers in a more direct way through farmers' markets and Community Supported Agriculture (CSA). Farm to School continues to grow as school districts seek cost-effective ways to bring more local, healthy meat and produce into their lunch and breakfast programs.

Both public health focus and consumer interest and demand have given rise to entrepreneurial ventures and business models that are either new or that were lost to consolidation and specialization in the industrial food system. Many food entrepreneurs envision building a more humane, human-scale and low-impact food system which contributes to community health and vitality while meeting the triple bottom line of economic, environmental and social welfare. The local food/food justice movement brings together environmentalists, farmers, social justice activists and economic development interests from across the political spectrum.

Key Trends in Local, Sustainable Food System

- Growth in number and size of farmers markets
- Rapid growth of Farm to School and child nutrition improvement programs
- Growing number of Community Supported Agriculture (CSA) farms and customers
- Mobile food operations/food trucks
- Artisan and European-inspired food trends: cheeses, fresh and cured meats
- On-farm processing, value-added enterprises

Farmers' markets and restaurants are the front lines in this growing diversification and localization of the food system. Farmers' markets have grown in size and number and

given consumers a perfect way to have a direct relationship with farmers and food producers. Consumers gain a sense of control over who and how their food is grown.

Growth and Change Create Issues

Rapid growth in numbers and kinds of farmers markets have served as incubators of many new food enterprises and spurred some farmers to enter into value-added products or light processing activities. The growth of many small food enterprises has created challenges for local and state regulators to enforce existing food code and statutory requirements, many of which were written and developed in a different era.

Regulatory Change and Updating

This is a time of change and evolution in the regulatory system at the federal, state and local levels. The Food Safety Modernization Act (FSMA) was passed in 2011 and is in the rulemaking process. This law aims to bring Good Agricultural Practices (GAP) and food safety protections to large and midsize farms but has created uncertainty and debate across the country, especially among sustainable agriculture farmers and smaller family farms. [See sidebar on FSMA.]

Minnesota's Departments of Agriculture (MDA) and Department of Health (MDH) have undertaken the first full-scale rewriting of Minnesota's Food Code since 1998. It is a large multi-year project with opportunities for public comment throughout. Minnesota's Food Code contains all the food safety laws for the state and is based on model federal language, with some local differences. The rapid growth and changing nature of farmers' markets and food businesses in the state is bringing new questions to the fore. It is also creating much debate at the local level as citizens encounter laws and ordinances that don't appear relevant, at appropriate scale or scientifically based for newer business practices and contemporary tastes.

This report will focus on state and local food regulations that have posed a challenge for small food enterprises in Minnesota. For purposes of this report, we are focusing on a few key areas of entrepreneurial activity:

1. Farmers markets
2. Mobile food enterprises
3. Commercial kitchen/value-added food products.

This report will not cover on-farm regulations, except for value-added enterprises. With a focus on state and local regulations, the intent of this report is not to explain the Food Safety Modernization Act (FSMA) though it briefly describes areas of concern for small food producers in this law. Farms and restaurant regulations are outside the purview of this report. On-farm regulation is on the brink of significant change with the Food Safety Modernization Act (FSMA) and, as such, requires a separate and in-depth treatment. Restaurants are a familiar and long-established type of food operations, and have many architects, designers and consultants to guide people through the process.

Regulations Collaboration

Collaborations have emerged over the several years to improve consistency and communications among food inspectors and regulators. I've participated in the Local Food Advisory Committee at the University of Minnesota and base some observations on discussions within this advisory group.

Local Food Advisory Committee

An informal regulations advisory group was established in 2013 by the Minnesota Institute for Sustainable Agriculture (MISA) and Extension Alternative Livestock Program. It brings together representatives from MDA's Meat and Dairy Inspections, Minnesota Department of Health (MDH) Inspections, Sustainable Farming Association (SFA), the Minnesota Farmers Market Association (MFMA), Minnesota Meat Processors Association and other groups to discuss and trouble-shoot a variety of regulatory issues for small food producers.

Food Safety Partnership

The State Department of Health runs a statewide consortium to facilitate ongoing education and food safety system improvements. The Food Safety Partnership of Minnesota is consortium of environmental health professionals, industry partners, and other stakeholders working together to protect the public health in the area of food safety. The goal of the Food Safety Partnership is to create a unified program for food safety in the State of Minnesota. Three Food Safety Partnership Videoconferences are held each year at conference sites throughout the state of Minnesota.

The Report starts with an overview of the federal, state and local regulatory framework. It will be followed by the focus areas of entrepreneurial activities: farmers' markets, mobile food units and

The Federal System

Here is our federal system in brief. Several federal departments are charged with ensuring the safety of the nation's food supply. The most often cited and recognized agencies are the Food and Drug Administration (FDA) and United States Department of Agriculture (USDA). FDA is part of the U.S. Department of Health and Human Services (HHS). The federal Food, Drug and Cosmetic Act (FDCA) grants broad authority to the FDA for food safety. However, the FDA delegates significant authority to state and local governments over retail food establishments such as restaurants and grocery stores, due to the great volume of these businesses.

The FDA regulates raw and processed foods, game meat and venison, food additives, bottled water and infant formula. In the 1990s, FDA created a model Food Code to address growing concerns about outbreaks of foodborne illness across the United States and to drive toward consistency in the patchwork of state regulations.

The USDA regulates all livestock meat, poultry products, eggs and catfish, through its Food Safety and Inspection Services (FSIS). The USDA's Animal and Plant Health Inspection Service (APHIS) sets and enforces standards for the care and treatment of animals and protection from pests. The USDA regulates labeling, processing and slaughtering of beef, pork, poultry, as well as inspection and labeling of eggs. For sales across state lines, it must be slaughtered and processed at a USDA-inspected plant. The USDA delegates authority to the Minnesota Department of Agriculture (MDA) for slaughter, processing and labeling of meat at Minnesota Equal-To plants. That allows sales to individuals or businesses within the state of Minnesota.

Other federal agencies with oversight over aspects of the food system are: the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) over seafood; the Department of Homeland Security inspects food, plants and animal imports at the border; Environmental Protection Agency sets drinking water standards and regulates pesticides, setting residue limits; Federal Trade Commission (FTC) enforces consumer protection and fair trade practices.

sidebar

Food Safety Modernization Act: In Brief

While this report is not addressing on-farm regulations, there is much debate at the national and local level about the new Food Safety Modernization Act (FSMA). In January 2011, Congress passed FSMA to update and improve food safety regulation at the farm level. The rule-making process created major concerns for small and medium size sustainable farms. The National Sustainable Agriculture Coalition (NSAC) mounted a major response from farmers and thousands of comments were submitted. The FDA announced in December 2013 that several areas of the law would have an extended comment period to address concerns from farmers that the law would put them out of business. Some areas of special concern:

- water quality standards and testing
- standards for using raw manure and compost
- provisions affecting "mixed-use facilities" (value-added operations)
- due process considerations for farms who are eligible for qualified exemptions from FSMA requirements.

NSAC cited several other areas warranting further discussion and revision and commended FDA for reopening those areas for the second comment period. They cite on-farm co-management of conservation and food safety practices—including wildlife habitat protections—as a critical issue. They also request defining farms to include usual and customary farming activities, as well as counting only regulated food and not all farm products in determining eligibility for modified requirements.

NSAC wants to ensure that the rules don't make direct marketing operations subject to food facility registration, a clarification Congress directed FDA to incorporate. NSAC also

called for an overhaul of the economic cost-benefit analysis. Congress also directed FDA to put hard numbers on the scope of farming operations that could be considered food processing facilities under the rule. NSAC called for more discussion on how the federal-state interface will work to ensure effective implementation and prevent unfunded mandates.

The Federal and State Relationship

Federal regulators are present in the state, as required by federal law. Inspectors from the USDA examine all meat, poultry, and related products processed or manufactured in USDA-inspected plants in Minnesota. USDA-inspected products may be sold to any buyer, individual or business, within Minnesota or in other states. Minnesota Department of Agriculture inspectors inspect all meat, poultry, and related products processed or manufactured in State Equal-To plants in Minnesota. Equal-To inspected products may be sold to any buyer, individual or business, within the state of Minnesota but may not be sold across state lines. State inspectors inspect other food businesses under agreements with the USDA or the FDA. States can adopt stricter rules than what the USDA requires for meat, poultry and egg processing. For example, USDA allows sale of up to 1,000 birds per year with no license, if slaughtered and processed on the farm and sold directly from the farm premises. Minnesota has adopted that standard but Michigan requires a license.

Minnesota State law requires periodic inspection of participants in the commercial food industry in the following categories:

Food Manufacturers

Processors

Distributors and transporters

Retailers

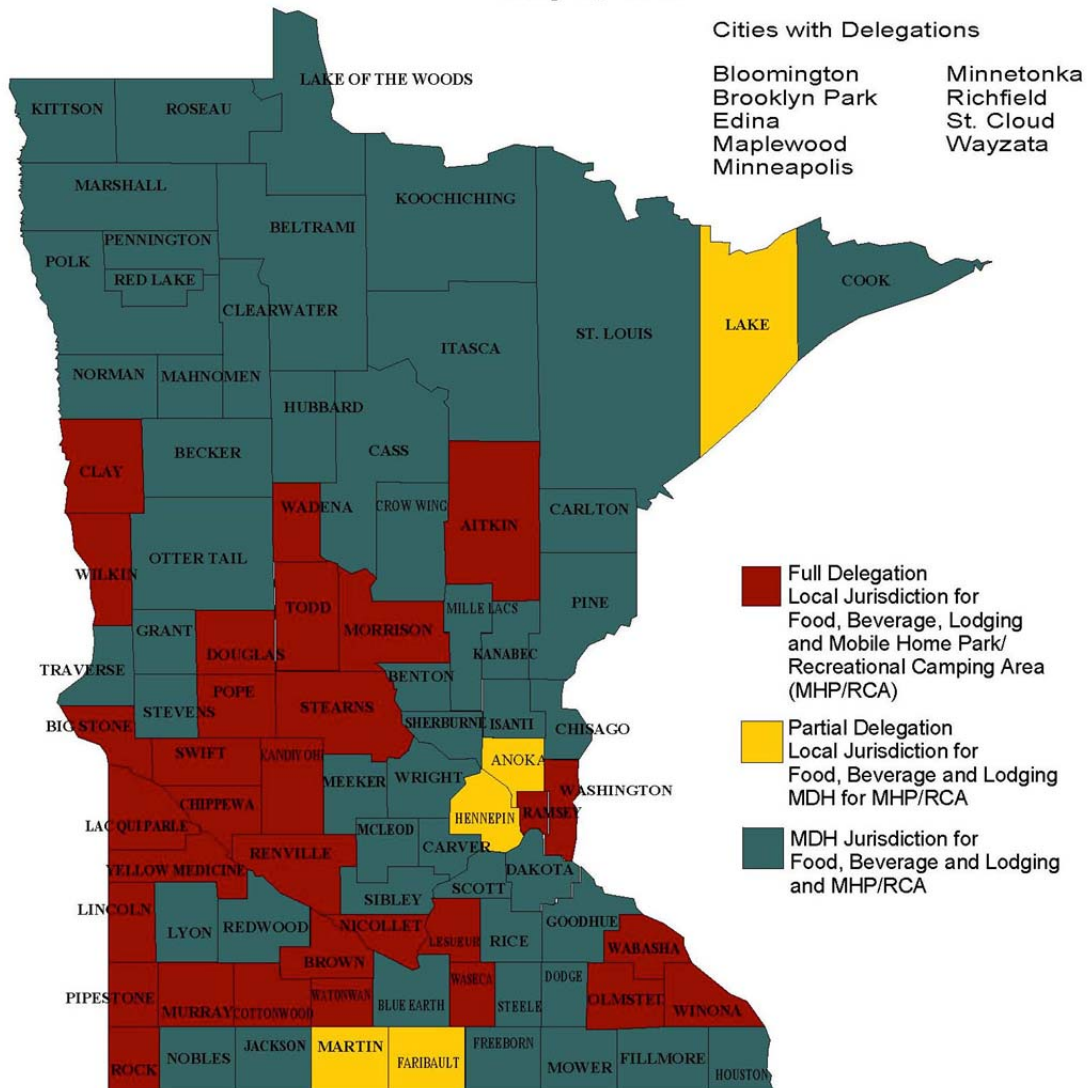
Minnesota Statutes (Ch. 157 and 327) and Minnesota Rules (4626.0010-4626.1870, 4625.0100-4625.2300, 4626.2000-4626.2010) covering licensing, inspection and enforcement authority prevent local governments from conflicting or being less restrictive than related Minnesota Statute and Rules. It states that local ordinances must establish authority for enforcement and actions necessary for compliance.

The state statute contains licensing categories/definitions and fees and the Minnesota Food Code describes food handling procedures and facility sanitation standards and inspection frequency based on type of food operation and level of risk to public health.

The Centers for Disease Control (CDC) coordinates the national foodborne illness surveillance network and provide funding for state participation. Inspectors from state Departments of Agriculture and Departments of Health have a role in monitoring, detecting and investigating food-borne illness.

**County Delegation Map of Food, Beverage and Lodging
and Mobile Home Park/Recreational Camping Area
Jurisdiction**

July 9, 2013



State and Local Relationship: Delegation Agreements

MDA and MDH have statutory authority to delegate certain retail facility licensing and inspection activities to participating and eligible local units of government, either municipal or county. Through delegation agreements, some larger cities carry out their own restaurant licensing and inspection programs under agreement with MDH. In 2013, MDH revoked its delegation agreement with the city of St. Paul while the city undertakes improvements to its licensing and inspection program.

MDH has district offices in Bemidji, Duluth, Fergus Falls, Mankato, Marshall, Metro Office, Rochester and St. Cloud. MDH has Delegated Agreements with local governments in cities: Bloomington, Brooklyn Park, Edina, Maplewood, Minneapolis, Minnetonka, Richfield, St. Cloud and Wayzata. Thirty counties have full delegation agreements with MDH and five have partial delegation.

Minnesota Food Code

MN Rules, Ch. 4626

MDA and MDH worked together to revise food regulations and to develop uniform sanitation and food safety standards. The joint endeavor combined rules and regulations for food and beverage service establishments, retail food establishments, bakeries and vending establishments into one uniform regulation.¹ The MN Food Code sets practices and requirements for all facility, equipment, employee hygiene, food preparation, storage, cleaning and sanitation to protect public health from human and food-borne illness.

Food regulations are developed with the specific temperature and preparation guidelines for each type of food. Any time you add a new food process, equipment, or a time and temperature sensitive food item, you should involve your state or local health inspector before and during the process or menu change. The health inspector can help assess food safety risks and identify practices to reduce those risks. They can also help you to decide if the changes you are planning will require plan review by your regulatory authority.

When potentially hazardous foods are added to the menu, you will need standard procedures to support your HACCP (Hazard Analysis and Critical Control Points) plan for safely handling these items. Such procedures include guidelines for purchasing, receiving, storage, washing, processing, holding, temperature logging, serving and re-serving of potentially hazardous foods. As part of routine inspections, the local or state inspector will ask to see your business's HACCP, which stands for Hazard Analysis and Critical Control Points.

What is HACCP?

HACCP is a preventive plan for reducing the risk of food-borne illness or contamination of foods during production or processing. HACCP is an international set of standards that covers all food processing, handling and preparation activities. A meat processing plant needs to have separate HACCP plans on file for cutting muscle meats, for grinding meat, for each recipe for sausage or for smoked meats. The HACCP plan covers each step of the process—cooling, cutting, grinding, wrapping and freezing—with time and temperature documentation each step of the way.

¹ Minnesota Department of Agriculture, "Starting a Food Business in Minnesota," 2008.

Critical Control Points identifies specific spots in the process where you do an intervention to prevent a food safety hazard. HACCP regulation in Minnesota is based on the FDA's 1995 Food Code, with Minnesota amendments.

Chart of MDH/MDA Roles (House Research Short Subjects on Food Safety System: An Overview)

Approved Sources

Minnesota Rules, Chapter 4626

The Minnesota Food Code requires all food sold or served to the public must be from an Approved Source. Produce growers are an approved source and food facilities are allowed to buy directly from the grower. In fact, there's a growing trend for food facilities to buy directly from farmers and farmers' markets and for food shelves to receive donated products directly from the farm.

Growers are an approved source when selling their own whole produce including produce with "*limited processing*" defined as sorting, trimming (includes husking corn) and washing. (Minnesota Statutes 28A.15 and MN Constitution Article 13, Section 7) Growers are still responsible to ensure that all produce they sell or donate complies with applicable regulations, proper handling and is safe, wholesome and unadulterated. For more information about Good Agricultural Practices, contact the MDA at 651-201-6027.

A Food Handler License is required if any "*processing*" has occurred as defined by MDA: slicing, heating, canning, drying, mixing, coating, bottling or includes added off-farm ingredients such as salt, spices or sugar, except for those covered under Pickle Bill or Non-Potentially Hazardous Foods exemptions [in Farmers' Market section].

For more information, see:

<http://www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-produce.ashx>. Growers who wish to process their produce must use an inspected and approved kitchen or processing facility (see Commercial Kitchen section). For further information on using or preserving local produce in your food facility, refer to <http://www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-canning.ashx>.

Approved sources for meat and poultry means products that come from licensed and inspected processing facilities in one of the following categories. Continuous Inspection is required for any business that wishes to sell their products to other retail outlets, such as grocery stores, restaurants or other food service establishments. Federal exemptions exist for hot, ready-to-eat pizzas and sandwiches that contain sliced meat, vegetables or cheese between slices of bread. Wraps or meat pasties are not included in this exemption. Continuous inspection is provided by either MDA or USDA as follows.

USDA facility

These meat-processing plants have USDA's Food Safety and Inspection Service (FSIS) staff on-site continuously and are allowed to sell meat products across state lines. Farmers who have their animals slaughtered and processed at these plants can take their meat back and sell it wholesale or retail within or outside the state. A business can purchase products from USDA-inspected sources and further process these products under continuous inspection, for sale within or outside Minnesota. The FSIS program is administered out of 10 regional offices, with Minnesota's 5-state region program operated out of Des Moines, Iowa.

Equal-To Plants

These meat slaughter facilities are able to produce and process meat and poultry for wholesale or retail within the state of Minnesota. MDA Inspectors are on-site for all slaughter days. These businesses may harvest their own animals or harvest animals that belong to others. A farmer can bring in an animal in to an Equal-To plant, have it slaughtered and processed under inspection and take the meat to sell at wholesale or retail. A business can also purchase products from Equal-To-inspected sources and further process these products under continuous inspection for sale within Minnesota.

Custom Exempt

This type of meat processing facility is not an approved source for meat to be sold or served to the public. Custom Exempt facilities allow meat and poultry processing for the owners of the animals, the owner's household and non-paying guests. These plants are an important route for farmers to sell meat to customers. Customers must first own the animal before it goes to processing and the owner does not have to be the farm family. A beef steer, for example, could be sold as quarters to four different customers with proper record-keeping and documentation. Custom Exempt meat products are to be labeled "NOT FOR SALE." Custom Exempt processors must still meet State and Federal plant guidelines for sanitation and construction, but are inspected less frequently than continuous inspection plants.

State Building Code, MN Statute Ch. 16B

The State Building Code governs construction, reconstruction, renovation and repair of all buildings and housing in the state. The code provides basic and uniform performance standards; establishes reasonable safeguards for health, safety, welfare, comfort, and security; and provides guidelines for methods, devices, materials, and techniques.

The Minnesota State Building Code, administered by the Department of Labor and Industry (DLI), is the minimum construction standard throughout all of Minnesota including all cities, townships and counties. Although it is not enforceable by municipalities unless it is adopted by local ordinance, this law creates a level playing field for the construction industry by establishing the Minnesota State Building Code as the standard for the construction of all buildings in the state. Following are excerpts of the law contained in Minnesota Statute 16B.62 Subdivisions 1a and 1b:

- Application (1a): The state building code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality. *The State Building Code does not apply to agricultural buildings except with respect to state inspections*
- Municipal enforcement (1b): (a) If, as of January 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, that municipality must continue to administer and enforce the State Building Code within its jurisdiction. The municipality is prohibited from repealing its ordinance adopting the State Building Code. This paragraph does not apply to municipalities with a population of less than 2,500 according to the last federal census that are located outside of a metropolitan county, as defined in section 473.121, subdivision 4. (b) If a municipality is not required by paragraph (a) to administer and enforce the State Building Code, the municipality may choose to administer and enforce the State Building Code within its jurisdiction by adopting the code by ordinance [appointing a certified building official, and establishing a fee schedule]

Some communities in Minnesota do not have a building inspection program; however, **all** Minnesota food businesses and establishments are required by statute to comply with the State Building Code and related local regulations for the safety of both their patrons and employees.

In rural Minnesota, you may contact county Economic Development offices designed to help small businesses through various planning and regulatory processes. There are city and county Economic Development offices in all parts of the state. For a listing of Economic Development authorities, commissions and departments, consult <http://www.ecodevdirectory.com/minnesota.htm#Statewide> Minnesota. Contacts for local and state building/fire/plumbing inspectors in all areas of the state can be accessed via: <http://workplace.doli.state.mn.us/jurisdiction>.

Local Regulation

County or city planning and zoning staff can provide information on building codes and local ordinances governing your type of food business. They can inform you if your city or township has local zoning ordinances that may differ from those of the county and where to apply for the necessary building permits.

Zoning

The first step for any food business is to ensure compliance with local zoning laws which govern what types of business can operate in specific geographic areas of the city or community. In most non-metro areas of the state, this occurs at the county level. Larger cities usually separate industrial business activities from residential and residential areas

from commercial/ retail. City zoning ordinances may be very different from suburban ones and suburban ordinances are different from towns or townships.

In smaller communities or townships, there is need for further assistance on zoning and building regulations, since many local communities don't have a separate zoning code. Farmers in rural areas or townships should start with their County's planning/zoning staff to get guidance on applicable codes.

If you are building or remodeling your facility, a zoning permit must be reviewed by both state and local agencies, as well as reviewing blueprints. When you contact your local or county zoning authority, they will initiate review of your plan to meet both state and local codes. At the state level, building code review is by the Department of Labor and Industry.

Sidebar with photo

A Minneapolis honey production facility, Beez Kneez, planned to open in a former corner grocery location. They learned their honey operation was not allowed under the retail zoning laws, but would be considered a food manufacturing business and restricted to industrial zones. After city zoning officials learned more about the scale and nature of their honey processing, they were allowed to open in that space. They have since moved to a different location in south Minneapolis that better suited their production and retail needs.

Business Licensing

There are also local business licenses for food establishments in many communities. It is issued out of a local or county business licensing office, with some variation in categories for businesses. Larger cities have departments for licenses and permits or issue them out of the City Clerk's office.

Minneapolis City Licenses, Department of Licensing and Consumer Services 612-673-2080

St. Paul City Licenses, License and Permit Division, 651-266-9090

Duluth City Licenses, City Clerk office, 218-730-5500

St. Cloud, City Clerk office, 320-255-7210

Rochester, City Clerk office, 507-328-2900

Plan Review

Plan Review application and materials are available from your local city offices, or contact Minnesota Department of Health or Minnesota Department of Agriculture to request these materials and find out the fee for Plan Review.

The following information will be required by MDH, MDA or your local licensing authorities at least 30 days (preferably more) prior to the start of construction:

1. Architectural blueprint of facility, drawn to scale, including location of all areas of the food establishment: kitchen, storage, ware washing, dining, retail sales, rest room, garbage area
2. Location of all equipment in the food establishment
3. Manufacturer and model number of equipment
4. Interior finishes for ceilings, walls and floors
5. Menu or written description of foods prepared and sold
6. HACCP (Hazard Analysis Critical Control Points) plan is required in M.R. 4626
7. Plan review application
8. Plan review fee

[Plan Review chart, p. 16 of Starting a Food Business in Minnesota]

Local or state regulatory authorities may request additional information about your business, especially when it is an unfamiliar type of food or food business for local authorities. With one Minneapolis business producing a new type of granola bar using raw ingredients, the local health inspector watched the entire production process to fully understand the ingredients and safety precautions necessary.

Once Plan Review is conducted, regulatory authorities issue a letter stating any required changes or clarifications needed for approval. After written approval is received, construction can begin. It is a good idea to schedule a construction inspection during this stage to ensure compliance with all codes.

Pre-opening Inspection by MDA or MDH is required before the business license to operate is issued.

Building/Fire/Plumbing and Electrical Codes

A food facility must comply with the State Building Code. The building code establishes safeguards for human health and safety by stipulating uniform performance and standards. The Department of Labor and Industry (DOLI) website has links to appropriate codes, and state or local authorities for plumbing, electrical, boiler, elevators and more. For a directory of your local building code enforcement authority consult <http://workplace.doli.state.mn.us/jurisdiction/> or a list of Minnesota Designated Building Officials at http://www.dli.mn.gov/CCLD/pdf/bc_bo_list.pdf.

For the “build out” of a food facility, it’s important to work with knowledgeable contractors with meetings and collaboration with local building code inspectors. Whether a business is doing new construction or renovating an existing structure, the local or state building authorities are an important step for a new business.

Electrical permits are obtained by contacting your local or state building authority. An electrical contractor will handle this process for you. The electrical inspector must see the roughed-in wiring before it is covered by drywall or plaster. If you are doing electrical yourself you will have 30 days to finish the project or a new permit will have to be pulled.

Fire Code is enforced by local or state fire inspectors who will ensure that your building has the required fire safety features and who will also conduct regular inspections of the facility. The building must also comply with the State Plumbing Code. Plumbing Plan blueprints must be approved by the DOLI at least 30 days prior to the start of construction, whether it's new construction or alterations to an existing plumbing system.

Pre-opening inspection by licensing authorities is required before a license to operate is issued.

Inspections

Inspections by building code inspectors and sanitarian/environmental health inspectors are two primary ways local food businesses interact with government on an ongoing basis. Inspectors can vary in style and approach and maintaining a good relationship with them is helpful. One food business operator called these styles "teacher vs. terminator." Fortunately, some cities are taking a more educational approach with their inspectors and Minneapolis is instituting a new Customer Service Improvement Project to improve communications and outreach with the business community and organizations.

RS/REHS: Registered Sanitarian or Environmental Health Specialist

It's important to know that you can ask questions of your inspector and get clarification on any rules being applied. Many business owners don't know they can ask questions. The Inspector is designed to be a resource not an adversary.

[new section]

Focus on Key Local Food Segments

Farmers' Markets, Mobile Food and Commercial Kitchens

Following the overview of federal, state and local food regulation, this report spotlights a few areas of special concern for local food entrepreneurs. Consumer interest and demand have driven many new entrepreneurs and businesses into the mix. Food entrepreneurs often introduce food products at farmers' markets to develop a customer base. Thus, farmers' markets are an important incubator for new food products. Similarly, many chefs introduce new concepts with a food truck. Successful food trucks often lead to bricks-and-mortar restaurants, like World Street Kitchen and Smack Shack. Yet these new business introductions can often face unexpected regulatory hurdles and long delays.

Following are key areas of interest and regulatory concerns across the state:

- Farmers' markets
- mobile food operations
- commercial kitchens

Overview of Farmers' Markets

With the tremendous growth in farmers' markets across the state over the past decade, farmers' markets have become good places to launch local food enterprises and develop a customer base. MDA's Minnesota Grown directory lists 143 farmers' markets across Minnesota, up from 100 markets listed in 2009. Farmers markets are located in all corners of the state.

These farmers' markets have also served as local food business incubators, allowing farmers and entrepreneurs to introduce their products to a wide variety of customers who are already interested in local food. Farmers' markets have also served as locations for the introduction food trucks like Chef Shack and many food product launches.

"Products of the Farm": In MN Constitution

The Minnesota Constitution grants farmers the right to sell their own "products of the farm" without a license. This covers farm products with no off-farm ingredients.

Cottage Food laws

Most states also have an exemption from licensing for farmers and small food producers called Cottage Food laws. Farmers selling particular products under at the markets are granted exemption from licensing under Minnesota Statute 28A.15. Minnesota's best-known cottage food law is called The Pickle Bill, passed in 2004.

Minnesota Statute 28A.15 Exemptions

Certain home-processed foods fall under the Non Potentially Hazardous Food Exemption including baked goods. Exempt vendors are required to give accurate ingredient information to customers with food sensitivities or allergies, particularly wheat, eggs, peanuts, tree nuts, soy, milk, fish or shellfish.

Subd. 9. Non-potentially hazardous foods

This exemption covers many baked goods such as fruit pies, cakes and cookies, as well as maple syrup. An individual who prepares and sells food that is not potentially hazardous at a community event or farmers' market with gross receipts of \$5,000 or less in a calendar year from the prepared food items, is exempt from licensing requirements.

If the food is not prepared in a kitchen that is licensed or inspected, the seller must post a visible sign or placard stating that: "These products are homemade and not subject to

state inspection." Prepared foods sold under this subdivision must be labeled to accurately reflect the name and address of the person preparing and selling the foods.

Subd. 10 The Pickle Bill

Minnesota's Pickle Bill exempts primarily high-acid canned foods, with a top dollar limit of \$5000 in annual sales for each person involved in the food preparation.

- Pickle Bill exemption covers high-acid canned foods like pickles, salsas, sauerkraut and some canned fruits with pH of 4.6 or less
- Seller must display a sign: "THESE CANNED GOODS ARE HOMEMADE AND NOT SUBJECT TO STATE INSPECTION"
- This legislation does NOT cover sales of home-canned, low-acid foods such as peas, green beans, beets, or carrots processed by either the use of a boiling water bath or by the use of a home pressure cooker.

Together, the non-potentially hazardous food and Pickle Bill exemptions can allow for potential sales of up to \$10,000 a year in exempt sales per "person" as defined in MN Statutes 34A.01 subd.10.

Other provisions of the Pickle Bill involve labeling requirements for name and address of the person processing the food and date of processing or canning. It's recommended that home processors complete a better process school recognized by the Commissioner of Agriculture and have their recipe and process reviewed by a person knowledgeable in food canning industry and recognized as a process authority by the Commissioner of Agriculture. Contact your University of Minnesota Extension Office for more information about canning process education. Link for Better Process Schools: http://www.gmaonline.org/file-manager/Events/Bro_BPCS-011411.pdf

The Operational Guidelines for Farmers' Market Vendors has some further description of the exemptions listed in Minnesota Statute 28A.15, subdivisions 9 & 10: <http://www.mda.state.mn.us/~media/Files/licensing/dairyfood/fm-vendor-guide.aspx>

Trend: Food sampling and nutrition

Many vendors and farmers' markets began to offer food tastings and samplings. Public health nutritionists were also demonstrating healthy recipes using fresh vegetables and fruits. MDH or local sanitarians and environmental health inspectors informed market managers that processed, cut or otherwise prepared foods required a different type of food license, as well as requiring separate sinks and ware washing facilities to ensure food safety.

In 2013, the Minnesota Farmers' Market Association worked with regulators to address concerns of farmers' markets across the state that these requirements posed an

excessive barrier to sampling and selling local food products. MFMA Board of Directors and staff worked closely with MDA and MDH for more than a year to carefully craft language to allow these activities to occur at farmers markets.

Representatives Bob Barrett (R) and Carolyn Laine (D) authored MFMA's farmers' market bill and introduced it in 2014 at the Minnesota Legislature. It accomplishes four significant things:

1. It defines the term “farmers’ market” in Minnesota
2. It allows all vendors at farmers’ markets to safely sample food, with no additional license or fee if they follow these safe food handling practices:
 - gravity hand washing with turn or flip spout; warm water, soap, paper towels and containers to catch waste water
 - plastic gloves
 - samples prepared on-site at farmers’ market
 - free, 3-ounce single serve food samples (toothpicks, plastic/paper cups)
3. It allows food demonstrations at farmers’ markets to safely sample food, with no additional license or fee as long as they follow the same safe food handling practices as set forth for vendors.
4. It allows vendors who sell value-added food products to sample food all year long (not just 21 days) at their farmers’ markets or community events without incurring additional license and fee.

Case Study: St. Paul Farmers’ Market, Summer 2013

While farmers’ markets across the state have been growing and evolving, it has created a challenging regulatory environment as markets expand product categories and vendor types. Meetings and communications between market managers and local regulators are not unusual to keep markets in compliance with rules and regulations. Yet, farmers who have sold fresh, whole produce of the farm may not have encountered licensing requirements or dealt with local or state inspectors. When they do find themselves out of compliance for a variety of reasons, it can trigger frustration, anger and distrust as they navigate unfamiliar rules. At the same time, regulators must enforce rules and licenses that were drafted in a different era and don’t necessarily accommodate the way the food system is rapidly changing and evolving.

During the summer of 2013, changes in regulatory authority over the St. Paul Farmers’ Market demonstrated the complexity of this arena. Following a report/audit on regulatory issues with the City of St. Paul, MDA and MDH revoked the city’s delegated authority agreement. In July 2013, MDA and MDH took over retail and restaurant food inspections in the city of St. Paul, including the St. Paul Farmers’ Market. One of the issues highlighted in MDA’s regulatory audit was city licenses that weren’t supported in state statute. St. Paul’s retail food handler license allowed vendors to operate 365 days a year with prepared foods that were not strictly farm products and involved handling and assembling.

Longtime vendors at the St. Paul Farmers' Market were surprised to learn that the license issued by the City of St. Paul was not consistent with state statutes. They were very concerned that a different type of license would be required by the state that carried time restrictions.

A few meetings followed with concerned farmers and vendors to clarify the situation. MDA and MDH honored St. Paul licenses that were current, and only required them to obtain the Seasonal Temporary License when renewing. They did not enforce a 21-day restriction for any vendor for the 2013 market season.

Ben Miller, MDA Dairy and Food Inspection Supervisor, acknowledged, "It is complicated but essentially the activity drives the license." He clarified aspects regulating farmers' market vendors, including meat vendors.

- The equal-to category (for meat vendors) with MDA covers a truck if the farmer is selling prepackaged product directly from the vehicle. These Food Handler licenses are renewable annually but within a year there is no time limit on sales activities under this license.
- If a vendor takes product off the truck and sets up a table or freezer and sells only prepackaged foods this would require a Retail Food Vehicle license - there is no day restriction for this license and s/he can operate year round.
- If the vendor does any sampling or food preparation OUTSIDE the truck or vehicle this requires the Seasonal Temporary Food Stand license and is limited to 21 days at a single location. This license type is under the jurisdiction of MDH. Food preparation done within a commercially equipped vehicle falls under the Mobile Food Unit license, also under MDH authority. Food preparation inside the vehicle puts the business into the Mobile Food Unit category that covers food trucks.

Vendors at the St. Paul Farmers' Market who were selling both packaged meat products, as they long had; and prepared breakfast sandwiches; thought their Retail Food Handler license covered both activities. But MDA and MDH officials explained in the follow up meetings that serving prepared foods put them into an entirely different category: a food service operation. That is the realm of MDH and necessitated the additional Seasonal Temporary Food Stand license.

Miller further explains: "When this law (Seasonal Temporary) was put in place, we didn't have the prevalence of farmers' markets and volume of vendors. There has been significant growth in this part of the food market [and subsequent confusion]. Our state agencies want farmers and food vendors to be able to sell the foods the consumers demand, but to do it safely."

License Descriptions

Retail Food Handler is an MDA license classification specified in Minnesota Statute 28A.05. MDA also issues licenses for Retail Food Vehicle, Portable Structure: a food establishment licensed under Minnesota Statutes, sections [28A.06](#) and [28A.07](#), that is a motor vehicle, portable structure, or nonmotorized cart where food and food products are:

- A. offered to the consumer
- B. intended for off-premises consumption
- C. not subject to on-site preparation

Seasonal Temporary Food Stand is in Statute 157 and is an MDH classification. The Seasonal Temporary Food Stand License has a 21-day limit at a given location. The 21-day rule triggered much concern from farmers' market vendors who were selling at markets many more days than that and also were concerned to be required to carry additional licenses.

Inspection is shared by MDA and MDH per MN Food Code 4626.

Further, as part of the farmers' market legislation that was introduced in the 2014 legislative session, it stipulated that Seasonal Temporary Food Stand Licenses could operate beyond 21 days with the approval of regulatory authority, whether local or state.

Overview: Mobile Food Businesses

While rolling ice cream trucks and hot dog stands have been seen on city streets for years, the mobile food truck phenomenon has taken hold much more strongly in the past five years. Buses and trucks fitted with commercial kitchen appliances have brought food to underserved areas, farmers' markets and downtown areas alike. Many of these chefs and food enterprises cater to a local food sensibility and help connect and expand the farm-to-table options.

Some like Sisters Camelot in Minneapolis and St. Paul emphasize using produce that would go to waste and serving populations that are underserved for healthy and nutritious foods. More recently, mobile groceries and food shelves are also in development. Minneapolis has drafted a mobile food ordinance to allow for mobile groceries and farmers' markets to operate in the city on private property with some restrictions on proximity to corner or grocery stores.

Chapter 157 of the MN State Statute defines five different categories of vendors: Food Cart, Mobile Food Unit, Seasonal Permanent Food Stand, Seasonal Temporary Food Stand and Special Event Food Stand. These definitions limit the number of days of operation regardless of the food safety risk. Chapter 157 defines food carts and temporary and mobile food enterprises and limits operations of certain types to 21 days. The 21-day limit applies to Mobile Food Units, Seasonal Permanent Food Stands

and Seasonal Temporary Food Stand. The definitions that limit days of operation for some businesses have been in Minnesota Statute since 1995.

Food Cart: a non-motorized vehicle self-propelled by the operator
<http://www.health.state.mn.us/divs/eh/food/license/foodcart.pdf>

Mobile Food Unit: A vehicle-mounted unit, motorized or trailered, that can be moved from one location to another without being disassembled.
<http://www.health.state.mn.us/divs/eh/food/license/mfureview.pdf>

Seasonal Permanent Food Stand: A permanent food and beverage service stand that operates no more than 21 days a year.
<http://www.health.state.mn.us/divs/eh/food/license/seasperm.pdf>

Seasonal Temporary Food Stand: A food and beverage service stand that is disassembled and moved from location to location.
<http://www.health.state.mn.us/divs/eh/food/license/tempseason.pdf>

Special Event Food Stand: A food and beverage service establishment that is used in conjunction with celebrations and special events and which operates no more than three times annually for no more than 10 total days.
<http://www.health.state.mn.us/divs/eh/food/license/specevent.pdf>

Retail Food Vehicle, Portable Structure: a food establishment licensed under Minnesota Statutes, sections [28A.06](#) and [28A.07](#), that is a motor vehicle, portable structure, or nonmotorized cart where food and food products are:

- A. offered to the consumer;
- B. intended for off-premises consumption; and
- C. not subject to on-site preparation.

Trend: Food Trucks



Photo courtesy of Chef Shack

Though long established in major cities across the globe, food trucks have brought street food to a new level in Minnesota. Since Chef Shack appeared in 2008, the food

truck trend has exploded bringing culinary flair and chef-driven specialties to enliven street life. Food trucks are starring at special events and farmers' markets in Minneapolis/St. Paul, Duluth and Brainerd among others. The Minnesota Food Truck Association now lists more than 60 food trucks. Local ordinances usually stipulate where these food entrepreneurs can operate, and that can take some time and process for city councils or county commissioners to make determinations. Food Trucks were introduced into ordinance in the City of Minneapolis in 2011. The city required Food Truck licenses to operate in connection with a licensed Commercial Kitchen in the city of Minneapolis. The City issues mobile licenses in three categories: Mobile Food Vehicle Vendor (self-contained truck or trailer used to prepare and serve food), Limited Mobile Food Vendor (vehicle from which pre-packed items such as ice cream and popsicles are sold) and Mobile Food Cart (non-motorized push cart that sells prepackaged or ready-to-eat foods on public sidewalks downtown).

Food trucks fall under the Mobile Food Unit category and have exploded in popularity in Minneapolis and St. Paul within designated areas.

After taking over inspections for the city of St. Paul, MDH is directly licensing food trucks in St. Paul as well as many other parts of the state. However, the MDH license will allow the food truck to operate in all cities or counties where MDH handles licensing and inspections directly, that is where the city or county does not have a delegation agreement.

Case Study: Prairie Bay's Side Dish Food Truck

Prairie Bay restaurant is located in Baxter, MN and is owned and operated by General Manager Nick Miller and Head Chef Matt Annand. In 2012, they decided to expand their successful restaurant enterprise with a food truck to cater weddings and graduations offer prepared food specialties at community events and festivals. They obtained a license as a mobile food unit from the local MDH licensing/inspections office. They contacted Brainerd Planning and Zoning office and were informed they could set up on private properties with permission from the owner.

In October 2012, they set up in a bank parking lot and did a brisk business on Monday. They were served with a Cease and Desist order from the city on Friday of that week after the city received complaints from downtown businesses. After further research of Brainerd zoning laws, they sought approval for a Transient Merchant license. They attended several Brainerd city council meetings to obtain this approval and investigated whether their MDH Mobile Food Unit license could supersede local Brainerd authority. A Brainerd zoning official and city council members brought in other restaurants to discuss the matter. The Brainerd Planning and Zoning Commission then recommended to the City Council to deny the permit.

Brainerd Council Member Chip Borkenhagen explained after the vote, “If you don’t think it through and just carte blanche it, they can really put an edge over existing businesses.” Borkenhagen noted a responsibility to protect the downtown businesses of Brainerd and concerns that issuing a permit without first setting some kind of parameters will ultimately hurt downtown tenants.

Yet Council Members also saw the food truck as a way to help revitalize the downtown area. Miller took to social media and met with local businesses to build support. Support was garnered from 102 businesses and 600 residents who signed a petition supporting the food truck. A Facebook posting elicited more than 75 letters of support. The Brainerd Council President got involved and worked with local businesses to identify a list of private property owners willing to offer their lots for the food truck operation. Brainerd approved the Side Dish food truck for a trial period beginning in April 2013. Brainerd allowed certain zones, including the local farmers market, within certain hour restrictions. They opted not to include city properties in the initial trial phase.

In June 2013, Prairie Bay’s Miller went before Crow Wing County Commissioners to request permission to operate in the Crow Wing County office parking lot. As a major employer in Brainerd, this was an important opportunity for the Side Dish enterprise. The County gave approval after hearings were held.

During spring and summer of 2013 Miller and Annand worked with Baxter and Nisswa city councils and gained approval for trial periods while they worked on an ordinance for food trucks. The Side Dish food truck has proven popular and is requested throughout the region to a growing list of communities and farmers’ markets: Long Prairie, Camp Ripley, Pierz, Pine River, Bemidji, Wadena, Staples, Cass Lake, Garrison and Aitkin and more. They’ve also served regional festivals like Lakes Jam. Miller and Annand cited good support from Cheryal Hills from Region 5 Economic Development Council and Arlene Jones of SPROUT MN, a local food hub operating out of The Farm on St. Mathias.

Recommendations for other food truck entrepreneurs might help smooth the way. Consider the following ideas to build your support and allay fears of local restaurants:

- enlisting help or support from county or regional economic development contacts
- work closely with local zoning officials and
- enlisting support of your customers and allies to support your case

Overview: Commercial Kitchens

When food entrepreneurs plan to grow beyond farmers’ markets and direct sales and sell into retail and grocery stores, Minnesota Food Code requires that they operate out of a licensed and inspected commercial kitchen. Since the cost of building a fully equipped and licensed commercial kitchen is prohibitive for most small food

entrepreneurs, many are finding the solution in shared commercial kitchen spaces. Some communities have inventoried available commercial or community kitchen space. Minneapolis and St. Paul and some other cities have a facility that can be rented on an hourly or monthly basis.

Minnesota Food Code 4626 sets forth all the requirements for physical facility and equipment, as well as employee health and cleanliness, safe food handling and cleaning procedures for the space and equipment.

*Even for those farmers or food producers who sell direct at farmers markets, if they sell more than 50 percent of their products to retailers, they are required to carry a wholesale license and are regulated as a wholesale operation. This doesn't apply to **whole, unprocessed "products of the farm"** which remain exempt from licensing requirements. A farm is an "approved source" for products of the farm, with no license or dollar limits required.*

Retail vs. Wholesale Food Manufacturing

- Retail means a business selling directly to the consumer.
- Wholesale means one business selling to another business.
- A retail business **can** sell (non-meat) food products to another retail business. However, if a business has sales of 50% or more to other businesses they need to be licensed solely by the Minnesota Department of Agriculture.
- A retail business **cannot produce** food products and sell those food products to another retail business if the products contain more than 3% raw or 2% cooked meat. Businesses **producing** and **wholesaling** products that contain more than 3% raw or 2% cooked meat **need to be** licensed solely by the Minnesota Department of Agriculture, under a State meat inspection program. Meat means beef, poultry and pork.
- Sandwiches containing meat products are exempt from the above regulation. Wraps are not considered sandwiches and so are not exempt.

Below is the standard operating procedure for the City of Minneapolis and provided to businesses for clarification of the retail and wholesale rules.

- If a business has mainly retail sales but also has wholesale sales under 50% of total sales, they can conduct the wholesale operation under the existing retail license. Each case will be evaluated to determine appropriate licensing authority based on the products, facility and equipment. If the wholesale operation has multiple accounts then generally a City food distributor license is needed.

- Fish products can be distributed wholesale under the retail license but the process needs to be reviewed and approved by an inspector certified in Seafood HACCP through the FDA.
1. If regulatory staff find products in the facilities that are being supplied by businesses that are not following the above regulations, the products will be considered from an "Unapproved Source".
 2. If you purchase any products from a retail or wholesale store, **you must have receipts** from that store. A receipt must have the following information and must come with each delivery/pickup.
 - The name and address of the supplier
 - Date of delivery/pickup
 - Name of product delivered/picked up and amount of each product

If you do not have receipts, the products will be considered from an "Unapproved Source." The products will then have to be discarded on site and citations will be issued to the owner of the establishment selling the products.

Wholesale: Regulated by the MDA

Wholesale licensing requires 30-day review by MDA before start of construction. Plan Review is conducted on-site by an inspector from MDA, not by submitting a Plan Review application. Wholesale food manufacturing doesn't always require NSF equipment since specialized equipment for particular foods may be different than NSF. Manufacturing requires sealed concrete floor and has specialized equipment specific to particular foods. Manufacturer should contact inspector for on site review.

Review Menu

Inspect all surface materials: floor, wall, ceiling

A shared wholesale food manufacturing operation would be called a co-pack or co-production facility. Manufacturing codes are specific: 21 CFR

Part 123 – Seafood

Part 120 – Juice (HACCP)

Part 114 – Acidified Foods

Part 113 – LACF

Part 108 – Canning

Part 110 – GMP: Good Manufacturing Processes

Labeling

Both Meat and Dairy require product labels to be preapproved before production. The Meat "Equal To" program is the most stringent about this as all product labels have to

be reviewed and in compliance before production, otherwise, the product could be required to be taken off the market. Food, which includes retail and manufacturing, does not require preapproval but they do periodic checks of labels to determine compliance.

A good resource for food labeling in Minnesota is AURI, or Agriculture Utilization Research Institute. They can assist on labeling requirements, nutrition panels and more and are a good resource for food entrepreneurs. MDA has some basic food labeling information at <http://www.mda.state.mn.us/food/safety/basic-label-req.aspx>. State contacts on food labeling are as follows.

Food: Jim Roettger (james.roettger@state.mn.us) or 651-201-6622

Meat: Teresa Chirhart (Teresa.chirhart@state.mn.us) or 651-201-6113

Dairy: Todd Whalen (Todd.Whalen@state.mn.us) or 651-201-6679

Retail sales of Prepared/Processed Foods: Regulated by MDH or Delegated Authorities

Require 30-day plan review before license application, though number of days can vary

Review menu and ingredients

Review all floor, counter and wall materials

Requires NSF equipment, tile floors and specific wall and counter materials.

Milk and milk products: Must be processed at an approved milk processing plant (dairy), and must be pasteurized.

Fish: Must be commercially caught.

Wild Mushrooms: Must be from an approved source. See Wild Mushroom Fact Sheet at: <http://www.health.state.mn.us/foodsafety/foods/mushroom.html>

Meat: Must be processed at a USDA or Minnesota "Equal To" plant.

Eggs: Must be candled and graded as grade B or better, with shells intact.

For a guide to building a commercial or food service kitchen in Minnesota

<http://www.health.state.mn.us/divs/eh/food/license/prconreq.pdf>

other tips on preserving foods from approved sources in a licensed commercial kitchen <http://www.mda.state.mn.us/food.aspx>

Trend: Shared Commercial Kitchens

For many small food businesses, it's most cost-effective to work with existing restaurants or food service operations to inquire if renting their space is an option. The kitchen manager should work closely with local inspectors during all phases of planning and build out. Inspectors have codes to the kitchen and can enter at any time without warning. Plans are shown to local Zoning or Building Inspectors if they are present in the community. Sanitarian or Environmental Health Inspectors should also be consulted during planning, renovation or build-out of an existing facility or a new space.

The inspector will compare the initial plan with each new tenant license and ensure all proper equipment and procedures are in place. The inspector discusses with each operator the license requirement for their business, including:

- Menu plan and ingredients
- Storage and equipment
- Food safety rules specific to each type of food product/ingredients
- Sanitation procedures
- Staff and employee training and hygiene procedures

In addition, each operator or vendor using the commercial kitchen space must obtain her own business license and insurance policy. Licensed commercial kitchens usually require the following from each business using the facility:

- Rental agreement
- Individual business license from city or state
- Liability insurance,
- ServSafe or other food safety management course
- Business Plan

Shared commercial kitchens also may offer many educational classes, from cooking classes to business training classes to help people understand licensing requirements and how to write a business plan. Kindred Kitchen offered entrepreneur classes throughout its start-up years to help turn skilled cooks into business people.

Minnesota Certified Food Manager,

Minnesota Rules, parts 4626.2000 -4626.2020.

The license will require a full-time Certified Food Manager (CFM) on staff. Training for this is approximately \$100 with one training course description here:

<http://foodsafe.homestead.com/Course-Description.html>. The test for CFM certificate is \$35 and copy of food safety certificate should be displayed. There is ongoing food safety training, continuing education every 3 years, but initial certification is in person. More information about requirements and training for CFM is on MDH's website, <http://www.health.state.mn.us/divs/eh/food/fmc/cfmfs.pdf>. The CFM is responsible to identify potential hazards in the food preparation and to implement procedures to prevent foodborne illness. This person is also responsible for ongoing employee food safety training and to ensure that there is a knowledgeable Person In Charge (PIC) during all hours of food preparation.

Case Study: Pashen bars

Wendy and Pol Sorquist began making an innovative granola bar with raw ingredients from a family recipe when they lived in the state of Virginia. Virginia's cottage food laws allowed for home kitchen production, with home inspection to ensure food safety

compliance. After moving to Minnesota, they learned Minnesota laws wouldn't allow the same kind of production for sale to businesses.

Wendy happened to drive by the West Broadway storefront of Kindred Kitchen, a new commercial kitchen/business incubator that opened in north Minneapolis in 2011. With the help of available commercial kitchen space, the Sorquists decided to pursue creating their raw wholegrain bar in Minnesota. They began renting at Kindred Kitchen in 2011. They received invaluable product development assistance from AURI, Agriculture Utilization and Research Institute: recipe testing and nutrition analysis, ingredients, labeling and product marketing. "You have to know your product and the right price," Pol explained. AURI helped them work through their costs, pricing, packaging and more.

They began by getting their wholegrain bars into Minnesota food Co-ops. They appreciated that the Co-ops, with their local and healthy food ethic were willing to buy direct from the manufacturer without going through a distributor. They were later able to get into select Whole Foods stores and have found retailers eager for more local, organic and gluten-free products. Pol and Wendy do their own distribution since they believe the mark-up a distributor would charge would price their product out of the market.

In 2012, Pol Sorquist took over as manager of the Kindred Kitchen. They decreased the hourly rental to \$20, with a \$100/month minimum to maintain affordability for smaller enterprises. He instituted Google Calendar and Google Group to maintain the production schedule and communicate with the renters. He noted that Kindred Kitchen has a good mix of tenants: with 40 to 50 percent caterers, 25 percent food trucks and 25 percent wholesale food manufacturers. They would like more food manufacturers to balance out the seasonality of both food trucks and catering business.

Education has been key component for Kindred Kitchen and other shared commercial kitchen operations. "Education is key. People really need accurate information on health and safety rules and what it will take to get their product on the market," Pol explained. They offer a Business 101 class of how to incorporate, business plan and financial/legal requirements and Quickbook primer. The second class covers food manufacturing elements: ingredients, sourcing, pricing, distribution and marketing.

A partial listing of Commercial Kitchens available for rental:

Kindred Kitchen

1210 W. Broadway Ave.

Minneapolis, MN 55411

612-584-0828

info@kindredkitchen.org

<http://www.kindredkitchen.org/kitchen.html>

Kitchen in the Market, Minneapolis

Midtown Global Market

920 E. Lake St.
612-568-5486
<http://www.kitcheninthemarket.com/chefs.html>

CSPS Hall, St. Paul
383 W. Michigan St.
St. Paul, MN 55102
651-298-5599
hallrental@sokolmn.org

GIA Kitchen
955 Mackubin St.
St. Paul, MN 55103
651-493-2315
giakitchen@gmail.com

The Kitchen, Burnsville
Jeremy.Menz@gmail.com

Harmony Food Cooperative, Bemidji, MN
Lisa Weiskopf, Community Kitchen Coordinator
lweiskopf@gmail.com
218-751-2009, ext. 111

Clair Nelson Community Center
6866 Cramer Rd.
Finland, MN 55603
218- 353-0300
218-353-7536
ourkaya1@gmail.com

Sidebar

Cottage Food Laws

The FDA Food Code does not recognize cottage food production but does contain an exemption to food establishment requirements for charity bake sales and religious events as long as the consumer is notified that the food was produced in an unregulated and uninspected home kitchen. The exemption applies to non-potentially hazardous foods such as baked goods, jams and jellies, popcorn, granola, coffee and tea. This exception in the FDA Food Code demonstrates recognition that these low-risk foods can be safely prepared in a home kitchen and provides a model for applying the exemption to direct sales in other settings such as farmers' markets.

Since then, 23 states have passed cottage food laws, part of which is Minnesota's Pickle Bill (along with the non-potentially hazardous foods provision which covers baked goods.) These laws vary widely between states and are primarily focused on allowing direct sales to consumer and for local distribution. California's new Cottage Food Bill allows direct sales statewide. In a 2013 Harvard Food Law and Policy Clinic report, they identify five areas for improvement of cottage food laws nationwide:

- Removing or increasing sales limits: Minnesota has a \$5000 sales limit, among the most restrictive in the nation
- Removing restrictions to only on-farm processing; Minnesota allows off-farm
- Make these laws easy to find on state websites, with easy-to-understand requirements and restrictions²
- Allow cottage food producers to sell indirectly via restaurants and retail food establishments: Minnesota only allows direct sales to customers.
- Place regulations on cottage food businesses that reflect the small size and low-risk nature of these non-potentially hazardous foods. They should not carry the same regulatory burden of much larger, industrial-scale operations.

According to the Harvard Food Law and Policy report, states with the broadest list of allowed cottage food products are: Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Iowa, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, New York, N. Carolina, Pennsylvania, Rhode Island, S. Carolina, S. Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming.

Minnesota is listed among the most restrictive states, along with Indiana, Kentucky, Louisiana, Maine, Maryland, Oregon, Vermont and Wisconsin.³

RECOMMENDATIONS

The complexity and layered nature of our food regulatory structure call for several areas of improvement. While entrepreneurs complain of unresponsive local or state authorities, the volume of entrepreneurial activity can make it difficult for both local and state regulators to respond in a timely way. There is also a lack of accessible online tools and resources to allow small businesses to find answers to simple questions more readily.

Timeliness

When a business has expended money and is awaiting regulatory decisions, inaction and delay can be costly for the business. There are also times when a business can't get a

² Food Law and Policy Clinic, Harvard Law School, August 2013.
http://blogs.law.harvard.edu/foodpolicyinitiative/files/2013/08/FINAL_Cottage-Food-Laws-Report_2013.pdf

³ Harvard Report

final answer or may disagree strongly with the conclusions of a local regulatory authority.

Better empowering frontline inspectors can result in improved service and faster decisions. When inspectors are given the leeway to work with businesses and educate them, it can result in more timely and responsive relationships. Design changes, menu changes and dialogue back and forth can involve many delays. When clear violations occur, there should be timelines drawn up for corrective action.

Transparency

There is a tremendous amount of helpful information on both the MDA and MDH websites. Communications, fact sheets, flow charts and resource links are all contained on the state websites, as well as many county and local websites. However, this information is not easy to find. Frequently asked questions or issues could be brought to front pages of the MDA and MDH websites with easy to navigate information flow.

One simple way to improve transparency is to have a link to the directory of state inspectors on one of the front pages of MDH and MDA websites. All fact sheets and web pages highly recommend speaking to your local zoning office, sanitarian or environmental health inspector, building inspector or meat and dairy inspector to ensure information is accurate to your specific business. This directory of officials should be accessible by a front-page weblink.

As this implies, regulatory issues and questions are complex and require direct dialogue. Face-to-face information sharing is inherent in the Plan Review and Business Licensing processes. Yet more education can and should be shared in informal gatherings and forums that exist, whether Minnesota Farmers' Market Association or Food Truck association. There are business associations and chambers of commerce, Rotaries and Lions Clubs and other social and business groups and councils that can be forums for regulatory discussion and information sharing.

MDH and MDA supervisors worked closely with the Minnesota Farmers' Market Association for a year to develop new policies around hand washing and sampling at farmers' markets. This kind of cooperative working relationship can result in laws that are up-to-date and relevant to current business practices.

The City of Minneapolis has undertaken a Customer Service Improvement Project which has opened up better communications with neighborhood and business groups in the city. Zoning, environmental health and other city staff attend the business council meeting together and answer a range of questions and concerns as well as communicating new or changing policies.

Consistency

Since many farmers and food businesses operate in a broader regional market, many become aware of inconsistencies in dealing with local regulators. Local delegation agreements allow local regulators to enact more restrictive, but not less restrictive ordinances. The **Food Safety Partnership** is part of sharing up-to-date information out to local and delegated authorities and improving consistent interpretation of the Minnesota Food Code rules.

The City of Minneapolis does monthly **Peer Inspections**, making inspections calls together to improve teamwork and consistency. Supervisors are also part of the rotation.

Scale-appropriate

Minnesota food safety laws currently require NSF equipment for all retail food operations. This is not contained in FDA model food code nor required in Iowa and Wisconsin. If Minnesota Food Code regulations are more onerous than nearby states or national standards it can serve to drive smaller enterprises to a neighboring state. One local food entrepreneur selling a range of dried fruits and vegetables in farmers' markets for the past two decades was informed that she would need a \$6000 NSF food dehydrator in order to sell her products to retail stores. That expense discouraged her from expanding her business, resulting in lost potential economic development for her town and county.

Attachments:

State/Local Environmental Health Contacts

Certified Food Manager.pdf

Local Food in Facilities.pdf

MN Food Code haccp.pdf

Serving Locally Grown Produce in Food Facilities.pdf

Potluck events.pdf

Cottage Food Sales Limits

Resources and Links:

Starting a Food Business in Minnesota

Minnesota Department of Agriculture, 2008

<http://www.mda.state.mn.us/about/divisions/~media/Files/food/business/startingfoodbiz.ashx>

www.mda.state.mn.us

Marketing Local Food, Minnesota Institute for Sustainable Agriculture

<http://www.misa.umn.edu/Publications/MarketingLocalFood/index.htm>

Listing of Food Business Fact Sheets by MDA and MDH

<http://www.health.state.mn.us/divs/eh/food/fs/index.html>

Food Safety Resources

http://www.health.state.mn.us/divs/eh/food/pwdu/fsp/meetings/2011/oct18_resources.pdf

Guide to Starting a Food Business in Minneapolis
Minneapolis Planning and Economic Development
2011

http://www.minneapolismn.gov/www/groups/public/@cped/documents/webcontent/convert_269947.pdf

Food Product Basic Label Requirements from the Minnesota Department of Agriculture

<http://www.mda.state.mn.us/food/safety/basic-label-req.aspx>

Wholesale Success, A Farmer's Guide to Food Safety, Selling, Postharvest Handling and Packing Produce, Third Edition, edited by Jim Slama and Atina Diffley,

www.FamilyFarmed.org

Food Safety Plan for School Gardens

<http://www.co.olmsted.mn.us/OPHS/reports/Pages/MNSchoolGardenandFarmToCafeteriaSafety.aspx>