

Local Food Licensing and Regulatory Issues

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Introduction

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

Court case, 2005

A Minnesota Supreme Court case in 2005 established that farmers have the right to sell products of their farm without a license, but must follow applicable food safety laws.

[State of Minnesota vs. Diane Marcella Hartmann et al. July 28, 2005. Docket # A03-1674.

<http://mn.gov/lawlib/archive/supct/0507/opa031674-0728.htm>] Or, visit this URL for a reprinted PDF of the case: <http://tinyurl.com/plo2tn6>

Court case, 2013

A Stearns County District Court case in 2013 upheld the Minnesota Department of Agriculture's position that farmers distributing the products of other farms, not their own, must be licensed for that activity of collecting and distributing products. Case # 73-CR-12-2846; <http://pa.courts.state.mn.us/>

Note on accessing this 2013 case:

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

<http://tinyurl.com/p8b6ex2>

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

Product of the Farm:

If you are a farmer selling the products of your own farm, you are exempt from needing a license to sell those products either to individual customers or to food businesses. Selling the products of your own farm is protected by the Constitution of the State of Minnesota. This exemption is defined in Minnesota Statute 28A.15 Subd. 2: <https://www.revisor.mn.gov/statutes/?id=28A.15>

Farmers Doing Aggregation and Distribution of Farm Products:

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

Statutory definitions of "sell" and "sale:"

See Minnesota Statute 34A.01 Subd. 12 for what the words "sell" and "sale" of food mean in Minnesota law: <https://www.revisor.mn.gov/statutes/?id=34A.01>

Off-Farm Ingredients:

Any time you sell a product of your farm that includes any off-farm ingredients – even just salt or sugar – then the "product of the farm" exemption from licensing no longer applies. Either you need a license, or the product may fall under different exemptions. Exemptions to licensing for food sales that include off-farm ingredients are defined in Minnesota Statute 28A.15 Subd. 9 & 10 (described further below).

Exemptions to Licensing Requirements:

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

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>

Not Potentially Hazardous Food Exemption:

The exemption from licensing according to Minnesota Statute 28A.15 Subd. 9 is generally called the “not potentially hazardous food exemption.” It applies to jams, jellies, and baked goods sold at community events or farmers’ markets. If you sell these products from a farm stand or on-farm store, the Minnesota Department of Agriculture does not consider those sales to be exempt from licensing. You would need a license to sell these products at a location other than a farmers’ market or community event.

Pickle Bill Exemption:

The exemption from licensing according to Minnesota Statute 28A.15 Subd. 10 is generally called the “Pickle Bill.” It applies to pickles, salsa, sauerkraut, some canned fruits, and other high-acid canned foods sold at community events or farmers’ markets. Again, if you sell these products from a farm stand or on-farm store, the Minnesota Department of Agriculture does not consider those sales to be exempt from licensing. You would need a license to sell these products at a location other than a farmers’ market or community event.

Pickle Bill and Not Potentially Hazardous Food Exemption Dollar Limits:

\$5,000 in annual sales for Pickle Bill items and separate \$5,000 in annual sales for not potentially hazardous food items, for each person involved in the actual food preparation. Potential total of \$10,000 per year in exempt sales per “person” as defined in M.S. 34A.01 subd.10:

<https://www.revisor.leg.state.mn.us/statutes/?id=34A.01>

Licensing, Inspection, and Food Safety:

Even if you are exempt from licensing because you are selling product of the farm, or exempt Pickle Bill items, or exempt “not potentially hazardous food” items; you are not exempt from following applicable food safety regulations, and you are not exempt from the possibility of inspection.

Food Safety:

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

Raw Milk:

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

Minnesota Department of Agriculture (MDA) Procedures:

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

Getting a License:

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

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

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Find more information about the Local Food Advisory Committee:

<http://www.misa.umn.edu/FarmFoodResources/LocalFood/LocalFoodAdvCmte/index.htm>