



FACT SHEET

THE 2015 MINNESOTA COTTAGE FOODS LAW

Minnesota Statute 28A.152 Cottage Foods Exemption
Effective July 1, 2015

The 2015 MN Cottage Foods Law MFMA Fact Sheet

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M.S. 28A.152 Cottage Foods Exemption

Background

The 2015 Minnesota Cottage Foods Exemption, M.S. 28A.152, replaces M.S. 28A.15, subdivisions 9 and 10. Subdivisions 9 and 10 allowed certain non-potentially hazardous (NPH) foods (basically baked goods, jams and jellies, and pickled items, with pH values of 4.6 or less), to be exempt from food licensing when made in home kitchens and sold only at farmers’ markets or community events, with a \$5,000 in gross sales per person per year cap.

Over the years, various issues arose with the old law:

- vendors at farmers’ markets wanted to keep selling their NPH food items under the exemption from their homes once their farmers’ markets ended for the season, but could not since the old law only allowed sales at farmers’ markets or community events
- home bakers who did not sell at farmers’ markets or community events, but were baking the exact same NPH foods, wanted to sell from their homes
- the \$5,000 gross sales /person / year cap was not high enough for many farmers’ market vendors
- the old law never required food safety training, even though the food was being sold to the public. The Minnesota Department of Agriculture (and the Minnesota Department of Health) have legal responsibility to ensure safe food products are being sold to the public.

The initial impetus for this law started six years ago with an informally organized group led by Shelley Erickson of Big Lake, and Marianne Sussman of Minneapolis. Primary bill authors were Rep. Jim Newberger (R) from Becker and Sen. Scott Dibble (D) from Minneapolis.

MFMA got involved in 2015 when language in the initial bill contained wording that would have prohibited most baked goods from being sold even at farmers’ markets. Additionally, since many vendors at farmers’ markets sell both baked foods and pickled foods, MFMA felt it prudent to treat all the NPH foods similarly under the new law. Collaborating on the passage of the law: MFMA, MDA, MDH, Minneapolis Department of Environmental Health, League of Minnesota Cities, Minnesota Grocers Association, Local Food Advisory Committee, University of Minnesota Extension, and many delegated authorities of MDA and MDH.

The Basics

The 2015 MN Cottage Foods Law is an exemption from food licensing for non-potentially hazardous (NPH) foods (aka cottage foods), as long as specific conditions are met by the cottage foods producer.

Under this exemption, NPH foods include baked goods; certain jams and jellies; canned pickles, vegetables, fruits with a pH of 4.6 or lower. (For the approved list of NPH foods, go to www.mfma.org.)

Who Must Register

All *individuals* must register with the Minnesota Department of Agriculture before selling cottage foods. This includes all vendors at all farmers' markets in Minnesota who sold this type of NPH food prior to the enactment of this new law. The registration is valid for one calendar year, January 1 – December 31.

All *individuals* must take some form of MDA-approved food safety training before selling food; and must retrain every three years. MDA and the University of Minnesota Extension are collaborating to offer in-person and online food safety training. (The certified food manager course is not accepted at this time by MDA because it does not cover the specifics of this law.)

Sales

Gross sales on cottage foods per *individual* cannot exceed \$18,000 in a calendar year. *Individuals* selling between \$0 and \$5,000 register with MDA annually for free. *Individuals* selling between \$5,001 and \$18,000 register with MDA annually for \$50. Sales are based on what was sold the previous year. Income under this law (just as it was under the previous law) is taxable income.

The individual who makes the cottage foods must be the same individual who sells the foods; the food must be sold and delivered directly to the ultimate consumer by the individual who made it.

Cottage foods sales may be from the home, at farmers' markets, at community events, or on the Internet. While cottage foods can be sold on the Internet, they still must be delivered by the individual who prepared them directly to the ultimate consumer. If you have a Community Supported Agriculture (CSA), and have a Cottage Foods Producer Registration, customers must come to your place of residence to pick up products; or you, as the producer, must deliver them directly to customers. You may not leave products for customer pick up at a location other than your residence.

Canned Foods Peculiarities

Moreover, under this exemption, home-processed and home-canned foods can only be sold *in Minnesota*, due to federal laws. This limitation only applies to home-processed and home-canned foods; not baked goods, etc. You may purchase out-of-state food products and can them; the out-of-state limitation is for the *production and sale* of the canned goods only, so you could buy produce from wherever and can it, but the canning has to occur in Minnesota.

Pressure canners can be used to process acidic fruits or acidified foods, as long as there is an approved pressure canner process for the product you want to can. You will not find a pressure canner process for pickled products, however, because the result would be an inferior product.

Pressure-canning is required for low-acid foods like vegetables, meats, fish, soups and mixed ingredient sauces but these products are *not allowed* under the cottage foods exemption. There are some naturally acidic fruits and acidified tomato products that do have tested procedures for pressure canning and those products would be allowed.

Label Requirements

Cottage foods must be labeled with the following information:

- The name and complete home address of the registered individual(s) preparing the food (E.g., if a mother and son both register and prepare their cottage foods, then both their names and home address must appear on the label. If you as an individual are also a DBA (doing business as), then your DBA name must be registered and must appear on the label as well.
- The date the food was *prepared*.
- The list of ingredients contained in the product, including allergens. The allergens of concern are: milk, eggs, wheat, soy, peanuts, tree nuts, fish, and shellfish.
- If you sell individual baked goods (e.g., cookies), you must display the label near the foods at the point of sale.

Additionally, you must post a notice at the point of sale (including on your website if you sell on the internet) as follows:

1. “These products are homemade and not subject to state inspection.”
2. “These canned goods are homemade and not subject to state inspection.”

Furthermore, you should keep your Cottage Food Producer Registration certificate with you when selling. A MDA food inspector may ask to see it. If your registration cannot be verified, MDA will require you to stop selling food. MDA offices are not open on weekends or holidays so the MDA’s database may not be available to confirm your registration, even though inspections are conducted on weekends in some locations.

Local Ordinances

The cottage foods exemption does not supersede local ordinances. The law states “This section does not preempt the application of any business licensing requirement or sanitation, public health, or zoning ordinance of a political subdivision.” MDA is prohibited from issuing a registration unless you comply with local laws.

The Registration Process

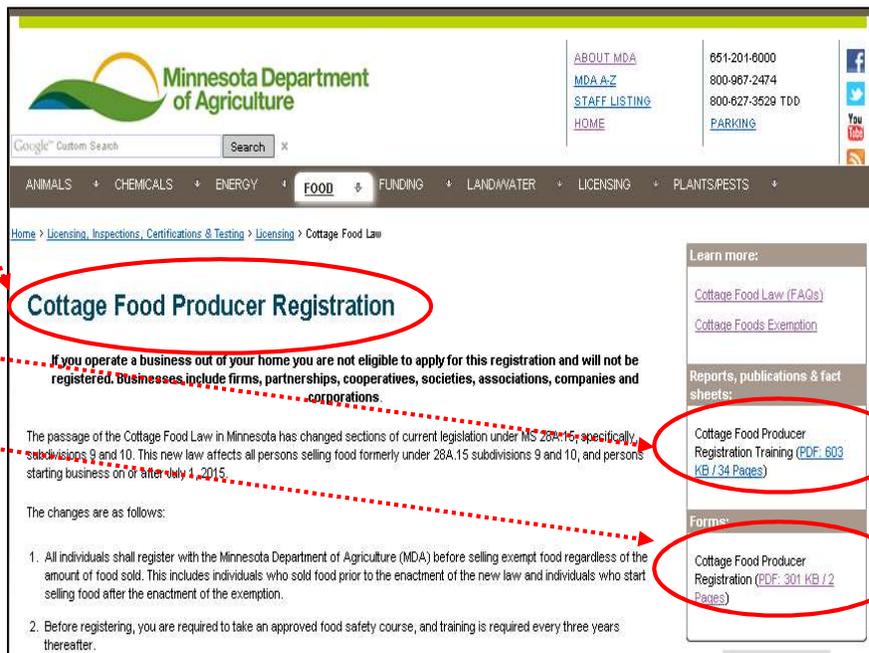
In order to complete the registration form, you will need your contact information, your Minnesota Tax ID or Social Security Number, at which sales level you’re registering, and the list of products you’ll make and sell. Once you are successfully registered, the MDA will mail you your Cottage Foods Producer Registration certificate.

If accessing the online content is difficult, you can get help directly from the MDA by:

- o Calling MDA at (651) 201-6027
- o Visiting MDA at 625 North Robert Street, St. Paul MN 55155-2538
- o Contacting your local MDA Food Inspector to help you complete the registration:
<http://gis.mda.state.mn.us/food/>

Registering is a 3-step process:

1. Read the info on MDA’s “Cottage Food Producer Registration” page (or MFMA’s fact sheet) so you understand the law.
2. Take a MDA-approved food safety training.
3. Complete the registration form. The form requires your signature, so you’ll need to print it, sign it, scan it and email it to the MDA; or print and mail it to them.



The Details Behind The Basics

As with many laws, there are numerous details underlying the 2015 Minnesota Cottage Foods Law that need further explanation. Following is a discussion on the issues that have surfaced to date.

Other Labeling Concerns

There are other food facts you could put on your labels, but they are NOT required under this cottage foods exemption. Following are some tips if you do choose to use these:

- Gluten-free claim: to qualify as gluten-free any unavoidable presence of gluten in the food must be less than 20 ppm.
- Sugar-free claim: must contain less than 5 calories per reference amount customarily consumed and per labeled serving.
- Dietary supplement claim: if you sell your cottage food as a dietary supplement, then you would have to have the supplement facts panel on the label.
- If you freeze baked products and sell them as orders come in, you still must put the date the food was prepared on the label. When you remove the baked foods from the freezer you could write the date the products were removed from the freezer. This is not required, however, since they are non-potentially hazardous foods.
- Cooking sprays, or 'releasing agents' are considered direct food additives, but if used correctly, should not end up as a functional ingredient in the finished product, and thus would not need to be labeled. If you spray it directly onto cookies, bars, bread, etc., rather than the light coating recommended for the pan, that would be different; then you need to add it as an ingredient. Parchment paper is a good alternative to cooking spray; especially with allergen concerns and possible soy lecithin in many of those sprays
- Ingredients that are less than 2% of the finished product must be listed on the label, but these ingredients can be placed at the end of the statement with language stating 'contains less than 2% of the following ingredients:'
- Incidental addition of water from washing an ingredient does NOT need to be listed on the label since this water is part of the production process and should not be getting into the finished product as a functional ingredient.
- Equipment used to make and store your food products does NOT need to be listed on the label (e.g., BPA-free, Teflon, aluminum pans, etc.) but if it is a concern, you can have a conversation with your customers when they order or purchase your product about what type of equipment you use.
- Nutrient analysis and nutrition facts panel: not required.

Two resources for your reference:

- <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Allergens/ucm362880.htm>
- <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcr/CFRSearch.cfm?fr=101.60>

“Individual” and “Sales” Limitations

Since the law used the word 'individual,' you can only register as an 'individual;' not as an LLC, LLP, corporation, association, non-profit, cooperative, etc.

However, an individual could be a sole proprietorship; and be registered with the Secretary of State as a DBA (Doing Business As). The legal name for a sole proprietorship is still the individual's name, not the DBA name. If you have a DBA, it has to be registered with the Secretary of State before use, and both your legal name and the name of the DBA should be on the registration form.

Other possible 'individual' scenarios:

- A family who works together making and selling cottage foods could all choose to take the training and register as 'individuals.' For instance, a family of four could then register at the top sales tier, each pay the \$50 annual register fee (4 x \$50 = \$200) and then earn up to \$18,000 in gross sales / year / 'individual,' or up to \$72,000 / year / family of four.
- An 'individual' who is a sole proprietor could have employees / volunteers. An employee / volunteer could sell at for the 'individual' as part of the sole proprietorship and would not have to train and register. However, since the individual is the sole proprietorship, the gross sales per year would be capped at \$18,000; not \$18,000 per employee / volunteer.
- An 'individual' can be a youth. There is not a minimum age requirement. Training materials are written at an 8th grade reading level and required for registration. The Minnesota Department of Labor and Industry have exemptions to the child labor law for a minor if the business is solely owned and the minor is supervised by one or both parents. See <http://www.dli.mn.gov/ls/minage.asp>.

Minnesota also has a legal definition for the “sale” or “selling” of food in [M.S. 34A.01, subd. 12](#). In Minnesota, donating food products is the same as selling and would be considered wholesale and / or resell. As a registered cottage food producer, since you must sell your product directly to the ultimate consumer, you cannot donate cottage food products to church bake sales, school bake sales, etc. Furthermore, you can't donate cottage food products to a food pantry, shelter or other food rescue program, since that would be considered reselling.

Non-Minnesota Cottage Foods Producers

The MN Cottage Foods Law pertains to all cottage foods sold in Minnesota, even if they are produced in another state; although *home-canned* foods are treated differently than the other cottage foods.

- For baked goods, jams, jellies, etc., all non-Minnesota cottage food producers must follow the same process as Minnesota residents: you need to take the training and register with the MDA.
- Home-canned foods, on the other hand, *cannot* cross state lines under this exemption, due to federal laws that require acidified foods to be produced in a licensed kitchen in order to be sold via interstate commerce. The sale of acidified products crossing state lines need to be registered and the process filed with FDA. See this link: <http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007431.htm>

Approved (Tested) Recipes

There are hundreds of tested and approved canning recipes (see MFMA’s NPH Foods List at www.mfma.org for a list of references.) There are fewer ‘tested’ recipes for baked goods, however.

The MDA Cottage Foods Team has deemed most baked goods and dried foods, probably 95%, would not need to be tested or have a recipe review. These products are baked or dried, which reduces water activity and places them in the non-potentially hazardous food category. However, for unusual products mixing higher water activity products together or baked goods for which you are not sure, you can submit the recipes to mda.cottagefood@state.mn.us for review. Some examples of items that might require recipe review and/or water activity testing include banana bread and vegetable-filled pastries. If you can think about your recipes and look for ingredients that contain a lot of water, that should help you identify which recipes might be questionable or closer to a water activity of 0.85.

Ethnic variations of non-potentially hazardous food are allowed. Recipes controlling for water activity, i.e., baked goods, dried, jams, jellies, etc. would not need to be pre-approved by the MDA. Remember, non-potentially hazardous foods do not require refrigeration to prevent bacterial growth.

Fruit-based freezer jams are allowed under the cottage foods exemption. Fruit-based freezer jams are not frozen for food safety, but rather for quality. Fruit-based freezer jams are best kept frozen until sale. It is recommended to include on your label “Keep frozen or refrigerated for quality.”

Be cautious using ‘old family’ or ‘heirloom’ recipes for canning as they may not have been tested or based on science. Compare these recipes with a current tested recipe: compare ingredients and processing times. If they match, you can safely use the recipe. If they don’t, update your recipe or have your product and process analyzed.

Contact MDA in advance if you have any questions about a product before you begin production. Call (651) 201-6027 or email mda.cottagefood@state.mn.us.

Miscellaneous Issues

MFMA will maintain the approved NPH Foods List at www.mfma.org. Please see that list for the most complete and up-to-date information. However, some foods don’t fit nicely into any food category, so following is the list of foods people have asked about to see if they fit under the cottage foods exemption.

Foods	Explanation
Frozen fruits and vegetables	If they are a ‘product of the farm’ with no additional ingredients, then they are already exempt from licensing under M.S. 28A.15 .
Honey or maple syrup	<p>Honey and maple syrup as whole foods are considered a ‘product of the farm,’ and thus already exempt from licensing under M.S. 28A.15. However, if you flavor them, then they would be a cottage food.</p> <p>If an individual buys honey or maple syrup from other producers with the intent to resell them, they are no longer considered a ‘product of the farm’ or a ‘cottage food’ and the individual would be required to get a license from the MDA to resell.</p> <p>There are labeling requirements for honey products:</p>

Foods	Explanation
	<ul style="list-style-type: none"> • include a statement: “Don’t feed to children less than 1 year of age.” • include your name and contact information • include the volume of product •
Pet food	Pet food is not a cottage food and does require licensing through the MDA’s feed program. See http://www.mda.state.mn.us/licensing/licensetypes/feed/petfood.aspx

Cottage Foods at Farmers’ Markets

Cottage foods can be made at home and sampled at farmers’ markets throughout Minnesota. The University of Minnesota Extension offers safe food sampling workshops. Contact Suzanne Driessen at Driessen@umn.edu.

Verification and compliance of the MN Cottage Foods Law are the sole responsibilities of the MDA. However, MFMA highly recommends that farmers’ market managers require and keep on file all of these types of certificates for their vendors, both as a good business practice for insurance; and as a service to the vendors, in case they misplace their copies.

Product Liability Insurance

As a good business principle, cottage foods producers should consider buying product liability insurance. You should contact your homeowner’s insurance company before starting a cottage foods business at home. The law does not protect you from being sued if someone is injured while picking up product or is sickened by a food product they purchase from you. Minnesota Farmers’ Market Association offers a general and product liability insurance group policy to its members: info@mfma.org.

Public Access to Cottage Foods Producer Registration

Just as with all MDA permits, registrations and licenses, the following information is public information: name, address, date of issuance, type and number.

Non-Compliance: Consequences and Reporting

The MDA (and its delegated authorities) are solely responsible for the enforcement of the MN Cottage Foods Producer Law. However, all of us in the cottage foods industry have a vested interest in making sure all producers comply with the law, follow food safety practices, and register with the MDA, if we want to continue to enjoy the provisions of the law.

Consequences

MDA inspectors can at any time inspect a farmers’ market, community event or a home that is producing cottage foods. The inspectors will be looking for registration, sales of allowed products, proper labeling, and safe food handling practices. They will have paper copies of the training available along with registration forms, so those individuals who qualify and are not already registered will be able to register on site. Those selling non-exempt foods or refusing to register will be told to cease sales on-site or can obtain a valid retail food handler license if they meet the requirements for licensure. MDA prefers to educate and work cooperatively with those in the business of making and selling food, however, vendors failing to register and found to be operating after being informed of the requirements may be subject to penalties.

Reporting Non-Compliances

You can report non-compliances to MDA, even anonymously, via phone or email.

MDA’s Dairy and Food Inspection Division’s Information Desk is available for questions or complaints on dairy, meat and food safety. Call (651) 201-6064, Monday through Friday, from 8 a.m. to 4:30 pm. After hours, you may call (651) 201-6027, leave a message, and someone will return your call.

If you prefer, you may use the online form found at this link, to register your complaint: <http://www.mda.state.mn.us/en/food/safety/foodcomplaint.aspx>

state.mn.us/en/food/safety/foodcomplaint.aspx



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Food & Feed Quality Complaint Form

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The Dairy and Food Inspection Division, or delegated local health agency, has jurisdiction over grocery and convenience stores, bakeries, meat markets, wholesale food manufacturing plants, dairy processing plants, dairy farms, and milk hauling trucks. The [Minnesota Department of Health](#) or local health agency, licenses and inspects restaurants, cafes, and alcoholic beverage establishments. If a facility is not licensed by us, we will refer it to the proper local, state or federal agency that has jurisdiction.

If your complaint is a food emergency, please contact the State Duty Officer at 1-800-422-0798.

If you have a pesticide misuse complaint, please use the [Pesticide Misuse Complaint Form](#).

* indicates required field

Complaint Information

Nature of Complaint

Date Found or Observed

Year	Month	Day
<input type="text" value="2000"/>	<input type="text" value="January"/>	<input type="text" value="13"/>

M.S. 28A.152 Cottage Foods Exemption

Subdivision 1. Licensing provisions applicability.

(a) The licensing provisions of sections [28A.01 to 28A.16](#) do not apply to the following:

(1) an individual who prepares and sells food that is not potentially hazardous food, as defined in [Minnesota Rules, part 4626.0020, subpart 62](#), if the following requirements are met:

(i) the prepared food offered for sale under this clause is labeled to accurately reflect the name and address of the individual preparing and selling the food, the date on which the food was prepared, and the ingredients and any possible allergens; and

(ii) the individual displays at the point of sale a clearly legible sign or placard stating: "These products are homemade and not subject to state inspection."; and

(2) an individual who prepares and sells home-processed and home-canned food products if the following requirements are met:

(i) the products are pickles, vegetables, or fruits having an equilibrium pH value of 4.6 or lower;

(ii) the products are home-processed and home-canned in Minnesota;

(iii) the individual displays at the point of sale a clearly legible sign or placard stating: "These canned goods are homemade and not subject to state inspection."; and

(iv) each container of the product sold or offered for sale under this clause is accurately labeled to provide the name and address of the individual who processed and canned the goods, the date on which the goods were processed and canned, and ingredients and any possible allergens.

(b) An individual who qualifies for an exemption under paragraph (a), clause (2), is also exempt from the provisions of sections [31.31 and 31.392](#).

Subd. 2. Direct sales to consumers.

(a) An individual qualifying for an exemption under subdivision 1 may sell the exempt food:

(1) directly to the ultimate consumer;

(2) at a community event or farmers' market; or

(3) directly from the individual's home to the consumer, to the extent allowed by local ordinance.

(b) If an exempt food product will be delivered to the ultimate consumer upon sale of the food product, the individual who prepared the food product must be the person who delivers the food product to the ultimate consumer.

(c) Food products exempt under subdivision 1, paragraph (a), clause (2), may not be sold outside of Minnesota.

(d) Food products exempt under subdivision 1 may be sold over the Internet but must be delivered directly to the ultimate consumer by the individual who prepared the food product. The statement "These products are homemade and not subject to state inspection." must be displayed on the Web site that offers the exempt foods for purchase.

Subd. 3. Limitation on sales. An individual selling exempt foods under this section is limited to total sales with gross receipts of \$18,000 or less in a calendar year.

Subd. 4. Registration. An individual who prepares and sells exempt food under subdivision 1 must register annually with the commissioner. The annual registration fee is \$50. An individual with \$5,000 or less in annual gross receipts from the sale of exempt food under this section is not required to pay the registration fee.

Subd. 5. Training.

(a) An individual with gross receipts between \$5,000 and \$18,000 in a calendar year from the sale of exempt food under this section must complete a safe food handling training course that is approved by the commissioner before registering under subdivision 4. The training shall not exceed eight hours and must be completed every three years while the individual is registered under subdivision 4.

(b) An individual with gross receipts of less than \$5,000 in a calendar year from the sale of exempt food under this section must satisfactorily complete an online course and exam as approved by the commissioner before registering under subdivision 4. The commissioner shall offer the online course and exam under this paragraph at no cost to the individual.

Subd. 6. Local ordinances. This section does not preempt the application of any business licensing requirement or sanitation, public health, or zoning ordinance of a political subdivision.

Subd. 7. Account established. A cottage foods account is created as a separate account in the agricultural fund in the state treasury for depositing money received by the commissioner under this section. Money in the account, including interest, is appropriated to the commissioner for purposes of this section.