

Ch 3: Legal concerns within the kitchen: Serving safe, delicious food through the law

Introduction

After reading this chapter, readers will:

- Understand that a food service venture must be licensed if 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.
- Envision the broad process a farmer must follow to receive the various food service licenses.

From potlucks to pizza nights, festivals to farm-to-table dinners, farmers are exploring new ways to share the bounty through the warm comfort of a meal. The natural intimacy of sharing a meal on a pastoral landscape boosts the farm's community image and the bottom line. Many farmers considering a food service venture want to keep the atmosphere as tight-knit as possible to foster trust and build honest relationships with customers. Farmers and customers see an informal exchange as an expression of their shared values. There's nothing like gathering around a table to create a sense of community.

Farmers and customers also share the value of safe food that contributes to healthy communities. Because safety has been compromised in the past, national and state lawmakers have created food production 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 facility that meets specific standards. Prepared foods are vastly safer with respect to chemical and bacterial contaminants than they were before food production regulations were passed. Few consumers ever think twice about the safety of prepared foods. This is good for farmers and their customers alike. In this way, the laws surrounding food production have increased the trust between food producer and customer.

The increased public trust does come at some cost to those doing the food preparation. The maintenance of the licensing system requires that food producers spend time and money understanding and complying with detailed rules. This can be an uncomfortable surprise to farmers who rarely encounter production-based regulations for their raw agricultural products. Seeking efficiency and low capital investment, farmers who venture into the more regulated world of food production often wish to keep their exposure to regulations at a minimum. Other farmers don't necessarily agree that regulation supports a trusting relationship. For these reasons, some farmers considering a food service venture wish to avoid food production regulations altogether. As the next

paragraph explains, farmers will have a very difficult time serving food outside the regulatory process. Public discourse on the effectiveness of regulations is necessary for any democracy, and farmers who disagree with these rules should consider talking with lawmakers about their vision for a safe food supply. Regulations can always be changed. As it stands, these are the regulations currently.

[These brackets indicate that the text here is intended for reviewers. It's not for inclusion with the document. Design is very hard to explain in words but I'm going to take a crack at it. This chapter is organized in the way a farmer would think about it. So to help lead the reader along, I would like to have a little farmer figure asking relevant questions/ making statements as we go. For example, I format my resources with a little farmer guy/gal. I'm going to put the farmer image into this document to signal this. In the real document, we could have a conversation bubble, too.]



When do I need a license to provide prepared food?

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

Farmers may find it difficult to host any type of food service venture without going through a licensing process. Because the shared goal of safe food is so important to public health and economic activity, food production regulations have very broad reach. Although this chapter will discuss the details, the wisest assumption is that ANY arrangement to serve food to the public must be done under a license. At the risk of over-generalizing, any time food is made available within a business or commercial context, a license is required. It doesn't matter if the food is free, if the members have joined a club, or if customers have signed agreement. Food offered in a business context requires a license.

Minnesota farmers have a constitutionally protected right to sell the products of their farm. This right is important but limited. It applies only to the products of the farm. Ingredients such as salt, pepper, and sugar are very likely not ingredients of the farm. Thus, when the farmer prepares a dish that includes non-farm ingredients, the constitutional protection doesn't apply.

Having made no bones about the extent to which farmers will need a license to conduct any food service operation, there are a few exemptions to the rule. Because the rules are complex and depend on very precise circumstances, farmers should read this entire section rather than just individual exemptions to get the full picture.

...Except for potlucks

Hosting a potluck is perhaps the easiest way for farmers to create a community food event without a license. If individuals prepare their potluck dishes at their own home and bring the prepared dish to an event, no license is needed. There are a couple requirements. The food can't be prepared at the event location, which means that farmers should not allow guests to reheat or finish dishes in the farmhouse kitchen. Unlicensed potlucks are not allowed at places that also have licensed food facilities. For example, a restaurant can't host a potluck because it already has a food establishment license.

The potluck exemption is a great opportunity for Community Supported Agriculture farms and other membership-based farms to host community events. The law doesn't limit the ability of the entity to advertise the potluck and welcome guests who are not necessarily members to attend. For example, many CSA farms host potlucks as a way to recruit new members. When existing members invite their friends and family to attend the potluck, the friends and family experience the farm's beauty and community involvement, making them likely to sign up themselves. These events are permissible without a license, but farmers should read the additional legal implications detailed in Chapter 4.

The text of the law exempts any potluck event from licensing, so long as the food is prepared elsewhere by those attending the event and the host does not have a food establishment license. Some materials available from regulating agencies phrase the law in terms of food preparation and consumption by membership organizations, only. Farmers relying on this exemption should be prepared to talk with their local regulators about the language of the law and about local interpretations.

...Except for non-business, non-commercial event

Everyone knows that a family hosting a reunion, wedding, or birthday party doesn't need a food establishment license before they invite 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. Especially for many farms where personal and business lives 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 much broader. In close-knit communities, the same people might attend both events. Still, society implicitly recognizes that perfect strangers can't just 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 public can attend even if they don't.

Simple examples like a graduation party and farm festival make the calculus look easy! In reality, it's much harder than that. Farmers are innovative folks who are deeply rooted in their community. The diversity of farm business models can make for some difficult distinctions. **Where there is any question about whether an event is private or public, the safe route is to ask the licensing authorities for their guidance.** But, the stakes can be high as licensing adds time and cost to an event. Farmers may want more guidance before going that route. Again, with the caveat that local authorities are the single source of authority on the issue, this section teases out the distinction between business and personal through some examples. Farmers are cautioned from relying exclusively on the examples here- these are for illustration purposes only. Small deviations can have a large effect and farmers should seek further advice before making a decision to apply for a license or not.

What if the farm only accepts donations for the food?

Asking for donations rather than charging a set amount does not turn a public event into a private one. If a farm business is serving food to the public, the licensing process applies. The law does say that persons "engaged in the business" of food service need a license, but "business" is not restricted to those who charge for food. Farms who provide prepared food may do it for business reasons even if the product is free. If the food boosts the farm's name recognition, builds awareness, advertises products, or simply generates goodwill in the community, it's part of the business. Many marketing events lose money, so it doesn't necessarily matter if the farm loses money on the food service. The distinction is made on whether the event is public or not.

What if the food is free?

As with accepting donations, the obligation to get a license does not change based on whether the food service is available for free, for a donation, or for an established price. If the product is available to the public, the license rules apply. 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 resource. Considering this resource's focus on for-profit farms considering diversification into food service, serving food for free does not affect the licensing obligations of for-profit farms.

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.

What if a farm invites only CSA members to an exclusive meal on the farm?

Things can get a little complicated with Community Supported Agriculture arrangements. Let's say a farm sells CSA memberships in the spring and then hosts a members-only dinner in the fall. That event isn't open to the public because only members can attend, right? The farmer would not need a license, right? Not exactly. If anyone can join the farm, then the event is actually open to anyone so long as they join the farm first. A farmer might then argue that her CSA membership has been closed for years because everyone renews and no new memberships are created. Is it still a public event? The safe answer is likely still "yes." A farmer in that situation should still ask for guidance from the appropriate regulatory agency. It may be possible for such a farmer to convince the regulators that all CSA members are friends, there is no business purpose as every member renews, no new members are recruited, and the event is not open to the public. The farmer may lose the argument but it might be worth the effort.

What if the farm organizes a dinner club?

Many innovative farmers around the country are starting dinner clubs where club members may purchase tickets or 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 arrangement, Minnesota farmers who prepare food for club members still need to be licensed. (A potluck is still permissible without a license, according to the exception above.) Although the law allows private events to be unlicensed, this is not actually a private event. If anyone can join the club, it is public. Even if the club has membership qualifications, Minnesota law does not exempt clubs from food service licensing. Clubs that serve food must be licensed, absent some other exemption. Now, if a farmer coordinates her or his friends, they all throw parties for each other, and they call themselves the "Farm Dinner Club," as long as those events are truly private parties no license is needed. Whether a group calls themselves a "club," makes no difference as to whether a license is needed. The distinction is whether it's public or private.

What if the farm asks 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 the farm permission to serve from an unlicensed facility will not defeat the law.

What if a farm sets out refreshments for volunteer workers?

This can get complicated. If a farmer has a couple of friends who regularly volunteer and the farmer prepares 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 personal friends of the farmer. But, let's say the following week the same farmer recruits a crew of 20 customers who donate one hour of volunteer work in return for lunch. Is this a public event? It's hard to say. Reasonable people could disagree on the answer. On one hand, the customers are from the public at large. On the other hand, they were accepted as volunteers and donated time. The analysis below about risky foods will probably play a role in any ultimate decision, and farmers in this situation should speak with the regulatory authorities for further guidance.

What about setting out beverages and snacks at a farm open house?

A farm open house is by its nature a public event so regulators will be concerned on that point. But, the need for licensing is not necessarily absolute on the point of public accessibility and a business context. The analysis of whether the food service is regulated also touches on the type of product being served. Regulators are particularly concerned with foods that have a risk of making people sick. In a legal context, risky foods fall into two categories: foods made outside a licensed facility are risky; foods including meat, dairy, or other animal protein products are risky. The latter category also includes most items that require refrigeration. These may not be the same foods that farmers and consumers find to be risky but it's the law's definition.

When determining if a food service event needs to be licensed, regulators will pay attention to whether the food is risky or not. A farmer who sets out packaged cookies after a tour event will not attract much attention from regulators. A farmer who sets out homemade sandwiches, especially anything containing meat, cheese or eggs, will attract attention.

(Rachel's design note: I have explained the above paragraphs in words, but it would be nice if we could design a flowchart as well. Each "what about..." example either ends in "You need a license," "You don't need a license," or "You may need a license- contact regulators for more info." Not something I can do in word at this point, though.)

The line between needing a license and not needing one can be tough for farmers to distinguish. The safe route is always to contact the local inspection authority and ask for further information. Some farmers will prefer to rely on their own intuition. That approach has some merit, as well. Hopefully, farmers who rely on their own logic will be successful in their event, its popularity will grow, and even more guests will come to the farm. But, success can be a double-edged sword for any enterprise in a legal gray area. If

the legal basis for the event as an unlicensed operation is in doubt, the farmer's security is threatened. Regulators could decide to take enforcement steps at any time. Recall the old saying that a person can win more flies with honey? A farmer who approaches regulators with a positive, cooperative attitude in advance is more likely to convince regulators of the farmer's preferred interpretation of an unclear rule. Farmers who work proactively with regulators will probably spend less time on the negotiation, too. Farmers who build legally stable and secure enterprises from the start can sleep soundly, knowing they have a revenue stream that won't be interrupted by an investigation.

Farmers and food safety authorities can all agree that safe food is good for everyone. Farmers are very knowledgeable in the production aspects of safe food, but they may not have as much experience in the service aspects of safe food. The Minnesota Department of Health has a great website, (available by searching for the Food Business Safety website) that details the basics.



My event will require a license. What now?

First, let's talk about a few threshold requirements. If farmers can't meet these obligations, they won't be eligible for any food establishment license.

All food served must be prepared under a license, in accordance with the Minnesota Food Code. This does not mean all food must be prepared in a commercial kitchen. The licenses discussed below, such as the special event food stand, are licensed facilities as well. All food service licenses are issued in accordance with the Minnesota Food Code. All farmers considering food service should check out the code and decide if this is something they truly want to pursue. The full Food Code is detailed and extensive, topping out at 161 pages in the bound version. Farmers certainly do not have to read each page or attempt to understand each section. Inspectors are more than happy to guide license applicants. At this stage, the point is to determine if the farmer is comfortable with detailed, precise obligations. To find the code, search on the Internet for "Minnesota Food Code". The Minnesota Department of Health offers links to each section online. For those preferring print, the Minnesota's Bookstore sells copies for \$15.95.

All food served must come from an approved source. This rule is designed to prevent food service operations from using ingredients that haven't been produced under the required conditions. It is not meant to restrict food service operations from buying produce directly from farmers, growers, or backyard gardeners. Fresh, raw fruits and vegetables may be purchased directly from the grower. The situation is a little different

with animal products directly from the farm. Meat, dairy, and eggs must be acquired through farmers who have followed the appropriate processing requirements to sell to food service establishments.

All water used in the food service must come from an approved source. Farmers have two basic choices for approved water sources. First, farmers may use water from an approved public water supply system. For example, the farm may be on a municipal water supply already. If not, farmers might consider transporting municipal water to the site in food grade containers or using exclusively bottled water. Farmers who cannot or prefer not to use municipal or bottled water have a second option. Farmers can use a residential well if it complies with the standards for a “transient noncommunity public water system.” The Minnesota Department of Health’s Noncommunity Water Supply Unit handles the enforcement of these rules. They will check the well’s source, facilities, maintenance, and operation to make sure it’s sanitary. MDH will also test the water for bacterial or nitrate contamination. Farmers can learn more about the process at MDH’s webpage for noncommunity public water supply systems or for the Minnesota Rural Water Association.

Farmers who know they can meet the threshold obligations should move on to exploring specific licenses.

Farmers who are comfortable with the threshold requirements can move on to exploring the individual food service license requirements. Every farmer who operates a food service venture for the public will need at least one license. Depending on the scale and type of operation, some farms will need two or more permits and licenses. Unfortunately, that’s where the simple explanations end! The license options and regulatory authorities can get quite confusing. Especially for farmers in the beginning stages of exploration, a long list of potential licenses and regulators isn’t necessarily helpful. It can make the process seem very overwhelming. Farmers generally want to know which licenses their specific operation might need.

The best place to start in exploring licenses is with the farm’s goals in hosting food service. If farmers can identify clear goals first, they can narrow in on the correct license to accomplish those goals. Identifying goals can be harder than it sounds. Farmers are accustomed to a more dynamic business environment - a venture’s details may follow whichever path is least resistant. Putting goals on paper may seem like limiting one’s options. Unfortunately, when it comes to food service flexibility is not the name of the game. Although various food establishment licenses do allow some flexibility in meeting the goals of the specific license, entrepreneurs save time and frustration by choosing an appropriate license first.



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. Licenses for smaller or less frequent operations shoulder the same responsibilities in meeting that goal as larger or more frequent operations. Although smaller operations may potentially expose fewer people to problems, problems develop in the same exact ways as larger operations. This means that smaller or temporary operations still need to follow strict rules when preparing and serving food. When it comes to identifying the right license, a farmers should identify what the farm is hoping to achieve by starting a food service operation.

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

The rest of this chapter is according to goals farmers might have in starting a food venture. For each group of goals there is a potential license to achieve them. Farmers who haven’t identified their goals might find inspiration from reading about what other farmers might hope to achieve. Even farmers who know exactly which goal mirrors their own will benefit from reading the entire rest of this chapter. It might spark new, better ideas.

Each goals section also outlines the license requirements. This is not an exhaustive list of the requirements for each license type. It is intended only to help farmers determine if the venture is a possibility within the farmer’s capital resources and farm situation. Farmers will still need to contact the appropriate regulatory agency and speak directly with an inspector. Depending on the exact circumstances, the inspector may determine that a different or additional license is necessary. Only after speaking with an inspector can a farmer determine precisely what is required.

GOALS SECTION 1:



I’d like to add food service to an existing event, such as my pumpkin festival. I don’t want full-time food service and I’m happy with a simple menu. I’d really like to cook the food myself rather than hire a caterer.

For example, farmers may want to:
Serve apple pie at the farm's autumn festival
Host a picnic with hot dogs and chips after a farm tour
Sell sandwiches during an annual barn dance

A special event food stand license may be right for these goals.

With a special event food stand license, a farmer may serve food 1) at an existing event only, 2) at no more than three separate existing events, and 3) for no more than 10 days total, amongst all events. As with all food service licenses, the special event food stand must follow high standards for food safety. The special event food stand has the advantage of a more streamlined application and inspection process.

Although the process is somewhat more streamlined, it can certainly be slowed down if farmers aren't familiar with their obligations. The food stand cannot be operated out in the open without any further protection. 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. This can be a problem for farmers who may want to host events at locations where they lease or do not have control over buildings. Also, if a farmer is hoping 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.

Some farms also may not be able to meet the gas, electrical, and fire code standards that apply to the farm. If the farm facility is less than modern and hasn't been upgraded recently, these may be hard to meet. If a barn does not have the electrical capacity to operate cooking equipment safely, an electrical fire could result. That would certainly be bad for everyone.

To receive a special event food stand, applicants 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. The following are a few, select requirements that may be of special interest to farmers considering a special event food stand at their farm.

1. Handwashing stations must be provided with, among other standards, potable water at between 70 and 110 degrees Fahrenheit.
2. If hoses are used for water, the hose must be food grade.
3. Wastewater cannot be dumped onto the ground. It must go into a sewer system or into a wastewater holding tank.
4. Disposable service utensils such as plates, forks, and napkins must be used. Farmers may not collect wares for washing and future re-use.
5. Recall the threshold requirement above: Water must be from an approved source.

See the Special Event Food Stand publication and checklist available from the Minnesota Department of Health and be prepared to speak with the inspector about the full obligations.

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 individuals to first submit a plan before submitting an application. Instead, individuals 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.

- Determine the appropriate licensing authority for the county where the food preparation will take place. The licensing authority may be the city, county, or state department of health.* The Minnesota Department of Health publishes a directory of the relevant licensing agency for each county.
- Contact the licensing authority for an application.* Different offices may use different applications and they are not interchangeable.
- 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. This can cause stress if a farmer realizes that new equipment needs to be purchased or new procedures created just days before the event. Instead, farmers might consider talking with an inspector early in the process to discuss a precise plan that will meet the Food Code requirements.
- Submit the application with the appropriate fee.* Different licensing authorities charge different fees for the license.
- Receive the license.* If the application meets the requirements, a license will be issued.

GOALS SECTION 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.

For example, farmers may want to:

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

Bring a food truck to the farm for a movie night.

Farmers with these goals may be able to avoid license logistics because the restaurant, caterer, or food truck may handle it.

These situations still require licenses. However, farmers who work with food businesses such as caterers and food trucks to provide the food service may be able to rely on the food business to handle licenses. For example, a food truck should already be licensed as a mobile food unit to prepare food in 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.

If the food truck does any food prep outside of the truck or if the caterer/restaurant does any food prep at the farm, additional licenses are necessary. In that case, a special event food stand is the most likely license needed. If the farm has already held a special event food stand license for either 10 total days or three separate events, a seasonal temporary food stand license is required instead. Again, one of these additional licenses will be required only where the food truck or caterer does additional food preparation on the farm, outside their otherwise-licensed facility.

Food truck operators, caterers, and restaurants should all 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. Farmers working with these types of businesses 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, farmers should double-check that caterers and food trucks have secured the necessary licenses.

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

Although the farmer may be able to offload the lion's share of duties applying for the license, farmers still have plenty of legal concerns. All the legal issues detailed in Chapter 4 may apply when working with caterers and food trucks.

How do I manage licensing when I work with a food truck, caterer, or restaurant?

- 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 activities.
- 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.
- 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.
- Before the event, check that the license has been applied for and received.

GOALS SECTION 3



I already have a retail food handler's license. 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's license. I'm now thinking about serving a few prepared items as a small part of my future retail store.

For example, farmers might:

Already sell jam, salsas, and baked good but would like to start serving sandwiches to order.

Open a retail store to sell farm products but wish to serve brunch on weekends.

Farms with a retail food handler's license should work with their current inspector to add food service to the existing license.

Farms considering a food service operation that's part of a broader retail or grocery operation are in a slightly different licensing position than farms considering just food service. When an operation is predominantly retail (including bakery and deli operations), the business needs a "retail food handler's license." Retail food handler's licenses are administered through the Minnesota Department of Agriculture. (By contrast, the food service establishment licenses discussed here are administered by the Minnesota Department of Health. Both agencies may delegate inspection and licensing to more local units of government, however.)

If a farm currently has a retail food handler's license, a new license is not needed. The farmer will work with their current inspector to add food service. The best way to begin adding food service is to place a call to the Minnesota Department of Agriculture. MDA will then direct the farmer to the local inspector for the farmer's location. Farmers should then contact the local inspector to discuss exactly what needs to be done to serve food. If the retail operation is currently very modest- such as a retail operation with only prepared and packaged foods- upgrades may be significant. But, if the retail operation is already preparing foods like salad mixes, selling animal products, or doing repackaging, the upgrades may be moderate. It all depends on what the farm is currently doing under its retail license.

If a farm is still in the planning stages for a retail operation, the next step is to contact the office handling the process currently. The inspector will want to know which operation will generate the majority of the revenue- retail or food service. If retail sales will make the most money, the farmer will need to work with MDA on a retail food handler's license. But, if the retail sales are less than half when compared to sales of food made to order, the farmer may need to work with MDH to discuss the appropriate food service license instead. Farmers in this situation should contact the office currently handling their license process as soon as possible.

The details behind a retail food handler's license are beyond the scope of this resource. The objective of this section is simply this: farmers with a retail operation will not follow the food service establishment license procedures discussed in this guide. Instead, they will work with their current retail license inspector.

I have a retail food handler's license already. What do I do to add food service?

- Call MDA to get in touch with your local inspector about adding food service under your existing license.

GOALS SECTION 4



I want to host food service guests more than a few times... but I'm not looking to open a regular 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.

For example, farmers might:

Cook an elegant dinner on the farm 10-20 times per year from a small kitchen she's 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.

A temporary food establishment license may be right to meet these goals.

The term “temporary food establishment license” is actually an umbrella term that encompasses five different licenses. The “special event food stand” is one but it’s handled on it’s own. Read all about the special event food stand a few pages ahead. The food cart license 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.

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 if the local regulating agency authorizes it. If operating for 21 days or fewer won’t meet the farmer’s objectives and the authorities won’t authorize longer usage, the farmer will have to move on to a regular restaurant license, described below. (A temporary food establishment can operate for another 21 days at a different location. This may be an advantage for farmers who cooperatively purchase a food truck and move it from farm to farm, for example).

Temporary food establishment licenses come with generally lower fees, a different inspection schedule, and some small modifications of the food code requirements as compared to a full restaurant license.

Even though the mobile food unit, food carts, seasonal temporary food stands, and seasonal permanent food stands licenses come with four different names, the distinctions are not that important from a practical perspective. Applicants will follow the same basic processes and need to meet the same basic requirements for all licenses. The food must be prepared in a licensed facility and served under specific sanitary procedures. There are small differences in the type of equipment allowed but the differences are not large enough to matter, as compared to the farm’s broader goals.

From a practical perspective it’s a bit easier to break it down into two options: food trucks and food stands.

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 commissary in advance and do only final preparations in the truck. If the chef uses specific techniques or ingredients he or she may not be able to do all the cooking in the truck because the necessary equipment may not be installed. 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 are increasing in popularity so farmers may find local options to purchase or rent a food truck. A food truck isn't necessarily more affordable or more expensive than building one's own kitchen on-site. It all depends on the local market and the truck under consideration. However, trucks do have the added advantage of portability. If several farms wanted to cooperatively purchase and manage a food truck, the costs may drop below that of a kitchen. A cooperatively managed food truck may boost the visibility of all the farms in an area, as well.

Food stands are another option within the temporary food establishment license arena. Food stands are perhaps easiest to explain by example. Many of the food vendors at county fairs are food stands. Anyone who has purchased fried cheese curds or the many other items at a county fair may have patronized a food stand. Food stands may also exist where a restaurant serves food next to a golf course or volleyball court on a regular, but seasonal, basis. Food stands that can be disassembled and moved are licensed as temporary seasonal food stands while those that cannot are permanent seasonal food stands.

From a legal perspective, the easiest way to integrate a food truck or food stand into on-farm food service is to purchase an existing, licensed food truck and follow the same menu. If the farmer doesn't plan any remodeling, the equipment is suitable for the farmer's intended menu, and the license is current, the farmer will have the shortest turn-around time on the license application. However, if any modifications are needed, the menu is changing, or the license has lapsed, the full application process applies.

If a farmer wants to build or remodel a food truck or food stand, the process is quite a bit longer. Naturally, the regulatory authorities have a more work to do if the facility goes through a new licensing review.

The first step is to determine the appropriate licensing authority as it may be within the county, city, or state. Farmers should consult the Minnesota Department of Health's county map, online, which lists contact information for the appropriate authority by county. After locating the appropriate agency, the farmer should call and ask for the agency's plan review application for a temporary food establishment. The plan review application will request many items such as a copy of the intended menu, detailed blueprints, information sheets on all equipment used, tables detailing construction finishes, and more.

The second step is the longest and most significant: prepare the plan review application. If the plan does not demonstrate that the facility will comply with the Minnesota Food Code, the agency will hand the application back for modifications. To help applicants understand how to meet the requirements, the Minnesota Department of Health publishes the "Mobile Food Unit, Seasonal Temporary Food Stand, and Seasonal Permanent Food Stand Construction Guide," which is available online. The construction

guide highlights many of the things plan reviewers will need to see in the construction plan. Of particular interest to do-it-yourself farmers, homemade or modified equipment is not acceptable. Farmers unfamiliar with food service may need to seek expert advice to prepare a plan application that will be approved.

But wait, that's not all! A permanent food stand (and possibly even a temporary one) may require a building permit from the local zoning authority. Even if there is no local zoning, other state agencies take an interest in food service facilities. Farmers may need the plumbing approved by the Minnesota Department of Labor and Industry. At the same time that the farmer is submitting a plan to the appropriate food license authority, the farmer should contact DOLI about submitting the plumbing plan for approval. The local fire marshal may also need to approve the plans with respect to fire codes. Farmers should contact each of these agencies before submitting the plan 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 the license. Some farmers are willing and able to follow detailed, technical codes when designing their facility. Other farmers will only be frustrated by the detail orientation and engineering skills required. Farmers can always work with a professional to design plans that will meet with inspectors' approval.

After the plan has been approved, the farmer's third step is to begin construction or remodeling of the food truck or stand. After the construction is complete, the farmer submits the license application and fees. After the facility is inspected, the license is awarded.

The law has additional requirements to ensure that restaurant staff are trained in food safety practices. Each temporary 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 the CFM, a person must pass an approved food safety course. Many of the approved courses are available online. Although each establishment needs a CFM, the CFM may not 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.

What is the process for getting a mobile food unit or seasonal/permanent food stand license?

- Determine local regulatory agency.* Consult MDH's online map to find the correct authority for the county in which the food will be prepared.

- 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. An internet search may be effective. 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.
- 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.
- Inquire with the DOLI, the local fire marshal, and the local zoning authority as to whether they need to review the plan 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.
- Submit the food establishment plan packet to the licensing authority.* When the farmer is confident the plans will meet the requirements of the various regulatory agencies, the next step is to submit the plan review application.
- Await approval.* If the plan meets the regulations, the plan will be approved. But, if there are problems it will be returned for modification.
- Do construction.* Construction may begin only after the plan has been approved.
- Get inspected.* After construction is complete, the food stand or food truck must be inspected. This process assures everything was installed as planned.
- Receive the license.* After a successful inspection, the owner submits the license application with the appropriate fee.

GOALS SECTION 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.

For example, farmers might:

Do pizza nights and farm dinners year-round or multiple times per week over the summer.

Serve farm dinners that highlight new chefs and challenging or trendy cooking techniques.

Open a regular full-time farm café that serves sandwiches and other prepared foods.

A regular food service establishment license may meet these goals.

If the farmer's vision includes regular service, a temporary food establishment permit won't work. For anything over 21 days of service, a regular food establishment license is needed. The same applies to fancy or complex dishes. The types of equipment necessary to prepare them may not be feasible in a temporary establishment.

A regular food establishment license isn't necessarily more difficult than a temporary establishment. The requirements are about the same from a food safety perspective. The facility will need to be constructed to meet specific standards for wall, floor, and ceiling finish materials, specific types of equipment must be installed, food must be stored in specific types of containers, dishes are washed and sanitized under specific procedures and more. Farmers who already have space in a barn or packing shed may find it quite easy to install the necessary equipment and modify finishes.

Considering the wide variety of menu items farmers may want to serve and the spectrum of existing resources on many farms, it's difficult to say exactly what a farm will need to install to get the license. The more menu flexibility that a farm wishes, the more expansive the kitchen must be. Simple, consistent menus require less specialized equipment.

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

- A commercial grade refrigerator or walk-in cooler with enough capacity for the farm's envisioned operation. (If the farm is a produce operation with a modified or homemade cooler, it 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 the restaurant holds 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 basins.
- Countertops must be made of approved materials and there must be enough space to prepare foods and air-dry cooking equipment.

All equipment must be manufactured for the purpose that it is used. Homemade and modified equipment is not acceptable.

The process for planning a licensed farm kitchen for food service isn't so much difficult as it is time consuming. The farmer will need to know what he or she intends to serve and to how many guests, on average. The menu and the scale will dictate the type of equipment needed, the volume of storage space, and the size of the coolers, countertops, and more. Farmers who prefer to get a kitchen installed first and figure out the menu later will find the process frustrating. The process for receiving the license is driven by the menu, so farmers need to pick a set menu or install more equipment to cover for wide menu options. After a farmer has a good idea of what will be served, when, and to how many individuals, a conversation with the local licensing authority will identify the necessary equipment and space needs. Farmers do not have to read the food code themselves- it's probably easier to ask. Farmers may also find it helpful to talk with an experienced, licensed food service entrepreneur in the county where the farmer plans to prepare the food. Someone who has done it before will know exactly what is needed. Professionals also provide these services for a fee.

Farmers may find it a bit challenging to meet some of the plumbing, fire code, and source water requirements for a farm kitchen, especially if they are remodeling a farm building. These may necessitate expensive remodeling to meet the codes. However, if the remodeling is coupled with developing of a new packing shed, employee washrooms, or other upgrades it might be more cost effective. Again, working with a professional who knows the relevant codes already can make things easier.

The process for receiving a standard restaurant operator's license is nearly the same as for a temporary establishment license. A farmer must prepare and submit a detailed plan review application. 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. Standard restaurants are inspected on a regular basis thereafter.

The law has additional requirements to ensure that restaurant staff are trained in food safety practices. Each temporary 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 the CFM, a person must pass an approved food safety course. Many of the approved courses are available online. Although each establishment needs a CFM, the CFM may not 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.

What is the process for getting food service establishment license?

The process for a temporary and regular food service establishment is the same.

- Determine local regulatory agency.* Consult MDH's online map to find the correct authority for the county in which the food will be prepared.
- 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. An internet search may be effective. 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 about this.
- 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.
- Inquire with the DOLI, the local fire marshal, and the local zoning authority as to whether they need to review the plan as well.* If a seasonal permanent food stand is being built, it likely needs a building permit and review by these agencies.
- Submit the food establishment plan packet to the licensing authority.* When the farmer is confident the plans will meet the requirements of the various regulatory agencies, the next step is to submit the plan review application.
- Await approval.* If the plan meets the regulations, the plan will be approved. But, if there are problems it will be returned for modification.
- Do construction.* Construction may begin only after the plan has been approved.
- Get inspected.* After construction is complete, the food stand or food truck must be inspected. This process assures everything was installed as planned.
- Receive the license.* After a successful inspection, the owner submits the license application with the appropriate fee.

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 local inspectors, farmers can integrate food service into their farm safely and efficiently.