

Blazing through the Jungle of Local Food Regulations

Indigenous Agriculture
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Blazing through the Jungle of Local Food Regulations

A project of
Minnesota Institute for Sustainable
Agriculture,
Renewing the Countryside, and
Minnesota Farmers' Market Association



Who We Are

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Who Is Helping Us

Local Food Advisory Committee

Minnesota Department of Health

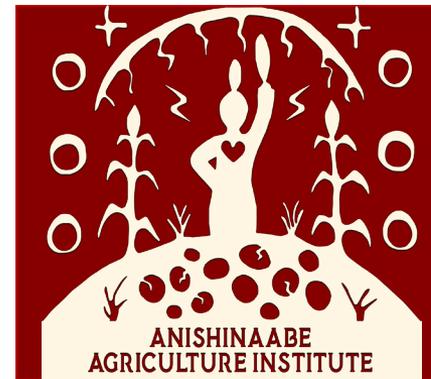
- Food, Pools, and Lodging Section
- Statewide Health Improvement Partnership

Minnesota Department of Agriculture

- Food and Feed Safety Division
- Dairy and Meat Inspection Division



Who Is Helping Us



Tribal Liaison

MN Department of Agriculture

Shannon Kesner

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218-382-0173

[www.mda.state.mn.us/home/
tribal-relations](http://www.mda.state.mn.us/home/tribal-relations)



Why This Project?

- All three of us have worked with local food systems in Minnesota for many years, and have witnessed and experienced confusion about regulations.
- We have seen good ideas struggle and sometimes fail because of confusion and misinformation about regulations.
- Knowledge is power! We have knowledge to share.



What this is:

Information about the food regulations that exist in Minnesota

What this is not:

Advocacy to change the regulations



Blazing Trails Resources:

[www.misa.umn.edu/resources/
blazing-trails](http://www.misa.umn.edu/resources/blazing-trails)



The landscape of
food regulation:
federal, tribal,
state, local
(statute & rule)



Landscape of Food Regulation

Federal Law:

USDA:
meat, poultry, eggs





Landscape of Food Regulation

Federal Law:

FDA:

fish, shellfish, snails, crickets, milk, all other food...

...unless a wholesale food product contains more than 2% meat. Then it's USDA, and you need an inspector present on every day of operations.





Landscape of Food Regulation

Sovereign Nations

In general:

- Trust Land: Activities subject to tribal law
- Fee Land & Privately Owned: Activities subject to federal, state, and local laws
- Gray area: When a food product is made on trust land but sold elsewhere



Landscape of Food Regulation

Sovereign Nations

Model Ag & Food Code:

<https://www.tribalfoodcode.com/>

Some tribes model after state-level
Food Code



Landscape of Food Regulation

State Statute

- no variances

State Rule

- variances allowed

Minnesota Rule 4626:
Minnesota Food Code

Crossing
State or
Tribal
Lines?
FDA or
USDA





Landscape of Food Regulation

Local Ordinances

- variances
- conditional use permits
- zoning

LOCAL ALWAYS WINS!

Best Practices

- GAP: Good Agricultural Practices



Exclusion from Licensing

Product of the Farm

State of Minnesota Constitution,
Article 13, Section 7

MN Statute 28A.15 Subd. 2:

[https://www.revisor.mn.gov/statutes/cite/
28A.15](https://www.revisor.mn.gov/statutes/cite/28A.15)





Product of the reservation = Product of the farm

People can sell their own product of the farm or product of the reservation to any buyer, including food facilities, with no license.

There might be other requirements for crossing into areas under state jurisdiction, like inspection of meat.



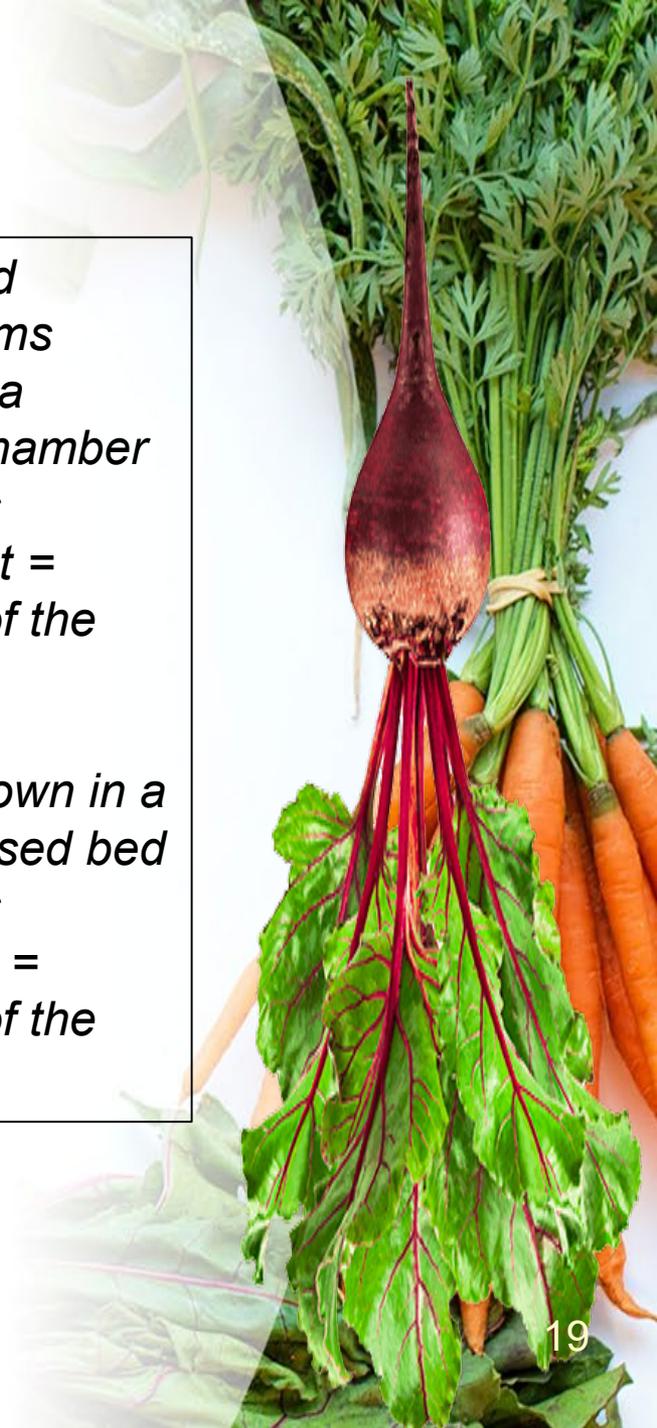
Product of the Farm

No license required:

- Has to be from their owned or rented property (any size or configuration)
- No off-farm ingredients added

Cultivated mushrooms grown in a growth chamber in seller's basement = product of the farm.

Herbs grown in a 6' x 6' raised bed in seller's backyard = product of the farm.



Product of the Farm

- Meats with no added ingredients
 - Poultry products with no added ingredients
 - Shell eggs
-
- Fruits
 - Vegetables
 - Edible flowers
 - Cultivated Mushrooms
 - Herbs
 - Nuts
 - Grains
 - Dry beans
 - Honey
 - Maple syrup
 - Wild foraged foods from own property

*What's missing from this list?
DAIRY. Dairy products have additional facilities and inspection requirements under the federal Pasteurized Milk Ordinance (PMO)*

Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

Why are these items blue?

Because regulations for sale of these items depend on your buyer and on where you sell.



Product of the Farm

- Meats with no added ingredients
 - Poultry products with no added ingredients
 - Shell eggs
-
- You can hold frozen meat or poultry in freezers on your property.
 - The freezers must be in a separate, sanitary space from your private dwelling, with separate entry.
 - The freezers need not be ANSI certified.



Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients
- Shell eggs

If you are selling to a food business:

- the meat or poultry must be processed under inspection (USDA or Minnesota Equal-To)
- shell eggs have grading, candling, & labeling requirements.



Product of the Farm

- Meats with no added ingredients
- Poultry products with no added ingredients

On-reservation production & processing & storage prior to sale:

- Must be USDA-inspected processing in order to sell off-reservation





Product of the Farm

Meat & Poultry

Locally raised meats and poultry are legal for food facilities to use if slaughtered and processed under continuous (daily) inspection. Two options:

- USDA (can cross state lines and reservation lines)
- Minnesota Equal-To
(can be stored, transported, and sold within MN)

Product of the Farm

Meat & Poultry

USDA inspection “bugs”



Minnesota Equal-To Inspection “bug”



Product of the Farm

Meat & Poultry

“Non-amenable”
species:

- bison
- cervidae (elk, deer)
- rabbit
- pheasant





Product of the Farm

Meat & Poultry

Wild-harvested game generally cannot be sold in commerce because it doesn't get a pre-slaughter inspection.*

*Exceptions in some tribal settings.



Product of the Farm

Meat & Poultry

Farm-raised dangerous animals (elk, bison, bull) can have pre-slaughter inspection on-farm. The inspector witnesses the whole process of killing and transport to the plant. Animal carcass must be left intact & delivered to plant within a limited period of time (1 hr).

Product of the Farm

Meat & Poultry

Donation of traditional Native American foods to a food service program in a public facility

- Wild-harvested wild game or fish can be donated to food service programs that serve primarily (more than 50%) Native Americans.
- It is the food service's responsibility to verify the donated game is wholesome and was handled in a sanitary manner.





Product of the Farm

Shell Eggs

Locally raised shell eggs are legal for food facilities to use. Eggs are product of the farm if sold by the farmer who owns the egg-layer flock

Eggs can be handled and sold by others with the proper licensing from MDA and/or registration from USDA.

A photograph of fresh farm produce including several white onions, green beans, and a bunch of carrots with their green tops, arranged on a white surface. The produce is partially obscured by a semi-transparent white circle that frames the text.

Product of the Farm

Shell Eggs

Health care facilities are an exception.

Pasteurized eggs are required for some uses at health care facilities because their patients or residents are defined as “highly susceptible populations.”

Product of the Farm

Shell Eggs

Small Flock Egg Producer Registration Form

 DEPARTMENT OF AGRICULTURE		625 Robert Street North, Saint Paul, MN 55155-2538 www.mda.state.mn.us	
Dairy and Meat Inspection Division 651-201-6300			
REGISTRATION FOR SELLING SHELL EGGS IN MINNESOTA			
<p>The Egg Products Inspection Act (7 CFR § 57) exempts shell egg producers with fewer than 3,000 laying fowl from the USDA Shell Egg Surveillance Program. The Minnesota Department of Agriculture (MDA) registers producers with fewer than 3,000 laying fowl who sell shell eggs to consumers away from their premises (e.g., at farmers' markets) or to food facilities in Minnesota. These producers do not need a food handler's license to sell eggs produced on their farm but must still follow state regulations for handling, labeling, and storage to provide wholesome, safe products to consumers. Completing this registration form is voluntary and not required by law. (Minnesota Statutes Chapter 29 and Minnesota Rules Chapter 1520)</p> <p><i>Privacy Notice: Please be aware that information submitted with this form is presumptively public under Minnesota law. The MDA is required by law to provide public information in response to any data request made for that information.</i></p>			
Name of Applicant(s) <i>(Individuals from the same business may apply on the same registration form)</i>			
<input type="text"/>			
Mailing Address	City	State	Zip
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Physical Address <i>(if different from Mailing Address)</i>	City	State	Zip
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Business Phone	Email		
<input type="text"/>	<input type="text"/>		
Name of person(s) or business to be listed on certificate <i>(if different from Name of Applicants)</i>			
<input type="text"/>			

<https://www.mda.state.mn.us/sites/default/files/docs/2021-02/AG04016-Registration-for-Selling-Shell-Eggs-in-Minnesota-2.21.pdf>



Questions about meat, poultry, or shell egg sales to food facilities?

Product of the Farm

- Meats with no added ingredients
 - Poultry products with no added ingredients
 - Shell eggs
-

If you are selling to individuals at a farmers' market:

- The meat *must* be processed under inspection
- Poultry or rabbits can be processed under inspection OR on the farm in an approved facility, according to standards in Public Law 90-492.
- shell eggs have grading, candling, & labeling requirements.



Product of the Farm

Whole Chicken
Exempt PL 90-492
Smith Poultry
1234 Pasture Road
Anytown, MN 5555

Safe Handling Instructions

Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions:



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.



Keep raw meat and poultry separate from other foods.
Wash working surfaces (including cutting boards),
utensils, and hands after touching raw meat or poultry.



Cook thoroughly.



Keep hot foods hot. Refrigerate leftovers
immediately or discard.

Farmers can process poultry on their own farms, without a license, in a sanitary facility, for sale to individual end consumers.

Facility standards:
9 CFR 416.2-416.5

Product of the Farm

Exempt

Whole Rabbit

Rush River Rabbitry
1234 Pasture Road
Anytown, MN 5555x

Safe Handling Instructions

Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions:



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.



Keep raw meat and poultry separate from other foods.
Wash working surfaces (including cutting boards),
utensils, and hands after touching raw meat or poultry.



Cook thoroughly.



Keep hot foods hot. Refrigerate leftovers
immediately or discard.

Farmers can process rabbits on their own farms, without a license, in a sanitary facility according to same requirements as poultry, for sale to individual end consumers.

Product of the Farm

Storage & Transport Requirements
for meat, poultry, and eggs
at farmers' markets:

Meat & Poultry – frozen, 0°F
-- fresh, 41°F +
date-marking

Shell Eggs – 45°F



A photograph of fresh farm produce including several yellow onions, a bunch of green beans, and a bunch of carrots with their green tops, arranged on a white surface. The produce is partially obscured by a semi-transparent white circle that frames the text.

Product of the Farm

Questions about meat, poultry,
or shell egg sales at farmers'
markets?



Farmers' Market Help:

Minnesota Farmers' Market Association will help with educating farmers' market managers.

mfma.org

Product of the Farm

- Meats with no added ingredients
 - Poultry products with no added ingredients
 - Shell eggs
-

If you are selling to an individual customer who comes to your farm:

- Meat packages must have been processed under continuous inspection
- Poultry and rabbit can be inspected, or processed on the farm
- Eggs need not be candled, graded, or labeled





Product of the Farm

- Poultry products with no added ingredients

If you are selling to an individual customer who comes to your farm:

- You can use the 1,000-bird exemption for on-farm slaughter and processing of poultry.
- No specific facilities requirements; you can do it in open-air
- Must be sanitary conditions
- You can hold the butchered birds in a freezer on your property.



Product of the Farm

Custom-Exempt Sales

Meat or poultry, sold prior to slaughter and processed at a licensed & permitted Custom-Exempt facility

- The customer gives their cutting & processing instructions to the custom-exempt facility.
- The customer can choose to have ingredients added such as spices, and special processes such as smoking.



Product of the Farm

Custom-Exempt Sales

Packages go to the customer and are labeled “Not for Sale” or unlabeled.



Wild foraged foods

Product of the Farm =

Product of the Reservation =

Product of Ceded Territory
with retained hunting, fishing,
gathering rights



Product of the Farm

Wild foraged foods

* **Wild Mushrooms:** the seller must have their certificate of training in wild mushroom identification and be registered with the MN Department of Agriculture.

* **Herbs, edible flowers, nuts, other edible plants or portions of plants, maple sap, birch sap:** no special requirements.





Product of the Farm

Wild foraged foods

Tribal agency permit may be required for some wild harvesting



Processed Product of the Farm?



Product of the Farm

Can include processed fruits & vegetables

2 triggers end product of the farm status & require a license:

1. Sold by someone other than the farmer who grew it.
2. Added off-farm ingredients.

Processing is NOT a trigger to require a license (but maybe a commercial-grade facility, food safety plan, or other requirements)



Product of the Farm

Product of the farm is NOT an exclusion from food safety requirements!

- Follow Current Good Manufacturing Practices (CGMPs)
- Adequate facility
 - * Not a private residence
 - * Not used for personal activities



Product of the Farm

Making vegetables presentable for sale is not “Processing”

Farmers and gardeners can always do these tasks, using **potable water**, meaning water that is safe to drink.

- Trim roots
- Trim tops
- Wash off soil
- Remove outer husks or leaves



Product of the Farm

What is “processing” of fruits, vegetables, mushrooms, or herbs?

Peeling

Shredding

Dehydrating

Bagging*

Canning*

Fermenting*

Slicing

Wrapping

Freezing

Waxing

Treatment for ripening

*These may be special processes that require additional training, certification, facilities, etc.



Product of the Farm

Farmers can do this, with potable water, appropriate facilities (not a kitchen in a private residence), and appropriate processes. Follow CGMPs.

Examples:

- Shredded, bagged cabbage
- Peeled, sliced carrots
- Chunks of squash
- Frozen blueberries
- Frozen apple slices
- Frozen rhubarb chunks



Questions about
fruit & vegetable
processing under
the Product of the
Farm Exclusion?



Product of the Farm

Mixed-Ingredient Products:

Yes, this can be product of the farm so long as **EVERY** ingredient is produced by you on your farm or garden.

What if you can't produce every ingredient yourself?

Get a license!



Product of the Farm

Sometimes you might be better off to use the Cottage Food Exemption,

or to use an off-farm ingredient and get a license.



Product of the Farm

You are responsible for the safety of your product that enters commerce.

Even if other people mishandle the product after it leaves you, you may be held liable for injuries that may occur.

(Moral of the story: buy insurance)



Product of the Farm

Traceability requirements don't apply to every enterprise.

Traceability is a best practice **regardless** of requirement, and can help you manage risk



Any more questions
about Product of the
Farm?



Cross-Border Sales



Cross-Border Sales

- Raw, whole fruit and vegetables can cross state & tribal borders.
- USDA-inspected meat and poultry can cross state & tribal borders.
- Licensed food can cross state borders if you register with FDA



Cross-Border Sales

- Canned Cottage Food products cannot cross state borders per federal law.
- Baked or dry Cottage Food products can cross state & tribal borders if both governments allow it.



Cross-Border Sales

- Transport of canned or baked Cottage Food from reservation to reservation is allowed even if it crosses a state line, if both Tribes allow it.



Exemption from
licensing:

Food Sampling &
Demonstration

M.S. 28A. 151



At a farmers' market or community event, you can give samples or do a cooking demonstration with samples, with no license.





Follow requirements in MN Rule 4626.1855

(Except you do not need to
have hot, pressurized water
for ware-washing)

*(But you do need warm water
for handwashing)*





Exemption from
licensing:
Cottage Food

M.S. 28A.152



Cottage Food: Per Individual

- **Registration with MDA is required!**
- Training is required, online or in-person
- Training is good for three years

Tier 1:

- Up to \$5,000 in annual gross sales
- No registration fee

Tier 2:

- Up to \$18,000 in annual gross sales
- \$50 annual registration fee



Cottage Food vs. Licensed Local Food Sales

- Can make it in a home kitchen
- Non-potentially hazardous food
- \$18,000 sales cap per individual per year
- ALL sales to individual consumers
- NO sales to businesses or other food facilities
- Product delivery must be in person

- Must make it in an approved commercial-grade kitchen, not a private residence kitchen
- Any food product type is possible with appropriate facilities & training
- No sales cap
- Can sell to food businesses or food facilities
- Product delivery need not be in person



Cottage Food

Examples:

- Bakery products
- Flavored honey or maple syrup products
- Pickles, salsa, fermented products
- Jam, jelly, fruit syrup

The MN Farmers' Market Association has a long list of allowed Cottage Food items:

<https://www.mfma.org/CFL>

These product types can be made and sold to INDIVIDUALS under the Cottage Food exemption ...

BUT ...

If you want to sell items to a food business or food facility, you can't do that under Cottage Food. Items must be made under a license in an approved facility.



Cottage Food can
be a stepping
stone to licensed
food production



Questions about Cottage Food?



Legal Local Food

Don't mix exclusions and exemptions for a single product!

You must meet all conditions of the exclusion or exemption in order to claim it.



Legal Local Food

Don't mix exclusions and exemptions!

EXCEPT: The exemption for sampling & demonstration can be combined with either Cottage Food or Product of the Farm.



Licensed Local Food Sales

Individual farmers or others can get licensed by the Minnesota Department of Agriculture to sell:

- Foods they didn't grow themselves on their owned or rented land
- Foods with off-farm ingredients added



Licenses

MDA License Types:

- * Retail Food Handler
- * Wholesale Food Handler
- * Wholesale Food Manufacturer/Processor
- * Food Broker





License Fees

What do MDA licenses cost?

Retail Food Handler: \$77/yr

Wholesale Food Handler: \$57/yr

Food Processor: \$169/yr

(These are the lowest rates. Fees increase as annual revenue increases.)



License Fees

Additional one-time cost for Plan Review for retail licenses.

MDA Plan Review fee: \$200 to \$425, based on square footage



Don't Stay
Stuck!



Thank you!

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www.misa.umn.edu/resources/blazing-trails



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