

# Local Food Advisory Committee

## September 10, 2015

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### Present:

Wayne Martin – U of MN Extension  
Sarah Leach – MDH; Food, Pools & Lodging  
Jennifer Stephe – MDA; Dairy & Food Inspection  
Lisa Wetzel – MDA; Dairy & Food Inspection  
Jane Jewett - MISA  
Emily Nachtigal – MN Farmers Union  
Valerie Gamble – MDA; Dairy & Food Inspection  
Tim Jenkins – MDH; Food Access  
Mike Lilja – Sustainable Farming Association  
Stephanie VanDyke – RTC/MDH  
Megan O’Hara – Homegrown Mpls  
Karen Lanthier – U of MN/MDA  
Jim Witkowski – MDH, Drinking Water Protection  
Sharon Smith – MDH, Drinking Water Protection  
Nikki Neeser – MDA; Dairy & Food Inspection  
Greg Schweser – U of MN Extension/RSDPs

### Present by phone:

Kathy Zeman – MN Farmers Market Assoc.  
Suzanne Driessen – U of MN Extension  
Paul Hugunin – MDA; Ag Marketing  
Lauri Clements – Olmsted Co. Public Health

## Agenda

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## Minnesota Food Charter

The Food Access Summit is coming up on November 9 & 10 in Duluth.

The 99 strategies mapped out in the Food Charter can be found on the website:

<http://mnfoodcharter.com>

- These 99 strategies came out of statewide listening sessions
  - Engaging with the strategies means picking the one that resonates most with your own program or interests and working on that.
    - The Food Charter is viewed as a “generative network” – generated by many different groups.
    - Goal of the Charter is to coordinate strategy, not implement strategy
      - Not prescriptive
      - Avoids specific definition of words with multiple meanings, like “healthy”
      - Leaves space for local groups to maneuver
      - Leaves space for differences of opinion and evolving science
- Example: Tim Jenkins is working on the Healthy Food, Safe Food initiative that is connected to Food Charter strategies around nutrition and food safety.
- Right now this is in an assessment phase; surveys and focus groups
  - Will look at needs for development of new resources or improving use of existing resources.
- Example: Rep. David Bly is working on a bill for a Food Policy Council. This relates to the Policy segment of the Food Charter.
- There is a need for measurement of outcomes of the Food Charter; documentation of progress in order to seek support for further progress.

## Minnesota Department of Agriculture Update

Nikki Neeser, Val Gamble

The Dairy & Food Inspection Division got a majority of its budget request to the Legislature last session. As a result of that plus the changes in staffing and budget that happened in October 2014, the Division is splitting into two parts: Dairy & Meat Inspections, led by Nikki Neeser; and Food and Feed Inspections, led by Ben Miller. In practical terms this is how it has been operating for the past year, anyway, so those outside the division will not notice much change.

## Increased funding for meat inspectors:

- One position that was open was filled by an internal shift of a staff member.
- A new position was created in SE MN, based in Austin. This position will support plants that want to add Equal-To inspection, and will reduce inspector travel time.
  - Plants that had been waiting for inspection in SE MN were contacted to inform them of the new capacity. Two plants for sure will be coming into the Equal-To system.
- A field supervisor was hired in central MN, which will expand inspection capacity there.
- Interviews have been done for a metro position.
  - This position isn't actually new; it had gone vacant and there hadn't been funds available to fill it until now.
- The meat inspections staff are considering the best location for the 4<sup>th</sup> position
- They had hoped for 5 new meat inspections positions, but had to shift some dollars to pay for IT infrastructure. This was a required payment to MNIT, the state's central IT support unit.
- The greater inspection capacity will also mean greater capacity to review and approve meat labels. It may not directly translate into increased capacity to clear the backlog in review of animal feed labels; but the feed inspections program also received a substantial funding increase.
- Some firms that have been waiting for inspection have gone other routes, such as USDA inspection.
- Some plants have increased their number of days of inspected slaughter now that inspector capacity has increased.

## Feasibility Study for Meat Processing Training Program at NERCC

Dairy & Food Inspections received \$75,000 per year for two years to work on development of a meat processing training program at the Northeast Regional Correctional Center (NERCC) in Saginaw, MN (near Duluth).

- First year: Feasibility study of development of a training program
  - Limited guidance was given on this. Among other questions, MDA will be looking at:
    - Whether this would address the shortage of skilled butchers
    - Whether meat plants would be willing to hire program graduates who have a criminal record
- Second year: Hire program coordinator to implement the program

NERCC also received funding to build a new meat slaughter and processing facility to replace the existing, old facility on the grounds.

## Food Inspections

Food and Feed Inspections will be combining some behind-the-scenes functions. The Food Inspections program received a 75% increase in funding and is completely reorganizing, splitting into Food Manufacturing and Food Retail sections.

- The current 26 inspectors will be increased to 42, with 30 of those focused on retail and 12 on food manufacturing.
  - Having enough inspectors on the ground should help with timely response to inquiries.
    - Currently there are 350 firms per inspector.
    - In the future there will be 100 to 150 firms per manufacturing inspector; 175 to 250 firms per retail inspector.
  - Hybrid businesses with both retail and manufacturing components will have two inspectors.
    - The goal will be to have the retail and the manufacturing inspector there at the same time, but this may not always work due to inspection schedules. Inspection schedule is based on risk, and if the retail and the manufacturing components are at different levels of risk, they will have different inspection schedules.
  - Goal for hiring is to have all new inspectors hired by the end of 2015.
    - Program managers were hired in August and have already started.
    - Food manufacturer field supervisor candidates have interviews starting next week.
- Other new positions to be hired:
  - Third full-time Plan Reviewer
  - Compliance officer who can help with food label review
  - Licensing liaison position
    - Will be the initial contact for start-up businesses
    - Looking for technical knowledge + willingness to talk on the phone

Discussion of position requirements and interest in the positions:

- Sarah Leach noted that MDH hired three new inspectors in the metro and had 100 applications.
- Requirements for MDA inspectors are a B.S. in some science field; or for meat and dairy inspectors, 15 years experience in a related field is also accepted.

- Requirements for MDH inspectors are a 4-year degree which can be a B.A. if it includes enough quarter or semester credits in the sciences; and must sit for the Registered Sanitarian or Registered Environmental Health Specialist/Sanitarian exam.
- Positions will be posted on the Minnesota Environmental Health Association website, <http://mehaonline.org>

## Bush Grant Update

Karen Korslund, Stephanie VanDyke, Jane Jewett

- Karen and Stephanie have been hired to work with MDA and MDH, respectively.
- Val Gamble and Sarah Leach have been helping Karen and Stephanie get acquainted with their agencies, departments and staff members, arranging for work space and for “shadowing” of inspectors.
- The first Bush Grant advisory committee meeting was held on July 21. Karen and Stephanie were tasked with conducting interviews of local food entrepreneurs to get their take on navigability of the regulations and licensing system.
- The next advisory committee meeting will be Sept. 21; Karen and Stephanie will have results of six case studies to present.

## Cottage Food Law

Kathy Zeman, Suzanne Driessen

Minnesota Farmers Market Association (MFMA) has been working on a Non-Potentially Hazardous Foods list. Along with that, the MFMA for the first time has purchased errors & omissions insurance for its board.

Roll-out of the new Cottage Food Law was not smooth for the MFMA. The July 1<sup>st</sup> deadline was too short to allow for the education and conversations that needed to happen. Lots of markets were unhappy with the change, but where MFMA was able to have the conversation with them, they understood and accepted it.

### Two lessons learned:

- 1) There needs to be a 90 to 120-day wait period before implementation of the law
- 2) The word “individual” in the new law precluded LLCs from registering as exempt under the new law. This immediately became a problem for sole-proprietor bakers who had been told several years ago by their insurance companies to form LLCs for better liability

protection; now they can't register as exempt under that LLC. The former Pickle Bill used the word "persons" instead of "individuals," which allowed the LLC.

- a. One major concern of the LLC people is that they may have employees or volunteers do the selling for them at farmers' markets. The MDA agreed to a work-around; employees or volunteers who are only selling product and not making product do not have to register and take the training.

The Cottage Food exemption is for individuals. If a family of four works together on producing foods under this exemption, then all four individuals take the training and all four submit the form requesting exemption, and they each pay the \$50 fee if they as an individual are operating in the \$5,001 -- \$18,000 range of sales.

- There's a possibility that a family could have the adults selling in the higher range and paying the fee; and the children selling in the lower range and just claiming the exemption – or vice versa.

## Training

- MFMA is planning a major training workshop this fall about the new law. Three fact sheets have been created to deal with the rollout of the law.
- Training will affect liability insurance. The MFMA's insurance underwriters will recognize the value of a certificate of training.
  - Premiums will go down because MFMA will be able to prove that farmers' markets and vendors are following the legal mandate for training.
  - Other states are now looking at offering group insurance policies for food product liability, similar to MFMA's. That could broaden the pool of insured and lower premiums further.
- The training materials produced by the MDA are written to an 8<sup>th</sup> grade level.
  - Twelve years of age is about the youngest that the MDA would accept as a trained individual who could claim an individual exemption.
  - This one-hour training is currently just a PDF file that someone reads and verifies that they read. MDA is looking at adding a scored exam to the one-hour training that will be required for people selling at the ≤\$5,000 level.
- Extension Food Safety educators are working on the training that will be required for the \$5,001 to \$18,000 level of sales.

- There will be several training modules that focus on different types of food products: baked goods, acidified & canned products, jams & jellies, and dehydrated foods.
- Each module will be about 2 hours long, for a total training of 8 hours if someone took all four.
- Modules will cover production, packaging, transport, signage and labeling.
- These will be offered as in-person trainings in 2016, at locations in NW, NE, SW, SE, and metro areas of MN. They may also be offered in conjunction with other conferences and workshops.
- Online offering of the longer training modules isn't decided yet.
- Question asked about Certified Food Manager (CFM) training and how available that is in MN.
  - Sarah Leach said it is offered thousands of times. The MDH has a requirement for CFM instructor qualifications and renewal of credentials, but they don't monitor how many courses each instructor offers.
  - Some CFM trainings are in-house only; for example, a food franchise may offer the training to its employees.
  - The exam that people take for their initial CFM certificate must be accredited.

## Registration process

People who registered right away didn't go into the MDA's database. New registrations now go into the database.

- Val reported that 238 people registered under the Cottage Food law. This is lower than the number anticipated by MDA. Kathy Z. noted that MFMA will do a big push this fall and should see that number come up.
- Five to 10 people registered for the exemption at the higher, \$5,000 to \$18,000 dollar range.
- It's important to recognize that this is a registration for an exemption, and not a license. Nothing sold under the Cottage Food exemption should be sold to a food business; sales can only be to individual customers.
- Noted also that it is illegal to lie on an application. This law has been on the books for a long time but hasn't surfaced with regard to farmers' markets until this new law requiring registration. MFMA will be informing people that they need to choose the correct sales range when applying for their Cottage Food exemption.

## Local Food Sales Fact Sheets

Kathy Zeman, Jane Jewett

Minnesota Farmers Market Association is planning a series of about 23 fact sheets that explain the regulations for sales of a wide variety of products. About 3/4 of these fact sheets will deal with food products, and the remainder with non-food items.

- The goal is to have a fact sheet to address every possible type of product that people might sell at a farmers' market.
- Fact sheets will be available online as PDFs. The online portal to them will probably include a brief description of each one and then a link to the PDF. Kathy Zeman, Suzanne Driessen, and Jane Jewett will coordinate on online hosting for the fact sheets.
- The fact sheets will be added to MISA's Marketing Local Food book.
- FMPP (Farmers Market Promotion Program) funding has been secured to create the fact sheets and offer training. Eleven sites have been identified as training locations; no vendor will have to travel more than 50 miles for training.

## Bison Processing and Cross-Border Sales

Nikki Neeser, Lisa Wetzal, Jennifer Stepes, Jane Jewett

MISA received a question about cross-border sales of bison. USDA considers bison and other historically game species "non-amenable" to inspection. Minnesota considers farm-raised game species as "amenable." USDA offers voluntary inspection for non-amenable species, and charges a fee for that voluntary inspection. Minnesota requires inspection of commercially raised non-amenable species and does not charge for the inspection.

States with Equal-To inspection usually recognize each others' inspection in the case of the non-amenable species. Farm-raised game processed under Equal-To inspection in Minnesota can be sold in South Dakota or Wisconsin. Farm-raised game processed under Equal-To inspection in South Dakota or Wisconsin can be shipped across state lines into Minnesota and sold in Minnesota.

If the non-amenable animals are processed in a state with no inspection required and they are not processed under voluntary inspection, those products could not be sold in Minnesota. Uninspected meat from amenable or non-amenable species cannot be sold in Minnesota.

Wild-harvested game cannot enter commerce in Minnesota. The one exception is the venison donation program. Hunter-harvested venison can be processed at approved meat processing plants for distribution by food shelves and food banks.

## Further processing:

- Sausage made from non-amenable species but with beef or pork added would be considered “amenable” by USDA and must be made under inspection.
- Cured sausage made from non-amenable species – elk, bison, etc. – may need to have meat from an amenable species added in order to meet the definition of a “meat” that can have nitrate added to it. By USDA definition, tissue from non-amenable species is not “meat.”

## Cider and Fruit Juice Production and Marketing

Val Gamble, Jane Jewett

### Question: Can cider and fruit juice fall under Minnesota's Cottage Food Law?

Answer: If they are high-acid (pH < 4.6), properly heat-treated fruit juice and cider are considered not potentially hazardous; so yes, canned high-acid fruit juices would qualify for the Cottage Food exemption. This exemption would not allow sale of raw juice or cider. It would have to be water-bath canned.

### Question: What are the regulations on raw cider?

Answer:

- Usually raw cider has off-farm ingredients added (potassium sorbate or sodium benzoate) as a preservative. If this is the case, the raw cider is a mixed-ingredient product that is not considered “product of the farm,” so production and sale of it would need to be licensed.
  - If any sales of the cider are wholesale sales – sales to a food business that will re-sell to the end consumer – the cider cannot be raw. Wholesaling of cider is subject to Code of Federal Regulations 21 (21 CFR 120) which states that there must be a 5-log reduction step in the production of the cider. This means the cider must be treated in such a way that there is a 10 to the 5th power (100,000) –fold reduction in microbes as a result of the treatment. Cider would not meet the definition of “raw” after such a treatment, which would almost certainly have to be a heat treatment or UV-C radiation treatment.

- If all sales are retail sales – sales by the cider producer to the end consumer – raw cider with preservatives added can be sold under a license.
  - The licensed production and sale of the cider would be subject to the MN Food Code.
  - The cider would have to have a warning label stating that it is not pasteurized.
  - Refrigeration would be required.
- There is an FDA determination that is being used for some raw cider sales in grocery stores. Cider being sold in a grocery store would ordinarily be a wholesale sale of the cider by the cider producer to the grocery store and then retail sale by the store to the customer, and as such would not be allowed under 21 CFR 120. However,
  - IF the cider-selling entity leases a refrigerated space in the grocery store;
  - AND if the cider-selling entity has its own retail food handler license for that space within the grocery store;
  - AND if the cider-selling entity has an owner or employee physically present at that space during all times that cider is sold from that space within the grocery store;
  - THEN, the Food & Drug Administration has determined that this is a retail sale and raw cider can be sold.

(Here is the link to the Q and A document from FDA:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Juice/ucm072981.htm#B>)

- If raw cider is produced and sold by the farmer with no added off-farm ingredients and sold only at retail, then it is “product of the farm,” not subject to licensing, and not subject to the Minnesota Food Code.
  - Even though this would not be a licensed activity, Minnesota Department of Agriculture would expect to conduct an annual inspection of the cider-producing facilities. (License and inspection are not the same thing. They usually go together, but not in the case of “product of the farm.”)
  - MDA would require that the facility meet Good Manufacturing Practice (GMP) standards.
  - The raw cider would have to be labeled with the required warning statement that it is not pasteurized.
  - Refrigerated storage of the cider would be required.

## Fact Sheet: Serving Locally Grown Produce in Food Facilities

This fact sheet was issued jointly by MDA and MDH in 2010. It contains an error in the way that it describes activities that can be done with or without a license.

The fact sheet defines “Limited Processing” as: “...sorting or trimming (e.g., topping carrots or husking corn) as part of the harvesting process; or washing (e.g., to start the cooling process or to remove extraneous soil or debris).

The fact sheet defines “Processing” as: “...slicing, heating, canning, freezing, drying, mixing, coating, bottling, enrichment, or similar actions. Any addition of off-farm ingredients (e.g., salt) prior to use or sale is also considered processing.”

The fact sheet states, “People who sell or donate produce from a farm or garden that they rent or own are exempt from licensing. This includes growers selling their own whole produce or produce with “limited processing” (as described below.”

It also says, “People who sell or donate produce that is “processed” (as described below) are normally required to be licensed.”

In fact, these statements introduced confusion about the actual trigger for a licensing requirement. Addition of off-farm ingredients triggers the requirement for a license. Processing does not.

Processing of the farm’s own produce with no added off-farm ingredients does not trigger the license requirement, so this activity would not be subject to the Food Code – but would need to follow Good Manufacturing Practices (GMPs).

The fact sheet will be revised to correct the error.

## Water use

On-farm processing of produce gets into questions of approved source of water.

A farm’s well would need to be evaluated to determine if it could be an approved source of water for on-farm processing of produce. The MDH would require the construction record and evidence that isolation distances have been maintained. Regional differences in geology could come into play in determining if a well’s construction was adequate for it to be an approved source of water.

Annual sampling of water would likely be required. For public water supplies, community wells and non-community wells are both sampled annually; but the things tested for depend on the definition of the well's use. Non-transient wells are tested for organic compounds in addition to microbiological testing.

### **Question about food service production and sale of raw juices, blends, smoothies, etc.**

- \* MDH would require date-marking of any juices or juice blends not served immediately.
  - \* Approved sources of ingredients must be used.
  - \* Any health claims made on the product's label would have to comply with labeling laws.
  - \* Health claims could be made on a menu, poster, or other item separate from the actual food/beverage item
  - \* In some cases there have been questions about whether an ingredient is actually a food, or not.
  - \* Example: spirulina powder; this is used in some blended drinks and MDH inspectors weren't sure how to classify it.
- "Additives" vs. "Ingredients:" – if something is an "ingredient," there are less stringent rules about its use in a food product.