

Comments on First Draft of Policy Report, issued 01/08/16

I. COMMENTS IN POLICY REPORT DOC (by section)

Problem Statement:

- **Ben Miller** - Is it the rules and regulations that are contradictory or the information that's provided? I think that's an important distinction to make. If the rules and regs are contradictory, please provide examples or citations.
- **Chris Kudrna** - I tend to agree with Ben. It's the complexity and the communication of that complexity that may be the primary challenge

Background:

- **Chris Kudrna** - Per earlier comment about complexity, here's where I might talk about the reality that each organization operates under a different set of legislatively mandated regulations versus inconsistency. You can fix inconsistency with training and procedures but I don't think that will do it for this current situation.

Evidence:

- **Ben Miller** - Outside of this community I wouldn't say this is a true statement so I would want to make sure this sentence reflects that this sentiment, by and large, is limited to active voices in the local foods movement. The vast majority of citizens have no idea of how a food business is licensed or regulated; they know that they want safe food.
- **Chris Kudrna** - Agree. Not sure the typical citizen knows or cares about this.
- **Ben Miller** - This sounds like interesting and informative reading but without a table of references, footnotes, or endnotes it leaves the reader unable to validate these statements. I would HIGHLY recommend adding references to this report as it will increase the readability and credibility of the statements made within.
- **Chris Kudrna** - I agree this should be a key part of this report and expanded significantly.
- **Jan Joannides** - Not sure what "put effort to be part of community" means. A little more explanation or example would be helpful

Navigational Help

- **Jan Joannides** - I think this is the wrong title. I think we need to loop back here and say - the models we found useful to explore further were X, Y & Z. And then explain why we chose them, how we gathered info on them, what we learned. And of these 3 - I think there was the Mpls Model - which was different than a "coach" position.
- **Chris Kudrna** - I might spend some time playing with synonyms and thinking through what we really want here -- advocate? Counselor? Guide?

- **Jan Joannides** - I think whatever solution we recommend/move toward - we'll always need to figure out ways to make it accessible to the range of people who need info/assistance
- **Ben Miller** - Even absent a technology platform, coordinator or coaching positions at MDA and MDH there's likely much better written materials that can be developed and put on both agencies' websites. Certainly there's more we can do in outreach via our website at MDA.

Development Coordinator

- **Chris Kudrna** - Perhaps a one paragraph executive summary up front with an emphasis on the results achieved. From the meeting on this example, it was the results that were exciting!
- **Jan Joannides** - I think this section could use some expanding. I wouldn't put the focus on the Development Coordinator - but rather the systems changes that were made - which resulted in this structure where there are process experts and subject experts - with the Development Coaches being the process experts.
- **Paul Allwood** - This is great. I suppose also good that it's a single agency vs two in the case of health and Ag. Also nice that the city stuck out and got things working right.

Merging Retail Food Operations

- **Chris Kudrna** - Obviously this merger in WI has political overtones and we want to avoid those if possible. This specific merger is being bundled with a suite of changes from the governor's office and people on both sides have strong feelings. Do we really need to lead with WI or could we just talk about the possible benefits of a merger in MN?
- **Wayne Martin** - I would say that we need to be careful with the language used. Do we know that "it can't be any worse" was a general opinion of business owners? If so, what percentage said that? Attractive to many? How many? A rep from the restaurant associations said this? All local health departments? My point is that adjectives can be accurate or misleading, depending on the data they represent...I am not for removing this section completely, but just modifying the adjectives used....
- **Paul Allwood** - Are there local delegations? If yes, how will they be handled?

Bush Grant Deliverable "Increased Focus on Food Safety by Both Regulators and the Regulated Community"

- **Ben Miller** - So none of the three options addresses what's arguably the most important aspect of licensing and regulatory work (our raison d'être if you will)? That seems troubling to me as someone that cares deeply about food safety. It seems like this particular goal is an afterthought whereas it ought to be the cornerstone of any outcome.
- **Chris Kudrna** - Agreed! Assuming you can't make the column disappear, we need to speak to why this isn't being addressed. Very broadly, I might make the argument that reducing complexity and confusion could possibly free regulatory time to focus on what matters primarily -- food safety. Although this really needs more discussion
- **Jan Joannides** - I think this table needs to be redone and recreated at our next meeting with input from the group.

Recommendation

- **Chris Kudrna** - I'm assuming this section is still very much in draft form. I was hoping we'd get to possibly recommending legislative change also as an example.

Appendix A - Timeline leading to the formation of the LFAC

- **Chris Kudrna** - What is the purpose of this timeline?

Appendix B - Stories

- **Chris Kudrna** - I'd especially like to see the coffee/doughnut shop story. That makes the issues and opportunity crystal clear.
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II. EMAILED COMMENTS

A. CHRIS KUDRNA:

My comments have been placed in the document. I think I was one of the people pushing hard for a rough draft of the finished product given our timeline and I really appreciate this initial draft and the work that went into creating it.

Overall I did not think the tone towards regulators was negative except in a few spots where Ben (and I) made editing suggestions. And I'm quite confident the authors' intent was not critical. With respect to scope, I agree that is a key topic for the group going forward. Right now what's been documented is what we talked about and were excited about. We need to go broader and bigger in the next few months and our writers need more guidance from us.

Thanks, Karen and Stephanie, for getting this done and moving us a big step forward!

B. MEGAN O'HARA:

I'd like to weigh in though I've been late to the process and was not involved in the first 2 meetings. I think the draft is a good start to capture a couple of models for regulatory reform at the city of Minneapolis and the state of Wisconsin, along with advantages and disadvantages of both. I had thought that the Bush project was geared more to this type of restructuring. In reviewing the initial grant, I see that it does envision 4 key outcomes, which includes improved education and outreach.

When I did my regulations report, it strongly recommended improved outreach and education to help farmers and small business people navigate a complicated system and avoid problems before sinking money into a project. During the

course of my research, I found the farmers and small entrepreneurs often consulted friends/family networks who have done similar projects. Or they relied on Associations like MFMA or Food Truck Association. It seems fact sheets and Q & As, whether online or on paper, while valuable, will always have limitations in who they reach.

I hope an upcoming meeting can allow us to further explore interactive, online and face-to-face strategies for doing education/outreach that can serve a very diverse and resource/time limited population. Along with some restructuring, it could help reach those who don't understand the systems that ultimately impact their project or dream business.

C. NIKKI NEESER:

I read through this report this morning as well. Thanks for putting the effort into getting this document and discussion started.

I do honestly have to say that I'm actually quite disappointed in the narrow scope of this report (and project?). Having been a part of the original effort to get the Bush Grant and original conversation about how to proceed, I feel like this effort leaves a lot of the original ideas and a lot of low-hanging fruit out of the picture. What work was done on helping MDA/MDH focus more on outreach, factsheets, helping get information out, identifying ways that we can gain efficiencies in the current systems?

The tone of the report is very negative toward the regulators and while I realize that might be reflective of what some, or maybe even many, individuals feel, I don't feel like it is accurate in the context of the LFAC, and certainly not useful, in the sense that we are trying to change that tone through the work of the LFAC.

I can't tell from the report how much research into the different ideas was done, so there very well be more to it than I am seeing. However, the report seems to focus on a narrow solution (the merger) that was researched on a very broad level and there isn't a lot of substance into why a merger actually fixes most of the problems identified. I work with Federal agencies on a daily basis and can speak with confidence and say that putting all of one 'thing' under one roof doesn't fix problems with outreach, communication, consistency, etc. In fact, this often makes a bigger agency that is only more difficult to deal with for small producers and entrepreneurs. And the merger, would only affect retail – nothing at all about manufacturing of food, dairy or meat. Outreach, communication, etc, still remain huge issues.

And ultimately, what MDA and MDA (and local agencies) are both commissioned to address, food safety, is basically completely left out of the recommendation/solution. Isn't the main question how we can help people make sure they are

producing food safely within the regulatory framework that exists? If the framework needs to change to help make it more profitable or feasible, and still keep food safe, then those are questions we should look at with this work, rather than focusing solely on the regulating agencies.

I know these comments will come off as a bit harsh, but I feel like I need to share with this level of honesty if we are going to move forward with something that has solutions that we can actually use to make things better in the short term future.

D. LAURI CLEMENTS:

Thank you for sending this out. On the 2nd page (under the Background section), paragraph beginning with “In 2014....” -- I think it is important to note (somehow) that the application for and work done under the Bush Grant was done by a *subcommittee* of LFAC -- similar to how you have described the grant work and recommendations further on a few times further down in the document.

Also – what is the destination audience for this report?

I really appreciate the work that went into the creation of this document. There are some great bits that I want to reflect on a little more and that I plan to offer feedback on very soon. However, there are also bits that concern me from my (out-state) delegated agency perspective. I feel there would also be concern from other delegated agencies with (1) where this document might ultimately land and (2) what action or decisions that particular audience might take with this information – unintended consequences you might say.

I want to be transparent and honest in telling you that I plan to forward this draft document up my chain of command. Which may likely mean it will also go to MN LPHA for further feedback. I think local feedback is important and could provide additional insight valuable to this committee’s work.

E. VAL GAMBLE/BEN MILLER:

Ben has asked if it might be possible to add an ‘MDA section’ to the report, not to rebut the points that are raised, but to provide more context and background about why some of this is the way it is right now? What do you think? We would also like to provide the regulatory point of view/context for the Wabasha case study, but are discussing the best way to do that at the moment.

Ben had one additional comment (and I agree with it). Do you think it would work to put in a methodology section? That would be really helpful for people who haven't been a part of the process the whole time, or who want to know more detail?

F. COLLEEN PAULUS:

Kudos to the BGAC committee members for your candid comments. I feel the LFAC and the BGAC are unique committees in that the discussions have been calm, respectful and collegial. Ideas have been openly shared and explored. It appears that the discussion about merging the retail food programs in MDH and MDA is unsettling to some people. It isn't a new discussion. Below is some historical information. The possibility of a merger was discussed 25 years ago when the Minnesota Legislature mandated a study and report.

The Legislative mandate is found in the 1993 Minnesota Laws Chapter 114

Sec. 2. [STUDY OF FOOD INSPECTIONS.]

The commissioner of health, in cooperation with the commissioner of agriculture, affected local health departments, and representatives of statewide organizations for the businesses that are inspected, shall study and report to the legislature by February 1, 1994, on the current system for regulating and inspecting grocery stores and food, beverage, and lodging establishments. The study shall analyze the current system and determine whether or not the system could be improved (1) through better coordination of various inspection responsibilities; (2) by assigning to either the commissioner of health or the commissioner of agriculture the responsibility to conduct all food-related inspections; or (3) by adopting other modifications that the report shall recommend.

The current BGAC committee process and discussions are a stark difference from the 1993 committee that created the legislative mandated Food, Beverage and Lodging Establishments and Grocery Stores study. Those discussions were raucous and the committee unofficially was known as the "Committee from Hell."

The report can be found at the MN Legislative Ref. Library Circulating Collection. Food, beverage and lodging establishments and grocery stores study : a report to the 1994 Legislature.

http://lrl.mnpals.net/F/1DFLQFDJJGVTI7AXKK5BNAF58FU5RTTQUC8KFHCMBH8AB17BY9-13301?func=full-set-set&set_number=415011&set_entry=000002&format=999

Call Number: KFM5682.H6 F66 1994 Barcode 30307000575970

One result of that study was a statute modification. In 1995, MDH made changes to Minnesota Statute 157.

<https://www.revisor.mn.gov/laws/?id=207&year=1995&type=0>

Language was included in the statute for principle mode of business, otherwise known as the 51% rule, so that businesses would not be licensed by both MDA and MDH.

“(4) any person, firm, or corporation whose principal mode of business is licensed under sections 28A.04 and 28A.05, is exempt at that premises from licensure as a food or beverage establishment; provided that the holding of any license pursuant to sections 28A.04 and 28A.05 shall not exempt any person, firm, or corporation from the applicable provisions of this chapter or the rules of the state commissioner of health relating to food and beverage service establishments;”

This language helped with assigning agency responsibility when the food business was distinguishable. As food businesses have evolved over time, it has become harder to distinguish which state agency is responsible for licensing and inspecting. Even after 25 years of incremental statutory changes, program improvements, education and training, the dual state agency model for retail food continues to produce a fragmented, confusing and often a contradictory regulatory environment for businesses.

Merging of state programs is not unusual. Below are a few programs/departments that were merged with other programs/departments.

2003 - MN Department of Economic Security and Department of Trade and Economic Development merged to create Department of Employment and Economic Development.

2005 - Five State construction code and licensing units were consolidated within Department of Labor and Industry as a direct result of the governors' reorganization order. On May 16, 2005, the Department of Administration's Building Codes and Standards Division, the Department of Health's Plumbing and Engineering unit, the Board of Electricity and the Department of Commerce's Residential Contractors' Licensing unit joined DLI's boiler and high-pressure-piping groups to form a single division -- the Construction Codes and Licensing Division (CCLD).

2007 - Merger of the Department of Employee Relations functions into three other agencies for the reasons of streamlining government and providing greater accountability.

2012 - Consolidation of IT systems and services

If we are serious about improving the regulatory framework in Minnesota then we should be confident in the policy report that we have created.

I am look forward to seeing you and our discussions at our next meeting.

The basis of all the problems and conflicts is with the different statutes and rules. Add to that the various agencies enforcing the regulations the conflict increases. Until the statutes and rules are changed the conflict will not go away. No matter who the person is (MDH, MDA or 311 staff) giving the answer. The answer is dependent on the statute and rules. Add various ordinances regulating food around the State and you have the basis for current inconsistencies and conflict.

Can explaining the conflict be made clearer so the reader can understand the problem? Could an example of the problem be given? I know the following isn't exactly a local food issue. The terms and the structures are something that most readers will understand. Start with a person wanting to open a restaurant and a deli/grocery store. The basic question is what is it? Is it A. a restaurant with a grocery store or B. a grocery store with a restaurant? Most people would say, "What difference does it make?" The answer changes the legal requirements for the business.

If the business is more A, then the business is licensed and inspected by MDH. If the business is B, then the business is licensed and inspected by MDA. Each agency has different requirements and license fees based on the different statutes that are their responsibility to enforce.

I can't think of an example right now where the line of responsibility is even more blurred. I believe you have example of businesses that have been tossed back and forth between the agencies.

I created the following table - does this illustrate the problem to the reader?

Question	MDA Statutes 28A and 34 A	MDH Statutes 157	Minnesota Rules Chapter 4626 - Food
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			Code
What is the definition of food?	Subd. 4. Food. "Food" means every ingredient used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for humans or other animals, whether simple, mixed, or compound; and articles used as components of these ingredients.		Subp. 30. Food. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
What is the definition of selling food?	Subd. 12. Sell; sale. "Sell" and "sale" mean keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food		

	whether done or permitted in person or through others.		
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<p>What is a place of business?</p>	<p>Subd. 4.Place of business. "Place of business" means every location where food or food items are manufactured, processed, sold, stored, or handled, including buildings, locations, permanent or portable structures, carnivals, circuses, fairs, or any other permanent or temporary location.</p> <p>Any vehicle or similar mobile unit from which food is sold shall be considered a place of business for purposes of this section if the food therefrom has been manufactured, packaged or dispensed from bulk, or processed in any manner thereon.</p>	<p>Subd. 5.Food and beverage service establishment. "Food and beverage service establishment" means a building, structure, enclosure, or any part of a building, structure, or enclosure used as, maintained as, advertised as, or held out to be an operation that prepares, serves, or otherwise provides food or beverages, or both, for human consumption.</p> <p>Subd. 6.Food cart. "Food cart" means a food and beverage service establishment that is a nonmotorized vehicle self-propelled by the operator.</p> <p>Subd. 9.Mobile food unit. "Mobile food unit" means a food and beverage service establishment that is a vehicle mounted unit, either:</p> <p>(1) motorized or trailered, operating no more than 21 days annually at any one place, or operating more than 21 days annually at any one place with the approval of the regulatory authority as defined in Minnesota Rules, part <u>4626.0020</u>, subpart 70; or</p> <p>(2) operated in conjunction with a permanent business licensed under this chapter or chapter 28A at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for</p>	<p>Subp. 35. Food establishment.</p> <p>A. "Food establishment" means an operation that:</p> <p>(1) stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including a restaurant, satellite or catered feeding location, market, grocery store, convenience store, special event food stand, school, boarding establishment, vending machine and vending location, institution, and retail bakery; or</p> <p>(2) relinquishes possession of food to a consumer directly or indirectly through a delivery service, including the home delivery of grocery orders or restaurant takeout orders, and a delivery service that is provided by common carriers.</p>
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		transport to another location.	
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When is a license required?	Subdivision 1. Application; date of issuance. (a) No person shall engage in the business of manufacturing, processing, selling, handling, or storing food without having first obtained from the commissioner a license for doing such business.	Subdivision 1. License required annually. A license is required annually for every person, firm, or corporation engaged in the business of conducting a food and beverage service establishment, youth camp, hotel, motel, lodging establishment, public pool, or resort.	