Local Food Advisory Committee

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306 Borlaug Hall, St. Paul Campus, University of Minnesota

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Regulatory Q & A

Fruit juices under Cottage Food Law

A question came up this fall as orchards were preparing for on-farm festivals. Can raw fruit juices be served?

- There is a lot of foodborne illness outbreak history with raw fruit juices, so they are considered potentially hazardous even though the pH is <4.6. Because of the potentially hazardous designation, raw juices are not allowed under Cottage Food law.
- If the juices are pasteurized, they could be allowed as Cottage Food. Cottage Food operators must verify their pasteurization process: temperature held at 160^{o}F for six seconds.
- Raw juices could be allowed as product of the farm if all the fruit comes from the farm offering the juice. Raw juice as product of the farm could only be sold at retail. Wholesale sales of juice requires a juice HACCP and the juice cannot be raw.
    - A warning label about raw juice is required for retail sales of raw juice.
- The new Minnesota Food Code (not yet in place) will have a new section, Minnesota Rules 4626.0447, that prohibits serving raw fruit juice to highly susceptible populations. This applies only to licensed food service. Highly susceptible populations include:
    - Children under the age of 9 in schools (For juice only. For all other foods, Highly Susceptible Population still includes Preschoolers but not other children under age 9.)
    - Preschoolers
    - Immunocompromised individuals
    - Senior citizens
- Ben Miller will send to LFAC:
    - FDA juice guide
    - Citations from the scientific literature regarding outbreaks associated with raw juice

Celery juice powder as a meat cure in place of synthetic nitrates

A Minnesota meat processing plant that does custom-exempt processing and retail-exempt meat sales wants to use celery juice powder in its cured meats. An inspector told the owner they could use it in the custom-exempt meats but not the retail.

- USDA has approved celery juice powder for use in meat processing, but the meat must be labeled as “uncured” and “no nitrates or nitrites added.”
    - Under the USDA regulations, meat processed as custom-exempt or under Minnesota Equal-To or USDA inspection can be processed with celery juice powder.
    - Celery juice powder breaks down in meat and releases nitrates, but in a variable manner so the product doesn’t have a defined ppm of nitrates.
    - There are defined parameters for time allowed to cool a product down when processed with celery juice powder, and these are stricter than for products with nitrate cure. For

large-diameter products like ham, it is sometimes hard to achieve the required cooling within the time parameter.

- For retail-exempt meat sales, the regulatory language refers to part of the Code of Federal Regulations (CFR) that specifies use of a federally recognized cure.
    - Celery juice powder can't be used for processing of retail-exempt meat products because it is not recognized as a "cure."
    - Reduced Oxygen Packaging (ROPs) also prohibits use of celery juice powder in place of nitrate cure in the retail situation.
    - Other forms of packaging that are not ROPs may be allowed.
- USDA and Minnesota Equal-To plants have inspectors present on every day of operation and are considered lower-risk operations than retail-exempt processors, which are inspected only occasionally.
    - Under USDA regulations, continuously inspected meat processing plants (USDA and Equal-To) can do ROPs of uncured meats.

Carissa Nath of AURI would be a good technical resource person for meat processors interested in using celery juice powder.

Sarah Leach of MDH is involved in a work group developing a HACCP fact sheet series. She would be interested in any scenarios involving retail HACCP.

Jeff Luedeman at MDA would be a good contact person for the MDA-MDH HACCP work group.

Cottage Food Law: crossing state lines with acid or acidified canned foods

Currently Minnesota's Cottage Food Law prohibits acid or acidified canned foods coming into Minnesota from other states. The rationale given for this in the Extension Cottage Food FAQs is FDA guidance about commercial processing requirements for acid and acidified canned foods made in commercial establishments. However, guidance from FDA states that home kitchens are not food facilities. Therefore, it does not seem that guidance about commercial processing establishments would apply to any Cottage Food.

Discussion:

- The original Pickle Bill in Minnesota prohibited acid and acidified canned foods coming in from other states. The rationale for this restriction at the time was, in fact, the federal restrictions on acid and acidified canned foods in interstate commerce. The language requiring these products to be made in Minnesota was retained in the current Cottage Food Law.
- Acid and acidified canned foods are a higher food safety risk than baked goods, which can come in from other states under Minnesota's Cottage Food Law. As noted in federal regulations, canned foods are sealed products and once they enter interstate commerce, their safety cannot be easily verified by observation of the product. You have to rely on the process used to produce these foods, and therefore the production process is strictly regulated.
- If these products were to come in as Cottage Food from other states, the MDA would not have jurisdiction to inspect the home kitchens where they were made. Therefore, Minnesota's

Cottage Food Law is more restrictive than might perhaps be permissible under FDA guidance that home kitchens are not food facilities.

- The explanation given for no acid and acidified canned Cottage Foods coming in across state lines should reference Minnesota's Cottage Food Law, M.S. 28A.152 Subdivision 1(a)(2)(ii), rather than federal regulations about commercial canning facilities.
- Further explanation, if needed, could reference the higher food safety risk of acid and acidified canned foods. This is described in 21 CFR 108.25 (https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=108.25)

Institutional Demand for Clean Label Products

Jean Ronnei and Catherine Stine

Agricultural Utilization Research Institute (AURI) recently had a project on "clean label" for processed foods. Clean label in the food context usually means limiting the number of synthetic ingredients in products and using alternative formulations that often focus on plant-derived ingredients. Celery juice powder in place of synthetic nitrates in meat products is one example.

Schools can get an app that shows the complete label of food products, and national advertising about clean label has resulted in more schools checking labels. This has been revelatory to many; the ingredient lists are very long.

Minnesota schools have 837,725 students and 51,456 teachers in 544 school districts and 2,422 school buildings, so this is a large market for food. Of the 2,422 school buildings 1,043 are elementary schools, 291 are middle schools, 801 are high schools, and 1,288 are "other" (for example, K-12 schools in small communities.)

There are concerns about waste in pre-packaging of school food portions. Some school food services do "pre-plate:" food is prepared in a central kitchen and distributed out to several cafeterias. Some school food services do "simple scratch" cooking: combining of ingredients like sauces with pasta cooked on site, for example. "Scratch-scratch" cooking is rare at schools.

Now AURI has commissioned a survey of school food service directors to determine their interest in purchasing clean label products. AURI views this is a potential market for locally grown ingredients.

About 25% of survey respondents have been asked to move toward clean label products. There is no official definition of "clean label" and its parameters are debatable. They also shift over time. Fats were of great concern as little as five years ago, but now more attention has shifted to sugar.

- Some consider high fructose corn syrup (HFCS) an additive that is not compatible with clean label; and some are not concerned about HFCS because it is plant-derived and not synthetic.
- Added sugar is a problem for some.
- Biggest concern overall: artificial colors

Discussion:

- For schools and other buyers, a concern is not just what is available locally, but what is available on a regular basis.

    - This may not be a deal-breaker for local food. Schools can serve special items on an occasional (seasonal) basis.
- Concerns about liability are real and serious. Schools don't want to buy direct from farmers if they fear a foodborne illness outbreak as a result.
    - Annalisa Hultberg advocates a conversation between schools and farmers about on-farm food safety practices, in lieu of third-party audits.
    - It has been difficult for farmers to find liability insurance to cover direct sales to schools or other buyers. MN Farmers Union now has a product that covers smallholder farms. Mike Lilja has it; cost is about $550/year.
- Further processing of local foods, and/or moving local products through the distribution chain, could alleviate food safety concerns.
    - Example: AURI is working with food entrepreneurs making a chickpea spread. That could use locally grown ingredients and be offered in schools.
- A perennial concern with further processing of locally grown foods is whether adequate dollars flow back to the farmers. The Minnesota Ketchup Project faced this: there had to be a percentage going to the middleman. How to manage that equation so it's both fair and achievable on both sides – buyer and farmer?
    - If value-added food entrepreneurs can get product into schools, that expands the market for locally grown ingredients.
    - An example of a locally made, clean label product successfully used by schools: JonnyPops, a frozen fruit and dairy popsicle.
    - There are missing links in the supply chain for small and mid-scale food manufacturers. Research by Renewing the Countryside and U of MN professor Rob King showed that small manufacturers are less likely than large ones to source local and regional ingredients.
- Aggregation and distribution of local foods is another potential avenue for getting more local food into schools.
    - This also carries a difficulty of fair price back to the farmer. What percentage does the aggregator get?
    - Schools can use products the farmers can't sell at retail; for example, oversized or misshapen squash.
    - Also concerns re: responsibility/liability – who is responsible for food safety?
    - Example from St. Paul schools: they purchased raw chicken legs and cooked them. There were a lot of concerns about food safety; and the uniformity of the product served to students: they had to use drumsticks and thighs, which aren't the same size or shape.
    - You need to have volume of sales before a distributor is willing to carry a product.
- In Minnesota, a lot of demand for local food is currently being driven by the restaurant trade.
    - Small farmers may have trouble meeting the demands of distributors for both volume of product and third-party audits.
    - Some relatively small farmers are moving toward third-party audits.

The Good Acre

Emily Paul, Nick Mabe

The Good Acre (TGA) is located in Falcon Heights near the St. Paul Campus of the U of MN. It's a food hub that offers a range of services, envisioned and funded by the Pohlad family. In the start-up phase, Pohlad funding was 100%. Currently The Good Acre is 70% self-sustaining, with 30% Pohlad funding. It is on track to be 100% self-sustaining within a year and a half. A main goal of TGA is capacity-building around shovel-to-knife pathways for local food.

Farm to School

TGA recently received a $100,000 USDA Farm to School grant with a main objective of liaising between farmers and school food services. Top 2 issues for food service: liability and price.

Currently TGA has 20 wholesale produce growers participating in a program that commingles and delivers produce to 13 schools, 4 healthcare facilities, 2 colleges, and 1 broadline distributor. TGA's role is to "internalize the chaos" of farm-to-school: managing the variable product from farmers and the variable orders from buyers.

- Furthest farmer from St. Paul is in SE Minnesota
- TGA provides buyers with pricelist, pack size info, and season of availability
- List of available products goes out 2x/week for ad-hoc purchases
- TGA provides buyers with farmer profiles; they step into the programming/marketing/farm to school coordinator role for schools that don't have it in-house

TGA provides services as needed to facilitate farm to school. Sometimes that includes arranging for processing; for instance, TGA worked with the Hopkins school district to get tomatoes processed and delivered. Sometimes that includes intensive training and follow-up coaching for food service staff on how to prepare and serve unfamiliar vegetables, such as parsnips; or how to operate new equipment intended to facilitate use of local food.

Example of culinary training for 24 food service staff on Delicata squash:

- Three people could identify it
- One person had ever tried it
- TGA trainers hand-held 24 people through cooking and eating Delicata squash.
- Focus of training is on efficient breakdown and cooking of produce, not on specific recipes.

Food makers

TGA has a shared-use commercial kitchen facility that currently hosts 16 food-makers. All are making produce-heavy products with locally sourced produce.

- The tenant agreement states that TGA is their supplier of first resort for produce
- TGA is a certified organic kitchen but tenants are not required to be organic; but most follow similar guidelines and practices as TGA.

- TGA could potentially facilitate the provision of processed foods to schools. Price point could be an issue.

Discussion: Rural vs. urban procurement

TGA is fantastic for schools and farmers within its reach, but rural areas distant from the metro have to find other ways to do farm to school.

- The new Food from Farms Toolkit from MISA provides a model of local food procurement for schools or other institutions
- Someone other than TGA has to step into the "manager of chaos" role. If the school doesn't have that capacity, it might be a SHIP coordinator or Extension person.

RSDPs Backhaul Project

Naomi Olive

The U of MN Regional Sustainable Development Partnerships (RSDPs) conducted a survey in 2015 of grocery stores in towns with population <2500. They wanted information about interest and willingness of rural grocery stores to carry locally grown produce. There was a 69% response rate, and many stores were interested but concerned about sourcing, liability, and price.

Survey summaries are available online: https://www.extension.umn.edu/rsdp/statewide/rural-grocery-stores/

Rural grocery stores are a public good in communities, but closure notices are happening weekly. At the same time, farmers are not accessing sufficient markets for their produce and wind up donating or plowing down product.

The Backhaul Project seeks to address both issues by giving rural grocery stores another enterprise as a shipping site, giving stores easier access to local product, and giving farmers a way to access wholesale markets. The Project is testing this concept using the close relationship between two Wadena-based businesses: Russ Davis Wholesale and Mason Brothers. Russ Davis is a produce warehouse and distributor. Mason Brothers is a broadline distributor that serves grocery stores and runs trucks out to many rural grocery stores.

As Mason Brothers trucks make deliveries to rural stores, they can pick up produce delivered by farmers to the stores and bring the produce back to Russ Davis, which purchases the produce. A test case is garlic delivered to Bonnie's Hometown Grocery in Clinton, MN and picked up by Mason Brothers. The RSDPs are studying the logistics and economics of this arrangement.

Distributors are sometimes identified as a barrier to local food-related projects. It's important to note the distributors in this project are going to great lengths to help it succeed. Mason Brothers is keeping small grocery stores alive by continuing to deliver to them, and by sometimes breaking cases of product to give small stores the small volumes they need.

Question: What food regulations might apply to the backhaul concept?

- Using the store as a location for delivery and pick-up of product might qualify as cross-docking, which requires no licensing. MDA's documentation on cross-docking refers to a 24-hour window between drop-off and pick-up. There is some vagueness, however, and the 24 hours is not in statute.
- Could cross-docking apply for product held up to one week? This wouldn't be possible from a quality standpoint with some products, but could be done with a product like garlic. Would the store need licensing in the case of storage for longer than 24 hours?
- The RSDPs should work with MDA to develop answers to backhaul scenarios, so there is consistency around the state in how inspectors approach this.

FSMA Produce Safety Program

Annalisa Hultberg, Val Gamble

The FSMA Produce Safety Rule is in the process of being rolled out. This Rule is similar to the voluntary GAPs (Good Agricultural Practices) that are already in place.

GAPs audits are third-party audits of a farm's production and handling system for specific types of produce. GAPs audits are for the product, not the farm. Cost in MN is $92/hour plus a $50 USDA charge per audit. The average cost per farm is $500 to $600. These are not mandated by federal or state governments, but most distributors and some other types of buyers require the GAPs audit.

The FSMA Produce Safety Rule is mandatory. The principles of on-farm food safety are essentially the same as for GAPs. Many farmers have already implemented many of the food safety practices. The main difference they will see now is more recordkeeping to comply with FSMA. Produce farmers may be exempt from FSMA if they are selling primarily (51% or more of sales) to "qualified end users." Food hubs and distributors are not "qualified end users."

Accurate information about FSMA is available from the FDA and the Produce Safety Alliance (PSA), based at Cornell University. https://producesafetyalliance.cornell.edu/

MDA has a cooperative agreement with FDA to implement a FSMA Produce Safety Rule program, including building a farm inventory and establishing an advisory council. Currently the program has four staff people. They intend to hire two additional staff people, as well as home-based inspection positions and student positions. Produce safety inspections will begin in spring of 2019.

The FSMA Produce Safety Rule has a qualified exemption for farms with less than $500,000 in food sales. "Food" includes cash grain crops, and probably includes animal feedstuffs such as hay. This has implications for farm generational transfer. A next generation coming back to the farm to raise produce had better have their own business structure and file their own Schedule F form.

Pet Treats as Cottage Food

Kathy Zeman, Brett Boswell

Cottage Food registration applications have been coming in with requests to make pet treats. This is not currently supported by Cottage Food Law. Licensing for pet foods and pet treats is handled by a different unit within MDA than licensing for human food, although both units are in the MDA's Food & Feed Division. Pet food licensing is under the Commercial Feed Law in M.S. 25. Cottage Food is in M.S. 28A.152.

- A "pet" is defined as a dog or cat.
- "Specialty pet" is virtually everything else that doesn't fall into the definition of "livestock."
- Horses are considered livestock.

Licensing of pet foods includes label review. There is a $75 annual commercial feed license, plus a $100 annual fee per product for the label review if products are sold in packages of <10 lbs.

Pet treats made with human food-grade ingredients and sold only to end consumers are of low concern to the MDA feed licensing unit.

MN Farmers' Market Association intends to pursue legislation to add pet treats to Cottage Food Law, or to get a similar exemption added to M.S. 25 to cover sale of pet treats by unlicensed individuals. Pet treats would have to be made with non-potentially hazardous ingredients allowed for human food, to avoid the possibility of cross-contamination at farmers' markets and to account for the possibility that items labeled as pet treats might be consumed by humans.

Food Donation Document

Sarah Leach, Lisa Wetzel

MDH and MDA are in the process of revising a 15-year-old document about allowed types of foods for donation to food shelves, food banks, and feeding locations.

MDA and MDH staff working on this document have been in contact with Minnesota's Department of Human Services (DHS), which does audits of food banks. DHS receives pass-through money from USDA to oversee food shelves. Therefore, the document under development will be an MDA/MDH/DHS document.

Sarah and Lisa will be setting up a meeting to work on document development. Contact Sarah if you would like to receive the Doodle poll for the meeting.