

Local Food Advisory Committee

September 5, 2014

Present:

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Sarah Leach, MDH
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Lisa Wetzel, MDA
Jennifer Stephe, MDA
Lauri Clements, Olmsted County
Valerie Gamble, MDA
Greg Schweser, Regional Sustainable Development Partnership
Nikki Neeser, MDA
Kathy Zeman, Minnesota Farmers Market Association
Paul Hugunin, MDA
Colleen Paulus
Mike Lilja, Sustainable Farming Association
Tim Jenkins, MDH

Present by phone:

Ryan Cox, U of MN
Marilyn Johnson, Minnesota Fruit & Vegetable Growers Association

Summary:

- Licensing is required for food service to the public in all cases, except potluck meals and sampling, whether people are charged for the food or not.
- Food service licenses prohibit use of residential well water. For on-farm food service, there is a potential pathway for a residential well to be re-classified as a public water source.
- Which license(s) a food business needs is determined by the interactions between type of sales and the physical location of food processing and/or sales. See Food Vendor Scenarios, below.
- Food manufacturing falls under the jurisdiction of the FDA and food manufacturing facilities must be registered with FDA; unless all ingredients are produced in-state and all sales are in-state.

- The MDA's Meat Inspections Program is submitting a budget requesting increased funding to hire up to 7 new inspectors, conduct outreach and education, and conduct a study to determine the best organizational and funding structure for the program.

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On-Farm Food Service

Jan Joannides and Jane Jewett are working with two writers; Lisa Kivirist of Inn Serendipity Bed-and-Breakfast, and Rachel Armstrong of Farm Commons. A first draft of two of the chapters raised a number of questions about regulations.

- Exceptions to the requirement for licensing to serve food to the public: 1) Potluck meals 2) Sampling.
- Special Event Food Stand license discussion
 - Should the SWROC get this license for their burger & brat BBQ event? -- Answer: yes.
 - The license allows up to three separate events on up to ten days total.
 - Preparing and serving of food is the key to whether this license is required. The license is needed regardless of whether food is charged for, or whether it is charged as part of the admission fee for the event.
 - A caterer or food truck coming in to serve at an event would (or should) have their own licenses.
- Caterer or food truck coming on to a farm to serve an on-farm dinner?
 - Caterer or food truck would (should) have their own licenses, as they would for serving at any other event.
 - If any food preparation will take place at the farm outside of a licensed food truck, licensing would be needed for that.
 - A Seasonal Permanent Food Stand license could work for a farm that will do more on-farm meals than allowed under the Special Event Food Stand license.
- Brick oven pizza served on the farm?
 - NSF-approved equipment would be required. There are NSF inserts that can be placed in a brick oven structure.
 - Plan review would be required
 - Food Code requires cleanable, non-porous ceiling, walls and floor for food service

- Question about whether a three-sided structure to house the oven would work for an outdoor patio venue for on-farm “Pizza Night?”
 - Outdoor venue would eliminate the HVAC requirements for ventilation
- Water source for on-farm food service is an issue.
 - Special Event Food Stand license specifies that residential well water may not be used.
 - There is a process that offers the potential to get a residential well re-classified as a “Non-Community Transient Public Water System.”
 - The location must serve a minimum of 25 people on a minimum of 65 days per year.
 - The well construction record must be submitted and must qualify.
 - Water testing must be done on a schedule approved by the MDH Well Unit.
 - More information is available on the MDH website: <http://www.health.state.mn.us/divs/eh/water/ncom/>
 - Some delegated authorities are allowing residential well water use for a Special Event Food Stand if the water is tested prior to the event.
- Farmers may consider buying a licensed food truck in order to offer on-farm food service
 - The license is non-transferable, so a new buyer will need to go through inspection and licensing.
 - Purchasing an existing food truck is a risk. What if the license has actually lapsed or the truck is not up to code?
 - A prospective buyer can get the most recent inspection report on the vehicle from the MDH.
 - Some delegated authorities will do pre-buy inspections.
 - The MDA will do pre-buy inspections.

Food Vendor Scenarios

These scenarios have been collected for the purpose of clarifying license requirements for vendors at the FEAST Local & Regional Food Trade Show that will be held in Rochester in Nov. 2014. The scenarios are also applicable to other festivals, community events, and farmers’ markets.

1. Custom-exempt meat processor with a retail counter makes and sells BBQ sauce from his facility. He wants to also sell the sauce at farmers’ markets and festivals.

* Retail Mobile Food Handler license is required for both farmers’ market sales and sales at this event.

* Other considerations: is the product shelf-stable or refrigerated? Is it acidified? The vendor may need an approved HACCP plan for the process.

2. Jelly/Jam vendor makes the products in a rented commercial kitchen, sells at an on-farm store, and sells at farmers’ markets.

* Three separate licenses will be needed, because there will be inspection of three separate physical entities:

- 1) The commercial kitchen
- 2) The Store
- 3) The mobile unit used for farmers' market sales.

* Internet sales could be tied to the location of the commercial kitchen, so if product manufacturing and Internet sales from that location were the only activities, one license would be required.

3. Farmers' market meat vendor -- a farmer is selling cuts of pork, sausage, bacon, and ham at three farmers' markets out of a mobile trailer. The meat is processed at a state Equal-To facility.

* One license; Retail Mobile Food Handler

4. A vendor from Wisconsin sells pickles, jam & jelly, and baked goods at farmers' markets in SW WI and SE MN.

* Baked goods – the Wisconsin farmer can use the M.S. 28A.15 Subd. 9 exemption and sell home-baked items, up to \$5,000 per year in total sales, at Minnesota farmers' markets.

* Canned goods – the “Pickle Bill” specifies that items sold under this exemption must be home-canned or home-processed in Minnesota. Wisconsin farmers cannot use this exemption.

* Wisconsin farmers who want to sell canned goods at Minnesota farmers' markets would need a Wisconsin license, would have to make the products in a commercial kitchen in Wisconsin, and would need a Minnesota Retail Food Handler license.

5. A farmer from Wisconsin sells fresh vegetables at farmers' markets and delivers CSA shares in Minnesota.

* No license needed if all of the CSA products are product of that farmer's own farm.

* Discussion of whether shelled nuts would be allowed as a CSA product. In-shell nuts are a raw agricultural product. MDA currently also views shelled nuts as a raw agricultural product, considering shelling of nuts to be “limited processing” similar to husking of ears of corn. Mike Lilja stated that in Wisconsin, a hazelnut business he's involved with is having to develop a HACCP plan for producing shelled nuts.

6. A restaurant chef makes salad dressings, flavored vinegars, and other sauces in the restaurant kitchen. The products are offered for sale in the restaurant. The chef wants to also sell these sauces at community events.

* Shelf-stable vs. refrigerated nature of the products would be a question. Approved HACCP plan would be needed.

* The restaurant would be operating under an MDH license for food service, and food service

would most likely be >50% of the business income, so the restaurant would remain licensed under MDH but with food manufacturing and retail sales taking place at the same site.

* A Retail Mobile Food Handler's license would be needed to take the product out of the restaurant to sell at community events or farmers' markets.

7. An apple orchard with an on-farm store/cafe produces both take-n-bake frozen apple pies and already-baked apple pies on site for sale in the store; and serves slices of pie in the cafe. They also sell frozen pies at wholesale to local grocery stores and resorts. They want to set up a mobile unit to sell frozen pies, baked pies, and serve slices of pie at farmers' markets.

* Assume that product sales are a greater percentage of the business than the food service in the café. Then the on-farm location will be licensed as Retail Food Handler or Wholesale Food Handler, depending on whether in-store sales or wholesale accounts are the majority of the business.

* For the mobile unit at the farmers' market, assume that >50% of total sales are from slices of pie served to customers. The mobile unit will be licensed by the MDH in that case.

8. A butcher/meat vendor or business expands from fresh meats into deli and prepared foods from meat products. They also sell frozen vacuum-packed meat products out of a freezer.

* Retail Food Handler license for the store location.

* If this business wants to take frozen sausage products to the FEAST show to sell, they will need a Retail Mobile Food Handler license.

9. Mushrooms! Wild harvested vs. farm-raised. Additional twist: farm-raised 'wild' mushrooms.

* Sale of wild-harvested mushrooms requires a certification course in identification of wild-grown mushrooms.

* No courses are currently offered in Minnesota. There is a morel ID certification course offered in Iowa.

* Farm-raised mushrooms are "product of the farm" and can be sold.

* Wild-harvested greens? (e.g. nettles, purslane, dock) -- Okay to be sold as long as they are "product of the farm" and not, for example, ditch-harvested greens.

10. So of course to be forward-thinkers: marijuana brownies if the marijuana is raised on your farm
..... ;-)

* Hmmmm. Other regulations come into play.

* Legislation was floated to allow sales of wine at farmers' markets, but it did not pass.

* City of Minneapolis allows sampling of wine at farmers' markets.

* “Temporary Intoxicating Liquor License” allows sale of wine and beer by the glass, but no bottle sales.

* Some provision for special event sales – at Savor Minnesota event, for example, one customer can buy a limited number of bottles of wine.

Ketchup Production Example

Mike Lilja described a scenario developing with the Crow River Chapter of the SFA: they are considering launching a line of ketchup to be sold at the Garlic Festival next August as a test market, and then potentially into stores.

- Manufacturer’s license needed for the ketchup production at a commercial kitchen
- Retail Mobile Food Handler’s license for the Garlic Festival sales
- Allow at least two weeks of lead time to get the license.
- May require registration with the FDA. Lauri Clements offered an example of a caterer she worked with who owned a licensed building and produced a product for Internet sales; because product was being sold into other states, he had to register with the FDA.
- If all ingredients come from Minnesota and all sales take place in Minnesota, the FDA does not have jurisdiction. However, this is a difficult standard to meet because most products include out-of-state ingredients (salt, for example).
- If there is an illness outbreak associated with a product, FDA may look far back on the supply chain to claim jurisdiction. Example: if Gedney vinegar, a Minnesota product, is used to produce a salt-free ketchup with all ingredients from Minnesota – but some ingredients used by Gedney to produce its vinegar come from out-of-state – the FDA could claim jurisdiction on the ketchup made with Gedney vinegar.
- Registration with the FDA is free; licensing still comes through the MDA.

Potential for Changes to Licensing Process

Proposed Changes in Approach to New Applicants

- Kathy Zeman brought up some suggestions from Kitty Baker, a farmer/food entrepreneur in SE MN.
 - A hotline for would-be food producers to advise on and pre-approve equipment purchases to be sure they meet standards. This would take some staff, expertise and finger on the pulse of upcoming producer situations.

- Create a list of all licensed kitchens in Minnesota complete with contact info for start-up food producers to consider.
- A team to help launch start-ups or help existing food producers at key point in scaling up.
- Colleen Paulus suggested a need to re-work the funding model for food safety in MN to give inspectors the time and resources to educate operators (farm-to-plate) about food safety and how to navigate the system. Current funding structure and staffing structure pushes outreach efforts to the bottom of the priority list, even though customers place outreach at the top of the list.

Proposed Merger of MDA and MDH

- Colleen Paulus has been mulling ideas for a merger of the departments of Agriculture and Health. One goal would be simplification of licensing: having a one-stop shop for licenses.
- Noted that this was tried in Wisconsin and didn't work; the two departments split back apart after just a couple of years.
- There would need to be a feasibility study conducted to explore how to do a merger. Michigan and Kansas have successfully merged these departments.
- Some obstacles that would need to be overcome:
 - MDH has delegated authorities; MDA does not and cannot.
 - Fee structures are different between the two departments and also may be different in delegated authorities.
 - Delegated authorities may offer additional services. For instance, Olmsted County pays extra into the budget for inspectors in order to have a higher level of service.
- Colleen would like to see a proposal to the Legislature for funding to study a possible merger.
 - Jan Joannides will look into the possibility of a Bush Innovation Grant; deadline is in October.

Meat Inspections Budgetary Needs

led by Jennifer Stephes and Nikki Neeser, MDA Dairy & Food Inspection Division

- Staffing needs are increasing. There is a desire among plant operators for increased number of days of slaughter under inspection
 - There are custom-exempt plants that want to make the jump to Equal-To.
 - There are Equal-To plants that want to offer more days of inspected slaughter.
 - The peak number of Equal-To plants was about 73, and that was several years ago. Some plants have dropped out, but the remaining ones have increased production so that total production is similar.
 - There are 240 custom-exempt meat plants in MN.

- Nikki Neeser’s request to the Commissioner of Agriculture will include funding for more inspectors, funding for outreach, and funding for a study to determine the best funding structure for the meat inspections program.
- 6 to 7 additional staff would be needed to act upon all of the existing requests for inspection and the plants that are nearly ready to put in a request.
- Meat processing plants have the option to go to USDA inspection, but many don’t.
 - USDA requires a dedicated office, shower, and bathroom for the inspector; the Minnesota Equal-To program requires only a dedicated filing cabinet.
 - MN Equal-To inspectors have more latitude to do education and provide advice to plant owners on how to fix problems that are identified.
 - USDA is required to provide inspection to any plant that requests it and meets the standards; but has in some geographical areas seemed reluctant to accommodate small meat plants.
- The State of Minnesota is offering livestock investment grants and hopes to see increased livestock production.
 - AGRI grants name meat processing plants as a priority area for funding. It seems like low-hanging fruit to get the inspections program built up to a level sufficient to handle existing meat processing capacity.
 - Important to have a range of sizes of meat processing facilities. It’s difficult for small-scale farmers to get into larger plants because of minimum lot size requirements.
 - There are questions about whether there are enough animals available for some of these plants to have enough through-put to be profitable.
- How to pay for inspections? User fee vs. public support
 - It is a public good to have these plants available and have them inspected.
 - Currently there is no charge for inspection. Farmers may at some point be asked to pay all or a portion of inspection cost. A rough estimate of cost, based on number of livestock inspected in 2013, would be \$6 to \$10 per head for beef cattle.
- How long does it take to train an inspector?
 - Depends on qualifications and background of the applicant
 - Majority of the training is hands-on, in the field with another inspector.
 - The inspections workforce is very segmented; cross-training could be useful – but – there are so many specialized training requirements under FSMA that it becomes very difficult to do all of the cross-training.
- Need for a sustainable organizational structure.
 - Nikki Neeser is working on a staffing model and organizational structure.
 - Colleen Paulus noted that MDH reorganized a few years ago, informed by an “incident command” model. That model recommends no more than seven reporting levels.
 - It’s helpful to draw out the organizational structure, goals, and 5-year plan. Having these things in place also helps with funding. The more information that can be provided to legislators, the better.

Action item for the non-agency members of LFAC: Draft a brief survey to go out to livestock producers, to assess level of use of custom-exempt and Equal-To plants and whether access to processing is a limiting factor for meat sales.

Request by Kathy Zeman: The Food Inspections side of DFID should also provide this group with information about needs and their budget request so that the community-based groups can include that in contacts with legislators.