

Local Food Advisory Committee

March 8, 2016

Present:

- Ryan Cox, Univ. of MN Extension
- Mike Lilja, Sustainable Farming Association
- Michelle Medina, MN Farmers Union
- Sarah Leach, MN Dept. of Health
- Stephanie Van Dyke, Bush grant
- Karen Lanthier, Univ. of MN Extension/RSDPs
- Greg Schweser, Univ. of MN Extension/RSDPs
- Jennifer Stepes, MN Dept. of Agriculture
- Lisa Wetzal, MN Dept. of Agriculture
- Jane Jewett, MN Institute for Sustainable Agriculture
- Jan Joannides, Renewing the Countryside
- Tim Jenkins, MN Dept. of Health
- Lauri Clements, Olmsted Co. Public Health
- Wayne Martin, Univ. of MN Extension
- Michele Schermann, Univ. of MN
- Ben Miller, MN Dept. of Agriculture

Present by phone:

- Sara George, Wabasha Farmers’ Market
- Tina Moen, Wabasha County SHIP
- Kathy Zeman, MN Farmers Market Association
- Marilyn Johnson, MN Fruit & Vegetable Growers Association

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Wabasha Farmers' Market

Sara George

The Wabasha Farmers' Market has been seeking a license to aggregate and sell produce to the local school and hospital.

- The school district didn't want to use petty cash to purchase from 15 different vendors and the food service staff didn't have time to come to the market, so the market was going to serve as the intermediary.
- There was a local advisory committee formed for this project. SHIP (Statewide Health Improvement Project) got involved. The plan was to have the school and hospital send produce orders, compile those orders at the market, have hospital volunteers pick up and deliver the produce, and have the market do the invoicing. Then the market would pay the individual vendors.
- The project was successful. More schools wanted to join in. Sara realized that a license was going to be necessary.
- Originally Sara wanted to set up her cargo trailer with a Cool-Bot for overnight storage and next-day hauling of produce from the market, but found that grant funds were not available to do that.
- It was hard to get through the inspector. He would not respond to phone calls; almost all of her communication was via email. It took a long time to get an inspection and then there were requirements that were difficult to meet in mid-season.
- A canopy for the produce sorting area and totes for transporting the produce were purchased through SHIP.
- Sara wrote up a tote sanitization policy at the inspector's request. He approved that quickly, but SHIP sent it to Mary Marrow (attorney with Public Health Law Center), and she made a number of suggestions. Sara wasn't sure whether to proceed with what the inspector had already approved or make changes.
- Three options for the market were written up by Sara and presented to the inspector:
 - School or hospital sends people to pick up produce at the market.
 - Volunteers deliver the produce to school or hospital.
 - One person from the market makes the deliveries of produce.

Sara noted that she did change what she said to the inspector. Originally she thought they could get the cargo trailer with Cool-Bot and have one person do deliveries, but she realized that was not going to happen last summer and changed the plan to have pick-up happen at the market.

- Originally the inspector was going to require refrigeration but that was dropped because there were no potentially hazardous foods involved.
- The inspector required that the market have a produce storage vehicle or structure to inspect, even if the market never used it.
 - This was not possible for the market; funds were not available for this and permanent structures were not possible at their location.

- Sara offered her personal vehicle as the storage vehicle, but that was not allowed because it had a carpeted interior.
- Sara stated that the market had a very clean layout for the produce sorting area, with a canopy, mats on the ground, a handwashing station. They were very transparent with the school and hospital; school and hospital staff viewed the market's set-up and spoke directly with the farmers.

Discussion of Sara George's story:

- MDA and MDH staff noted that the timing of the conversation may have caused difficulties. There were a lot of staffing changes at that time last year and the structure of MDA was being changed.
 - Lisa W. noted that MDA now has outreach coordinators, who might have helped if they had been in place at the time.
- Sarah L. noted that there is a lot of complexity in the regulations, and sometimes the answer to a licensing request is "no."
- Kathy Z. suggested that Sara G. should have come to MFMA for help; they deal with questions like this often.
 - Sara G. clarified that she had reached out early last spring to Stephanie Heim, then Jane Jewett, then Val Gamble for information and advice. She shared the information gained from those contacts with the inspector.
- Questions that need to be resolved:
 - Is it a statutory requirement that there be a structure or vehicle to inspect for this type of licensing?
 - Would the uncarpeted back of a pickup truck with a topper be acceptable as the temporary storage vehicle?
 - Can buyers come select items for themselves and just have the market handle invoicing and payments to farmers?
- It would be good to have a process to flag licensing requests that are likely to be complex and require clarification, or things that are likely to need a statute change before they can go forward.
 - There needs to be a process flow when a licensing request reaches a dead end.
 - How to appeal a "no"
 - Process for pushing questions up to a higher level within MDA or MDH without acrimony
 - Even if the answer has to be no, then there should be identification of a next step – possibly statute change, or a revision of the business model.
 - Good process could mean that a "no" is conditional, not absolute. People would be less frustrated.

Discussion of how to resolve the Wabasha case and create a model for other farmers' markets:

- Kathy Z. noted that this kind of aggregation is already happening at farmers' markets around the state. We need an approve-able model and a best practices document.
- Tim J. noted that 20 SHIP grantees have chosen farmers' markets as a focus area and another 20 have chosen community gardens. They are looking for models that will work.

- Megan O. noted that the aggregation question also affects food shelves and food banks. They are looking for mechanisms to receive donations of unsold food, and there's confusion around regulations for that.
- Suggestion to form an ad hoc committee to deal with the Wabasha case with an eye toward creating a model.
 - The MDH or local delegated authority is involved in the case of a school, and should be included.
 - Tina Moen, the SHIP coordinator in Wabasha, offered to host the meeting.
 - Jan J. suggested getting finance and legal experts in the room as well as food regulators and farmers' market representatives.
 - Kathy Z. will take the lead on setting up this meeting. Sarah Leach and Jane Jewett will participate.

Update on Local Food Fact Sheets for Farmers & Food Entrepreneurs

Jane Jewett, Kathy Zeman

These are in progress. Five fact sheets have been drafted:

- Red meat
- Poultry
- Shell Eggs
- Produce
- Approved Source of Water

The red meat, poultry, and shell eggs fact sheets have been reviewed by Jennifer Stepes and Levi Muhl. Lisa Wetzel also reviewed shell eggs. The Produce and Approved Source of Water fact sheets are still out for review by other MDA and MDH staff.

Kathy Zeman noted that eventually she would like to have a series of 27 fact sheets that cover many different types of farmers' market products, similar to the series put together with SARE funding in the state of Washington.

The University of Minnesota's branding and logo use policy requires having a written agreement and getting approval from U Relations in order to use other organizations' logos on U of MN documents. That is something that we will need to attend to in development of these fact sheets. There is a template available for the written agreements.

We discussed translation of fact sheets:

- MDH has five approved translator companies. They pay for a weekly number of words to be translated and sometimes don't use it all, so segments of fact sheets could be sent to Sarah Leach for inclusion in batches of items sent to translators.
- Sarah noted that an efficient way to handle translation is to have certain key descriptions; of handwashing, for instance; translated once and then saved for use in multiple documents.

- MISA is looking at translation into Spanish, German, and Somali.
 - The Hmong community is an obvious audience for the fact sheets, but noted that most Hmong people do not read Hmong – you need either an oral version for the older generation or English for the younger generation.
 - German translation would be valuable for the Amish, Mennonite and Hutterite farming communities; there are farmers’ markets and food hubs in the state that could use the support in communicating about regulations to German speakers.
 - German is not one of the languages for which MDH has translator contracts.

Bush Grant Update

Karen Lanthier, Stephanie Van Dyke

The group has stepped back from the policy document that was described at the December LFAC meeting. That document had recommended a merger of MDA and MDH food inspection units and implementation of a system similar to the City of Minneapolis 311 system, which involves rapid directing of people to the right office, and “development coordinators” who act like case managers and make sure applications move through departments.

Instead, the group is turning to a broader look at the system and commissioning Karen and Stephanie to create case studies of farmers and food entrepreneurs who have tried to navigate the licensing system. We are also working on a timeline for actions that have been discussed that could be helpful short-term or medium-term changes to the system, which may include some aspects of the City of Minneapolis model. Lisa Wetzel noted that the development coordinator idea fits in with ideas of process flow, to avoid having people get stuck in the system.

School Use of School Garden Produce

Laurie Clements

Lauri Clements brought up a question that had been raised by a SHIP coordinator in her area. The local school has a large school garden and is very dedicated to student involvement with it. The Family and Consumer Science (FACS) class has a juice infusion gadget. They chop fruits and vegetables from the school garden, put the chopped produce in cylinders that are frozen, and then put the cylinders into the infuser. The infuser is set up in front of the school office so that anyone walking by can get a drink.

This is one example of what many schools are trying to do with school garden produce. They get a lot of it, they want to use it, and the school food service doesn’t always use it – so schools turn to home economics classes as a way to use the produce.

Question: Does this activity need to be licensed? And if so, who or what would be licensed?

Discussion points:

- Could the FACS classroom be licensed?
- Could the infuser be licensed as a vending machine?
- Would this qualify for a Seasonal Temporary Food Stand license?
- Would it qualify as a school concession stand – some of which are licensed, and some not –
 - MN Statute 157.22 provides an exemption from licensing for school concession stands that offer only commercially prepared wrapped products.
 - Maybe offering fruits and veggies out of a licensed concession stand during sporting events would be okay?
- Could it be considered a food demonstration at a community event? “Community event” is not defined in the state statute – it is defined at the local ordinance level.
- Could the produce prep and ware washing be done under the school’s license in the school kitchen?
 - Noted that food service management companies contracted with schools can prevent this use of the school kitchen.

Lauri will pursue this and report back later.

Re-Organization within Minnesota Department of Agriculture

Ben Miller

The MDA, MDH and Delegated Agencies are currently re-working their Memorandum of Understanding. The goal is to get that document finalized by the end of April. The new document will be more process-oriented rather than product-oriented. The changes are intended to direct people to the right agency that has jurisdiction. Right now they are taking feedback from the delegated agencies.

Part of the process-orientation of the new MOU is a decision tree for deciding jurisdiction over retail food businesses:

- Does a sale of food occur?
 - This determines whether retail food licensing of any kind is needed.
- Is food being prepared and served for immediate consumption?
 - This divides retail food establishments between MDA and MDH. MDA has jurisdiction over foods not for immediate consumption; MDH has jurisdiction over foods that are for immediate consumption.
 - Example: Pap Murphy’s Pizza jurisdiction moves from MDH to MDA, because the pizzas are not for immediate consumption.
 - Example: Snow cones move from MDA to MDH, because they are for immediate consumption.
- Cottage Food items are exempt from licensing, so they are not considered retail food sales.

Lauri noted that this change represents a loss of revenue for some delegated authorities that were previously inspecting Papa Murphy-style establishments under their MDH delegation.

FSMA Final Rule on Produce Safety (“the Produce Rule”)

Ben Miller; with reference to FDA’s FSMA information

“Covered Farms” = farms NOT exempt from the Produce Rule. “Covered Farms” must comply with the Produce Rule.

Across-the-Board Exemptions to the Produce Rule:

- Farms or businesses selling things that are not a raw agricultural product, are exempt *for that product*.
 - Example: jam made out of the farm’s strawberries = not a raw agricultural product.
 - The jam enterprise might be subject to the FSMA Preventive Controls rule for manufactured food products, but that’s a separate issue.
 - If the farm also sells raw strawberries, those sales of raw product would still be “covered” and NOT EXEMPT under this particular exemption.
 - The farm’s raw strawberry sales might still fall under a different exemption.
- Farms selling produce that is “rarely consumed raw” are exempt *for that type of produce*.
 - Examples: potatoes, beets, dry beans
 - If a farm is also selling produce that is often consumed raw, such as spinach, those produce sales would be “covered” and NOT EXEMPT under this particular exemption.
 - The farm’s sales of produce often consumed raw might still fall under a different exemption.
- Farms selling food grains or oilseeds are exempt *for the sales of those grains or oilseeds*.
 - Examples: barley, quinoa, sunflower seeds
 - If a farm is also selling produce, those produce sales would be NOT EXEMPT under this particular exemption.
 - The farm’s sales of produce might fall under a different exemption.
- Produce that is used for personal or on-farm consumption is exempt from the Produce Rule.
- Farms that sell less than \$25,000-worth of produce per year are exempt from the Produce Rule.
 - These farms are exempt even if the type of produce they sell would be “covered” if the farm were larger.
 - **This exemption is part of what was originally called the Tester Amendment.
 - The wording of this segment includes “produce” with no separation of types of produce, so that means that the farm is only exempt if its *total* produce sales are less than \$25,000 per year. The farm cannot claim both this exemption plus another exemption for produce sales in the same year. For instance, if the farm sells \$24,000 in dry beans – which would be exempt as “rarely consumed raw” – and the farm also sells \$2,000 in spinach – which is “covered” because it is often consumed raw – the farm then sells

\$26,000 per year in *total* produce sales and cannot claim the <\$25,000 exemption. The farm would be exempt for the dry beans, but “covered” and NOT EXEMPT for the spinach sales.

- Produce sold to a commercial processing facility that “adequately reduces microorganisms” as part of the processing, is exempt from the Produce Rule.
 - Example: tomatoes shipped to a cannery
 - If the farm is also selling produce to other markets that are not commercial processing facilities, the farm may be “covered” and NOT EXEMPT for the sales to those other markets.

Qualified Exemption to the Produce Rule

** This is part of what was originally known as the Tester Amendment. There are two qualifications that a farm must meet for this exemption:

- 1) The farm must have food sales averaging less than \$500,000 per year during the previous three years.

* The wording of the FSMA rule is “food sales,” so that includes sales of other food besides produce. It includes sales of grains that are considered human food, or sales of meat. All food sales combined must be less than \$500,000 per year in order for the farm to qualify for this exemption.

- 2) The majority of the farm’s sales of food must be to “qualified end-users.”

* “Majority of sales” means that >50% of all food sales must be to qualified end-users.

* Qualified end-users are:

*** An individual consumer

*** A restaurant or retail food establishment (grocery store) that is:

- Located in the same state as the farm; OR
- Located on the same Indian Reservation as the farm; OR
- Located within 275 miles of the farm.

If a farm meets these requirements for the “Qualified Exemption to the Produce Rule,” then the farm is EXEMPT from the Produce Rule even if its products would otherwise be “covered” by the Produce Rule.

The Produce Safety Rule represents big changes to on-farm food safety. Illness outbreaks were the impetus for the change.

There are six major areas of implementation for farms under the Produce Rule:

1. Agricultural water testing for water that touches produce

- Surface water = more testing.
 - Groundwater = less testing.
 - Not clear how this will work: where will farmers get their sampling bottles? Can they do the sample collection themselves, or does it need to be a third party?
2. Biological soil amendments
 - The FDA is conducting risk assessments and is currently accepting National Organic Program standards.
 3. Sprout production
 - Sprouts have their own section because they are very difficult to produce safely. Typically the seeds are the source of the contamination, and the bacteria can be inside the seed coat so not removable via surface sanitizing of the seed.
 4. Domesticated and wild animals
 - Farmers need a plan to control risk from farm animal incursion into fields.
 5. Worker training & personal hygiene
 - Same standards apply to imported produce.
 6. Tools, equipment and buildings
 - Cleanliness
 - Smooth, cleanable contact surfaces

It is not currently known how many farms in Minnesota will fall under the Produce Rule. Some potential hurdles in implementation and interpretation at the state level:

- There is no regulatory structure within states yet for the implementation of FSMA. MDA is trying to align its staff to match the FSMA categories. Inspections will be coordinated with the FDA:
 - Retail Food
 - Manufactured food
 - Feed manufacturers
 - Produce Rule
- “Wholesale” in the legal sense in MN means sale to a third party intermediary between the producer and the end-consumer. Under the FSMA Qualified Exemption, food sales to “qualified end users” are exempt from the Produce Rule, even though some of these types of sales are “wholesale” sales.
 - What will happen in the case of purchases of produce by schools or childcare facilities from a farmer who is exempt from FSMA?
 - The buyers can look at other voluntary verifications, audits, etc. held by the farmer.
- Mike Lilja asked if information would get out through the annual farmer conferences, and if MDA was prepared to do outreach. Ben Miller noted that FDA is offering grants for outreach and education; grant applications are due in June.

MDA Dairy & Meat Inspections Updates

Nikki Neeser and Jennifer Stepes

- FSMA will have no effect on meat inspections, but Grade A and Grade B dairy plants are affected by FSMA.
- The MDA meat inspections program will undergo its 3-year on-site audit by the USDA beginning on March 21.
- The MDA received Minnesota funding for meat inspections, but this time the USDA did not fully match it. USDA matched only \$24,000 of the \$250,000 requested. That means they can't hire as many new inspectors as they had hoped.
 - Some hiring issues resulted in a vacant inspector position in SE MN
 - Some plants seeking Equal-To inspection decided to go with USDA inspection instead, which helped ease pressure on MDA staff.
 - Two new plants are coming online in the metro area.
 - Four more in the outer-ring metro should be coming online within a couple of months.
 - One plant in western MN is taking steps toward inspection; the operator went to HACCP validation training.
- Poultry plants
 - Most are seasonal and some only process for their own production.
 - The U of MN Meat Lab withdrew their poultry inspection.
 - Current locations of Equal-To poultry plants: NERCC, Hector, Vernon Center, Brainerd.
 - There has been an inquiry about inspection for a mobile poultry slaughter facility.
- Question about on-farm processing of poultry. Jennifer Stepes explained the exemptions available to farmers.

Raw Milk Lawsuit

Nikki Neeser

Background: The MDA attempted to inspect a farm that was believed to be selling dairy products. The farmer refused entry to the MDA. The MDA obtained an administrative search warrant. The farmer refused entry with the warrant and challenged the MDA on Constitutional grounds.

The MDA is waiting for the judge's decision following a hearing in October 2015. The decision will probably be appealed regardless of which way it goes. Nikki noted that this is not necessarily a raw milk case. It includes aspects such as manufacturing of food without a license, and retail sale of food products that are not product of the farm. Kathy Zeman said that the plaintiffs are asking the judge to decide what "micro-ingredients" are. If you add just a little bit of an ingredient (salt, for instance); they are claiming the product should still be considered product of the farm.

Question from Michelle Medina about whether you can still buy raw milk if you go to the farm with your own container. Nikki said yes, that is still allowed. The MDA's position is that even if a farm is exempt from all licensing, the MDA still has the authority to inspect.

The case is available online under Cook County, MN court documents.

Funding for LFAC

There was previous discussion about the possibility of MDA including a request for funding for LFAC in its process of preparing a budget request for the Legislature. The budget request would have to be made in September and approved by the Commissioner of Agriculture and the Governor. It was agreed that this could lead to many strings attached, including committee membership stipulations and reporting back to the Legislature. Grant funding could be a more amenable route.

Cottage Food Law Implementation

Kathy Zeman

Following the series of Cottage Food workshops around the state, 540 people have been trained and 40 people registered at Tier II of the Cottage Food Law (\$5,001 to \$18,000 in annual sales).

Kathy sat in on training that was given to delegated agency staff re: Cottage Food Law, and noted the following points:

- Producers registered as Cottage Food operators could have volunteers or employees selling product at multiple markets. Those individuals should have their employer's business card with them in case contact is needed by an inspector.
- Cottage Food operators should bring their recipes to market with them, to help verify non-potentially hazardous food status of the items.
- Cottage Food operators may get a "cease and desist" order if their labeling is incorrect.
Question about how an inspector would know when the label is wrong?
 - The inspector can ask to see the recipe, and recipe ingredients should match the ingredients listed on the label. All allergens in the product must be listed on the label.
 - Visual inspection; if a product obviously contains peanuts, for instance, and the label doesn't list peanuts as an allergen.
 - If label elements are missing; for instance, missing name or address for the Cottage Food operator.
- Exemption from licensing does not mean exemption from inspection. If a Cottage Food operator uses their home as the point of sale, an inspector could come to inspect the home.

Other issues that came up in the roll-out of the Cottage Food Law and training for it:

- Potential stalking issue for Cottage Food operators who provide their home address on their labels. This happened to one person. Possibly this could be resolved by having a complete address on file with the MDA and then listing a PO box address on the label.
- Online training was difficult to accomplish for elderly people and for the Amish community.
- At a fundraiser bake sale, under the wording of the Cottage Food Law, a Cottage Food Producer can't just donate product – they have to be physically present at the sale.

Questions about allowed ingredients for Cottage Food. Can animal products that are product of the farm be used in Cottage Food?

- Raw goat milk? Yes, if it's in a baked product with a kill step.

- Lard? Yes, in a baked product with a kill step. Also, unrendered lard produced under USDA or Equal-To inspection could be purchased from a farmer and rendered by a Cottage Food operator for use in baking.
- Eggs? Yes, in a baked product with a kill step.

Farmers can't mix exemptions. Dried herbs are a good example. If these are sold under the Cottage Food exemption, then the drying and mixing of herb blends can take place in a home kitchen. If a farmer is growing the herbs and wants to sell them under the product of the farm exemption, then the drying and blending must take place in an approved facility rather than in the home kitchen.

WHEW! THE END!