

HB 630 Advisory Committee Meeting, February 19, 2014

Start just after 10am

In attendance:

Joan Miles  
Mellisa Tuemmler, DPHHS  
Jan Tusick, MMFEC  
Laurel Riek, L&C City-County Health Dept.  
Lynn Paul, MSU Extension Service  
Corrine Rose, Teton/Pondera Co. Health Dept.  
Brent Sarchet, MSU Extension  
Jessica Wilcox, Livingston Healthcare  
Gary Hamel, DOL  
Stephanie Potts, NCAT, GROW MT  
Alex Tikalsky, Grow MT  
Joseph Russell, Flathead City-County Health Dept.  
Jim Murphy, DPHHS  
Joel Clairmont, AGR  
Cort Jensen, AGR  
David Hofer, Midway Colony  
Joseph Waldner, Rock Port Colony  
Jeff Havens, DPHHS  
Shannon McDonald, DPHHS  
Chuck Munson, DOJ

- Welcome and introductions
  - Only a smaller group was able to show due to weather and other obligations.
  - At the last meeting we talked about trying to get Indian tribe member on the committee and that did not happen. (A few people were invited but were not able to participate.)
  - Brad Griffin from Montana Retail Association was not able to come. Nor was Dave Prather from Western MT Growers Cooperative able to attend. The Food & Ag Centers are having a meeting today and that is conflicting with us, unfortunately. The previously involved county commissioners could not make the meeting either.
- Overview of public meetings in MSO, BZN and BIL
  - Cort gives an overview of the public meetings.
    - The turnout was good, basically full capacity in the spaces we chose to use. The written comments are still in the review stage. It will take more time to get those together. Total written comments are approximately equal in number to the verbal comments. Also, the written comments are consistent with the oral comments, so far. The meetings heard from: farmers, ranchers, businesses, regulators, institutional buyers, educators and consumers. Cort gave a summary of the differing tones by geography of the meetings. In every location, the #1 theme was education. Education was seen as a way to bridge the divide

between regulators and the regulated. Businesses expressed a desire to be educated on the laws and rules. They also desired to be more connected to the regulatory people in their communities. Cort noticed that HACCP and GAP terminology appeared to overwhelm some of the participants because they weren't yet fluent with the terminology or the requirements behind GAP and/or HACCP. On the other hand, some of them were likely following requirements, yet unaware because of the lack of familiarity with the language.

- Another theme from the public meetings was the general complaint that there was a lack of consistency in practice amongst the county health authorities. Crossing a county line appears to be a trigger mechanism for problems amongst mobile food businesses.
- With regard to cottage food, people came out as either for it or against it. Cort noticed a general lack of input on specific recommendations for cottage foods, however, he did think that the comments developed into a good public discussion. Cort's observation is that people are treating the 'smaller is not safer' philosophy as an argument in opposition of the 'bigger has more impact' philosophy, and vice-versa, and he points out to the group that both of these statements are actually true.
- Also, there may be a lack of awareness of the availability of commercial kitchens. DPHHS is working on that. Making this information available to the public seems to make it easier for people who want to enter this marketplace to do so.
  - Joan had a discussion with Rep. Williams about the definition of "community based commercial kitchen." It is a somewhat amorphous term but as the definition takes shape, this term basically means licensed kitchens available for rent. We have some really good information in the report to disseminate amongst communities.
  - Question posed: Who provides the operation structure for the renting of the kitchen? Melissa Tuemmler answers that one could have a single facility used for multiple purposes. But DPHHS works with the facility owner and the facility entity and DPHHS will license, by processes employed, that particular facility. Jim Murphy points out that the DPHHS is not going to be licensing all available kitchens, and does not play a role in the scheduling the use of those facilities. He reminds the group that for a cottage food producer, the kitchen does not have to be licensed. For a facility to make "the list," it is likely "licensable." (Some discussion over use of the term "licensable.")
    - Suggestion is made by Flathead County that there will have to be a registration system for cottage food producers.
- We return back to Cort's summary of the public meeting themes issues:
  - People complained of having communications with regulators that are not in writing and where there is no appeal mechanism.

- 1k bird exemption, raw milk, and honey are all hot button issues.
  - Jim Murphy points out that the public meetings, and therefore the comments memorialized at those meetings, functioned as a reflection of who actually showed up. Everybody was nice at the meetings. There was an atmosphere of constructive advice. There were not too many people that said that we need a cottage food act. With regard to county to county inconsistencies, Jim believes that DPHHS has its work cut out in order to figure out how to deal with this issue.
  - Last theme Cort speaks about was that there was a sense that food law is based on science and safety and since those are objective disciplines, there should be objective application.
  - In the written comments, there is a desire to have accurate food labeling, including what governmental agencies were implicated in inspection.
  - We discuss Potentially Hazardous (PH) vs. Non-Potentially Hazardous (NPH) food for a bit, including acidified foods. A general expression of ignorance in the marketplace is discussed.
- The group begins a discussion of **cottage food law resources** and **proposed options for MT**
    - The steering committee met two weeks ago to start to formulate options.
    - A statement is made that MT already has a cottage food law, technically. It is our farmers market law in MCA §50-50-202. In national reports, Montana is considered a state that has enacted a cottage food law.
    - Jan Tusick points out that calling our farmers market law a cottage food law is not accurate as a practical matter, despite the fact it is technically and legally so because local county officials will interpret this law to mean that there is a single and exclusive venue to sell those cottage foods (NPH foods produced in the home): the farmers market.
    - In 50-50-202, there is a list of piecemeal exemptions that apply to farmers markets. The proposal to be discussed in this meeting is amending the existing statute to incorporate a broader definition of cottage foods. We review a document—THE HAL Recommendations (incorporated by reference)—which is a joint proposal from every agency in the HB 630 group. There was an epiphany amongst some group members: Why does it matter where you sell safe food? They agree safe food shouldn't just be allowed to be sold at farmers markets. We then go over the sections under the recommendations.
      - What can be sold? NPH Foods. Cottage food operations may only produce NPH food including baked goods, candy, preserves, honey and other products *specified in rule*.
        - Add “may include but not limited to” and list general examples—this was a suggestion from Pat Murdo regarding any future proposed language insertions.

- Somebody mentions to keep in mind discussing cottage food, which is the “sub-licensed” level. People can still sell anything they want at a farmers market, if they have a license to do so.
- Specify which hot beverages and whole shell eggs.
- Specify that raw and unprocessed farm products are not under the statute. Dept. of AGR would define raw and unprocessed farm products.
- Cort goes over a flow chart he came up with and folks find it useful.
- Comment made that it is difficult to have an exclusive list in statute of NPH foods because it is too hard to expand a statute’s language to accommodate others foods that would meet the definition of NPH. If there is rulemaking authority in any future law, there would be ability to have the built in flexibility a law like this would need. DPHHS should have rulemaking authority in order to be more responsive to the public. This rulemaking authority is in the spirit of HB 630.
- How will businesses participate?
  - It is suggested that there be a one-time registration requirement for cottage food operations. The local health authority will then review and approve the application and submit the form to HHS. Changes to the operation would require re-registration. The license would be issued in the county where the cottage food is produced, but would be valid statewide – in other words, the product could be sold directly at other public venues anywhere in the state.
  - One-time fee (suggested \$35) would go to operating costs for the local health authority. An additional review and fee would be required if a food producer modifies their operation or expands products.
  - There should be an education component that is required—MSU extension and HHS offer to develop this program.
  - No monetary limits on total sales will be proposed.
  - Grant authority in MCA 50-50-103 to HHS to write rules pertaining to types of foods that can be sold, safe food handling training, and registration with local health department.
  - No inspection is required, however, the law will allow for investigations by the local HD when there is reason to believe public safety is threatened.
  - Direct sales only. Consignment sales are not permitted as they are not direct sales. No internet or interstate sales are to be allowed.
  - Jan T voices her concern that the group isn’t prepared for a backlash from people who have been at the farmers markets selling baked goods for a long time. This law will be a hurdle for them to continue to participate in markets that they have been participating in for years. Other folks counter Jan’s point by expressing that this process will require some ‘give and take’ from stakeholders and that this change will potentially have some positive effects for even the folks that Jan believes will push back on the suggested changes.

- But the committee agrees with Jan that to meet any pushback, there will need to be a unified response that with the new responsibilities come new and expanded opportunities.
    - Joel comments about the complications that are inherent with fees: He has had experience with this issue with the AGR's nursery bill and as simple as it seems to have a fee requirement, his experience tells him that is an area likely to complicate the process when a bill is in front of the legislature. He suggests that perhaps a \$35 one-time fee is too much.
    - It is then suggested that perhaps the fee should be in rule rather than in statute.
    - Cort believes that since there will be obvious costs apparent to the legislative committee, perhaps the work needs to be done proactively to put together a budget associated with these costs.
    - Comment: This is an unfunded mandate. What are the other options?
  - Label requirements?
    - See HAL recommendations.
  - Sampling?
    - Allow vendors to sample—non-monetary.
  - Home Sales: Joan brings home sales up as a topic that needs to be addressed. Other states have decided to disallow home sales because some homes can develop into commercial spaces and conflicts arise with the residential area that surrounds them. As an example, a number of states allow sales only at public venues. We have a summary of states that do allow home sales by incorporating a net revenue limit.
  - A comment is made that it is a business's responsibility to comply with applicable zoning law and any homeowner's association's requirements, covenants, etc. The committee agrees to recommend language stating as much.
  - Comment: there will be an inherent limiting factor in only producing your product at home.
  - Also, we need to place something in our recommendation that allows internet marketing, including sales, but explicitly excludes shipping. That transaction needs to be direct from the cottage food producer to the consumer.
- Education and fee?
  - Jan T. proposes that a *mandatory* requirement for training isn't the best way to go, and that we should only highly encourage training. There are others that think the only consistent way is to do a completely consistent education component to be developed by MSU extension and HHS.
  - The group discusses that the education component is very general at this point and could be very simple, like a quick on-line review of materials.
  - Plus, the public wanted more training. We shouldn't be wary of requiring training as long as multiple opportunities are created.
  - Joan suggests that we ought to suggest to the interim committee that we want a training component and acknowledge that the issues are whether training opportunities can be adequately managed and staffed.

- Comment: In L&C county, they give trainings several times a year...
- A comment is made that it should be required to have safety training and that it wouldn't be difficult to have training in food safety and application of safety measures in the home environment. Training on the label and a time period within which to comply are ideas that may be entertained.
- Suggestion: the person who registers...should have a training certificate. It should have to be required within a quarter or 3 months of registration.
- Final lingering issue: is there going to be a fee or not? Should it be discussed with MACO first? We have to acknowledge there will be a cost burden on counties. The HHS can bear the costs of education, labeling, online label creators, etc. But custom training may get more expensive. On some level administrative costs are going to have to be absorbed by everybody involved. The other concern is there is a significant question about to how many people are going to sign up: 100? 10,000?
- Comment from Flathead County: county fair vendors have to take a one-hour educational course and in many years of experience by Joe, they do it without any complaints. Joe also believes this is an excellent opportunity to rebuild the coordination between county authorities and MS extension.
- \$35 fee for training on safety, labeling and the differing players is described as a good deal.
- It has to be stated in statute that in the direct sale context, if you are approved by one county, you can go across county lines.
- **Update on new food rules for MT that are based on the Model Food Code of 2013**
  - FCSS draft is almost done and can be circulated to the study group soon.
  - Jessica from Livingston Health says she is very transparent with her county sanitarian about where she purchases her food. However, her counterparts in Bozeman (Gallatin Co.) can't necessarily source local foods in the way she is able.
  - Laurel says that because these are state rules and statutes, it is really important to have good interpretations coming down from the state regulators so that her and her county counterparts are able to form consistent interpretations. DPHHS believes that the definitions in the MFC will help eliminate many of the gray areas in Montana.
  - Stephanie Potts wants more information on how counties are interpreting rules...decisions perhaps should be reduced to writing...and those writings could then be reviewed. She poses a question about cut leafy greens as an example of potential inconsistencies in interpretation.
  - Jessica comments that she believes there is a certain amount of institutional trust in commercially produced foods as well as distrust in local foods. If the point of the bill is to increase markets for local food, we need to create the confidence amongst the regulatory players in local foods.
  - Cort agrees with the example that he has seen with school gardens: when it comes time to harvest school gardens, there have been concerns as to whether the kids should eat it. He thinks this is irrational.
- Community-based commercial kitchens?

- One point to keep in mind is that the rules are minimal standards, Costco has crazy high standards.
- The “community based commercial kitchen in MT” handout is passed around (incorporate by reference).
- It appears there are more kitchens available than people previously knew about.
- It is again clarified that licensed and licensable kitchens don’t necessarily have anything to do with cottage food. They are for people who want to take it to the next step in their business and potentially move to larger and/or non-direct sales.
- Licensed, licensable, commercial-grade, commercially licensable kitchens? What’s the correct term here? Non-residential kitchen? No real closure yet.
- WE still need a qualitative and quantitative term for these kitchens.
- We need a food scientist/process authority in the state.