

## Montana Environmental Health Association

### House Bill 630 - Guiding Principles

House Bill 630, was adopted by the 2013 Montana legislature to assess four criteria:

1. Potential changes in Montana laws and administrative rules necessitated by the approval and implementation of the federal Food Safety Modernization Act;
2. The extent to which home kitchens can be used to prepare foods for sale that are not potentially hazardous while maintaining food safety for the public;
3. The relative availability of community-based commercial kitchens and their use; and
4. Inconsistencies and inefficiencies in Montana's food laws that could be improved and streamlined.

The growing popularity of farmers' markets in Montana has created a demand for cottage food businesses in the state that are based in individual dwellings, community kitchens, or licensed facilities. The desire to market locally-grown food is becoming more prevalent. Making changes to Montana's food laws and regulations will provide opportunities for more Montanans to prepare and sell limited quantities of non-potentially hazardous foods in home kitchens. In part, this gives entrepreneurs an opportunity to test the market and improve their products. Some cottage food entrepreneurs will want to expand upon their success, and serve even larger markets, at which time they need to meet the same rules and standards of licensed food businesses throughout Montana.

The following recommendations will allow the cottage food industry to introduce products into the marketplace in a safe and reasonable way, while ensuring small businesses that choose to open traditional storefronts, such as retail candy stores, bakeries, and wholesale operations, are treated fairly and their investment is protected.

1. The health and safety of the citizens and visitors to Montana is the primary priority with regard to any changes to the existing laws. The priority is prevention of foodborne illness, related injuries, and conditions that may adversely affect persons consuming cottage foods.
2. Any changes to current food law or rule should be based on the best available scientific research. Model regulatory guidance documents for best practices in the cottage food industry should be utilized. MEHA is collaborating on specific language for the recommended structure for a cottage food industry. This document is still under discussion but, in general, uses the "AFDO Regulatory Guidance for Best Practices Cottage Foods" published in April 2012. MEHA encourages the State of Montana to closely follow the recommendations in this document when creating a cottage food industry.
3. Simplify the cottage food and Farmer's Market standards by:
  - a. Combining them under a definition for the cottage food operation and products.
    - i. The following are recommended definitions primarily based upon the AFDO Cottage Foods April 2012 document:

1. "Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer at public events. A cottage food operation shall not operate as a food service establishment, retail food store, or wholesale food manufacturer.
2. "Cottage food products" means non - potentially hazardous baked goods, jams, jellies, and other non-potentially hazardous foods produced at a cottage food operation.
4. Allow the Department of Public Health & Human Services, Food and Consumer Safety Section to develop rules for cottage food operation. The law should establish the framework for the regulation, while the details should be developed through the rule making process, allowing for greater public participation.
5. New rules for cottage foods should include:
  - a. Annual registration of cottage food entity with the regulatory authority.
  - b. A fee associated with registration of the cottage food entity. The associated fee would help to cover staff time associated with education, guidance, product updates and label review.
  - c. Limiting cottage foods to specific processes that do not involve high-risk foods, high-risk procedures and high-risk packaging.
  - d. Clear labeling requirements for pre-packaged cottage foods, a component of which would indicate that the food is not produced in a licensed facility or subject to routine safety inspections.
  - e. A food safety training requirement for cottage food purveyors.
  - f. Limiting cottage food sales to public events such as farmers markets, craft fairs, and similar community events with sales directly to consumers.\*
  - g. Explicitly state the right of the regulatory authority to investigate and inspect kitchens used in producing cottage foods in response to a potential foodborne illness outbreak, consumer complaint, or public health emergency.

\*Many states distinguish between cottage food operations and retail food establishments by limiting gross sales. However, since Montana does not have a sales tax, gross sales aren't tracked, and there isn't a good mechanism for assessing gross sales in a cottage food business. Limiting the venues to public events, instead of gross sales, meets the same goal. This provides a fair way of distinguishing between a licensed food establishment that makes similar products and a cottage food operation.

## **Part II- Assess areas in Montana's food laws that could be improved and streamlined**

The following are areas which could be examined and potentially streamlined in current statute:

1. Include a provision in statute which would allow the Department of Public Health and Human Services, Food and Consumer Safety Section greater flexibility in creating rules. Greater rule writing authority for the Department would allow:

## Guiding Principles

February 6, 2014

Page 3

- a. Timelier response to ever-changing needs of the public.
  - b. More public input with regard to details of food rules.
  - c. Clear and concise rules which would aid the public and regulators.
2. Simplify and modernize language in the MCA 50-50 to provide the framework for regulation to prevent and eliminate conditions and practices which endanger public health. The details should be developed through the rule making process, allowing for greater public participation including those that are immediately affected by the rules. The following are suggested:
  - a. Specific statutory details that should be examined and considered for rule making are current exemptions pertaining to farmer's markets, non-profit organizations, persons selling baked goods for charitable community purposes, frozen food lockers and fees for licensing, registration, and plan review;
  - b. Collaboration and cooperation agreements between agencies to ensure that each agency is providing a consistent message with regard to statutes and rules.
  - c. Credentialing and training for those that are responsible for food safety inspections.