

KDA Food Regulations Run into Resistance

Earlier this year, the Kansas Department of Agriculture (KDA) proposed a series of four regulations impacting food businesses and food sales. The first three proposed regulations received little resistance, but the fourth generated a flood of calls and letters from concerned farmers market managers, farmers, food businesses, and consumers across the state. That regulation (K.A.R. 4-28-35) would adopt requirements for exempt food sold directly to the end consumer; in other words, direct sales to consumers from farmers market type settings.

“The flood of concerns has moved KDA to announce that it will table the fourth regulation (K.A.R. 4-28-35) in order to fully address the public comments received,” stated Cole Cottin Local Food Field Coordinator for Kansas Rural Center. “KRC received a lot of phone calls and e-mails on this issue, and we are pleased with KDA’s response to the public’s concerns.”

KDA’s scheduled public hearing for all four of the proposed regulations will go on as planned on April 23, but they have stated they will not pass the fourth regulation at this time, as they anticipate proposing a revised version of it in the near future.

But why all the worry? K.A.R. 4-28-35 proposed to “clarify what foods could be sold by exempt food establishments directly to the end consumer at farmer market type settings.” What foods are those? The proposal states, “Exempt foods may include: cookies, breads, cakes, cinnamon rolls, and fruit pies; cereals and granola; popcorn and popcorn balls; cotton candy; roasted coffee beans; candy; whole fresh or dried fruits and vegetables; herbs; nuts; honey; dried mixes from a licensed processor that are repackaged; jams, jellies, and fruit butters; and bottled flavored vinegars.” That list includes many but not all types of food that farmers and food businesses currently sell to end consumers across Kansas. But that is not where the concern lies.

According to several farmers’ market vendors, it is K.A.R. 4-28-35’s attempted governance of *how* those exempt foods should be sold that has generated the most resistance. The draft regulation reads: “Exempt food *shall be sold only in a package or wrapping that protects the food from contamination and shall not be sold from a bulk container*. Each package or wrapped item of exempt food shall be labeled with the following information in a color that contrasts the background and in at least eight-point font...”

Upon reading this language, Lawrence produce and grain farmer, Jill Elmers, threw her hands into the air and declared, “Well, that would be the end of my career selling at farmers markets!”

Farmers and food entrepreneurs are concerned about more than the logistical challenges of marketing 100% packaged and labeled foods to the end consumer. Tamara Werth, a baker from Lawrence, submitted the following laundry list of negative impacts K.A.R. 4-28-35 could have: “increased environmental waste, increased expense to vendors, increased cost to consumers, hindrance of small businesses development, damaged product quality, compromised spirit of farmers markets...”

Werth adds that the proposed requirement for un-licensed food vendors to display a sign reading “the home kitchen or facility where the exempt food is prepared is not subject to routine inspection by the Kansas Department of Agriculture,” is fear based. She sees no evidence of food safety risks posed by unpackaged foods sold at market.

Did the proposed regulations really intend to transform “farmer market type settings” across Kansas into seas of plastic or other labeled packaging, covering everything from tomatoes and basil to cotton candy and local chestnuts? Did KDA envision an end to vendors’ cascades of abundant zucchini, onions, potatoes, or other items typically sold from bulk bins?

“No,” commented Rick Scheufler, a KDA staff attorney interviewed for this article. “It was never the intent for KDA to require the bagging of every sweet potato or squash.” Scheufler conceded that the deluge of public comments revealed a flaw in either the drafting of the regulation or in the method of disseminating information to the people this proposal would effect, or both. “That is why we will not move forward with adopting 4-28-35.”

KDA invites the public to submit written comment on the proposed regulations prior to the public hearing, scheduled for April 23, 2013, 1:30 p.m, at the Department of Agriculture. Public comment will be accepted for all four proposals. K.A.R. 4-28-6, 4-28-33, and 4-28-34, would adopt risk levels, fees, and other requirements for licensed food establishments and define food businesses exempt from licensure. But the fourth proposal, K.A.R. 4-28-35, will not be passed at this time. KDA anticipates proposing a revised version of it in the near future.

Proposed regulations may be found at <http://www.ksda.gov/statutes/id/249>. Written comments on the proposed regulations may be directed to the Secretary of Agriculture, 109 S.W. 9th, 4th Floor, Topeka, 66612, or by e-mail at leslie.garner@kda.ks.gov.