



Farmers' Guide to the Minnesota Cottage Food Law

Farmers' Legal Action Group, Inc. (FLAG)

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Farmers' Guide to the Minnesota Cottage Food Law

I. Introduction

A number of laws and regulations in Minnesota are designed to keep food safe. Some of these rules make it almost impossible for smaller-scale farmers to sell many kinds of processed foods. The Minnesota Cottage Food Law is intended to help smaller operations in Minnesota sell certain processed foods.¹ The current Law took effect in 2015.²

This booklet describes how the Minnesota Cottage Food Law works. It explains who can use the Cottage Food Law and how the Law affects farmers and others that sell food. The booklet assumes that the person selling food is a farmer and that he or she is growing food and selling it.

A. Food Processed at Home

Many farmers direct market fresh fruits and vegetables. As is discussed below, the rules regulating the sale of these foods by farmers is fairly straightforward. If a farmer wants to process food at home and sell it to the public, however, the law is more complicated and hard to follow. The Cottage Food Law is designed for food sellers that do certain kinds of food processing at a small scale, normally in their own homes.³

B. "Cottage Food Law" – Why the Strange Name?

Why would anyone create something called a "cottage food" law? According to the dictionary, a cottage is a very small building.⁴ Going back in history, though, a cottage often meant a small house. Cottage food, as a result, came to mean food produced in a small house and then sold to the public. So, even though much changed in farming and food production in the United States, the odd name – cottage food – stuck for small-scale processors of food. One of the few ways that the word cottage stayed in the language is to describe a form of cheese – cottage cheese – that once was often produced in small homes and then sold.

Sometimes people have called the Cottage Food Law the "Pickle Law." This is because, as we will see, the food covered by the Cottage Food Law includes pickles.

C. Sources for this Booklet

The main sources for this booklet are Minnesota state statutes and Minnesota state regulations. In some places – especially with the Minnesota Department of Agriculture (MDA) -- the booklet uses public sources from the MDA that do not appear in official Minnesota statutes or rules.⁵ MDA is the state office that administers the Cottage Food

¹ The law can be found at MINN. STAT. § 28A.152.

² Any earlier form of the law was changed significantly in 2015. See 1 Sp. 2015 Minn. Laws, ch. 4, art. 2, sec. 53.

³ For one example of writing that includes suggestions for cottage food production, see LISA KIVIRIST & JOHN D. IVANKO, *HOMEMADE FOR SALE: HOW TO SET UP AND MARKET A FOOD BUSINESS FROM YOUR HOME KITCHEN* (2015).

⁴ OXFORD ENGLISH DICTIONARY, Vol. 3, "cottage" (2nd ed. 1989).

⁵ These are:

Law, so the materials they put out can probably be considered authoritative about the way the MDA understands the Cottage Food Law. In a few cases, the booklet uses as sources public documents from the Minnesota Farmers Market Association (MFMA) and University of Minnesota Extension.⁶

D. Current Through August 31, 2017

This version of the Farmers' Guide to the Minnesota Cottage Food Law is current through August 31, 2017. It includes changes that were passed by the legislature and signed into law by the Governor on May 30, 2017.⁷

II. Many Food Laws and Regulations for Food Sellers

A number of laws and regulations affect those that sell food.

Some of these rules are based on federal law and are carried out by the federal government. These include rules enforced by the United States Department of Agriculture (USDA) and the Food and Drug Administration (FDA).⁸ Others rules are based on Minnesota state law.⁹ Still others can be local and might include zoning and other regulations.

This booklet is about a set of Minnesota laws that regulate food sellers, and a special law that helps some smaller operations to sell food legally – the Minnesota Cottage Food Law. For most of these laws and regulations that affect farmers selling food, the Cottage Food Law does not create an exemption. For some laws and regulations, however, the Cottage Food Law helps small-scale food sellers, especially farmers that are direct marketers.

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- (1) Minnesota Department of Agriculture, *Cottage Food Law (FAQs)* (2017), <http://www.mda.state.mn.us/licensing/licensetypes/cottagefood/cflfaqs.aspx>;
 - (2) Minnesota Department of Agriculture, *Cottage Food Producer Registration* (2017), <http://www.mda.state.mn.us/cottagefood>; and
 - (3) Minnesota Department of Agriculture, *Minnesota Cottage Food Producer Registration Training*, <http://www.mda.state.mn.us/~media/Files/licensing/dairyfood/cfltraining.pdf>.

⁶ These are:

- (1) Minnesota Farmers Market Association, *Minnesota Cottage Foods Law Non-Potentially Hazardous Food* (2016) (written in cooperation with MDA), https://farmersmarketcoalition.org/wp-content/uploads/gravity_forms/1-66fc51da018bd946fb1dfb74f4bea1e7/2017/06/MFMA-Fact-Sheet-NPH-Foods-List-2016-03-15.pdf; and
- (2) Minnesota Farmers Market Association, *The 2015 Minnesota Cottage Food Laws*, <http://www.mfma.org/resources/Documents/Cottage%20Food%20Fact%20Sheet.pdf>.

⁷ 2017 Minn. Laws ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152(2)). As of August 1, 2017, Minnesota Department of Agriculture materials do not address this change.

⁸ No summary of these laws seems to be written with everyday people in mind as readers. Several books take a scholarly or lawyerly look at the laws. Those include: JENNIFER L. POMERANZ, *FOOD LAW FOR PUBLIC HEALTH* (2015); PATRICIA A. CURTIS, *GUIDE TO US FOOD LAWS AND REGULATIONS* (2nd ed. 2013); NEAL D. FORTIN, *FOOD REGULATION: LAW, SCIENCE, POLICY, AND PRACTICE* (2nd ed. 2016); JEFFREY T. BARACH, *FSMA AND FOOD SAFETY SYSTEMS: UNDERSTANDING AND IMPLEMENTING THE RULES* (2017); MARC C. SANCHEZ, *FOOD LAW AND REGULATION FOR NON-LAWYERS: A US PERSPECTIVE* (2016); and MICHAEL T. ROBERTS, *FOOD LAW IN THE UNITED STATES* (2016).

⁹ A summary of them can be found on the Minnesota Department of Health website: <http://www.health.state.mn.us/divs/eh/food/fs/index.html>.

III. Cottage Food Law Creates Exemptions from Food Licenses and Some Regulations

The Cottage Food Law creates what are known as exemptions to food licenses and some regulations. If someone is “exempt” from a law or regulation that means he or she does not have to follow that law or regulation. The Cottage Food Law, therefore, says that some people do not have to follow some of the regulations that usually control food sales. The following sections describe how these exemptions work.

A. Cottage Food Law Exemptions: Minnesota Law Only

The Cottage Food Law only applies to Minnesota law. That means if the federal government has a law – for example about food safety– the Cottage Food Law does not change that federal law. Similarly, local regulations –for example about zoning – are not changed by the Cottage Food Law.

Although a number of states have something similar to Minnesota’s Cottage Food Law, the laws are different in every state.¹⁰ So, if someone knows how a cottage food law works in another state, it may not work the same way in Minnesota.

B. Cottage Law Exemption: Only Affects Licensing and Commercial Cannery Regulation

The Cottage Food Law applies to many food sellers that would otherwise need to get a license to sell food or might otherwise be regulated as a commercial cannery. Licensing and commercial cannery regulation is discussed below.

IV. Minnesota Food Licensing Law

According to the Minnesota Food Licensing Law, licenses are often required for people that sell food. Some food sellers, however, do not need to get a license.

A. How Food Licenses Usually Work

Minnesota law sets out a set of licensing rules for people who are “food handlers.” Anyone who sells food directly to the ultimate customer, or who processes and then sells food directly to the ultimate customer, must get a license.¹¹

Licensing is run by the Minnesota Department of Agriculture, although some of the licensing, for example for grocery and convenience stores, may be carried out by local boards of health.¹² Licenses need to be renewed every year.¹³

¹⁰ A summary of various cottage food laws is ALLI CONDRA, COTTAGE FOOD LAWS IN THE UNITED STATES (Harvard Food Law and Policy Clinic, August 2013), http://www.chlpi.org/wp-content/uploads/2013/12/FINAL_Cottage-Food-Laws-Report_2013.pdf.

¹¹ MINN. STAT. § 28A.05.

¹² MINN. STAT. § 28A.075.

¹³ MINN. STAT. § 28A.17.

B. Why Licenses to Sell Food Are Such a Problem for Small Operations

A license to sell food in Minnesota costs money, requires paperwork, and includes required inspections. The main problem with licenses for small operations, however, is the lengthy and detailed set of requirements for food production. The kitchen, for example, must meet certain complicated specifications. The rules for food sellers are hundreds of pages long. This may make sense for a restaurant that sells a wide variety of cooked food or an operation that processes and packages food. The requirements are so difficult, however, that they are impossible for a small-scale farmer that does minimal processing in his or her home or small kitchen.¹⁴

C. Some Food Sellers Do Not Need License

Some food sellers do not need to get a license. For example, in some cases license laws do not apply to farmers at all -- whether or not the farmer qualifies under the Cottage Food Law.

Four ways that a farmer can sell food without a license include the following.¹⁵

1. Raised by Farmer and Sold to Consumer

If a farmer sells the products of his or her farm or garden, the farmer does not need to get a food license to sell this food.¹⁶ The farm or garden must be occupied and cultivated by the farmer selling the food.

2. Seller Does Not Usually Manufacture and Sell Food

A person that does not regularly engage in the business of manufacturing and selling food may not need to get a food license to sell food.¹⁷ That person must prepare the food only on order. The sale must be either directly to the ultimate customer or to an educational, charitable, or religious organization that does not usually engage in the business of manufacturing, processing, or selling food at the institution.

3. Slaughter for Own Use

Licenses are not needed if a farmer slaughters animals for his or her own personal use or the use of his or her immediate family.¹⁸

¹⁴ Some people are trying to create community commercial kitchens that meet these requirements. See, for example, KAREN KORSLUND, GREG SCHWESER & RACHEL GREWELL, COMMERCIAL KITCHEN GUIDE, MINNESOTA INSTITUTE FOR SUSTAINABLE AGRICULTURE (MISA), http://www.misadocuments.info/Commercial_Kitchen_Guide.pdf.

¹⁵ MINN. STAT. § 28A.15(1). The licensing provisions of MINN. STAT. §§ 28A.01 to 28A.16 do not apply. Special rules also apply for warehouses, people with other forms of licenses, those who sell ice, soft drinks, and snacks, and for pharmacies. MINN. STAT. §§ 28A.15(4)-(5), (7)-(8).

¹⁶ MINN. STAT. § 28A.15(2).

¹⁷ MINN. STAT. § 28A.15(2).

¹⁸ MINN. STAT. § 28A.15(3).

4. Food Sampling or Demonstration at Farmers Market or Community Event

Food distribution at some farmers markets or community events does not require a food license. Strict rules apply.¹⁹

a. Food Sampling and Food Demonstrations

Food sampling can be exempt from food license requirements.²⁰ Food sampling, for this purpose, means food distributed to individuals at a farmers market or a community event.²¹ The distribution of the food must be for promotional or educational purposes. Only small portions of the food are allowed to be the main ingredient in food sold by the farmers market vendor or at a community event.²²

Food product demonstrations also can be exempt from food licensing.²³ A food product demonstration means cooking or preparing food products to distribute to individuals at a farmers market or community event for a promotional or educational purpose.²⁴

b. Food Provided at No Cost

Food provided through food product sampling or food product demonstrations must be provided at no cost.²⁵

c. Be Ready to Provide Information

Anyone providing food under the food product sampling or food product demonstration exception must provide the following to a government official who asks for it: information about the source of the food, the equipment used, the availability of hand washing facilities, and other

¹⁹ MINN. STAT. § 28A.151.

²⁰ MINN. STAT. § 28A.151(2).

²¹ MINN. STAT. § 28A.151(1)(c). For this purpose, a farmers market is an association of three or more persons who assemble at a defined location that is open to the public for the purpose of selling directly to the consumer the products of a farm or garden occupied and cultivated by the person selling the product. MINN. STAT. § 28A.151(1)(b). Farmers markets are free to make membership more restrictive than this statute. MINN. STAT. § 28A.151(6).

²² MINN. STAT. § 28A.151(1)(c). A small portion means a portion that is no more than three ounces of the food or beverage.

²³ MINN. STAT. § 28A.151(2).

²⁴ MINN. STAT. § 28A.151(1)(d).

²⁵ MINN. STAT. § 28A.151(3).

information.²⁶ He or she must also meet the same food and safety requirements that apply to special event food stands.²⁷

D. Minnesota Commercial Canning Regulations

Minnesota state law regulates what are called “commercial canneries.”²⁸ These rules regulate, among other things, canning operations and the use of acidity to preserve and sell food. The law bans selling food that is canned in private homes.²⁹ Commercial canneries are inspected by the state and heavily regulated by a set of complicated rules.³⁰

Without an exemption from the Cottage Food Law, it would be extremely difficult for a farmer to sell food from his or her farm that is canned.

V. The Logic of a Cottage Food Law: Some Foods Can Be Safe Without Licensing and Commercial Canning Rules

Safe food is a serious matter. Many people become sick each year from food-borne illness. It makes sense, therefore, to have a set of rules to protect the safety of food. Some foods, however, are simply not as risky as other foods when it comes to food-borne illness. Clean, fresh fruit, for example, does not require the seller to have extensive inspected kitchen operations. The situation is similar with food covered in the Cottage Food Law. These foods – for example pickled fruits -- can be made safely without the rules that go along with a food license. Without an exemption under the Cottage Food Law, it would be very difficult for a farmer to sell canned goods, and it would be illegal to sell goods that are canned in a home.

VI. Cottage Food Law Exemptions: Who Gets Them

Under the Cottage Food Law, some people who would otherwise be forced to get a license if they want to sell food get an exemption for the license requirements. Only certain people are exempt from licensing under the Cottage Food Law. The following sections describe those rules.

A. Individuals Can Be Exempt – Not Corporations

In order to be exempt from licensing, the food seller must be an individual person.³¹ In other words, the seller of the food cannot be a company – like Costco or Walmart. Also, cooperatives and partnerships cannot be sellers under the Cottage Food Law.

Some farmers, even smaller scale ones, have organized their farming operations as a corporation or partnership. If a farmer creates a corporation or a partnership – such as a

²⁶ MINN. STAT. § 28A.151(4). More specifically, the person providing the food product for sampling or food for demonstration must provide the following information to the official, if asked: (1) the sources of food used and whether it was produced on the person’s farm or garden; (2) they type and volume of food served; (3) the equipment used to provide the food; (3) the time period and location of the sampling or demonstration; (5) facilities for hand washing and washing of utensils; (6) availability of water; and (7) methods of waste disposal.

²⁷ MINN. STAT. § 28A.151(5).

²⁸ MINN. STAT. §§ 31.31 to 31.392.

²⁹ MINN. STAT. § 31.392.

³⁰ Minn. R. §§ 1550.1880 to 1550.2110.

³¹ MINN. STAT. § 28A.151(2)(a)-(b).

limited liability corporation (LLC) or a limited liability partnership (LLP) -- the corporation or partnership may not to sell under the Cottage Food Law.

B. Sole Proprietorships Possible

An individual can register as a Cottage Food Law seller as either an individual or a sole proprietorship.³² In general, a sole proprietorship is a business owned by an individual person.³³ That person is not considered an employee of the business. If more than one person owns a business, it cannot be a sole proprietorship.

The Minnesota Department of Agriculture (MDA) believes that if the food seller registers under the Cottage Food Law as a sole proprietorship, the sole proprietorship may have employees that sell food.³⁴ An employee therefore does not need to take the Cottage Food training and does not need to register with MDA.³⁵ Training and registration are discussed below.

To be protected by the Cottage Food law, sales for a sole proprietorship are capped at \$18,000.³⁶

C. Multiple Individuals

The Minnesota Farmers Market Association argues that if a group of people, such as a family, work together making and selling cottage food, each person in the family could take the training and register as an individual.³⁷ In theory, each person could make \$18,000 in sales per year. A group of four, therefore, could sell up to \$72,000 per year and still meet the \$18,000 yearly maximum. Anyone trying this strategy should make sure that each individual meets the requirements of the Cottage Food Law.

D. Prepare and Sell Food

In order to be protected by the Cottage Food Law the same person must both prepare and sell the food.³⁸

E. Do Not Need to be a Farmer

In order to use the Cottage Food Law, the food seller does not need to be a farmer. This booklet is written with farmers in mind, but the law applies to other people as well.

³² Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*. A business in Minnesota operating under a name other than the name of the owner needs to register with the Minnesota Secretary of State. That includes a sole proprietorship. MINN. STAT. §§ 333.001, 333.01-333.02. If the sole proprietorship has registered with the Minnesota Secretary of State and has registered a “doing business as” (DBA) name, both the legal name of the sole proprietorship and the DBA name must be included on the Cottage Food Law registration form.

³³ Sole proprietorships and other forms of business entities are discussed from the view point of Minnesota farmers in PHILLIP L. KUNKEL and S. SCOTT WICK, UNIVERSITY OF MINNESOTA EXTENSION: FARM LEGAL SERIES: CHOOSING THE RIGHT BUSINESS ENTITY (June 2015).

³⁴ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

³⁵ Minnesota Farmers’ Market Association, *Fact Sheet: The 2015 Minnesota Cottage Foods Law*, at 4.

³⁶ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

³⁷ Minnesota Farmers’ Market Association, *Fact Sheet: The 2015 Minnesota Cottage Foods Law*, at 4.

³⁸ MINN. STAT. § 28A.152(1)(a).

F. 2017 Changes – Donations to Community Event

Changes in the Cottage Food Law that took effect in 2017 suggest that it is possible for food to be donated to a community event by a person protected by the Cottage Food Law and then sold at the community event.³⁹ This change is discussed below.

VII. Foods Covered by the Cottage Food Law

Two types of food are covered by the Cottage Food Law: food that is not “potentially hazardous”; and food that is home-processed or home-canned. The rules vary somewhat between the two.⁴⁰

A. Foods That Are Not “Potentially Hazardous”

The Cottage Food Law provides an exemption for foods that are not “potentially hazardous.”⁴¹

1. Defining “Potentially Hazardous”

Potentially hazardous, for this purpose, is defined in Minnesota law, and the definition is highly technical and scientific.⁴²

One way to keep track of what foods are thought by the Minnesota Department of Agriculture (MDA) as not potentially hazardous is to look at a Fact Sheet created by the Minnesota Farmers’ Market Association (MFMA) called Non-Potentially Hazardous Foods. MFMA works with MDA, and others, to put together a list of non-potentially hazardous foods. That current list can be found by clicking “The Non-Potentially Hazardous Foods List” link found here: <http://www.mfma.org/CFL>

This list can change and is updated.

Another way to keep track of whether a food is potentially hazardous is to contact the Minnesota Department of Agriculture’s Food and Feed Safety Division at 651-201-6027.

In general, most baked goods and many jams and jellies are considered non-hazardous.⁴³

³⁹ 2017 Minn. Laws ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152(2)). As of August 31, 2017, Minnesota Department of Agriculture materials do not address this change.

⁴⁰ MINN. STAT. § 28A.152(1)(a).

⁴¹ MINN. STAT. § 28A.152(1)(a)(1).

⁴² MINN. STAT. § 28A.152(1)(a)(1). Potentially hazardous is defined at Minn. R. § 4626.0020(62). In general, a potentially hazardous food is a food that can support the growth of “infectious or toxigenic microorganism,” the growth of what is commonly known as botulism (*clostridium botulinum*) or, in raw egg shells what is commonly known as salmonella (*salmonella enteritis*). It also includes some foods of animal origin that are raw or heat treated and food of plant origin that is heat treated or consists of raw sprouts, cut melons, and garlic that are not acidified or modified at a food processing plant.

⁴³ Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

2. Must Have a Label

Food that qualifies under the potentially hazardous rule must have a label. The label must include the following.⁴⁴

a. Name and Address

The label must include the name, address, city, and zip code of the person preparing and selling the food.⁴⁵ A Post Office Box may not be used as an address.⁴⁶ Other contact information may be included.

b. Date

The label must include the date on which the food was prepared.

c. Ingredients

The label must include the ingredients of the food.

d. Allergens

The label must include any possible allergens in the food. The statute does not explain what is meant by allergens. The Minnesota Department of Agriculture says that “allergens of concern” are milk, eggs, wheat, soy, nuts, fish, and shellfish.⁴⁷

e. Other Information

Other information can be included. Additional labeling issues are discussed below.

3. Must Have a Sign

Anyone using the not potentially hazardous exceptions under the Cottage Food Law must display a sign at the point of sale of the food.⁴⁸ The sign or placard must be clearly legible and it must say:

THESE PRODUCTS ARE HOMEMADE AND NOT SUBJECT TO STATE INSPECTION.

Sellers should use these exact words.

⁴⁴ MINN. STAT. § 28A.152(1)(a)(1)(i); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁴⁵ MINN. STAT. § 28A.152(1)(a)(1)(i).

⁴⁶ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁴⁷ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*; Minnesota Farmers’ Market Association, *Fact Sheet: The 2015 Minnesota Cottage Foods Law*, at 2.

⁴⁸ MINN. STAT. § 28A.152(1)(a)(1)(ii); Minnesota Department of Agriculture, *Cottage Food Producer Registration*; Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

The same information must be on the website if food is sold on the internet.⁴⁹

4. Exemption for Not Potentially Hazardous food

The exemption for not potentially hazardous food under the Cottage Food Law applies to Minnesota food licensing rules.⁵⁰

B. Foods that Are Home-Processed or Home-Canned

Home-processed and home-canned foods can qualify for an exemption from the Cottage Food Law.

1. What Food Can be Exempt as Home-Processed or Home-Canned

Only certain foods that are home-canned or home-processed get an exemption under the Cottage Food Act.

a. Pickles, Vegetables, Fruits

In order to receive protection under the Cottage Food Law as home-processed or home-canned, the products must be pickles, vegetables, or fruits.⁵¹

b. Acidic

Home-processed or home-canned food must be “acidic.” Officially, that means that they must have what is known as an equilibrium pH value of 4.6 or lower.⁵²

c. Home-Processed or Home-Canned in Minnesota

Home-processed and home-canned food that is under the Minnesota Cottage Food Law can only be sold within Minnesota.⁵³

2. Must Have a Sign

Anyone using the home-processed or home-canned exception under the Cottage Food Law must display a sign at the point of sale of the food.⁵⁴ The sign or placard must be clearly legible and it must say:

THESE CANNED GOODS ARE HOMEMADE AND NOT SUBJECT TO STATE INSPECTION.

⁴⁹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁵⁰ MINN. STAT. § 28A.152(1)(a).

⁵¹ MINN. STAT. § 28A.152(1)(a)(2)(i).

⁵² MINN. STAT. § 28A.152(1)(a)(2)(i).

⁵³ MINN. STAT. § 28A.152(2)(c).

⁵⁴ MINN. STAT. § 28A.152(1)(a)(1)(ii); Minnesota Department of Agriculture, *Cottage Food Producer Registration*; Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

Sellers should use these exact words.

The same information must be on the website if food is sold on the internet.⁵⁵ Sellers should make sure to follow applicable state and federal rules if selling outside of Minnesota through a website.⁵⁶

3. Must Have a Label

Each container of food that qualifies as home-processed or home-canned must have a label. The label must include the following.⁵⁷

a. Name and Address

The label must include the name, address, city, and zip code of the person preparing and selling the food.⁵⁸ A Post Office Box may not be used as an address.⁵⁹ Other contact information may be included.

b. Date

The label must include the date on which the food was processed or canned.

c. Ingredients

The label must include the ingredients of the food.

d. Allergens

The label must include any possible allergens in the food. The statute does not explain what is meant by allergens. The Minnesota Department of Agriculture says that “allergens of concern” are milk, eggs, wheat, soy, nuts, fish, and shellfish.⁶⁰

e. Other Information

Other information can be included. Additional labeling issues are discussed below.

⁵⁵ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁵⁶ For example, for acidic foods, federal Food and Drug Administration (FDA) regulations say that for food to be sold across state lines, the seller must register with FDA and must produce in a licensed kitchen. Relevant regulations can be found at 7 C.F.R. pts. 114, 108 (2017). For further information regarding requirements under the FDA, see FDA, *Food Guidance and Regulation*, <https://www.fda.gov/food/guidanceregulation/>, and FDA, *Guidance for Commercial Processors of Acidified and Low-Acid Canned Foods*, <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/default.htm>.

⁵⁷ MINN. STAT. § 28A.152(1)(a)(2)(iv); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁵⁸ MINN. STAT. § 28A.152(1)(a)(1)(i).

⁵⁹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁶⁰ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

4. Exemption for Home-Processed and Home-Canned Food

The exemption for home-processed and home-canned foods under the Cottage Food law applies to two things. First, it gives an exemption to the Minnesota Food Licensing rules.⁶¹ Second, it gives the seller an exemption from the Minnesota Commercial Canning rules.⁶²

VIII. Direct Sales and Certain Donations Only

The Cottage Food Law covers two types of sales. The following rules apply to both home-processed or home-canned food and to food that is not potentially hazardous.

The rules governing direct sales changed in 2017.⁶³ Some information published before the changes may not, therefore, be accurate.

A. Either Sell Directly to Ultimate Customer – Or Donate to Community Event

Changes made in 2017 affect this rule and make it somewhat unclear.

1. Sell Directly to Ultimate Customer at Farmers Market or Community Event

Sales can be protected by the Cottage Food Law if the sales are made directly to the “ultimate customer” at a community event or a farmers market.⁶⁴ This was true before the 2017 changes.

2. Sell Directly to Ultimate Customer from Seller’s Home

Sales can be protected by the Cottage Food Law if the sales are made directly to the “ultimate customer” from the seller’s home.⁶⁵ The sale must be allowed by local ordinances. This was true before the 2017 changes.

3. Donate to Certain Community Events – And Then Sold

Based on legislation passed in 2017, sales can be protected by the Cottage Food Law if the sales are actually in the form of a donation to a community event.⁶⁶

⁶¹ MINN. STAT. § 28A.152(1)(a).

⁶² MINN. STAT. § 28A.152(1)(b).

⁶³ See 2017 Minn. Laws 2017 ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2)(a)).

⁶⁴ 2017 Minn. Laws 2017 ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2)(a)(1)). See Minnesota Department of Agriculture, *Cottage Food Producer Registration* for the rules that applied before the 2017 changes.

⁶⁵ 2017 Minn. Laws 2017 ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2(a)(2)). See Minnesota Department of Agriculture, *Cottage Food Producer Registration* for the rules that applied before the 2017 changes.

⁶⁶ 2017 Minn. Laws 2017 ch. 88, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2(a)(3)). See Minnesota Department of Agriculture, *Cottage Food Producer Registration* for the rules that applied before the 2017 changes. This change is confusing in part because the legislature seems to consider the donation to a community event to be a sale.

The community event must have the purpose of either: (a) fund-raising for an individual; or (b) fund-raising for an educational, charitable, or religious organization.

One confusing question is whether the processor of the food must deliver the food to the ultimate consumer at the community event. A part of the pre-2017 statute that remains in effect seems to require that the processor do so.⁶⁷ The new part of the statute seems to suggest that the processor can donate the food, for example, to a church bake sale, and the people running the bake sale can sell the food.⁶⁸

B. No Sales to Restaurants, Grocery Stores, Etc.

The Cottage Food Law exception does NOT allow a food seller to sell to restaurants, grocery stores, and similar businesses.

C. Ways to Sell or Deliver

Food protected by the Cottage Food Law can end up with the consumer in one of several ways.

1. At a Farmers Market

Food can be sold to the ultimate consumer and delivered to the customer at a farmers market.⁶⁹

2. At a Community Event – Such as a Church Bake Sale

Food can be sold and delivered to the ultimate consumer at a community event.⁷⁰

The Cottage Food Law covers sales of food prepared in the seller's home and then sold at the community event.⁷¹

As noted above, based on a 2017 change to the law, it is not clear whether the food processor must sell the food, or whether other people working at the community event can sell the food.⁷²

If food is prepared some place other than the seller's home – for example in a church kitchen – the Cottage Food Law does not play a role in regulating the sales.⁷³

⁶⁷ MINN. STAT. § 28A.152, subd. 2(b). Although somewhat confusing, the previous statute seemed to suggest that the processor could sell directly at a community event. MINN. STAT. § 28A.152, subd. 2(a)(2).

⁶⁸ 2017 Minn. Laws ch. 88, 2, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2(a)(2)).

⁶⁹ MINN. STAT. § 28A.152(2)(a)(1); Minnesota Department of Agriculture, *Cottage Food Producer Registration*; Minnesota Department of Agriculture, *Cottage Food (FAQs)*.

⁷⁰ MINN. STAT. § 28A.152(2)(a)(1). Minnesota Department of Agriculture, *Cottage Food Producer Registration*; Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁷¹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁷² 2017 Minn. Laws ch. 88, 2, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2(a)(2)).

⁷³ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

3. From Seller's Home

Sales are protected if they are made directly from the food seller's individual home to the consumer.⁷⁴ The seller must still follow local ordinances.

4. Delivered Directly by Seller – or Possibly Sold by Others at Community Event

In general, sales are protected only if the seller delivers the food directly to the ultimate consumer.⁷⁵

As noted above, however, based on a 2017 change to the law, it may be possible for the processor to donate the food to a community event and for the people at the community event to sell the food.⁷⁶

5. Internet Sales

Food protected by the Cottage Food Law can be sold on the internet.⁷⁷ If so, however, the food must be delivered directly to the ultimate customer by the individual who prepared the product.

The following statement must be display on the website that offers the food for sale.⁷⁸

THESE PRODUCTS ARE HOMEMADE AND NOT SUBJECT TO STATE INSPECTION.

Sellers should use these exact words.

6. Community Supported Agriculture (CSA) Sales

Community supported agriculture (CSA) sales can be protected under the Cottage Food Law.⁷⁹

For this method, or other similar methods, to work, however, the buyer must either come to the food seller's residence to pick up the food, or the seller must deliver the food directly to the food buyer. A food seller, may not, in other words, leave the food at a drop-off location if that location is not the home of the seller.

⁷⁴ MINN. STAT. § 28A.152(2)(a)(3); Minnesota Department of Agriculture, Cottage Food Producer Registration; Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁷⁵ MINN. STAT. § 28A.152(2)(b); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁷⁶ 2017 Minn. Laws ch. 88, 2, art. 2, sec. 53 (to be codified at MINN. STAT. § 28A.152, subd. 2(a)(2)).

⁷⁷ MINN. STAT. § 28A.152(2)(d). Minnesota Department of Agriculture, *Cottage Food Producer Registration*; Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁷⁸ Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁷⁹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*; Minnesota Farmers Market Association, Fact Sheet: 2015 Minnesota Cottage Food Law, at 2.

D. Donations vs. Sales: General Rule and 2017 Change to Statute

In general, for the purposes of Minnesota food safety law, donating or giving food away in Minnesota is the same thing as selling it.⁸⁰

Based on changes to the law made in 2017, the Cottage Food Law makes an important exception to this rule.

1. General Rule – Donations the Same Thing As Sales

As a general rule, when it comes to Minnesota food safety law, donating or giving food away in Minnesota is the same thing as selling it.⁸¹ “Exchanging” food is also the same thing as selling food.

2. Donation to Community Event – Sometimes Treated as Cottage Food Law Sale

In 2017, the Minnesota state legislature changed the law in a way that seems intended to make it easier to donate Cottage Food Law food to community events.

Until this change was made, the Cottage Food Law appeared to treat the donation of food to an organization, such as a church bake sale or a school bake sale, as the same thing as a sale to the organization. Food could be sold at a church bake sale under the old rules, but it had to be sold by the Cottage Food Law food seller himself or herself at the community event. Donations to the event were not covered by the Cottage Food Law.

Since the Cottage Food Law requires the sale – or in this case the donation -- to be to ultimate customer, and not to an organization, donations to organizations have not previously seemed to be protected by the Cottage Food Law.

The 2017 action by the legislature appears to change this somewhat. In general, the 2017 change allows sellers to donate food to some community events and still be protected by the Cottage Food Law.

Two additional points about this 2017 change are worth noting.

First, as discussed above, it is not clear whether the organization can take the donated food and sell it without the original Cottage Food Law seller being present to make the sale. In general, the Cottage Food Law requires sales to be made directly to the ultimate customer. The 2017 change seems to put this requirement in question for certain fundraising events. An important question, therefore, is whether the original food seller needs to make the sale at the community event, or whether the original food seller can donate the food, and those working at the community event make the sale and deliver the food.

⁸⁰ MINN. STAT. § 34A. 01(12); Minnesota Farmers’ Market Association, *Fact Sheet: The 2015 Minnesota Cottage Food Law*, at 4.

⁸¹ MINN. STAT. § 34A. 01(12); Minnesota Farmers’ Market Association, *Fact Sheet: The 2015 Minnesota Cottage Food Law*, at 4.

Second, it appears that many types of food donations will not be protected under the Cottage Food Law. In particular, donations that do not involve a direct sale to a consumer are not protected. For example, donations of food to a food pantry, shelter or food rescue program do not appear to qualify as donation for sales at a community event. That probably means that such a donation by the original food seller is not protected under the Cottage Food Law.

For both of these questions it is likely that the Minnesota Department of Agriculture (MDA) will make a decision about how to interpret the 2017 changes. As of August 31, 2017, MDA had not done so.

E. Food Produced Outside of Minnesota

The Cottage Food Law applies to food sold in Minnesota. In theory, someone from outside of Minnesota could take the Cottage Food Law training, register under the Minnesota Cottage Food Law, raise and process the food in another state, and sell it in Minnesota.⁸²

The problem, however, is that for acidic foods, the federal Food and Drug Administration (FDA) regulations say that for food to be sold across state lines, the seller must register with FDA and must produce in a licensed kitchen.⁸³ The Cottage Food Law does not give food sellers an exemption from any federal regulations, including FDA regulations. For baked food, jams and jellies, and other nonacidic foods, it may be that FDA regulations would not apply, but sellers should check for sure. As far as Minnesota law is concerned, someone could bring food across state lines into Minnesota and be protected by the Cottage Food Law.

IX. Limitation on Sales: \$18,000 Per Year in Exempt Food

A person selling exempt foods under the protection of the Cottage Food Law only receives protection if the total sales for that person are no more than \$18,000 in gross receipts in a calendar year.⁸⁴ A calendar year means January 1 through December 31.⁸⁵

A. How to Calculate the \$18,000 Limit

Gross receipts are total sales. One aspect of the \$18,000 limit is important to remember: only food exempt under the Cottage Food Law counts toward the \$18,000. Other food sold by the same person does not count against the limit. So, suppose a farmer had a total of \$40,000 in sales of food to customers. Of that \$40,000, sales of fresh fruit and

⁸² The statute does not bar food produced or processed outside of Minnesota. These issues are noted in Minnesota Farmers' Market Association, *Fact Sheet: The 2015 Minnesota Cottage Food Law*, at 5.

⁸³ Relevant regulations can be found at 7 C.F.R. pts. 114, 108 (2017). For further information regarding requirements under the FDA, see *FDA, Food Guidance and Regulation*, <https://www.fda.gov/food/guidanceregulation/>, and *FDA, Guidance for Commercial Processors of Acidified and Low-Acid Canned Foods*, <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/default.htm>.

⁸⁴ MINN. STAT. § 28A.152(3); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁸⁵ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

vegetables was \$25,000 and \$15,000 was for the sale of pickled fruit of various kinds. That person is still well under the \$18,000 limit.

B. Over \$18,000 – No Protection from Cottage Food Law

If gross receipts for a calendar year are more than \$18,000 that operation cannot receive protection from the Cottage Food Law. The seller would need to get a food license.

C. Honor System, Although MDA May Review

The Minnesota Department of Agriculture (MDA) says that the calculation of food sales is on an honor system. MDA may, however, ask to look at the seller's records.⁸⁶

D. Sole Proprietorship

As noted above, corporations and other legal entities are not allowed to use the Cottage Food Law. A sole proprietorship that has employees that sell food is allowed. All sole proprietorship sales are counted toward the \$18,000 limit.⁸⁷

X. Sellers Must Register

To be protected by the Minnesota Cottage Food Law, each food seller must register each year with the Minnesota Department of Agriculture.⁸⁸

A. Timing of Registration

Registration expires on December 31 of each year.⁸⁹ Sellers must register before selling food.⁹⁰

B. Fees for Registration

There are two possible registration fees.

If an individual has gross receipts of less than \$5,000 in a calendar year from the sale of exempt food that person is not required to pay a fee.⁹¹

A person with individual gross sales of exempt food of between \$5000 and \$18,000 in a calendar year must pay a registration fee each year of \$50.00.⁹²

⁸⁶ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁸⁷ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁸⁸ MINN. STAT. § 28A.152(4); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁸⁹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁰ Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁹¹ Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

⁹² Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

C. Registration Requirements

In order to be registered under the Cottage Food Law, a food seller must complete the training described in the next section and must provide tax and other information.

As noted above, corporations and other legal entities are not allowed to use the Cottage Food Law. A sole proprietorship that has employees that sell food is allowed. Sole proprietorship will need to provide a Minnesota Tax Identification Number.⁹³

In order to be registered sellers must comply with local laws.⁹⁴ The Minnesota Department of Agriculture (MDA) says that it will not allow sellers to be registered if they are not doing so.⁹⁵ That means, for example, that if a city or county objects to someone making or selling food in his or her home, MDA says it will not approve the Cottage Food Law registration.⁹⁶

XI. Training for Cottage Food Law Protection

In order to be protected by the Cottage Food Law a food seller must receive training about safe food handling.⁹⁷ Even people with extensive training of other types must receive the Cottage Food Law training described below.⁹⁸ The training must be completed before the food seller can get a Cottage Food Law registration.

A. Training Possibilities

Two possibilities for training are available.

1. Sales of \$5000 to \$18,000: Take Training Course

A food seller with gross receipts of between \$5,000 and \$18,000 in a calendar year from the sale of exempt food under the Cottage Food Law must complete a safe food handling training course.⁹⁹ The training must be approved by the Minnesota Department of Agriculture. The training may be up to eight hours long and must be completed every three years.¹⁰⁰

2. Sales Under \$5000: On-Line Course and an Exam

An individual with gross receipts of less than \$5,000 in a calendar year from the sale of exempt food under the Cottage Food Law must satisfactorily complete an online

⁹³ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁴ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁵ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁶ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁷ For examples of the nature of this training see: Minnesota Farmers' Market Association and Minnesota Extension, *Minnesota Cottage Foods Training*,

[https://www.youtube.com/watch?v=ayGEYhQFe_c&list=PLkf6A-](https://www.youtube.com/watch?v=ayGEYhQFe_c&list=PLkf6A-OmbbNBoaYBJ_erP8mVIM6F9GYjj)

[OmbbNBoaYBJ_erP8mVIM6F9GYjj](https://www.youtube.com/watch?v=ayGEYhQFe_c&list=PLkf6A-OmbbNBoaYBJ_erP8mVIM6F9GYjj); and University of Minnesota Extension, *Cottage Food Producer Training*, <http://www.extension.umn.edu/food/food-safety/courses/cottage-foods/index.html>.

⁹⁸ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

⁹⁹ A calendar year means January 1 through December 31. Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

¹⁰⁰ MINN. STAT. § 28A.152(5)(a).

course and exam.¹⁰¹ The Minnesota Department of Agriculture (MDA) offers the course and exam. There is no cost to take the course and the exam.

The MDA offers the course and provides the exam. It appears that the on-line course and exam must be completed every calendar year.

B. Sole Proprietorship

As noted above, although corporations and other legal entities are not allowed to use the Cottage Food Law, a sole proprietorship that has employees that sell food is allowed. In such a case the sole proprietor must complete the training.¹⁰²

XII. Local Ordinances Still Apply

The Cottage Food Law allows the food seller an exemption from state food licensing laws and commercial canning laws.

It does NOT provide an exemption for a number of other laws that must still be followed.¹⁰³ These can be laws made by a city, county or township.¹⁰⁴

For example, the following laws must still be followed.

A. License for Business

In some instances, depending on the location of the business, a business will need a license. If so, a Cottage Food Law food seller must get that license.¹⁰⁵

B. Sanitation and Public Health Laws

In some cases, a food seller might need to follow sanitation or public health laws. If so, they must still be followed by Cottage Food Law sellers.¹⁰⁶

C. Zoning Laws

A Cottage Food Law seller must follow local zoning laws.¹⁰⁷

D. Others

There may be other laws that apply to the food seller's operation. The Cottage Food Law will not provide an exemption for them.

¹⁰¹ MINN. STAT. § 28A.152(5)(b). A calendar year means January 1 through December 31. Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

¹⁰² Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

¹⁰³ MINN. STAT. § 28A.152(6).

¹⁰⁴ Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

¹⁰⁵ MINN. STAT. § 28A.152(6); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

¹⁰⁶ MINN. STAT. § 28A.152(6).

¹⁰⁷ MINN. STAT. § 28A.152(6); Minnesota Department of Agriculture, *Cottage Food Producer Registration*.

XIII. Proof of Registration at Sales Events and Inspections

Cottage Food Law sellers may be required to show proof of registration and may need to allow inspections.

A. Proof of Registration at Sales Events

Anyone selling under the protection of the Cottage Food Law must be able to show Cottage Food Law registration when asked.¹⁰⁸ A Minnesota Department of Agriculture (MDA) inspector or someone from the farmers market itself may ask to see it. If registration cannot be verified the seller will probably be asked to stop selling food. MDA offices are not open on weekends and holidays, so the MDA database may not be available to confirm registration. MDA may inspect farmers markets or community events and ask for Cottage Food Law registration and otherwise inspect to assure the food is safe.

B. Home Inspections

A Cottage Food Law seller's cooking operation – that is to say the food seller's home – will likely not be the subject of “routine” inspections. If, however, the Minnesota Department of Agriculture (MDA) suspects that food sold by the Cottage Food Law seller caused illness or injury, MDA believes it has the power to inspect the areas of the home where the food is manufactured, processed, packed, or held.¹⁰⁹

XIV. Other Food Labeling Issues

As noted above, food covered by the Cottage Food Law must include certain things on a label for food sold.

In addition, labeling of food for sale is regulated by both the federal and state government.¹¹⁰ These various rules include regulations that make it illegal to include deceptive or incorrect information about the food on the label. All of these requirements must continue to be met even when the food seller is protected by the Cottage Food Law.

XV. Legal Liability and Cottage Food Law

Food sellers often worry that they will be sued by someone who claims that the seller sold food to someone who became sick. These lawsuits do occur. It is important to remember that registering for the Cottage Food Law does not mean that the food seller cannot be sued. For those concerned about a lawsuit the best answer is probably to buy insurance. There are insurance policies created for those that sell food, and some insurance providers will write policies that are for cottage food sellers.

¹⁰⁸ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

¹⁰⁹ Minnesota Department of Agriculture, *Cottage Food Law (FAQs)*.

¹¹⁰ Minnesota state law regulates deceptive trade practices. MINN. STAT. § 325D. Food and Drug Administration (FDA) regulations make illegal false or misleading labeling. See 21 C.F.R. pt. 101. The Federal Trade Commission (FTC) also regulates deceptive labeling.

XVI. Taxes

People selling food may be subject to a wide variety of taxes. They might include, for example, federal and state income tax, and sales tax. The Cottage Food Law does NOT affect the taxes owed by a food seller.¹¹¹

XVII Conclusion and Reprinting this Guide

The Cottage Food Law is very new and there will be questions to work through as the law is applied in practice. This version of the Farmers' Guide to Minnesota Cottage Food Law is current through August 31, 2017.

This Guide may be reprinted and shared in its' entirety for educational purposes.

¹¹¹ Minnesota Department of Agriculture, *Cottage Food Producer Registration*. Information on Minnesota sales taxes that could be helpful for Cottage Food Law food sellers includes the following Minnesota Department of Revenue *Fact Sheets: Food and Ingredients* (no. 102A), <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS102A.pdf>; *Candy* (no. 102B), <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS102B.pdf>; *Soft Drinks and Other Beverages* (No. 102C), <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS102C.pdf>; *Prepared Food* (no. 102D), <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS102D.pdf>; and *Selling Event* (No. 148), *Exhibitors and Operators*, <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS148.pdf>.



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