

Local Food Advisory Committee

December 14, 2018

<p>Present:</p> <p>Wayne Martin – U of MN Extension Lolly Occhino – AURI Jeff Luedeman – MDA Food & Feed Safety Heidi Anderson – MDA Plant Protection Lisa Dierks – U of MN Extension Nicole Droher – MDA Dairy & Meat Inspection Jennifer Stepes – MDA Dairy & Meat Inspection Angie Cyr – MDH Food, Pools & Lodging Ren Olive – U of MN Extension RSDPs Eric Wilson – MN Food Association Emily Jerve – MDA Ag Marketing Nicole Chimbete – MDH OSHII Kathy Zeman – MN Farmers’ Market Assoc Megan O’Hara Lauri Clements – Olmsted Co Public Health Jane Jewett – U of MN MISA</p>	<p>Present by phone:</p> <p>Gerald Smith – MDH Drinking Water Protection Nick Milanowski – MDA Plant Protection Nicole Neeser – MDA Dairy & Meat Inspection Theresa Keaveny – Sustainable Farming Assoc</p>
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Table of Contents

Topic	Page#
Retail Meat Exemption	2
Meat Collectives	4
Shell Eggs and Highly Susceptible Populations	6
Two Journal Articles about Vendor Behavior and Presence of Indicator Organisms at Pennsylvania Farmers’ Markets	7
Raw Milk Court Case & Implications for Raw Milk Sales	8
First Food Innovation Team Case	9
Wholesale Produce Dealer Program	10

Retail Meat Exemption

Nicole Droher, Jennifer Stepes

The Retail Meat Exemption is a lesser-known aspect of meat regulation in Minnesota.

The group conducting statewide trainings on food regulations under the SARE-PDP grant needs to know the details of the retail meat exemption.

The U of MN Extension Regional Sustainable Development Partnership and others have begun discussing options for more local meat sales within Minnesota, including potential for Minnesota-raised meat to move through retail meat points of sale. The retail meat exemption needs to be understood for that discussion as well.

For the retail meat exemption, the animal carcass the meat comes from has to have been federally or Minnesota Equal-To inspected. Retailers can purchase inspected carcasses or parts of carcasses and do cutting and other processing, smoking, etc. for retail sale to customers.

This is an exemption because the retailer does not have to have continuous inspection by a USDA or MDA inspector in order to cut, process, and sell meat.

- An inspector is always present for inspected slaughter of animals at a USDA or Equal-To plant.
 - Processors do not pay for inspection services at Equal-To plants, although there may be related costs of compliance, paperwork, etc.
 - Processors do not pay for inspection services at USDA plants unless the animal is classified by USDA as “non-amenable” to inspection. Species that were originally wild game (e.g. bison, elk, deer, rabbit) are “non-amenable” and there is a charge for voluntary inspection. As with Equal-To plants, there are costs related to inspection.
- For further processing at USDA or Equal-To plants, there is “continuous” inspection. This means the inspector visits daily but isn’t there 100% of the time. The inspector is getting a daily snapshot of operations.

Wholesale Sales under the Retail Meat Exemption

In most cases when meat or meat products are being sold wholesale, the processor must have continuous USDA or MN Equal-To inspection. The MN Equal-To program includes plants that are processing-only. They are buying in USDA or Equal-To inspected carcasses and doing further processing, and they have an MDA inspector visit on every day of operations. This includes processing of cuts of meat, sausage, cured meats, and products containing meat (e.g. pizza, sambusas).

The retail meat exemption allows retailers to sell some meat products wholesale, up to about \$75,000 of red meat per year and \$56,000 of poultry per year. These annual limits are set by the USDA and change slightly every year.

The allowed wholesale meat sales by retailers are referred to as “HRI” sales – Hotel, Restaurant, Institution.

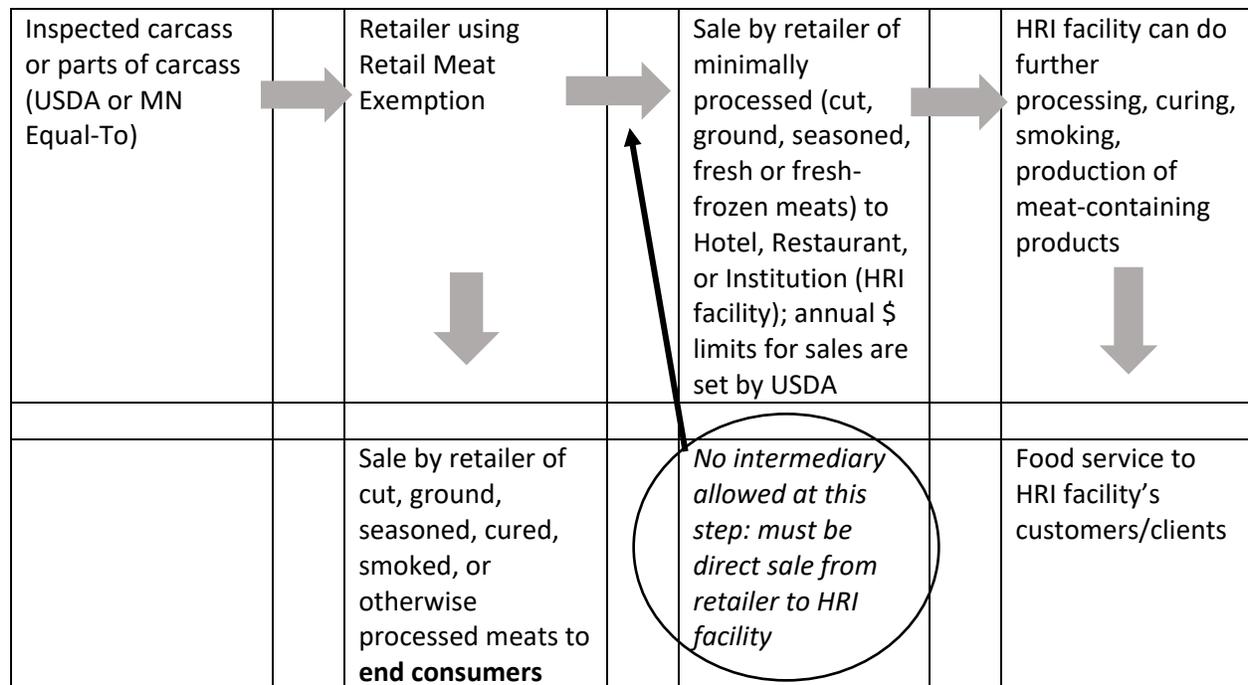
- The HRI sales must go straight from the retailer to the hotel, restaurant, or institution. Sales through an intermediary such as a distributor are not allowed.
 - “Intermediary” would include a farmers’ market or food hub doing aggregation of product; these entities could not sell meat processed under a retail meat exemption.

- The HRI products can only have minimal processing
 - Cut or ground meat is allowed
 - Fresh sausage products are allowed
 - Smoked or cured products are not allowed
 - Cooked or partially cooked products are not allowed

- The HRI facility could buy meat from a retailer and then do its own smoking or further processing of the meat for serving its customers.

- What kind of recordkeeping does the MDA expect to see from retailers using the retail meat exemption, to prove they are not exceeding the \$ sales limits?
 - Compliance issues seen by the MDA usually relate to product type sold rather than the \$ threshold.

Schematic of legal flow of meat through the Retail Meat Exemption



Other Discussion:

- A USDA plant located in Minnesota posts on its website a charge for voluntary inspection of elk, deer, and rabbit; and lists an additional charge for a veterinarian to be present at slaughter of rabbit. Sometimes veterinarians serve as inspectors at USDA plants, but an inspector plus veterinarian requirement was not familiar to the MDA Dairy & Meat staff people.
- The “Prime Act” proposed at the federal level would allow farmers to sell meat wholesale to local retailers such as grocery stores, restaurants, and HRI buyers; from the farmers’ animals slaughtered at a custom-exempt plant. What would be the implications for farmers, custom-exempt plants, and the retail meat exemption if the Prime Act were to pass? (A question for future discussion.)

Meat Collectives

Nicole Droher, Jennifer Stepes

The U of MN Extension Regional Sustainable Development Partnerships have discussed Meat Collectives as part of the larger discussion of increasing local meat sales in Minnesota.

There are several examples of Meat Collectives around the country. Portland, OR has one that has been held up as a model. It’s kind of like a make-and-take party for meat: a bunch of people get together, break down a carcass, maybe do some charcuterie-type things with it, and each person involved gets to take some meat home. There are variations on the model:

- Some are sourcing an animal from a farm, having it slaughtered in a custom-exempt situation, and getting a group of people together to cut up the carcass.
- Some Meat Collectives are organized by an entity that owns a commercial kitchen, so it’s like a workshop offered by that entity.
- Some are more informal groups of people who get together to buy an animal and cut it up together.
- Some involve the farmer as an organizer or host of the event.

MDA’s position on this kind of activity: Wherever the cutting-up happens, that location must have a license.

Discussion on this point:

- Most places in Minnesota don’t have an entity called a “licensed kitchen.” City of Mpls, City of Minnetonka, and City of St. Cloud have a license category called “licensed kitchen.” This is for a commercial kitchen that is intended to be rented out to tenants; the license verifies that the facility has been inspected and approved for renting out.
 - Each individual or business entity that rents the kitchen still needs their own license to operate in the kitchen.

- If there's a kitchen where a licensed business operates, that business's license is not an umbrella that covers all other activity that may take place in that kitchen.
- So, outside of those jurisdictions with a "licensed kitchen" available for rent, there are businesses that are licensed to operate in kitchens – but they won't necessarily be licensed for the activity of cutting up an animal carcass. For instance, a local restaurant would have a license and a kitchen, but the restaurant's kitchen probably isn't licensed for meat-cutting.
 - Would the restaurant even legally be able to allow this use of its kitchen outside of restaurant hours?
- A business entity that has a commercial kitchen facility it rents out, and that offers meat-cutting workshops – say something like The Good Acre but for meat – would need to have a license to organize and host a meat-cutting party.
- What if it's a more informal group of people who get together, acquire an animal, and slaughter and cut it up?
 - That's pretty similar to a live animal market.

Discussion of custom-exempt meat processing plants

- Many custom-exempt plants accept farm-slaughtered carcasses. Farmers can kill, eviscerate, and skin the animal on the farm and transport the carcass to the custom-exempt plant. Regulation begins when the carcass enters the plant door.
- There are some custom-exempt plants that offer on-farm slaughter services: They will come out to the farm; kill, skin, and eviscerate the animal; and take it back to their plant for processing.
- There are some third-party slaughter services that travel to farms to do on-farm slaughter for multiple custom-exempt plants.
 - What if someone is buying an animal from a farmer, and bring their preferred slaughterer with them to slaughter the animal?
 - This would be a preferred practice in some ethnic communities. There might be someone in the community who is known as a skilled slaughterer, and members of that community may want to have that person be the one to slaughter an animal on-farm for them. Could that person "count" as a third-party slaughter service?
 - MDA requires that Kosher or Halal slaughterers have approval from their religious communities in order to slaughter. This is for animal welfare reasons: both of these practices involve simultaneous cutting of carotid arteries on both sides of the animal's neck so that it bleeds out rapidly and becomes insensate. Animals must be brain dead before being shackled and hung. The MDA wants verification that the Kosher or Halal slaughterer can conduct this procedure correctly.

Shell Eggs and Highly Susceptible Populations

The new Minnesota Food Code that will become effective on January 1, 2019 defines “Highly Susceptible Populations.”

- Kindergarten through 12th grade students are not “Highly Susceptible.”
- Preschool children are “Highly Susceptible.”
- Individuals in nursing homes, custodial care facilities, and hospitals are “Highly Susceptible.”
- Restaurant patrons are not a “Highly Susceptible Population,” even if they include preschool children or care facility residents.

Shell egg requirements under the new Food Code:

- 45°F is the cold holding temperature for eggs. This puts the Food Code in alignment with USDA requirements for eggs.
- Cold holding temperature generally for other Time/Temperature Control for Safety (TCS) foods is 41°F.
- In the past, farmers’ market vendors with retail food licenses had to hold eggs at 41°F. Those without retail food licenses could hold eggs at 45°F. Now this is standardized to 45°F for everyone.

Some farmers and farm to school efforts have encountered statements from hospitals and nursing homes that they cannot buy local eggs because they can only use pasteurized eggs for their highly susceptible populations.

- That is not a restriction found in the Food Code. Unpasteurized shell eggs can be used with highly susceptible populations if the eggs are fully cooked. This has not changed from the previous version of the Food Code.
 - For highly susceptible populations, unpasteurized shell eggs have to be cooked promptly after breaking. They cannot be used in a blended product that will be held prior to cooking. For example, if an egg bake is going to be prepared the night before and held in refrigeration overnight before baking in the morning, pasteurized eggs must be used in that situation.
- Nursing homes, custodial care facilities, and hospitals follow federal regulations that may be stricter than the Food Code regarding eggs. These federal regulations are administered by a different division of MDH than Food, Pools, and Lodging.
 - Contact Susan Winkleman at the Health Regulation Division for clarification re: shell eggs in health care facilities.

Two Journal Articles about Vendor Behavior and Presence of Indicator Organisms at Pennsylvania Farmers' Markets

Jane Jewett

The two articles:

Joshua A. Scheinberg, Rama Radhakrishna, Jonathan Campbell, and Catherine N. Cutter (2018) A Comprehensive Needs Assessment of Food Safety Practices of Farmers' Market Vendors in Pennsylvania using Direct Concealed Observations, Self-reported Surveys, and State Sanitarian Surveys. *Food Protection Trends*: November/December 2018. Vol. 38, No. 6, pp. 421-439.

Joshua A. Scheinberg, Edward G. Dudley, Jonathan Campbell, Beth Roberts, Michael DiMarzio, Chitrita DebRoy, and Catherine N. Cutter (2017) Prevalence and Phylogenetic Characterization of *Escherichia coli* and Hygiene Indicator Bacteria Isolated from Leafy Green Produce, Beef, and Pork Obtained from Farmers' Markets in Pennsylvania. *Journal of Food Protection*: February 2017, Vol. 80, No. 2, pp. 237-244. <https://doi.org/10.4315/0362-028X.JFP-16-282>

These articles generated some negative media attention for farmers' markets. To what extent are they relevant to farmers' markets in Minnesota? Will there or should there be any action taken in MN to address concerns raised by these articles?

Review of some key points from the articles:

- Observation of vendor behavior re: handwashing.
 - The most common vendor food safety violation reported by observers was improper use of gloves.
 - Noted that the farmers' market vendors were being observed by sanitarians who were using a checklist relevant to RTE (ready-to-eat) foods that require no bare-hand contact. At the farmers' markets, unpackaged food for sale included whole, raw fruits and vegetables as well as RTE foods. The observers were sometimes only able to observe that vendors' hands were bare, and were not able to tell whether vendors were handling RTE or non-RTE foods. Gloving is not required for handling whole, raw fruits and vegetables; so glove use violations may have been over-reported.
 - Vendors handling money and then handling food without changing gloves or washing hands was the most common violation observed. This is likely to be a common occurrence at farmers' markets in MN as well. Should there be some training?
 - A recently released FDA report provides some context:
FDA Report on the Occurrence of Foodborne Illness Risk Factors in Fast Food and Full-Service Restaurants, 2013-2014
FDA Report on the Occurrence of Foodborne Illness Risk Factors in Fast Food and Full-Service Restaurants, 2013-2014.
<https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/UCM625005.pdf>

- Observations of food safety behaviors at fast-food and full-service restaurants showed 66% of fast-food restaurants and 80% of full-service restaurants had employees out of compliance on personal hygiene.
 - Noted that the restaurant data from FDA are not directly comparable to farmers' market situations. A better comparison for farmers' markets would be retail grocery stores.
 - Minnesota is currently doing risk factor studies on retail establishments and restaurants.
- Observation of vendor behavior re: sanitizing table surfaces
 - Few of the observers witnessed surface sanitizing activities. Vendors self-reported more surface sanitization than was observed. This is to be expected since observers arrived at the markets after vendors were already set up, so surface sanitization would have already happened.
 - About half of PA vendors were reported to use a wood-surfaced display table. This may be different in MN.
 - Microbial testing of meat products at farmers' markets.
 - The 2017 Scheinberg et al. research found *E. coli* in 40% of beef samples and 18% of pork samples.
 - Noted that this was generic *E. coli*, not *E. coli* H7:O157 or other STEC. Generic *E. coli* is not an adulterant of raw beef or pork and is ubiquitous in the digestive tracts of mammals. Data on its prevalence in beef and pork samples is not very relevant to food safety.
 - Cross-contamination at farmers' markets
 - Both PA papers refer to unpackaged raw meats and poultry at farmers' markets. This was perplexing because there are extremely limited circumstances in which this could occur at a farmers' market in MN.

Raw Milk Court Case and Implications for Raw Milk Sales

Kathy Zeman, Nicole Neeser

A court case between the State of Minnesota and a farmer who was delivering unpasteurized dairy products has been getting some attention on Facebook.

Claims are being made that the State of Minnesota lost the case, and this means farmers can legally deliver raw milk to anyone in the state.

The case began in 2013 and has been going through appeals for quite some time. It was recently before the MN Court of Appeals, and was remanded back to district court on a technicality. No one won or lost. It was sent back to be re-tried.

The re-trial at the district court level was just completed, and the MDA prevailed on all points.

The defendant claimed that the MDA was interfering with farmers' rights. Justifications cited for allowing farmers to deliver raw milk:

- Right to sell or peddle products of the farm, under the Minnesota Constitution
- Right to privacy
- Freedom of association

The court disagreed and said the MDA is not interfering with farmers' rights by preventing deliveries of raw milk.

There is a separate court action related to MDA confiscation of the same farmer's milk bottles. That is a property matter and is different from the question of whether farmers can deliver raw milk.

Legal basis for Minnesota's ban on sale of raw milk unless the customer comes to the farm premises:

Minnesota Statute 32D.20, <https://www.revisor.mn.gov/statutes/cite/32D.20> -- Prohibits sale, holding, or distribution of unpasteurized milk products except for occasional purchase by consumers who go to the farm where the milk is produced.

The farmer cannot bottle the milk and store it for customers to pick up. Customers have to bring their own container and fill it at the farm. This goes back to the federal Pasteurized Milk Ordinance (PMO): milk that is bottled for commercial sale has to be pasteurized.

Food & Drug Administration. Grade A Pasteurized Milk Ordinance.

<https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>

First Food Innovation Team Case

Jane Jewett, Lolly Occhino, Lauri Clements, Kathy Zeman

The first official FIT case was heard on November 15, 2018. The business was Jubilee Market and Peacemeals, owned by Judy Harder in Mountain Lake, MN. This is a farm with a building on the farm property that houses a retail store, commercial kitchen, and café. She came to FIT because of confusion about the boundaries on Cottage Food and how to bring Cottage Food sales alongside her restaurant and retail store.

The result from FIT was that she can make Cottage Food in her commercial kitchen, but has to keep it separate from her food service and retail activities. She can display it for sale in her store, but has to leave the store to complete the sale so that there is separation between the licensed retail activities and the Cottage Food.

There's so much confusion when innovative food entrepreneurs start crossing license boundaries. Jane Jewett and Kathy Zeman brought up the possibility of having a "local food enterprise license," with a la carte options and fees to cover things like multiple locations, multiple activities, or special processes.

- MDA licenses are issued according to predominant mode of business, and have fees related to gross annual sales.
- A local food enterprise license would be cross-agency, not just crossing between license types within MDA.

Lauri Clements noted that predominant mode of business came up a lot for vendors in the FEAST local food trade show.

- Boundaries in the law are important for when situations result in potential food safety issues.
- It's helpful if regulators approach people with a potential way forward (i.e. "You can do this IF ..."), instead of just saying "no" or "stop."

Wholesale Produce Dealer Program

Heidi Anderson

The Wholesale Produce Dealer license was discussed at previous LFAC meetings. Generally it is not well known, and not well used.

The Wholesale Produce Dealers Act is in Minnesota Statutes Chapter 27, <https://www.revisor.mn.gov/statutes/cite/27> . It is intended as financial protection for farmers selling milk, eggs, and produce.

- Farmers can file claims if they aren't paid for product they sold.
- The program also offers dispute resolution services.

Enforcement

- Currently there are 115 licensed entities. Anyone buying milk, eggs, and produce in amounts of more than \$12,000 per year is supposed to be licensed and bonded.
- The law is only enforced if someone reaches out or makes a complaint. No one has been fined for not having a license.
- There is amnesty if a business is proactive about getting licensed once they know they are supposed to be.
- The most recent use of the program was in 2010. A farmer sold green beans and didn't get paid, so filed a claim against the buyer, who was licensed by the program.

Marketing cooperatives or other collaborative sales agreements among farmers are exempt. It was previously determined that farmers' markets acting as food hubs would be exempt from this licensing.

There is a concern that this license could be a barrier to local purchasing by rural grocery stores. This was not the intent of the law.

How Might This License Affect the Rural Grocery Backhauling/Cross-docking Project?

- With cross-docking, the farmer is essentially renting space in a grocery store for the product to sit until it can be picked up.

- Invoicing could happen in several different ways:
 - Billing through the wholesale buyer of the product
 - Some direct sales between the farmer and the store
 - Barter between the farmer and store to cover the farmer's rent.

The MDA is seeking advisory committee members for an effort to revamp the law.

- This will be a long process to work on revising the regulations.
- A license holder should be on this advisory committee.
- Send out a notice about this opportunity to the LFAC list.