

Guidance Document

Subject: Exemptions for:

- School Concession Stands
- Fraternal, Sportsman and Patriotic Organizations
- Post Disaster Food Service Events

Statute or Rule: Minnesota Statutes Section 157.22 Exemptions

Supersedes: N/A

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Purpose

This document provides information about the changes that were made to Minnesota Statute Section 157.22 during the 2011 legislative session. The Minnesota Department of Health (MDH) is providing this information to assist regulators in applying these exemptions consistently statewide. For information regarding Faith-based Organizations exemptions please see Guidance Document #062711.

Background

Minnesota Statutes Chapter 157 governs the licensure and inspection of public food and beverage establishments, hotels, motels, lodging establishments, and resorts. Exemptions for food establishments are found in section 157.22. During the 2011 Legislative Session, Senate File 477 made changes to section 157.22. These changes affect **School Concession Stands, Fraternal, Sportsman and Patriotic Organizations and Post Disaster Food Service Events** and are effective August 1, 2011.

Intent of the Legislation:

The language changes were intended to exempt from licensure:

- certain situations where home- prepared food can be sold
- some school concession stands
- some food for disaster relief workers and volunteers following a disaster

Changes to Section 157.22 (New statutory language is underlined and deleted language is indicated with a strike-out).

1. fraternal, sportsman, or patriotic organizations that are tax exempt under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(10), or 501(c)(19) of the Internal Revenue Code of 1986, or organizations related to ~~or~~, affiliated with, or supported by such fraternal, sportsman, or patriotic organizations. ~~Such organizations may organize events~~ for events held in the building or on the grounds of the organization and at which home-prepared food is donated by organization members for sale at the events, provided
 - (i) the event is not a circus, carnival, or fair;
 - (ii) the organization controls the admission of persons to the event, the event agenda, or both; and
 - (iii) the organization's licensed kitchen is not used in any manner for the event.
2. A school kitchen or school cafeteria is not a school concession stand.
3. school concession stands operated in conjunction with school sponsored events on school property are exempt from the 21 day restriction; and serving commercially prepared, nonpotentially hazardous foods, as defined in Minnesota Rules, chapter 4626
4. food service events conducted following a disaster for purposes of feeding disaster relief staff and volunteers serving commercially prepared, nonpotentially hazardous foods, as defined in Minnesota Rules, chapter 4626

Interpretations and Determining the Exemptions

1. Fraternal, sportsman, or patriotic organizations:

Fraternal, sportsman, or patriotic organizations (that are **tax exempt** under certain parts of Sections 501(c) of the Internal Revenue Code of 1986), or organizations related to, affiliated with, or supported by such organizations are allowed to have **events held in the building or on the grounds of the organization at which home prepared food is sold.**

This section of the statute does not exempt the organization from other licensing and inspection statutes and rules; it only allows for home-prepared food to be sold on the premises (not in the licensed kitchen).

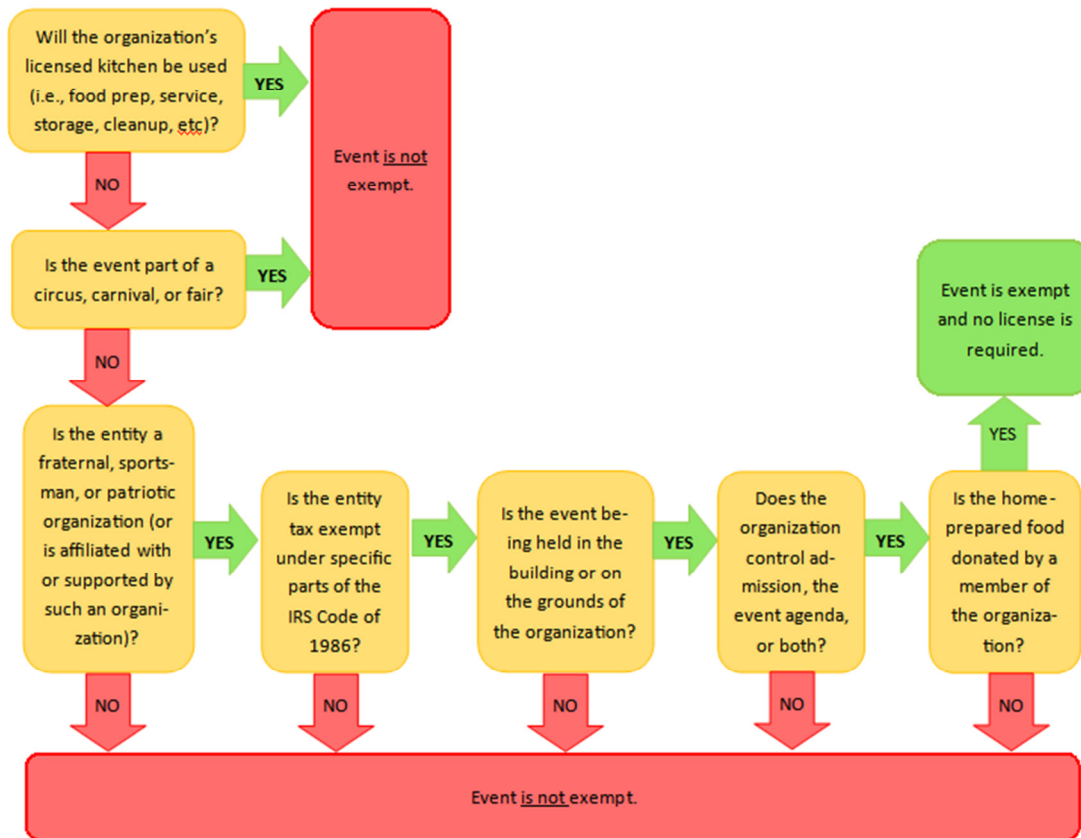
Examples of Organizations:

Fraternal organizations: Lions Club, Elks,

Sportsman organizations: Ducks Unlimited

Patriotic organizations: VFW, American Legion

Determining the Exemption for Fraternal, Sportsman and Patriotic Organizations:

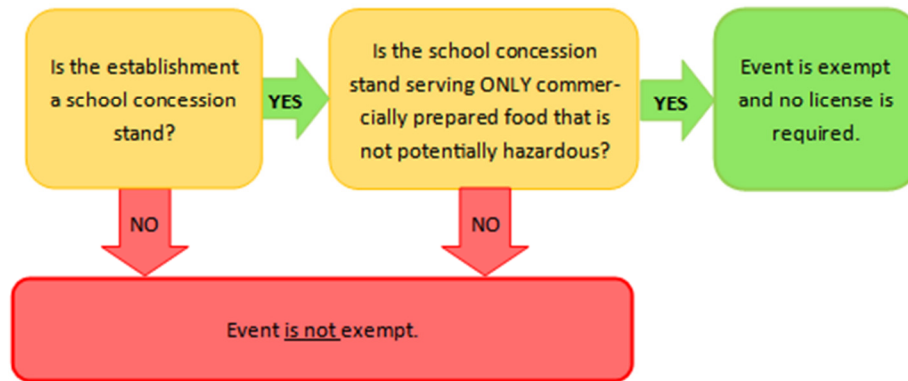


2. School Concession Stands:

The definition of "school concession stand" does not include a school kitchen or a school cafeteria.

School concession stands are exempt from licensing and inspection if they **serve only commercially prepared, not potentially hazardous foods**, as defined in Minnesota Rules, chapter 4626. (Examples of food that may be served: commercially canned soda, bagged potato chips, wrapped candy. Examples of food that cannot be served: hotdogs, hamburgers, and scooped ice cream).

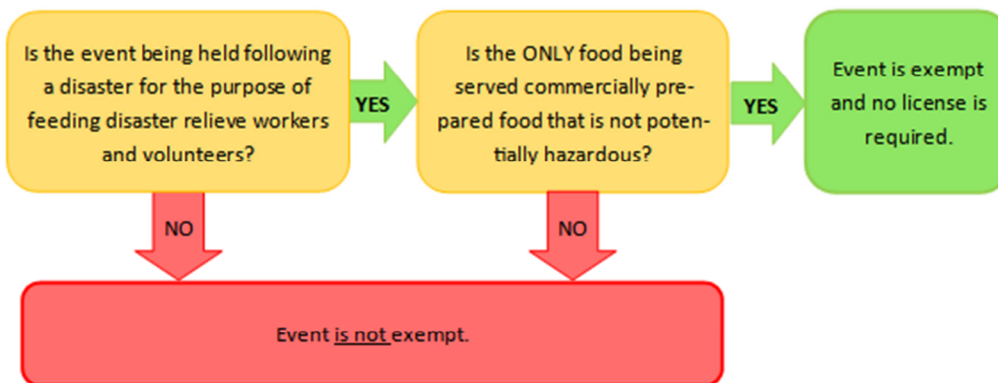
Determining the Exemption for School Concession Stands:



3. Post Disaster Food Service Events

Food service events conducted **following a disaster** for purposes of **feeding disaster relief staff and volunteers** serving **commercially prepared, not potentially hazardous foods**, as defined in Minnesota Rules, chapter 4626 are exempt from licensing and inspection. (Examples of food that may be served: commercially canned soda, bagged potato chips, wrapped candy. Examples of food that cannot be served: hotdogs, hamburgers, and scooped ice cream).

Determining the Exemption for Post Disaster Food Service Events:



Applicable Laws: Minnesota Statute 157.22 ; Minnesota Rules, Chapter 4626
www.leg.state.mn.us

Definition of Potentially Hazardous Food in Minnesota Rules Chapter 4626:

Subp. 62. **Potentially hazardous food.**

A. "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

- (1) the rapid and progressive growth of infectious or toxigenic microorganisms;
- (2) the growth and toxic production of *Clostridium botulinum*; or
- (3) in raw shell eggs, the growth of *Salmonella enteritidis*.

- B. Potentially hazardous food includes a food of animal origin that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified in item A.
- C. Potentially hazardous food does not include:
- (1) an air-cooled hard-boiled egg with shell intact;
 - (2) a food with an a_w value of 0.85 or less;
 - (3) a food with a pH level of 4.6 or below when measured at 24 degrees C (75 degrees F);
 - (4) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
 - (5) a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, including a food that has an a_w and a pH that are above the levels specified in subitem (2) or (3) and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
 - (6) a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified in item A.

Reference Documents:

Tax Guide - <http://www.irs.gov/pub/irs-pdf/p1828.pdf>
501c3 - <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>
501c4 - <http://www.irs.gov/pub/irs-tege/eotopici03.pdf>
501c6 - <http://www.irs.gov/charities/nonprofits/article/0,,id=96107,00.html>
501c7 - <http://www.irs.gov/pub/irs-tege/eotopicc96.pdf>
501c10 - <http://www.irs.gov/pub/irs-tege/eotopicf04.pdf>
501c19 - <http://www.irs.gov/charities/nonprofits/article/0,,id=96230,00.html>

Frequently Asked Questions

1. **Do patriotic organizations include city-run community centers?** No, government owned/operated businesses do not fall into this category.
2. **Can a VFW, American Legion, or gun club hold an event on their property or inside the building selling home prepared food?** Yes, if it is tax exempt under IRS Sections 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(10), or 501(c)(19) and it does not use the licensed kitchen.
3. **If a VFW, American Legion, or gun club prepares food for the public on their property or inside the building, do they need a license?** Yes.



EHS MANAGEMENT APPROVAL

August 18, 2011

DATE