

Montana Food Modernization Project

A product of HB 630 Sponsored by Representative Kathleen Williams.

(Portions of the appendices are the work of Chuck Munson of the Attorney General’s Office who provided amazing minutes of the public meetings (appendices B-E). We offer him our heartfelt thanks. It would not have been possible to do this without him.)

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Background

House Bill 630 Sponsored by Representative Kathleen Williams (Appendix A) funded a public process to gather input about Montana's food regulation and how it could be improved. A series of food-related bills were introduced and debated in the last legislative session on topics from hot coffee sales, eggs at farmers' markets, pickle exchanges, the transportation of meat, and raw milk indicating that public interest in food regulation was high. Changes to federal law, which include the Food Safety Modernization Act (FSMA) and a new version of the federal model food code, further motivated everyone involved to reexamine what was and wasn't working with Montana's food laws with an eye towards the future.

HB 630 tasked the three departments (Agriculture, Livestock, Public Health and Human Services) responsible for food regulation and advocacy to assess food laws and develop a report addressing the following issues:

- (a) potential changes in Montana laws and administrative rules necessitated by the passage and implementation of the federal Food Safety Modernization Act pursuant to Title 21, chapter 27, of the United States Code;
- (b) 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;
- (c) the relative availability of community-based commercial kitchens and their use; and
- (d) inconsistencies and inefficiencies in Montana's food laws that could be improved and streamlined.

The agencies were instructed to coordinate, hold a public meeting and gather comments and suggestions on the above subjects.

Review of Current Law

A brief overview of the current food law will assist readers' understanding of the comments and suggestions that follow. Food law is generally split into three separate paths, with three levels of regulation. Path one is for foods derived from animals (meat, milk, eggs); path two is food for animals (feed and pet food); path three is for all other foods. The three levels of regulation are federal, state, and local.

Path One: Animal (meat, milk, eggs)

Federal Level – United States Department of Agriculture (USDA) law and regulation - which govern to the extent these products cross state lines.

State Level – Montana Department of Livestock law and rules - which generally mirror federal regulation, govern in-state livestock and poultry processing, and slaughter, as well as eggs. Retail sale as human food is still covered by Montana Department of Health and Human Services laws and regulations (see Path Three).

Local Level – If sold into the retail human food chain (grocery store, direct sale, restaurants, etc.), their sale is subject to the jurisdiction of county sanitarians consistent with state Department of Health and Human Services laws and regulations.

Path Two: Animal Feeds and Pet Food

Federal Level – Food and Drug Administration (FDA) law and regulation – is primary but certain things are also covered by USDA laws.

State Level – Montana Department of Agriculture law and rule, with one limited exception which is covered by the Department of Livestock involving vegetable waste fed to pigs.

Local Level – none.

Path Three – All Other Foods

Federal Level – FDA is the federal regulatory agency -- produces a model food code (set of rules) that states may voluntarily adopt.

State Level – Montana Department of Public Health and Human Services -- is the licensing and rule maker at the state level.

Local Level – County Sanitarians -- are the ones that must enforce and implement the food laws and regulations on businesses that are in their county.

In addition, the Montana Department of Agriculture has certain duties as they relate to the production and first sale of fresh produce (fruits and vegetables). Certain foods have special rules that apply only to them (huckleberries for example) as do certain growing practices (organic and natural beef programs).

While Montana does not have existing law or regulation under the moniker of a “cottage food” law, it does have a series of exemptions found in MCA 50-50-202 that several outside legal reviewers have deemed a “cottage food” law. This particular law played a large role, both in the public comments but also the departmental discussions, so it is included below in its entirety.

50-50-202. Establishments exempt from license requirement -- farmer's market records. (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) (i) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products or whole shell eggs at a farmer's market.

(ii) Whole shell eggs sold at a farmer's market by a farm owner or operator must:

(A) be clean, free of cracks, and stored in clean cartons;

(B) be kept at a temperature established by the department; and

(C) carry a label indicating the name and address of the farm owner or operator selling the eggs.

(b) A license is not required of a person:

(i) selling or offering hot coffee or hot tea at a farmer's market; or

(ii) selling baked goods or preserves at a farmer's market or exclusively for a charitable community purpose.

(c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or cream.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent.

The use of home kitchens to prepare foods for sale and the availability of community-based commercial kitchens

One of the requirements of HB 630 is to assess the current availability of community-based commercial kitchens. These kitchens may be used under existing statutes and rules to produce food items for sale. This survey did not address "cottage food" kitchens specifically, but does identify sources that may be available to entrepreneurs who are interested in expanding their operation. This survey identified 394 community-based commercial kitchens throughout the state, including 266 that are currently licensed (requiring inspections). Some counties were not able to determine how many existed in their areas or did not respond to survey questions. These kitchens may be available to individuals for use in food manufacturing. DPHHS recognizes the interest by entrepreneurs who are in need of a facility to rent or lease. There are also facilities that may be interested in making their operation available for rent or lease. DPHSS will work with owners of licensed establishments to make this information readily available to entrepreneurs via the DPHHS website.

The departments agreed that production of potentially non-hazardous foods in home kitchens and community based kitchens could be safely accomplished under the proposed **Health, Agriculture, Livestock (HAL) Recommended Approach to Cottage Foods – HB 630** detailed on page nine of this report. For more information on the availability community based kitchens please see Appendix I.

Collaboration between Agriculture, Livestock and Public Health and Human Services

The three departments have been meeting for over two years on a quarterly basis to informally work on improving how the food regulation system functions. The passage of HB630 formalized this process. The bill also called for a facilitator, and the departments agreed on Joan Miles, who was a former Director of Public Health and Human Services, an attorney, and a former county sanitarian. The departments began a series of meetings to work together to look at all of the state laws and rules involving food to see what was working, what was confusing, and what could be done more effectively. These discussions looked closely at all food laws, particularly laws that overlapped with each other or contained complicated exceptions and/or exclusions and resulted in the following:

State Agency Improvement Efforts Already in Place:

- The three agencies have quarterly interagency meetings to discuss food manufacturing/food purveyor issues such as complaints, overlapping authorities, gaps in regulations, etc.
- Agencies are encouraging more communication, collaboration, referral of problems to appropriate agency representatives.
- DPHHS
 - Nearing completion of comprehensive revisions to food service regulations that are consistent with FDA Model Food Code. This will bring the Department's regulation into a more contemporary status.
 - DPHHS is conducting periodic review of county inspection reports – this is both an educational opportunity and an effort to improve consistency throughout the state.
 - Development and distribution of the *Montana Wholesale Food Licensing Guide* to help prospective applicants comply with local, state and federal requirements for a wholesale food business.
<http://www.dphhs.mt.gov/publichealth/fcs/documents/LicensingGuide.pdf>
 - Provided training and access to the state licensing data base to county Sanitarians – allowing Sanitarians to access and update information on specific food service establishments or food manufacturers
 - Development of a state sponsored website for the public to register complaints. These are referred to the appropriate county, and DPHHS can follow up where appropriate or provide technical assistance in resolving issues.
 - Promotions of accreditation through the Public Health Accreditation Board – this will bring more standardization, consistency and quality to various public health operations.
 - Improvements in licensing of food manufacturers and reviews/approvals of products of licensed food manufacturers to prevent delays that impact business operations.
- Department of Agriculture – Preparing a “Direct Marketing Guide” for potential and new or expanding ag businesses. This will walk them through the process, identify all requirements,

refer to other agencies when necessary, etc. This manual has been drafted but is waiting for the new version of the food regulations by DPHHS so as not to refer to outdated rules.

Public Meetings

While HB 630 called for at least one meeting for public input, it was clear from early discussions among the three agencies that multiple meetings would be preferable if meeting facility costs were kept low. We were able to hold three public meetings: Missoula (Appendix B), Bozeman (Appendix C), and Billings (Appendix D). Chuck Munson from the Attorney General's office kept excellent minutes of the events that we have included (Appendix F). He also prepared a summary of the major points that arose during the public meetings (Appendix E).

The public meetings served not only to allow people to express their views to the regulators in person, but also to discuss areas of concern and confusion with them one-on-one before, during, and after the meetings. While each meeting ended up with a slightly different tone and composition based on those in attendance, we cannot state enough how positive the experience seemed to be for everyone involved. Providing public forums to allow discussion on issues like this is a useful expenditure of time and money when the area of law is complicated or where a variety of viewpoints can exist without being in direct conflict. It is less useful where there are diametrically opposed viewpoints on core issues, such as raw milk regulation.

Written Comments

We have included all of the written public comments we received (Appendix F). They cover a lot of different topics, and many have suggestions on how the laws and regulations could be changed. They include comments from consumers, regulated businesses, and regulators. We did not include comments that simply asked questions about the location of the public meetings or thanked us for providing the process.

Advisory Group

In addition, the departments met twice with a small advisory group composed of various stakeholders in the current food system, including county sanitarians, farmers, an institutional buyer of local food, a food and agriculture development center, and local food advocates. The notes from these meetings are included (Appendix G and H).

Consensus Recommendations from the Three Participating Departments (HAL)

In addition to the work already being done by the various departments, the following are recommendations endorsed by all three of the departments, and are at least consistent with many of the public comments received and the majority of the advisory committee as well. At least the first four would require changes to existing legislation.

- (1) Expand/create the Montana “cottage food” law by amending MCA 50-50-102 to allow the sale of non-potentially hazardous foods (including foods currently listed) anywhere as long as it is a direct sale within the state. Additional details are provided below, please see: *Health, Agriculture, Livestock (HAL) Recommended Approach to Cottage Foods – HB 630*
- (2) Raw agricultural products (fruits, grains, vegetables) would be regulated by the Department of Agriculture, and could be sold anywhere and to anyone (including grocery stores, schools, and restaurants) subject only to limits set by local jurisdictions for time and manner. The federal FSMA would govern larger operations. Additional funding might be required as the Department of Agriculture is primarily a fee for service agency. To be consistent with federal regulations, honey should be added to the list of raw agricultural products found in MCA 50-50-102 (16).
- (3) Give greater rule-making flexibility to the Department of Public Health and Human Services by moving food regulatory details from law into rule. This would make the department’s interactions with their local counterparts more consistent. It would also allow the regulations to address the realities of modern farmers’ markets (weekly reoccurring events), mobile food operations, food sampling, and catering issues in a manner that is consistent in how the regulation is applied, while providing flexibility to change over time without involving the legislature on an individual food by food basis.
- (4) Currently, food rule-making requires the participation of a “special” oversight committee mandated under **MCA 50-50-103. Department authorized to adopt rules -- advisory council.** Our suggestion is to replace this group with representatives from health, agriculture and livestock, along with representatives from among the county sanitarians, and appointed members of the public.
- (5) The public also expressed an intense desire for more food safety and regulation trainings. The departments will work with MSU Extension and county sanitarians to make educational opportunities available about state and federal food law and food safety in general.
- (6) The exemption in 50-50-202 (b) for non-profit baked goods and fruit preserves should remain the same so as not to complicate charitable fund-raisers.

Health, Agriculture, Livestock (HAL) Recommended Approach to Cottage Foods – HB 630

The consensus of this group is to recommend revision of the current farmers’ market exemption in MCA 50-50-202 to include cottage foods and allow for direct sales of “non-potentially hazardous foods” (NPHF) at any direct sale venue. We also recommend MCA 50-50-103 be changed to allow DPHHS to adopt rules without the requirement of a special oversight committee.

- WHAT CAN BE SOLD:

- Non-potentially hazardous foods (NPHF). Cottage food operations may only produce “non- potentially hazardous foods,” including: (1) Baked Goods; (2) Candy; (3) Preserves; (4) Honey; and other products specified in rule;
 - Need to add “may include but is not limited to” and list general examples of allowed and prohibited products;
 - Specify that the 2013 exemptions for hot beverages and whole shell eggs should be maintained;
 - Specify that "Raw and unprocessed farm products" (suggest changing to “raw agricultural commodities”) are not regulated under this statute.
- HOW WILL PRODUCERS PARTICIPATE:
 - Require a one-time registration of each cottage food operation. Local health authorities will review and approve application and submit registration form to DPHHS, similar to what is done now for licensure. Changes to the operation will require re-registration and approval;
 - Require a one-time registration fee be established in rule (proposing \$35). This fee will be submitted to local jurisdictions. Subsequent re-registration and fees may be required when an operator modifies or expands their products. DPHHS will maintain a database of registered operations.
 - No additional fees may be imposed on these operations.
 - The registration will be recognized throughout the state, with no additional requirements imposed by the local health authority, if operating as approved.
 - Require an education component (developed by DPHHS and MSU Extension Service), which may include on-line training specific to cottage foods;
 - No monetary limit to total annual sales is proposed;
 - Grant authority to DPHHS to write rules pertaining to types of foods that can be sold, safe food handling training, registration with local health department, etc.;
 - No inspection of home kitchens be required, however allow for investigations by the local health department in the event an illness or complaint is associated with the facility;
 - Food production and processing will be limited to home kitchens in domestic residences.
 - WHERE CAN PRODUCTS BE SOLD:
 - Direct to consumers in public and private venues;
 - No sales to restaurants or other licensed establishments which include but are not limited to retail food establishments, wholesale food establishments, and public accommodations;
 - No shipment of products;
 - No consignment sales.

- **SAMPLING:**
 - Rules would allow cottage food businesses to provide free samples of products to customers without the need for a retail food license.

Suggestions from the Departments Individually:

Department of Agriculture

The Department of Agriculture recommends looking at salsas, barbecue sauces, and pickles to create clear frameworks on what types of these products (if any) might be considered for sale under a modified MCA 50-50-102.

The Department of Agriculture also recommends that honey be added to the raw agricultural products exemption in 50-50-102(16).

The Department of Agriculture would also like to see clearer rules/laws on eggs and poultry, as those currently in place tend to confuse producers, county sanitarians, food retailers and food service providers.

Department of Public Health and Human Services

During public meetings held in early 2014, information was collected regarding Montana food regulations, types of food establishments and licensing of establishments. The licensing and regulation of temporary and mobile food establishments were identified as a concern for regulators and operators.

The department proposes the following to address these concerns by simplifying and standardizing regulations related to mobile and temporary food establishments to ensure uniform application throughout the state:

Mobile Food Establishments

1. Adoption of the 2013 model Food Code published by the United States Food and Drug Administration (FDA), and its accompanying modifications, additions and deletions, as proposed by the department. Adoption of the Food Code will update state standards using the most recent science, better align the rules with other states, and improve uniform application of food safety principles throughout Montana;
2. Clearly state in retail food establishment rules adopted by the department that a state-issued mobile food establishment license will be honored by all local health officers and their designees, without additional licensure fees, provided the mobile food establishment meets all applicable state requirements;
3. State in statute that plans for mobile food establishments will be approved by DPHHS in coordination with local jurisdictions;

4. Authorize in statute a fee for mobile food establishment plan reviews.
5. All licenses will be issued and all inspections (i.e. pre-licensing, routine, complaints) will be performed by the county health authority where the mobile unit is based.

Temporary Food Establishments

1. DPHHS would no longer issue temporary food establishment licenses;
2. Authorize in statute that local health officers or their designees may issue temporary food establishment permits to be effective for one calendar year;
3. Permits are valid for the calendar year or until the last scheduled event, and only within the county that issued the permit.
4. Authorize the department in statute to establish rules setting maximum permit fees, application procedures and general standards;
5. Adopt the proposed rule change for the definition of a “temporary food establishment,” which means *a food establishment that operates **at a fixed location** for a period of no more than 14 consecutive days in conjunction with a single event or celebration;*
6. Create and adopt a definition for “Multiple-event temporary food establishment” which means *a food establishment that operates **at a series of events**, each for a period of no more than 14 consecutive days.* The purpose of creating this category is to enable operators that do not or cannot meet mobile food establishment standards the opportunity to buy one license in a calendar year, rather than multiple licenses in a year, if they operate within a specific county;
7. Multiple-event temporary food establishments would be required to list each proposed event location for that county during plan review. If additional events or a change of venues are proposed, the establishment owner would be required to notify the local jurisdiction at least 7 days before the proposed event date;
8. Each local jurisdiction will set its own permit fees (not to exceed maximum amount set by rule);
9. Each local jurisdiction will process such permits and keep the entire permit fee;
10. Permits would only be valid in the county where the permit was issued;
11. Each local jurisdiction may add local requirements;
12. Plan review would be performed by the local jurisdiction and required each year, since a temporary food establishment permit would be valid only for the calendar year.

License Fees

The department proposes the following to modernize retail food service fees to reflect the complexity of food service and offer relief to taxpayers who pay for the vast majority of the system that keeps food safe in Montana.

1. The department proposes changing license fees authorized in statute to correspond with the department’s proposed “Establishment Complexity” categories;
2. This new fee structure will better reflect risks of specific establishments and reflect the complexity of inspections required of the local sanitarian.

3. County sanitarians will be directly involved with assisting cottage food participants in food safety, including plan review, label development and issuing approval for registration. The purpose of the registration fee is to supplement the costs to the local jurisdictions for the resources necessary to provide training and review applications.

Department of Livestock

The Montana Department of Livestock, Meat and Poultry Inspection Bureau, recommends growers of small poultry flocks utilize the 1,000 Bird Exemption to produce poultry for Montana consumers. In order to meet the likely demand, the bureau is developing procedures and assessing staff resources.

The Montana Department of Livestock recommends developing consistency among county sanitarians regarding meat establishment requirements and what is considered an acceptable product.

Additional Perspectives

The report includes the Departmental recommendations and the various comments collected in this information gathering process (including in the appropriate appendix). In addition Grow Montana prepared further comments based on the legislative suggestions of this report and their participation in the advisory group discussions. The entirety of their comments is included in Appendix J, but they are summarized below.

- A. Make up of advisory committee: essential to include a diverse range of stakeholders
- B. Comments regarding cottage food proposal:
 - I. Impact on producers currently selling under MCA 50-50-202
 - II. Allowed products: Strongly encourage expanded list of allowed products
 - III. Product registration: re-registration seems unnecessary
 - IV. Product labeling: a reasonable way to ensure public knowledge
 - V. Production in home vs. commercial kitchens: production should not be limited to only homes
- C. Poultry processing: input for implementation of 1000-bird exemption

Conclusions

The public input process was a success. It created an environment in which consumers, businesses, regulators, and educators could talk and discuss the issues surrounding food. All three departments plan to continue meeting on a regular basis to continue the positive experiences that came out of this process.

We would like to thank all of the people who participated in the public comment processes and the advisory group. We would like to thank the public sanitarians for their thoughtful comments and participation in this process.

As to the four primary purposes of HB 630:

1. As to the FSMA, the federal Food Safety Modernization Act with currently enacted and proposed regulations does not appear to require changes to Montana laws or rules. By providing more food safety training throughout the state those growers affected by the act will have an easier time complying with it.
2. As to the “Cottage Food” Law, an expansion of Montana’s current “Cottage Food” Law (MCA 50-50-202) is our recommendation.
3. As to identifying the availability of “Community” Kitchens in Montana, DPHHS has compiled a list in Appendix I, and is working on creating a more detailed version to make it easier to find licensed food businesses willing and able to provide facilities that would allow a business to engage in licensed food manufacturing.
4. As to streamlining and improving the food regulations in Montana, the three Departments have included their suggestions in this report, and are working on updating rules and processes to make it easier for businesses to understand and comply with the food regulations of Montana.

With intended updates to the food regulations of Montana, coupled with some additional regulatory flexibility that we hope the legislature will grant in the food regulatory enforcement arena , we think Montana can create a system that is easier to understand, relatively painless to use, and maintains consistent safety standards for all. All three of the agencies involved are committed to working with local sanitarians and county extension offices to provide quality food safety training that the public made clear it needs and desires. While the changes proposed will not fix all issues that some have with food regulation, they represent a positive step that will make the requirements easier to understand and compliance easier to achieve.

Appendix A



HOUSE BILL NO. 630
INTRODUCED BY K. WILLIAMS

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF LIVESTOCK TO CONDUCT A PROJECT EXAMINING AND RECOMMENDING UPDATES FOR MONTANA FOOD LAWS; REQUIRING THE DEPARTMENTS TO COORDINATE WITH STAKEHOLDERS AND REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; REQUIRING THE ECONOMIC AFFAIRS INTERIM COMMITTEE TO REVIEW A FINAL REPORT OF THE PROJECT AND RECOMMEND APPROPRIATE LEGISLATION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, current Montana law contains a complex food code with jurisdiction spread between multiple departments and levels of government; and

WHEREAS, there is a growing movement to support locally sourced and community-based food production, sometimes referred to as "cottage food", which benefits local communities, small businesses, public health, and environmental sustainability; and

WHEREAS, numerous states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare for sale foods that are not potentially hazardous, while Montana has not; and

WHEREAS, new federal rules and regulations under the Food Safety Modernization Act will require updates to Montana food safety laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Montana food policy modernization project -- guidelines. (1) The departments of public health and human services, agriculture, and livestock shall coordinate to conduct a project to assess Montana's food laws and develop a report for the economic affairs interim committee, including any proposed legislation for the 2015 legislature. The project must assess:

(a) potential changes in Montana laws and administrative rules necessitated by the passage and implementation of the federal Food Safety Modernization Act pursuant to Title 21, chapter 27, of the United States Code;

(b) 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;

(c) the relative availability of community-based commercial kitchens and their use; and

(d) inconsistencies and inefficiencies in Montana's food laws that could be improved and streamlined.

(2) In conducting the project the departments shall form a steering committee and coordinate with stakeholders, including but not limited to:

(a) producers;

(b) institutional buyers;

(c) the food safety advisory council created under 50-50-103;

(d) county health officials; and

(e) community groups interested in locally sourced foods.

(3) The departments must use at least 50% of the money appropriated for this project to contract with a convening organization to hold at least one facilitated public meeting or conference to assist in forming consensus recommendations in the final report.

(4) The department of agriculture shall ensure that a final report of the project's findings and recommendations is presented to the economic affairs interim committee no later than May 15, 2014.

Section 2. Appropriation. (1) There is appropriated from the state general fund to the department of agriculture \$18,000 for the biennium beginning July 1, 2013.

(2) The appropriation must be used to pay for the costs of the project described in [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates June 30, 2014, or upon completion of the duties described in [section 1], whichever occurs first.

Appendix B

HB 630 Public Meeting #1, Missoula, MT—University Center at the University of Montana

Meeting date: Thursday, January 9, 2014.

Before the comment period is officially open, written comments are encouraged. It is explained that ultimately, this effort will execute a report to the Interim Economic Affairs Committee of the Montana Legislature along with recommendations for changes to improve the state's food regulatory environment.

Cort opens the meeting. He explains the process for making comments and the formal nature of the proceeding, as well as the agency responsibilities to attempt to receive every timely comment. He invites people to make written comments. He explains that although this is a formal process, people can speak fairly informally as long as they 1) state their name, 2) state who's interest the comment is on behalf, and 3) do their best to acknowledge they are on the record by speaking in as concrete of terms as possible. He also offers his number for telephone comments, which he discourages if the commenter is willing to make a public comment or submit a written comment.

Cort then describes what HB 630 is all about. He describes its intended purpose as well as the responsibilities required and parties that are required to participate, including the agencies. He describes that the intent is to move forward in aligning several different the different food safety and production laws, regulations and rules that are under the various departments in order to better serve Montana producers, businesses and consumers.

The government employees all introduce themselves.

Cort goes into slightly more detail on how to make an oral public comment. Using actual examples rather than hyperbole and articulating names rather than assuming the record can identify pronouns, etc., is all encouraged.

Comment 1: Kirk Martin—Owner operator/Sweets Barn. He has 3 decade food service background. He did food safety related work with the Montana National Guard. He's watched simple inspections become more complicated over time. He acknowledges that food safety regulations are burdensome; however, he sees other negative effects of the recession as chilling start-up businesses, not food safety regulations. He states that he wants start-up food businesses to be able to go into business, including people in the so-called cottage food industry. But, he thinks it only fair that if he's regulated, they need to be regulated. He does confections and baking and cottage foods will be big competition for him. If non-regulated people are competing for the same customers as him, he thinks it only fair that they follow the same rules. He wants a fair playing field. Food safety policy is not based on location, in his opinion: if you're serving food to the public and if you are doing it for profit, you are a business. When does a cottage food law meant to help start-ups become discriminatory? He asks. To him, it is a business issue because he'll have to compete with people who aren't regulated like he is if a cottage food law passes.

Kirk is also required to have a grease trap for environmental reasons to deal with the butter and grease by-product. This is an environmental regulation. He wonders: Will cottage food producers have to do the same? He believes the grease trap regulation is too burdensome and it is unclear. He is not sure how the county determined that his business had to have one.

In summary, he just wants a “fair playing field.” He thinks Montana is a tough state to do business. The cost to get products here is high. The regulation isn’t the problem, but juggling economics is tough, and if you want to go into business, that juggling is something you have to do.

Comment 2: Molly Galusha speaks as the owner of The Buttercup Market and Café in Missoula. She agrees with the previous commenter—Kirk Martin. She believes that there has to be a way in the law to incentivize when a business is trying to follow all the safety regulations, yet at the same time provide healthy, local food to consumers and support other local businesses in doing so. As an example, she picked strawberries at a local u-pick farm and used them in her immaculate commercial kitchen in some recipes and was told that she could not sell the products she made by the county sanitarian. She doesn’t understand how a cottage food bill would fit into that situation. How could she not be allowed to do that in her commercial kitchen, but cottage food businesses would be allowed?? That doesn’t make sense to her.

Comment 3: Kelly Moore from MSO county extension office. She thinks there needs to be some standardization of the proper canning methods so that people have this option. She wants to educate people through canning classes and commercial kitchens.

Comment 4: Jeff Cornell (sp? Didn’t see name on list), speaking for himself as a citizen and budding entrepreneur. He is involved with Aquaponics. It relies on probiotic bacteria to create a system to grow vegetables. Fish are involved as well and this might be an aquaculture process as well. He believes that there have been issues with getting the fish raised in similar situations to market, because of concerns of the environment they were raised in, which he believes is perfectly healthy and perhaps safer than other methods. His comment is that with fermented foods and probiotic bacteria products, people are skeptical and therefore the regulations discourage such ventures. He wants the law to acknowledge probiotic systems in a positive light.

Comment 5: Annie Heirscher—Community Food & Ag Coalition and AERO board member. Her main concern is that she is aware of attempts to make a guide and resources to make a guide that would allow market participants to educate themselves on the legal and regulatory landscape. By her estimation, it has been very challenging to create such a guide. They have heard from several people that county by county decisions are inconsistent. She suggests that any way those inconsistencies could be improved and made more transparent for producers would be appreciated. Accessibility to opportunity is her main concern.

Comment 6: David Tyson—he works at the college radio station, he has a business called Tandem Donuts and he hopes to eventually open a gluten free bakery. He comments that as the process continues, the agencies and legislature keep in mind the actual presentation of a final product. A new business person could still be confused, and he has found information confusing in the past. He would

like a simple, plain-language guide that businesses can refer to in navigating applicable rules and regulations.

Comment 7: Stephanie Potts from Grow Montana and NCAT has 3 suggestions for comment:

1. Her organizations would like to see sanitarians in all counties receive yearly trainings that update their knowledge on evolving rules and regulations.
2. They want a complaint process when businesses have an issue with a regulating body. They'd like a clear process at the state level when they have a complaint.
3. They would like a procedure providing due process for denial of permits, including who can be contacted to file such an appeal.

Comment 8: Laura Ginsberg is an employee the Mission Mountain Food Enterprise Center (MMFEC in Ronan). She is also a budding dairy farmer. At MMFEC, they get many calls from producers who want to raise poultry. There is a lack of clarity in the 1k bird exemption. It exists on the federal level, MT appears to have adopted that exemption, yet the agencies are unclear whether 1k or smaller operations need to be inspected. They want a clear, understandable and workable recognition of an ability to produce under 1k birds without regulations that apply to larger poultry CAFOs. MMFEC would like more accessibility in the use of mobile slaughter facilities, especially when small producers are trained in the use of a mobile unit. Secondly, MMFEC is aware of quite a few producers who travel from Lake Co. to Missoula Co. to try and tap the larger, highly interested market. However, there are differing regulations or perhaps different interpretations of the same type of regulation. MMFEC offers that the farmer's market regulations around the state must be more uniform. MMFEC would like a statewide 'base regulation' that basically says "if it is acceptable in one county it should be acceptable in all counties." And lastly, MMFEC gets a lot of questions about raw milk as well. Dairy producers call them a lot. She encourages the state to address raw milk head-on and that it should be fair to producers who are regulated as grade A. As a producer, she is working on starting a dairy in St. Ignatius. One of the most difficult things is being licensed. She wants the licensing of grade B dairies. It is nearly impossible to start as a grade A dairy. If MT could allow for the licensing of grade B dairies, she believes the dairies would open, be able to stay in business, and be viable. She believes it'd be a business growth move— she sees a vibrant small dairy scene that could be vibrant.

Comment 9: Kristen Lee-Charlson—She is speaking as the original requestor who asked for HB 630 to be drafted. She's a local and sustainable food consultant. She ran a local food magazine. She consults with businesses about how to get more local food into their markets. She runs the Heirloom Winter Farmer's Market. In her experience, she's seen a lot of disconnect in regulations. Looking at that disconnect across the state, she thinks we have a great opportunity in the state to learn from the lessons of other states. She believes the consumers are standing and waiting ready to buy cottage foods and locally produced and processed foods. She believes there are not enough commercial kitchens existing to meet the desires of this market. She believes it is cost-prohibitive for a start-up business to try and enter this market. She offers that Natural Grocers, a large retail chain, sent a letter of support to the TX legislature supporting the TX cottage food bill. Because there are so many unknowns and costs with a start-up, she believes that if the ability to start up was clearer, more people would learn that they don't necessarily

want to enter the market and they'd be essentially weeded out by the market, so the concern of existing businesses about competition may not be accurate. Overall, she doesn't appreciate when she is met with a response from a state agency that says "no, we don't do that." She wants them to say, "How do we do that?—How can we help you with that?"

Comment 10: Tim Reed, speaking as a Mineral County Sanitarian and a representative of the Northwest Sanitarians Association. He has voiced concerns about where food items come from. One of his opinions is that they don't know where this is all going to land (I assume "all" meaning the cottage food and HB 630 effort). Is it going to be AGR or DPHHS? As a preference, sanitarians would like to have their presence on the front lines acknowledged. Furthermore, they would like to hear from the people who want the cottage foods—the consumers and their county residents. He wants the feedback from the market participants so that he can recognize better the cottage foods as a viable entity, yet keep the focus on public health. He has looked at quite a few cottage food laws in other states, and he sees many inconsistencies.

Comment 11: Susan Brueggeman, Lake Co. Sanitarian. She's voices her strong support for the study bill. At the local level, she's experienced difficulty in enforcing the local regulations. She thinks that first and foremost, we must acknowledge public health. She constantly works with food manufacturers in Lake Co. She's worked with MMFEC—who have been great to work with, she says. She also licenses several food entrepreneurs not associated with MMFEC, other commercial kitchens, and church kitchens that are all licensed. One manufacturer operates out of a storage unit, and she says that even garage kitchens can work for a certain type of product. The needs of a kitchen are driven by what the business wants to produce. She's seen basement kitchens and even a residential backporch work in the right situations. Her point is that she's tried to be very supportive of people going into business—and it has worked. She wants to remind food entrepreneurs that there simply are certain things that you can't do. She thinks that the food manufacturing statute could be changed—she will be making written comments on that for the committee. She also believes that the farmer's market law is very unclear and she struggles with the poorly defined language. She believes that law doesn't serve anyone in the public whether they are her, her employees or the food producers and market participants. Everyone is confused, she says. If the regulators are confused and producers are confused, how do we expect the consumers to understand what decisions to make about their purchases(?), she asks. She wants to add focus on the consumer. She thinks advocating for public health also means a responsibility to encourage, or at the very least not discourage local, healthy foods. The farmer's market exemption needs to be rethought, she says. We need to address *how* the food is being produced, not *who* is producing it. Who is a farmer? She's unsure how to define that under the law. She believes the rules should be written under the DPHHS to be consistent with other food regulation. Any final product in terms of rules or regs could provide a listing of potentially hazardous foods that are acceptable. Or some sort of simple registration for cottage food producers. As we begin these changes, she suggests there be a requirement that they are only applicable to direct sales.

CORT states that with the Indian reservations, there is another layer of potential regulations.

Comment 12: Alisha Johnson—inspector with MSO City-County Health Dept. She is a supporter of the local food movement. Sometimes, she thinks people wrongly assume that the answer is going to be no from her and her office. She says uses food science in her decisions, so her determinations aren't an unwillingness to work with businesses, it's just science. She points out that a lot of times the answer isn't no. It is a qualified yes, it's just that people need to do specific things to bring their process up to a safe level for the public health. As to conflicting things amongst agencies, grease traps are a problem she has seen before as well, but that is not a food regulation, it's environmental. Food science has got to be acknowledged to the process, she says.

Comment 13: Stephanie Potts, Grow MT. She says that the local food system is not part of the problem, it's part of the solution. She has some ideas for a cottage food law. Cottage food laws as applied to farmer's market small businesses need to be manageable. Direct sales are safe, she acknowledges that. But she wants to look at the states that have cottage food laws who can do intermediary sales, whether online, through convenience stores, or local supermarkets. She has seen great guidance documents come out of cottage food laws in other states that are very useful for market participants—look to CA's guide, she encourages us. She believes CO is another example of a great cottage food system. She discourages a cottage food law that is too restrictive on what to make and where to sell—other states have done this from a food science perspective and succeeded.

Comment 14: Ephy Richeux (sp?)—He is speaking as a consumer, a food lover. One of the things he has struggled with since moving back to America is: where is this food coming from? You don't know in America, he says. What he would love is to know that he's eating the beef from Montana. He would like to know that the farmers he knows are able to produce and butcher in-state for the consumption of people from the state. He'd like to see the same thing with poultry. A level that is far below a CAFO should be able to butcher and sell to him directly. He'd like to see that this bill is in support of people getting into the industry to have eased regulations. He acknowledges that everyone wants safe food. He suggests training for the mobile butchering facility. He wants to buy raw milk as well.

Comment 15: Yvette Rodriguez from MMFEC. Cottage bill has to have regulations. She can understand selling to neighbors, but making it easier less costly would be good, but the industry DOES need regulation to help control outbreaks. She had a client that sold food at shows—they pay fees at all the shows and the state fee to be a manufacturer. She asks for a more abbreviated fee structure for manufacturers in the state. Why should they pay all these separate fees? She is also a budding dairy farmer: "I don't encourage raw milk, but there are ways to regulate it."

Comment 16: Jim Carlson, MSO Co. Health Dept. He is a RS. He's been involved in many outbreaks of disease, including salmonella, hemolytic *e. coli*, listeria. He remembers an outbreak in the case of a raw milk facility back in the early 80s. All of the people involved had drunk raw milk and a couple dozen of them ended up in the hospital. He reminds those present that not all food borne illnesses are getting sick overnight. They're quite serious. He has seen a Hep. A outbreak—he's had a friend die from it. The person carrying it isn't aware they're sick for 7-10 days. It's highly communicable and there is good reason to protect the public health, he believes.

Comment 17: Kirk Martin, The Sweets Barn. He says that “local” does not equal safe. He gives an example of a Rhode Island bakery who distributed croissants that transmitted salmonella because the delivery man put them on egg crates. From a business standpoint, he says that we have to make it fair to the existing businesses. If you sell for a profit, you are a business. Regulations should be uniform for similar businesses if and when law addresses so-called cottage foods.

Comment 18: Nancy Matheson, speaking as a consumer. Her and her former business partner started an organic livestock feed business. She comments that in that work, she came face-to-face with the raw milk black market. She suggests that if you let the black market go, it is unregulated and perhaps unsafe, whereas if you regulate it, there can be some safety checks and balances.

Melissa Tuemmler takes the floor to ask a question of the crowd: She asks: What is it that is so prohibitive that requires a cottage food bill? She doesn't understand what the public and advocates for cottage food businesses are looking for that they don't have currently.

Comment 19: Lori Elliot has a start-up business where she has only just begun to grow herbs for public sales. She started it as a hobby, but she'd like to continue as a business. Temporary service permits for different venues are cost-prohibitive for her. For a start-up, she'd like to see a tiered system that would allow people to tap into markets without jumping in the deep end of the pool first. She also would appreciate some mechanism for education on food safety handling for people who are starting up.

Comment 20: Molly Galusha from The Buttercup Market, MSO. She states a few things people have already said that she agrees with. Education, level playing field for businesses, etc. She adds that she believes people should have to pass a test to prove they learned the safety standards.

Comment 21: Stephanie Potts, Grow MT. Raw milk is being sold in Montana. No one is testing it, no one is watching it. She thinks there is incredible momentum behind raw milk. If the agencies who have the expertise that keep the consumers safe don't address it, there might be a bill that still passes that those agencies don't have as much control over. She suggests that if the agencies engage, they'll have more control.

Comment 22: Rebecca Wade. Director for Health and Food Safety at UM Dining. He role is as the campus sanitarian and campus dietician. They are very invested in the local food movement in Montana. Her hope as a department is that the result is safe, legal food produced and economic opportunity for small businesses in the state. She wants regulations to clarify and streamline the process and encourages producers to bring items to market locally, through varying venues. She finds the current process intimidating for producers to maneuver through that process. All of the separate barriers can become insurmountable for some people.

Too keep momentum, Cort starts to question the participants on specifics:

1. Cort: How often should restaurants or manufacturers be inspected? Specifically in MT?
 - a. Laura Ginsberg speaks from personal experience. She has worked at Whole Foods as the manager of the bakery and coffee shop. She's also worked at several dairies, both

organic and conventional. In her experience, when you know the inspection is coming, you clean up your act. Her opinion is that inspections should happen annually as a planned inspection, and annually on an unannounced inspection. This will incent the good behavior. Twice a year is her vote, with one of those inspections being unannounced.

- b. Kirk Martin from the Sweets Barn hasn't had anything other than annual inspections for 30 years. The sanitarian should be using the visit as an opportunity to teach you new regulations, not punishing you for not knowing them. If the sanitarians do a good inspection on an annual basis and use it as a learning tool, he thinks an annual inspection is sufficient.
 - c. Cora—a sanitarian for MSO County. There would be budgetary concerns with requiring more than a year. They don't necessarily have time to go back to every place multiple times a year. It would be great if places that are higher risk could get more inspections, but that's a budget concern.
 - d. Jim Murphy, DPHHS—mentions that there are 7500 retail food establishments in MT to be inspected at least once a year. Compliance is good—almost 100%. Most of these inspections are unannounced.
2. Cort: When contemplating a cottage food bill, do we exempt commerce under a certain dollar amount or not? What levels are suggested? At what level is it not worth it?
- a. David Tyson—from college radio, Tandem Donuts and he's trying to get a gluten free bakery going. He suggests a test that people who are under a certain limit on gross sales can take to bypass inspection.
 - b. Alisha Johnson, MSO county health dept. From a straight food safety perspective, food borne illness doesn't discriminate. She says that cottage food bill needs to focus on the type of food is presented. Caterers need a retail food license in MSO County.
 - c. Yvette Rodriguez from MMFEC—being the food safety coordinator at MMFEC, she thinks the National Restaurant Association's "serve safe" class is something that everyone who wants to serve food should take.
 - d. Kirk Martin—reiterates, "If you are a business, you are in the food safety business. The rules should apply to everyone."
 - e. Susan Brueggeman, Lake Co.—she says that the licensing fees don't cover the food inspection programs. She thinks that they're about 25% underfunded—that's her memory. Even with only one a year inspections, they are already underfunded. As a RS, she's not comfortable inspecting a residence kitchen, what with the pets and kids. She doesn't think that that would apply to a cottage food type kitchen. To add more to the burden of the RS without adequate funding for cottage food home kitchens? She doesn't see how that would work.
 - f. Laura Ginsberg—comment on larger producers subsidizing the smaller ones. She's seen some inequities in the burden of the actual inspections.
 - g. Kristen Lee Charlson—As a consumer, she wants choice and she'd like to support small scale production. There are examples around the country of states that are setting dollar limits on what can be produced in a home kitchen. In CO, if your sales are \$5k or

under, you don't have to be licensed. You DO have to provide a label and those educate consumers and allow them to make the choice for themselves. She suggests that as an alternative—a labeling requirement.

- h. Stephanie Potts, Grow MT, agrees with the warning label.
3. Cort: MT law has a bunch of special exemptions for farmer's markets. For example, raw agricultural products that aren't animal based, coffee w/o creamer, hot tea, some preserves, etc., are allowed to be served at farmer's markets. Are items not allowed that should be or allowed that shouldn't be? Should retailer entities be able to go buy farmers market items and use them in their products?
- a. Kirk Martin—most cottage food proposals don't require licensure. Why are cottage producers allowed to take their product to farmers markets and sell them without regulation when he is not able to because he has chosen to have a commercial building? Also what can they produce? Not more than what a regulated person produce...and they'd have to be licensed. (he refers to equal protection)
 - b. Susan Brueggeman—Lake Co. She says Kirk's message (above) is important. One of the Lake Co. legislators initiated the farmer's market. For folks doing the jams and jellies and baked goods—the kitchen requirements are minimal. Is it really too burdensome for them to be regulated? MMFEC is required to have liability insurance, Kirk does too. What if a consumer does get sick of a cottage food goes bad? This would be a product safety issue. IF the warning label isn't adequate, it could be a product liability issue and who is responsible?
 - c. Alisha Johnson—if both the farmers market exemptions exist with a cottage food act, that could get even more confusing. Perhaps cottage food and farmers market laws are combined to make the rules more consistent. She thinks commercial kitchens are simpler than they are perceived. Perhaps 'commercial kitchen' is too intimidating a phrase to describe what could technically be a commercial kitchen. Compiling a list of commissary kitchens in MSO County is a goal of her office for 2014. Another goal is to contact licensable kitchens to see if they can get them licensed for people.
 - d. David Tyson. His business, Tandem Donuts, holds a temporary foodservice license for the farmers markets. He's still unclear and they're researching constantly and still doesn't know sometimes whether he's doing something the right way. He'd like a database for potential producers to know what options are at their disposal to try and get into the business.
 - e. Stephanie Potts, Grow MT—She believes there is a big gap in education for people on what exactly they need to do in order to become a commercial kitchen. There should be an instruction manual where the requirements for certain types of operations are made public. She admits that if education was much better, perhaps we don't need a cottage food law.
4. Cort: The temporary food license was created before the current atmosphere of farmer's markets. How could the wording of temporary food licensing be changed to make it work better?

- a. Kirk Martin—He used to have to get temporary permits all the time. He thinks that law could use a makeover. He believes there is no logical safety reason why a person who is going to different venues would need to have a different license for every venue. He thinks the venue itself should have the license. If the a vender is licensed as a vendor, that license should be sufficient no matter where they go. For example, if you are a licensed vendor in MSO, and you go to Billings, you should be able to do so without obtaining another license.
5. Cort: As for FSMA—are county sanitarians able to inspect produce farms? Should it be the AGR? Any other comments on the FSMA?
 - a. Cort says that it gives more power to take action at the production level whereas historically it had been taken at the manufacturing, storage or retail level. The goal is less sick people, which is respectable. He worries that foreign based produce may have a different standard than domestic produce.
 - b. Stephanie Potts, Grow MT. She’s heard FDA is going to put out a revised rule based on all the comments from small producers. She reiterates that a standardized statewide training so that businesses all over MT have the same inspections from the RS, if it is the RS that is doing the FSMA inspections.
 - c. Tim Reed, Mineral Co. Sanitarian—doesn’t want a cottage food bill—he just wanted to make that clear. This places an incredible burden on the small counties with a single sanitarian and he considers further inspections as unfunded mandates from the state. In general, small county sanitarians don’t want cottage food laws, he believes.

Cort makes a last call for FINAL COMMENTS ON HB 630:

KIRK MARTIN: He understands the basis for the cottage food act. We are in a bad economy. Leases are high. Starting a business is tough. Shipping raw materials into MT is tough. The regulations that have existed on the premise of food safety have never really changed that much over 30 years. What has changed is the economic environment. He knows, because he invested a\$180k into his business last year. He says deregulation is a mistake as a response to a bad economy. It is going to take other things to encourage business. We already have a cottage food industry—it is called the Farmer’s Market—expand that and make it more accessible.

TIM REED, MINERAL CO. SANITARIAN—NW Sanitarians are going to provide written comments.

STEPHANIE POTTS: Comments that the agencies should encourage the continued dialogue. There are so many elements of the law aside from cottage food and she wants to encourage the group to move forward on any and all clarification and streamlining efforts. She’d like to replicate the achievements with commercial kitchens and RS inspections in MSO County in other counties.

Cort states that the committee will come up with a recommendation from all the departments and separate recommendations from separate departments if there are disagreements.

Appendix C

HB 630 Public Meeting #1, Bozeman, MT

Monday, January 13, 2014.

Written comments are encouraged as they were in Missoula.

Meeting starts shortly after 10:00 a.m. after Cort gives an “off the record” explanation of public meetings and their purpose.

Public meeting #2 on HB 630 formally begins at 10:05am. Cort notes that the primary sponsor of the bill is here and invites her to comment for the sake of perspective. Kathleen Williams, state representative for HD 65 in Bozeman, Gallatin County introduces herself. During the 2013 legislative session, she was asked to sponsor a cottage food bill to address issues that other states have already addressed in their own cottage food law efforts. The genesis of this bill was her constituent interest in local foods. Three different agencies had different roles as she came to learn: AGR, LIV, and DPHHS. She learned that the MT food laws are a patchwork. It occurred to her that the state needed to take stock of the current food law landscape and mandate the 3 agencies to review their own laws and see how they relate to new federal law and eventually a MT cottage food act.

Cort explains that with the interest behind this effort, we’ve decided to do 3 public meetings rather than one and that we’re accepting written comments through February 7. In addition to the three departments named—OPI, DOC and DEQ have helped chip in where appropriate as their regulations may apply to food law.

State people stand up and introduce themselves.

Comments begin after Cort gives similar advice to making an effective public comment to what he gave in MSO, so I will not detail that advice.

1. Bill O’Connell, farms up but Cut Bank, also had a game processing facility north of town. He also farms wheat, barley and camolina. They interface with the LIV, AGR departments because they do some direct marketing and some processing. He says it is somewhat out of character for him, but he doesn’t have much a problem with the existing system. He has some concerns with HAACP.
2. Jessie Wilcox, Livingston Healthcare—an acute healthcare living facility. They would like some help with procurement of local foods and consistency at her work. They are interested in procuring as much locally produced food as possible for patients.
3. Gregg Harris—he owns Artisan Meat & Cheese. He is here out of curiosity and supports the efforts because he believes he is the only local artisan sausage producer.
4. Aaron Smith—general manager for Seven Sushi. He has noticed that new federal regulations for sushi places are difficult to keep up with. His suggestion is that he wants to keep up with regs and simply doesn’t know where to find them. He wonders if there can be an email list or

- something to help educate his management team and his restaurant employees. The Gallatin Co. Health Dept. has done a nice job of helping him, but he'd like the info to be more accessible.
5. Jonathan Heap. Heap Burger food truck. He has run into a lot of problems travelling from county to county. His base is Gallatin County and he has their requirements down pat because of that. They've been told that Gallatin Co. had some of the strictest, if not THE strictest health regulations for food trucks, and yet he often experiences trouble vending in other counties. He would like some consistency so that he knows what to expect when he wants to do business in another county. He wonders: Why would he be put through the ringer in other counties after passing food safety inspections with flying colors in Gallatin. Co.? That doesn't make logical sense to him. Furthermore, they would like to see a regulation that allows private wells to be a water source for his food truck as well.
 6. Nicole Morgan—MT Made Manager and works for MSU University Food Services on campus. She is trying to revise the definition of MT made under their program and grappling with the definition of "local food." She is excited to be here and hear more about what the people in the room have to say. She seems general supportive of the HB 630 effort.
 7. Tom Morgan—small poultry producer from Helena, MT. He has a new poultry business that he just started. He would like the opportunity to make supplemental income on poultry. He represents the MT Sustainable Poultry Network as well. He understands that MT has adopted the USDA federal exemptions, yet DOL has verbally prohibited the use of the 1000 bird exemption—that's his understanding. He'd like to get something set in stone that makes that 1000 bird exemption clear under MT law. He suggests that other states have big poultry markets and that the State of MT need not reinvent the wheel. We need to look to those states for guidance, and he suggests North Carolina.
 8. Lynn Paul from MSU Extension. She works in the area of food safety and has done some education and training programs for the extension. She would like to see consistency in the regulations in the different cities and counties in MT. She also would also like some flexibility for smaller farms, ranches and meat processors, but still some concrete regulations that address safety. She thinks a standard training program is very important as well in order to educate market participants, specifically the vendors.
 9. Susan Duncan, self-described "micro-Ag" entrepreneur. She raises Irish Dexter Cattle. They are a distinct breed that is not bred down from angus or Herefords. She says she can't sell them at auction because they are looking for uniform commodity beef cattle. She can't really sell at retail either because she'd have to go out of county to be processed, and that can be prohibitive. The trip to slaughter can also be cost-prohibitive. She can't sell to Farmers Market because those costs are too high as well, she says. She can't sell to restaurants because she doesn't have the volume. Her operation has a size where it is hard for her to do much marketing at all. She does, however, see her operation as having potential to meet a market need that isn't yet being met. It is highly artisan, locally produce, grass-fed, source-identified, etc. She just struggles with being as small an operation as she is. Her main point is that she has good cows that families can afford to buy, but she has struggles getting them to market.
 10. Aubrey Roth—she helps with Farm to School programs locally and statewide. She sees the following 2 problems: 1) Education for procurement of local foods; and 2) consistency amongst

the counties. Some counties get OK'd to purchase a certain type of product and others struggle, so in her experience she sees that missing consistency that many folks are commenting about as well.

11. Judd Jensen—a local private attorney (from Bozeman) that in his prior work has drafted National Sustainable Agriculture Coalition legislation and he's pretty experienced with these issues. As a whole MT is ahead of the curve in terms of getting local food to market, in his opinion. He thinks BZN is one of the most organized small towns he's ever seen. However, he thinks that most of the state of MT is cutoff from local food systems, he uses east MT as an example. He believes it is important that there be a local food ombudsman at the state level—something that doesn't yet exist. He believes the state needs to have someone who any market participants could call on to advocate for that participant and move them through the bureaucracy or help connect them to the appropriate agency or other participant when they need help. He also thinks there should be dedicated funding for local food development—a focused, perpetual funding source. If you can get funding—grants, ads, education, etc., you can fund programs. Some states also come out with a publication every year that people can use to educate themselves on the who's and where's they can get local food from. It works as an unbiased advertising tool as well for the producers and vendors.
12. Katie Bark—Farm 2 School program at MSU. She mentions that school kitchens are good at food safety. There is growing interest to serve local foods in the schools, but there is a need for consistency and additional training. Procurement is certainly an issue, she acknowledged. However, there also needs to be education on school gardens, food preservation and other food safety rules that would allow the schools to get involved when they are interested.
13. Molly Spendford—She is a parent of school children and helps with 4-H. She supports this whole effort and wants to get local foods and local farmers into the school system to help educate kids. She does the school HACCP classes as well. She sees a great opportunity to integrated kids' educations with this food movement.
14. Becky Weed—Thirteenmile Farm, Belgrade, MT. She is also a member of the Wild Farm Alliance. She's a former Board of Livestock member. She echoes a need for consistency, but not inflexible consistency. She thinks there is an issue of training the county sanitarians. She thinks that they are taught that sterility is equal to safety, based under the umbrella of "science-based." She believes this is misguided, not necessarily "science-based" and that we have to acknowledge all modern food science, including probiotics, in any further efforts. There needs to be a broader understanding of true food safety, not just sterility, in the regulatory community. She also hopes that no new regulations, like final FSMA, are inconsistent with the national organic standards. Some of the DOL history has been that people believe that you get a different answer depending on who you talk to—she thinks they need a consistent message as to regulations and rules as well.
15. Tara Ray—OPI's School Nutrition Specialist. She states there are 276 school districts in MT. Each is expected to have 2 inspections a year. She points out that it is sometimes difficult for RSs to meet this requirement. She sees firsthand the level of variation in how RSs interface with local school districts, and she echoes a need for greater consistency.

16. Matt Kelley, Public Health Officer in Gallatin City-County. He is glad to see the interest in the issue and is interested in listening.

CORT invites RSs to comment in their professional or personal capacity—reminds them that this public comment period is for them too.

17. Dean Williamson-Three Hearts Vegetable Farm. He says that FSMA, if it passes in its entirety, will be extremely onerous for smaller producers, but not as onerous to the largest farms. For example, USDA wants there to be a 9 month waiting period between the application of fertilizer manure and harvest. This is impossible in MT. Organic standards have a much more reasonable protocol. He's certifying as organic in order to take advantage of 'organic' status. He urges the agencies to take a good look at FSMA regulations and asks them to take the position that GAPs and national organic standards remain in place. He echoes Becky Weed of Thirteenmile Farm on this point. He would like to get as much of his food to consumers as possible. Anyone can call him in BZN if they want his vegetables. He knows that his process has many fewer 'critical control points' than a large vegetable farm in California, and therefore fewer intersections of potential contamination. He thinks safety is very important, and he wants the HB 630 to acknowledge that in a small system has fewer critical control points, and therefore a potentially lower probability of contamination.
18. Kathy Heap—Heap burger food truck—asks that some specific regulations for food trucks be written into the law and regulations in Montana...this might clear a lot of things up for food carts and trucks that are catching on all over the place.

Break at 11:05am

Cort gives a cruising altitude view of the food law and regulation landscape.

- USDA—Agriculture on the national level—stuff that agricultural products that cross state lines.
 - FDA—Federal regulator for food.
 - When it comes to MT, raw plant matter produced in agriculture is regulated by AGR. Additionally, AGR is there to help Ag and Food based businesses. The DOL is in charge of any products if and when they come from or was part of an animal. For example, milk, eggs, and meat. Once these products make their way to the retail environment, the regulator is DPHHS. In reference to HB 630, it is DPHHS's Communicable Disease and Prevention Bureau that is the most involved. When it comes to food retail responsibilities on a more localized level, one is most likely regulated by a county sanitarian, who also regulate tattoo parlors, swimming pools, and septic systems. County sanitarians have broad responsibilities for the public health in their communities.
19. Tim Roark works at the Gallatin City-County Health Department. He had a chance to look at some of the notes at the MSO meeting. He encourages everyone who is interested to read those, because he thinks the testimony there covered most of the issues. He wanted to echo a few things from that meeting—he wants the regulation to be "science-based." He offers that any statutes that come out of this effort need to be simple, with the details in the regulation.

He says this would allow regulators to have the flexibility that some people seem to desire. Fee based services are a tough issue, he acknowledges. In Gallatin Co., income from fees hovers around \$.28 on the dollar for what his office's inspection related costs actually total. The reality is that the fees just don't cut it, and if we can keep that awareness, he would appreciate it. He comments that in some ways, his office is a lucky one being in BZN, because he knows other jurisdictions have even fewer resources. He also thinks the science in the 2015 Food Code is well established and should be incorporated in this effort in some manner.

20. Joel Clairmont, he'll speak as an AGR employee, but he'll also be speaking from his personal experience.
 - a. As a state employee, he states that the AGR is charged with reviewing applications and determining whether a project is ready to move forward as a local Ag business. One of the things they've noticed at AGR is that someone will be ready to go—appear to have jumped through the hoops, and as a result AGR funds them. And then it turns out there is another regulation that they need to comply with and this is *very* frustrating for entrepreneurs. He thinks this phenomenon needs to be addressed. He's seen development chilled this way. The main program he was referring to is the Growth through Ag program.
 - b. On a personal level, Joel wanted to join together with other tribal members to sell dried meat in order to add value to cull cows. They formed a business and got ready to process at the MMFEC and in order to develop their product. As a group they invested money over the course of several years. They ran into a problem where there were so many food regulations and so many regulator "cooks in the kitchen," their business development was brought to a standstill for a year and a half. By the time they put together a product, he believes too much time had passed. In his experience, different regulators would come in and tell them different interpretations of the law. Finally, they went to the tribal council and asked for support and when the regulators realized there was going to be another level of government, they all of a sudden approved the process. He doesn't think it should be that way.
21. Lynn Paul—MSU extension, BZN, MT—She states that she believes infrastructure is very important. She knows how hard the sanitarians work and she can't imagine giving them more work. She believes there is a statewide food science deficit as well. She believes we need to invest in employees with more food science education, including more employees with a food science degree in their background at DPHHS, MSU, etc., or in the alternative, having enough money to subcontract with out of state entities that can provide this knowledge base. She also thinks that regulatory authority is blurry and needs to be better understood by market participants. She asks: When a new retail or wholesale business pops up, how can the state adapt to them in a way that allows decisions to be made more quickly? The current environment unnecessarily breeds contempt due to the slow movement of new applications for budding businesses. Additionally, once a final FSMA comes down, the state needs to create a committee amongst the agencies to address the application of FSMA regs.
22. Garl Germann, MT Meat Company founder. He agrees that there should be quicker turnarounds for approval of new food businesses. He appreciates the work it has taken to allow

the safety we currently have in our food system, but he wishes the agencies could be speedier in getting through applications on permits, licenses, etc. Accessibility and user friendliness are two big issues he would like to see this effort address.

23. Sean Hill— Program Manager for the Gallatin City-County Health Department. Oftentimes, Sean said that his office has “no money and even less time.” Because of this reality, they must prioritize. “Joe Public” pays for over 70% of the work that comes out of his office. He urges the committee to keep in mind that something or someone has to pay for new programs. He is already prioritizing matters of public importance and public health, not necessarily business development and start-ups, despite the fact that he might like to be able to have the resources to prioritize that work. In this arena, the issues he most often sees involve food manufacturers who want to step up to the next level in their business structure (i.e., retail to wholesale) who are subsequently slowed by some regulation they didn’t anticipate. He believes that government’s purpose is to help businesses navigate such development, to the extent it can. The committee should define at which level of development problems occur and focus resources on helping businesses transition from one level to another. He also thinks labeling is a BIG issue for cottage foods—he sees a necessity for caveat emptor, buyer-beware type of education that includes labeling.
24. Mike Finnegan—MT DOL meat and poultry inspection. He states that he works with meat plants—even if they are smaller operations. He shares that he will put on a HACCP course this May so that small plants can learn how to comply with USDA rules and HACCP rules. He works to help the small plants as much as possible.
25. Katie Bark—She is a licensed, registered dietitian and the Project Director for the Montana Team Nutrition program at Montana State University in the Department of Health and Human Development. She says she cannot thank the RSs enough for guidance on the farm to school project that she is working on. She offers that since MT is such a rural state, we should put together some training videos that are accessible to anyone and everyone that is interested. She believes it comes down to more training and this might ease the burden of the RS offices because people would be more fluent in the disciplines they are being asked to work through as a part of their job responsibilities.
26. Judd Jensen—private attorney from Bozeman. He points out that MT doesn’t have a large population base, or significant urban population centers. From a practical standpoint, this makes certain aspects of regulation harder than they are in more developed population centers. He also points out that Montana has difficult weather, which makes certain aspects of agriculture difficult. However, he believes there is a base of consumers in MT that are willing to pay more for a product that is produced locally. He states that we need more diversity in our production base for local food. There also needs to be a bit more consumer sense and household knowledge. He’s experienced in designing HACCP programs and he’s trained businesses in compliance. He states that an effective program can be very expensive. Does knowing where the food comes from make it safer? He says that’s debatable. He thinks that we need an integrated system that provides as much consumer choice as possible. People who want the cheapest food possible should be able to get it, but people who want local food, even raw milk, should be able to get it if they’re willing to pay that premium. As a society, we absorb

the risks of alcohol and tobacco, so we should be able to find a way to acknowledge and incorporate the same type of risk analysis into a food system that allows for the purchase of “local” food.

27. Aaron Smith, Seven Sushi—He admits that he is confused over who the regulatory players are. He sees a similarity between Sushi and food trucks because both of these food service businesses are relatively new kids on the block. He would like a Gallatin City-County Health Dept. led Sushi symposium once a year. When questions arise, he’d like to get answers quicker when, for instance, he wants to introduce new products. As a business, he wants to be on the cutting edge of what the public wants. Right now it can be a struggle to find out whether or not a new product is up to par with existing regulations. He asks a question: Is there money available from the state to implement training at his restaurant? He acknowledges the agency complaints about their costs, but what about the costs of regulation on his business? Is there money available to train his cooks? Somewhat tongue in cheek, he suggests the legislative body should consider training funding for his employees and for other sushi bars. His point seems to be that he wishes there was a better way to keep up with new requirements other than learning the hard way through a violation. He also asks: Should the public understand the risks? Or is it up to him to put on his menu? He has every incentive to make sure that his customers are safe. He wants a partnership with the RS community, not an antagonistic relationship.
28. Kris Clawson--DOL—Division of Meat and Poultry Inspection. She states that every May, DOL gives a \$65 HACCP class. It is at MSU. On day one they train participants on food pathogens, and the next two days they teach people how to write their own HACCP plans. They teach about recordkeeping for raw products, heat treated products, and fully cooked products. For their small plants, she believes that a HACCP plan is not as expensive as was suggested earlier in another comment. She thinks it isn’t as prohibitive and they try to be accessible. If a business is interested, they should contact DOL.
29. Nancy Matheson—from the AGR Dept. Nancy educates the attendees on the Food & Ag development centers that exist around the state. As an example, she explains how the MMFEC is available for both start up and existing food and ag product businesses. The Food & Ag Center program currently has to contract with food scientists from out of state (WA). So she agrees, as was stated earlier, that we don’t have that many food scientists in MT. However, those services are available through the Food & Ag Development Centers. There is another based in Butte, one in Havre, Joliet and Glendive. For the record, the program would encourage the legislature to fund some sort of food science program for education of the businesses that need that support. Nancy comments that education is very important. She also suggests that it would be good if there was a central place to advertise—everyone keeps talking about a need for consistency, so perhaps there should be a dependable place for people to go to in order to access trainings and/or other forms of education. Also, she appreciates the suggestion that we videotape trainings so that people could watch them at a later date if they weren’t present.
30. Tim Reed, Mineral County Sanitarian. He is also a member of the NW Sanitarians Association. He is also on the board of the MT Environmental Health Association. He thinks current rules have a good potential to adapt to the issues that would arise with sales of cottage foods. He thinks cottage foods have the potential for just as much hazard as any other foods. Most

sanitarians he knows think that simply putting a dollar restriction on the sale of cottage foods as the single form of regulation is not feasible. He reminds the room that issues of food borne illness always fall back on local RS offices.

Q1: CORT ASKS ABOUT COTTAGE FOOD LAWS. Many cottage food laws exist and they are quite variable—the committee has reviewed them. He states that in Missoula, some people supported cottage foods, while some did not. Cort asks: If cottage food is to exist in the marketplace, what would today’s participants like to see in a cottage food law?

- a. Tim Reed, Mineral County Sanitarian. Member of the NW Sanitarian Association. He is also on the board of the MT environmental health association. He thinks current rules have a good potential to handle the issues that would arise with the sales of cottage foods. He thinks cottage foods have the potential for just as much hazard as other foods. Most sanitarians he knows believe that that a simple “cap” or dollar amount exemption is not feasible. The issue of food borne illness comes back on RS offices.
- b. Matt Kelley, Health Officer at Gallatin City-County health department sad that during the last legislative session he was aware of a lot of discussion about cottage foods. There always is some conversation about the freedom to choose these foods. He offers that whatever is ultimately decided needs to take into consideration people who are “unknowing” consumers at a Farmers Market who consider everything there as being inherently safe. We need to make sure that people have the information to opt out of the consumption of these foods.
 - i. Cort: Does he mean labeling?
 - ii. A: Yes, that is part of it. Especially with raw milk. He thinks Farmers Markets are areas of higher food danger. In his opinion, people make assumptions that the food at Farmers Markets is safe, even when it might not be safe.

Q2: Consistency—with so much talk about consistency, Cort asks what does the audience believe would help increase the consistency amongst the state agencies?

- a. Judd Jensen—state statutes and regulations that are thoughtful and written with the intent to be clear to county officials so that each county or region doesn’t have to come up with their own regulation of what is safe for their population base.
- b. Tim Reed, Mineral County Sanitarian—He comments that it is really difficult to compare low population counties to higher population counties. Inconsistencies aren’t just from interpretations; they’re from sheer size as a practical matter. Local food codes can help counties with their own work and he appreciates counties that might need them. But they also set up a regulatory atmosphere prone to inconsistency. He just wanted to point out that inconsistencies come from the volume of larger communities vs. small communities and the number of people on their staff as well.
- c. Nancy Matheson—AGR—it occurs to her that there are 2 issues: 1) the product itself, and whether that product is safe...and 2) there is a separate question in cases where there is inherent risk with a certain type of food. How much does the law acknowledge that risk?

Risk is different in differing distribution networks, and further efforts must acknowledge that.

Q3: Catering has come up in the written comments...other comments Cort has received has to do with fundraisers that are non-church related. He invites people to weigh in on either of these topics.

- a. Susan Duncan looked up cottage food laws the night before the public hearing. She realized that she doesn't know where to go in order to look up what she can and cannot do. The DOL has emailed her with rules in the past, and she appreciated it, but she still sees a lack of accessible material out there to self-educate. She believes she lacks the information she needs to make decisions for her niche business. She thinks at some level there should be some built in trust for smaller, more local producers. She asks—what kind of world do we have if there has to be a sticker on every apple?
- b. Unknown commenter believes that at some level the sanitarians should not be expected to know every regulation that exists. Perhaps that is where a state based ombudsmen involved that could handle some of the questions without requiring the sanitarian to know every last regulation involved. She is stunned that there is one sanitarian covering the entire counties where the Bakken boom is occurring.
- c. Tim Roark, Gallatin City-County health department. He states that catering events and farmers markets are hard events to figure out how to regulate. Do you regulate what is served or how it's being prepared? Education and information is the cornerstone for everything that they do at his office. He thinks education and information are fruitful focuses on these topics for a committee looking into them. There should be a clearinghouse for people to access information.
- d. Sean Hill, Gallatin City-County health department. He says that when it comes to caterers and single events, he thinks it is very important to delineate between private events and public events. His office stays out of private events. If it is a public event, there is an expectation that the food is safe. Currently, the state is dealing with an older food code. It is being tailored to include food-carts, etc. He also thinks it is important to have a statewide clearinghouse for information seeking parties. For example, they had the sushi symposium in Bozeman. He had an excellent turnout that was focused on a known need and they plan on webcasting such events to a broader base so that remote interested parties can access that symposium in the future. However, someone will have to fund these endeavors.

Q3: 50-50 exemptions—what foods are able to be sold without a food manufacturers license? None.

Q4: Anyone with general comments? None.

Break at 1:00pm

Cort tells people they are free to go, but the meeting is open for comment until 2pm today. People were invited to comment if they wanted to, but otherwise the meeting appeared over at 1:10pm.

At 1:20, Cort invites any public comment would be accepted in this forum. He also invites further comment on HB 630.

31. Lynn Paul, MSU extension, says that she has ethical concerns if MSU extension continues to support local foods and local food businesses if the extension cannot meet that supportive intent with an adequate staff and infrastructure to meet the need of that business community. Adequate funding is a major issue that she wishes to make clear.
32. Ron de Yong, AGR Director. In terms of adequate funding, Ron is concerned with anticipated FSMA requirements because there is no money to back the rollout of FSMA. He'll have to go through the appropriations process, which is challenging. He says that there is a need to keep track of federal dollars. On the state level, the biggest money gap he sees is the lack of a food scientist in the state. How much and how well we do these efforts will depend on the funding.
33. Judd Jensen, local private attorney, says he believes it is important to identify funding sources. When we look at how we spend money, much of it is risk assessment. Where there are health problems, we identify the causes and implement changes to lower the risk. As far as funding sources, Ag may need to pay its own way (check-off suggestion). Perhaps that will be a small pesticide tax or livestock fees. Perhaps the local food producers will have to bear the costs through an increased fee on Farmers Markets, perhaps the state can offer a license plate for local food, etc. It doesn't take a huge amount of money, but it takes consistent money every single year.
34. Tim Roark. He wants to reiterate that the interim committee needs to study the "Gosten report" out of Georgetown University.

Appendix D

HB 630 Public Meeting #3, Billings, MT

Tuesday, January 21, 2014.

Written comments are encouraged as they were in Missoula and Bozeman.

Meeting starts at 10:05 a.m. after Cort gives an “off the record” explanation of public meetings and their purpose.

ON THE RECORD:

Cort announces the third meeting on HB 630. He explains it has given the 3 departments with some degree of regulatory authority to take public comments. The law is fairly broad and Cort invites comment covering anything in the food process whatsoever.

State people introduced themselves.

Cort explains the three agencies involved—AGR, DPHHS and DOL. Cort lets the group know that the agencies are interested in comments on a possible cottage food law. Also, anything within the law that is or isn't working well, Cort wants to hear about it. And he'd be interested in hearing comments on public kitchens and their accessibility or lack thereof. He also encourages comments about the farmers market exemptions for food and whether there should be more, fewer or different regulations. Cort invites written comments and shares his phone number and email for those comments if people want to make them.

Cort reviews the appropriate way to make a public comment—he covers the same bases as prior public meetings.

1. Kate Rossetto, from Billings. She has a small market garden where she grows produce for local sales. She is not certified organic, but uses sustainable methods to raising the produce that would probably qualify her as organic, but for the lack of certification. She is exploring creating value added products with the produce she grows. She has a separate kitchen that gives her the ability to manufacture certain foods. The regulations she has seen are not always intuitively applicable to her business and she is here to listen and learn.
2. Michelle Harper, from Belfry. She enjoys baking for farmers markets. There have been many changes in the rules applying to farmers markets since she began. She would like to make pasties, but is unsure whether she may run into regulatory hurdles. She wants to learn more and that is why she is here.
3. Bonnie Martinell, co-owner of Boja Farms and a small business called On-Time Gourmet. A number of the issues she'd like to comment on have to do with eggs, specifically selling eggs off the farm. Can her farm direct eggs to people without grading? Does she need a special license for sampling? She has heard there is a separate license they need to allow folks to sample at the farmers markets. She says there is a better chance at selling product if you can sample and to

have another license to sample is too burdensome. She also has her own certified kitchen. She also is unsure about processing poultry onsite at her farm. She is unclear on what is the best and most cost effective method for processing some of the commodities she produces.

4. Carol Nash, from Bridger. She raises sheep, cattle and she has an orchard that she would like to see go back up under production. She states that last year she ran into some problems. She sells her lamb at farmers markets. She understands that in order to process her meat, she must do so at a federal or state inspected plant. She found out that she has to have a special license in every farmers market. She would like the inspection for the license to be more uniform and allow her to sell at any farmers market if she's allowed to sell at one. She also has to have a special hand-washing station at her booth at the market. Why? (She asks). She sees no purpose. She says her meat is absolutely safe from hand contamination at the point of sale. She doesn't see any purpose when she takes such care to wrap and double wrap her meat. Also, if and when she does start producing apples again on her orchard, she would like to see the organic certification become more streamlined. Finally, she also would like to see easier sampling ability at the farmers markets because she processes and sells smoked meat as well. If the state wants to encourage small producers, we need to make the laws easier for the little guy, according to Carol. She also is against animal ID for small producers. She only has 15 cows that are all registered with tattoos in their ears and she doesn't want to have additional ID burdens. She urges a bit more commonsense in the process when the state is dealing with really small producers.
5. Debra Haines, from Crow Agency—She is a federal inspector for the Crow Reservation. She is here to listen.
6. Jeanne Winnick—she is the manager of a restaurant in Billings and here to listen.
7. Laurie Gebhard, from Billings. Laurie owns Spicy Gals—a small business that sells dried spices. She has issues with labeling. She sees a lack of consistency in the approval of labels. She's had labels take 6 hours to approve and labels take 6 months to approve, even though her labeling process is the same every time. She has been told differing information on whether she had an organic product, even though she's using all organic raw materials.
8. Bruce Lackman, from Yellowstone County. Bill raises sweet corn, and tomatoes and peppers. He is interested in making salsa and he doesn't know how to enter the market, so he's here to learn.
9. Anna LaFountain, from Billings. She works as a RS at Riverstone Health and is here to listen.
10. Alicia Pettip, from Billings. She is employed with Northern Plains Resource Council—she is here to listen and support the effort.
11. Martha Brown, from Red Lodge. She is representing the Red Lodge Food Partnership Council. She is trying to understand rules and laws to better serve her community. She wants to help the RL Farmers Market continue to grow and she is a member of the board of AERO.
12. Clark Snyder, from Billings. He is employed as a RS at Riverstone Health. He and his colleague are here to learn how to better their process for all participants and they want to improve their processes so that they can better serve the public.

13. Gay Kepple, from Worden. She runs Misfire Farm, they raise goats. She's done some farmers markets and she wants to do more. She wants to start getting into making goat cheese and she doesn't know how.

Cort comments that it appears to him that many of the day's participants appear to have attended in order to learn and that this is a public comment forum. He comments that at other public meetings, the cry for education is loud and clear—it seems like that is what they really want. He comments there is a general lack of knowledge of the existing laws and he encourages anyone to comment on what their understanding of the law is so that we may ID problem areas where education is most needed.

14. Gay Keppel—She wonders where she can view the rules and regulations for farmers markets? What if you want to sell in another town? What if you want to start a new business or new product?
 - a. Cort says that the first effort should be to talk to the county sanitarian. There will be different regulation dependent on whether you want to sell to farmers market vs. sell internationally. He also encourages people to become familiar with the Food and Ag Development Centers, especially if you want to add value to your agricultural commodities. The marketing arm of the AGR—Agriculture Development Division (ADD) is another place to call with questions. Also, occasionally writing out in a short email detailing a perceived problem and sending it to the regulator can help people keep a record of the questions they're asking. One could also look up the administrative rules of Montana. The SOS is the gatekeeper for the ARMs. He also refers people to go to the MCA. Title 50 for food, Title 80 for crops and Title 81 for livestock.
 - b. To become certified organic, you can use any organic certifier that you want as long as they are licensed. His department can certify, but it isn't necessary that they are the entity that certifies.
15. Laurie Gebhard asks: If she uses all organic materials in her product, can she call it organic? She is told to call the regulator.
16. Jim Murphy—DPHHS—reminds the group that DPHHS makes informational resources available on the internet. But he asks the crowd to please describe exactly what type of information materials would be the most helpful to them to use?
17. Bonnie Martinell—She asks whether there will be any consideration of rules or regulations for agritourism on their properties. In general, she believes that people often do this and serve dinners on-site at their farm or ranch. She has concern that there does need to be some sort of oversight because eventually someone will get sick and she doesn't want that bad actor to ruin it for the good actors in agritourism. Secondly, when it comes to GAP standards, she has concerns that her orchard and produce garden—one that has all types of fruits and vegetables—will somehow be considered unsafe because they keep poultry around for bug control. She keeps the poultry away from direct contact with the produce. She points out that it is MT and they have wild animals and flocks of birds going through the orchard and she doesn't want regulations that don't allow this occasional contact with wildlife because that seems irrational in a state like MT.

18. Carol Nash wants some type of law that allows some ability to sell raw milk. She believes that people should be allowed to manage their own health risks when it comes to raw milk. Raw Milk is prohibited by rule of the DOL, not a law and she'd like to see that changed.
19. Deborah Haines offers that milk and egg producers should get a hold of the DOL to be inspected. They should be contacted first and then the producer can figure out whether the county sanitarian needs to be involved. Many places in MT they won't, but some counties may have additional regulation that requires them to be involved.
20. Gay Keppel asks about last sessions raw milk bills. Cort answers that none of them got passed. He encourages people interested in raw milk new rules to bring their concerns to the board of livestock. If they want cow shares to become 100% legal, they need to seek a new rule.
21. Debra Haines from Crow Agency offers her opinion that for producers who market milk, cheese and/or eggs, it is important for them to understand the history of milk and egg contamination—the Pasteurized Milk Order is important and there are very good reasons for such regulation. There were thousands of people dying from bad milk products. Look into the reasons behind the rules before you challenge the rules, she says.
22. Laurie Gephard reminds everyone that the businesses in the room already are conscientious. They want to do the right thing, or they wouldn't be here.
23. Alicia Pettip. Speaking from her personal experience with samples at farmers markets, she believes there should be an ability to serve a sample by doing a food safety course rather than an only through obtaining an \$85 license. Could the course substitute the license fee requirement?
24. Martha Brown—She believes that if there is any way to make it simpler for smaller producers to sell their stuff, we must do it in order to encourage their businesses. More regulation closes these people out when we want to bring them into the market. Furthermore, the increase and interest in raw milk in MT is big—there are superior tastes and health benefits. She consumes raw milk and thinks it's ridiculous that there are laws against it. She believes it should be up to the consumer to know their dairy. She encourages the state to address it.
25. Clark from Riverstone Health says that Riverstone encourages people to call them when they have questions about food and food health. If they don't have the answer, they will find it. They are currently working on their website to enhance the accessibility of that information. He believes that agritourism events do need to be licensed and offers that anyone can contact him about that. Riverstone is trying to be as consistent as possible with the food vendors that they regulate. They are working through FDA standards so that everyone is on equal footing with regard to regulation.

Cort gives more information on the Food & Agricultural Development Centers in the state and encourages people to contact them.

Cort asks a question about the cottage food/home kitchen exemption topic. He explains that part of deciding a cottage food law bill will be to decide whether there is an appropriate size under which the stated would draw a line for exemption. He explains that varying state-to-state regulations range from \$500-\$50k dollars. At what level should MT define "cottage?"

26. Kate Rosetto says that \$50k would be a fair amount of income in order to qualify for cottage exemptions.
27. Bonnie Martinell comments that what we should look at is the difference between people who get fully licensed and fully inspected and are under a certain dollar amount vs. people who take advantage of the cottage foods and end up with more in gross sales than she does. For the cottage industry, she believes we need to ask whether a food producer is capable of paying the licensing fees—dollar figure should include a profit analysis, not just the income or gross sales.
28. Carol Nash thinks that any rules or regs should be flexible to allow the smallest businesses to enter. If someone has a good recipe they want to introduce, we should encourage their entry and let them grow into potential regulation if they become big enough.
29. Debra Haines makes a comment on fees, in general. Every event, locality, ever will have their own schedule of fees. Don't mix these fees up with licensure fees that allow the business to operate, she says. She sees people who have to pay a myriad of fees in order to vend at an event. The licensure fee is but one fee. But the other levels of fees are often unique with localities. She encourages that people go to their RS for help so that you can get off on the right foot.
30. Anna LaFountain, Riverstone Health—She says that the certification of kitchens depend on the product you're going to make in that kitchen. She has people with the required sinks in their basement that allow them to sell cakes. It really depends on the food product, she says. When it comes to the cottage exemption amounts, she says that food pathogens don't discriminate by dollar amounts. She says less production is not necessarily safe. The principals of food safety need to apply, even to cottage producers.
31. Bruce Lackman—he thinks that some sort of education could help in the cottage area.
32. Clark from Riverstone Health echoes that education is absolutely needed.
33. John ???—a teacher at Rocky Mountain College that joined the meeting later believes that “kids” recognize the production of local foods as a major movement. He asks: is there curriculum existing in any agency that the schools could use and whether the agencies see this as their responsibility? Cort answers that AGR has a FTE that develops lesson plans for schools and curricula on farming and ranching and Ag-education for school systems to adopt. They have a request that there needs to be a ½ FTE to help her deal with demand. Laurie Breneman is her name and her job title is the Ag Literacy Specialist.
34. Yohanes Cadesi (sp?)—On behalf of Agrica Foods, a small processing facility. They vary in working with affordable formulations of gluten free mixes and he is here to learn and comment if helpful.

Cort asks a second question: Farmers Markets currently exempt certain food from having a license to sell. For example, you can serve hot coffee, but not cold tea. Eggs, hot pies, and raw agricultural commodities (fruits and veggies that haven't been processed). Should additional foods be added or should any foods be taken away?

35. Jim Murphy says that prior to the change in the last legislative session, eggs could not be sold because they were a potentially hazardous food. He encourages suggestions from the crowd on what other foods would like the state to consider.
36. HAACP is brought up by Debra Haines. She gives a quick summary of what HAACP means and that if people understand the critical control points before they become an inspected entity, that could help them during the process in a way that is safer for the customer and more conducive to a good inspection. One must ID the critical control points that their food is going to reach.
37. Martha Brown—She has 2 questions: 1) she’s curious about other beverages that can be sold without licenses? Hot coffee and hot tea. She doesn’t understand the reasoning. 2) Does “jams and preserves” mean BBQ sauce or salsa, etc.? How cumbersome is the process to get a license for these food products?
38. John from Rocky Mountain College—He states that in YS County, he finds it frustrating to see so many local garden and community food production efforts that don’t seem to get off the ground. There’s not an overarching network or coordination. Does some agency represented here today have a stake in that in terms of rulemaking? Is this part of any agency’s responsibilities?
 - a. Cort: The AGR department has a general mission to promote local food production and processing. Local food movements work best from the ground up. If there isn’t a local nexus, it can be more difficult. Missoula and Billings have a different culture and Cort is not sure that rulemaking is the appropriate method to encourage a Billings local food movement.
39. Yohanes has a question: Along with the pending FSMA, is there any initiative going forward in order to encourage smaller startups? He’s had a good experience so far with YS County sanitarians and in creating his own HAACP plan, but he doesn’t know what the future holds under FSMA?
 - a. Cort says that HB 630 has a few missions. Streamlining the state law, DPHHS rulemaking to adopt the 2013 FDA Food Code, and that part of the bill is to look at what areas can be improved. FSMA may have the Tester Amendment for producers, but processors may have more responsibilities. The groups that have expressed the most concern Cort has seen are large scale produce farms and larger scale orchards.
40. Maggie Zabback, Northern Plains representative. She states that interstate meat shipment has been approved; however, it is nearly impossible and not economical for mid-sized operations to do interstate meat shipment. Ranchers would like to see this opened up so that they have the option for interstate shipment without USDA inspection. Rules need to allow the state inspected plant inspectors to approve meat for interstate shipment. USDA is writing these rules.

Cort asks about home kitchens—what is the actual availability of approved, local commercial kitchens for the manufacture of processed foods? And to what extent should home kitchens be used for the manufacture of cottage food?

41. John from RMC wants to encourage people locally to perhaps not make money off their efforts and to understand there are other health and societal benefits of locally produced food.
42. Yohanes—He asks the Riverstone sanitarians: Who is responsible for the commercial kitchen when he is using a landlord’s commercial kitchen—in terms of the licensure? Who does the rule apply to? He processes, grinds, packages and distributes his product.
 - a. Cort says that each individual renter has to register as a producer with the FDA and the facility itself is subject to the inspection and a closure of that facility would affect all the people who use it.
 - b. Anna La Fountain from RS—Missoula recently compiled a list of commercial kitchens to rent in the county. RS will be working on such a list as well.
 - c. Jim Murphy from DPHHS is doing a survey with local sanitarians statewide to ID potential and operating commercial kitchens. Preliminary estimates have ID’d 350 potential commercial type facilities that could be eligible to help startups. Of those, already 260+ appear to be licensed.

Cort states that labeling of cottage foods is a subject that came up in other public meetings. Are such labels a good idea? Why? And what makes an effective label? Are they not a good idea? Why?

43. Anna LaFountain from Riverstone Health—She believes that if there needs to be a consumer advisory on the menu if people want a rare steak or a sunny-side up egg...there should be such a label for cottage foods. Why would they be exempt from this requirement?
44. Melissa Tuemmler—Cites MCA 50-50-202—Comments that it could easily be applied as a cottage food law. What if we just applied this existing language or something substantially similar to cottage foods as well? Perhaps we can get some sort of statewide license that is multi-venue.
45. Jim Murphy—Gently suggests that the comments in all of the meetings on cottage foods hasn’t necessarily been *informed* comment on cottage foods. One issue area is whether one is referring to direct sales vs. indirect sales. Jim believes that if we don’t address indirect sales in this effort, it’ll end up being another item to revisit in the future. He has observed that whether inspections or licenses are required for folks’ businesses or business interests is an area they haven’t fully explored yet. He reminds the room that not every state has a \$\$ amount exemption under their cottage food law. In fact, it is only a minority 1/3 that do. His opinion is that the dollar amount would be hard to track.
46. Cort says if there is a cottage food law, there need to be an “emergency” ability for health officials to go and inspect the cottage food producer. This can be upon complaint mechanism or other belief of possible contamination.
 - a. Under existing laws, the agencies agree that RSs do have authority to look into suspected outbreaks and investigate where needed to ID source contamination.
 - b. Traceability is key, everyone agrees.
47. Jim Murphy asks the Riverstone employees to give their perspective on the concerns that they’d have if the law required them to inspect cottage food manufacturers. Clark comments that it would be pretty tough. High risk places already receive 2+ inspections a year, but lower risk

places only get once a year. Riverstone struggles to make inspections under the current scheme. Sanitarians would struggle with many new inspections.

48. Debra Haines says that she trains 100-150 people a year under the 'Serve-Safe' program. For her population in Big Horn County, Serve-Safe is what prevents outbreaks more than anything. Participants take pride in using the knowledge they receive in their education. She thinks that education is one area this bill should focus on, because she's had experienced local success with education.

a. Riverstone comments that YS County teaches Serve-Safe 4 times a year and a food safety advisory group who does 4-5 trainings a year. They'll also do on-site restaurant trainings upon request.

49. Jim Murphy is surprised that the people who want to participate in these markets don't know about the sanitarian availability for compliance trainings. He looks to organizations like AERO and Grow MT to help get the word out to their members. Also, perhaps the sanitarians should better advertise, for example at the farmers markets, as well. Jim also believes whether sanitarians like it or not, perhaps there needs to be a uniform mobile food or portable food service unit to go from one place to another without having different hoops to jump through.

There is a general discussion that is fairly 'stream of conscious' where people comment on allergens, raw milk, gray markets vs. black markets, etc. The state may want to adopt a 'Costco' rule that no matter what, a parent must give permission for a child to eat something.

Cort invites if there are any comments whatsoever on anything, speak now or write him—he fulfills responsibility to invite comments and then we go back to a general discussion.

Melissa T. believes that the legislature would be pleased to hear that we're already working on a list of commercial kitchens that are available for lease on a statewide basis and making that information available for the public.

Cort asks Clark from Riverstone Health: How often does a regulated entity get inspected? Risk 1&2 are inspected once a year, Risk 3&4 are inspected twice, plus they can go in as much as needed. They also go into schools once a year as well.

Melissa comments that license fees should be tied to risk factor. Debra comments that she agrees that the fee should be tied to the risk factor and the process.

Meeting adjourns at 2pm.

Appendix E

HB 630 Public Meeting Themes: MSO, BZN, BIL Combined

1. **Education, education, education:** The dominant theme.
 - a. The call for more accessible information came from every type of participant, including:
 - i. Established business owners,
 - ii. Budding entrepreneurs,
 - iii. Farmers and ranchers,
 - iv. Local health officials,
 - v. State agencies,
 - vi. Consumer locavores, and
 - vii. Local farm and food advocacy groups.
 - b. The form of the suggested education varied, depending on topic. Some commenters asked for a guide. Some commenters asked for localized trainings—including trainings of vendors and local health officials. And all commenters asked for internet-based “FAQ”-like information, including identified regulatory contacts for questions.
2. **Consistency across County Lines.** If a mobile food business and/or other travelling vendor is approved in one county, their ability to conduct business in food service should apply statewide.
3. **Cottage Food Conflict:** Existing businesses believe that a cottage food exemption would be unfair, even discriminatory against their businesses because they are regulated. This was a common issue of a large majority of regulated commenters.
4. **Sanitarian sanity:**
 - a. Leading mantra: “Smaller is not safer.” Every participating RS made this statement. Any food can be contaminated and just because an operation is small, it cannot be assumed to be safe.
 - b. 2nd common message from RS: We can’t handle more inspection work (without more funding).
5. **Cry of the Consumer:** Another central theme was that there is very strong consumer demand. To the extent that the regulators and/or regulations are causing a roadblock for vendors in delivering product to demanding consumers, the regulators have a responsibility to adopt policies that help rather than hinder growing businesses.
6. **Commercial Kitchen Conundrum:** There were commenters who said there were not enough commercial kitchens (CKs) available for use in their communities (esp. MSO). And then there were commenters who said that CKs were plentiful, but there were hurdles due to: 1) liability; and 2) ignorance of availability and/or utility. In the spirit of #3 (above), it was suggested that a survey of statewide commercial kitchens is being conducted.
7. **Denial Due Process:** When a license or permit is denied, there should be a clear procedure allowing due process to the applicant, including an appeal function.
8. **1k Bird Exemption:** Commenters believe that the federal exemption appears to have been adopted by Montana, yet they believe the agencies are unclear on whether a 1k or less poultry operation needs to be inspected.

9. **Can we can?** Several people want standardized canning methods that would allow commonly canned items like preserves, pickles and salsas to be directly marketed.

Appendix F

Public Comments 1-22

Association Comments 23-28

- Northwest Sanitarians' Association
- Recommended Structure and Content of Montana's Cottage Foods Program
- Montana Environmental Health Association (MEHA)
- MEHA House Bill 630 Guiding Principles
- Missoula City-County Health Department
- Montana Public Health Association

Written Public Comments (Names have been removed from non-group comments)

Comment 1

Good Morning, Thank you for your time at the Bozeman meeting on Monday. I am happy to see people trying to make sense of current regulations and working to promote local food business. I have spent 3 years trying to make sense of the regulations regarding chicken processing on a small scale as relates to the usda 1000 bird exemption and have received so many conflicting interpretations that it has been extremely frustrating. In your attempt to work through the rules and regulations trying to interpret and streamline them I hope you can resolve this issue as the current regulatory regime is blocking an entire **local food industry that has great public support from existing at all.**

Comment 2

Please note that the information in the following is from the MONTANA DEPARTMENT OF AGRICULTURE FARMERS MARKETS FACT SHEET last modified on February 04, 2014 and the MONTANA CODE ANNOTATED 2013 76-2-902 Definitions.

The Farmers Markets fact sheet reads that Vendors selling honey directly to customers at a Farmers Market or roadside stand are EXEMPT from state licensing requirements. This, like I referenced to in the above paragraph, is the modified document that was dated February 04, of 2014.

Under #2 of the MONTANA CODE ANNOTATED 2013 "COMMERCIAL PRODUCTION OF FARM PRODUCTS it clearly states that if you grow, raise or market plants or animals and you gross income of not less than \$1500 that occurs on land that is classified as agricultural or forest land for taxation purposes that the term includes but is not limited to (l) apiaries among others. We are registered with the state and for tax purposes honeybee apiaries are agricultural farm products.

We purchase FOOD GRADE containers that are sterilized from a well known manufacturing company. We do NOT need to have a Commercial kitchen, because we do NOT cook, heat or use water to market our product. We DO label and place RAW stickers on the containers. It would be like the vegetables that come out of the ground would need a commercial kitchen also...honeybees do the making of raw honey, not the beekeeper..... we as beekeepers harvest the honey. We are just the caretakers of them(which by the way takes lots of time, energy, and money)

The farmers market here in Kalispell, MT will open on the 19th of April 2014 leaving very limited time to get this issue rectified.

Thanks for your time on this very important matter.

Comment 3

We appreciate this valuable opportunity to comment on Montana's Food Safety Regulations. As a food producer we recognize this comment period to be a unique opportunity to voice our needs and wishes in order to more clearly and effectively run our business.

We are a Montana owned and operated beekeeping business. We provide Pollination Services to farmers and produce Honey. We are commenting on the "Streamlining State Food Regulations" with the hope that Food Safety Laws will be changed to more accurately apply to Honey production in Montana. We believe that currently as the food regulations are written they are not practical for the day to day practices of a Honey producer. Because honey is an extracted raw agricultural product with inherent safe properties it is unlike other food categories. We would like to see a specific section in the food laws for Honey. This section could include definitions for "Pure Honey", "Raw", "Packaged", "Prepare, "Prepares", "Prepared", "Unprocessed" and "Processed".

Currently according to the Montana Department of Health under the Food Safety Laws a "Wholesale food manufacturing establishment" does not include "producers or harvesters of raw and unprocessed farm products" (MCA 50-57-102). In the "Food Safety Laws and Rules" there is almost no specific mention of Honey or a definition for unprocessed. This is problematic since Honey does not accurately fit into the definitions presented in the "Food Safety Laws and Rules" for other food products. This leads to conflicting information as one tries to piece together the regulations that may apply to Honey. For example, Honey is considered a "Raw Agricultural Commodity" (MCA 50-31-103) yet we are told by the Flathead County Health Department we are a "Wholesale food manufacturing establishment" which according to definition does not include "raw and unprocessed farm products".

In August of 2012 the Center for Food Safety and Applied Nutrition, Food and Drug Administration and the U.S. Dept. of Health and Human Services published a Qualitative Risk Assessment for low risk farm food products. Identified in the report as a low risk food is Honey. We feel that this type of designation is more accurate and demonstrates that Honey as a uniquely safe food.

Managing Honey Bees is an agricultural endeavor. Many agricultural crops in Montana require pollination by Honey Bees. The pollination results in the desired crop yield for farmers. The bi-product of pollination is Honey. Among Montana consumers Honey is a desired and sought after product. Most Honey consumers prefer local honey as much as possible. Distribution of Montana produced Honey to Montana consumers can be beneficial to both the agriculture industry and consumers in Montana. Properties of Honey include high sugar content, moderate acidity, as well as being antimicrobial. Honey is widely regarded as a safe wholesome pure food. Considering these factors it seems justifiable if not obligatory for the state to define food regulation specifically pertaining to Honey or to exempt Honey from any regulatory requirements.

Once again we appreciate this opportunity.

Comment 4

I would like to see a new regulation whereby if I have a restaurant in one county I can cater to another county.

Case in point: I have a restaurant in Park City and I was told by Riverstone Health that I could cater to Yellowstone county because I was just 6 miles outside Yellowstone county all I needed was to pay for the county health certificate, but after I had already signed the lease I was told by Riverstone Health that I would not be able to cater into Yellowstone county because I was in Stillwater county. The only way was for me to have a place in Yellowstone county or have a mobile unit.

The law needs to be changed. I should be able to cater anywhere in the state. I am issued a state health certificate aren't we?

#2 The other has to do with paying the fee. When I opened the café I paid the full price in November and then had to turn around and pay it again in January. Why? Because licenses run from January to December rather than running from when I started the café.

Comment 5

I would like to make a comment on the issue of raw milk. I supported HB570, Small Herd Exemption, and would hope it is reintroduced next session. Here are the points that I feel are essential to this bill:

-- Consumers have the right to buy food products from local vendors, including raw dairy products such as milk and cheese (Consumers have the "right" to drink alcohol and smoke cigarettes, known to cause major health problems and death. It is illogical to allow this and prohibit the sale of raw milk products. Is it an issue of the consumers' "rights" or is it an industry driven device to limit local competition in the dairy industry, or an issue of public safety?)

--Dairyman wishing to sell raw dairy products should be licensed or certified by the State, specifically to determine herd health and the sanitary conditions of milk collection and storage

--In order for consumers to make informed decisions about the raw dairy products, herd health and sanitary facility certificates should be posted and easily accessible.

In short, as a consumer I would like to have the right to buy raw milk and milk products for my personal use. As a raw milk provider, I would want to know if my herd was healthy and my facility and milk handling was safe. I would want to know this so that I could assure customers that the herd and the facility has met basic health standards. If one were to argue that this is the current regulations and includes pasteurization, I would argue that a non-pasteurized standard should be established. For example, if a pasteurization standard allows for pathogens to be 10K parts per million, that same standard should be applied to non-pasteurized milk as well. I am not aware of a non-pasteurized standard in the dairy industry. (Can non-pasteurized milk products be regulated by its own merit?

Comment 6

As there was some confusion concerning the Bozeman meeting, (I am sorry I missed it) I am writing you directly to let you know about who Gallatin Valley Botanical is. I'm sure any rules you come up with at the State level will affect my operation. Briefly, I own and operate a 12 acre vegetable farm with my wife Jacy. We now hire 2 folks full time year round, and another 8 to 9 full time for the 6 month growing season. We started farming in 2003 and market directly to consumers via CSA (25%) and farmers markets (8%), to restaurants (40%), and to wholesale (22%). We grow a very diverse array of vegetables and gross roughly 250k, almost half of which goes to labor, and the rest is poured back into the place in various places. Five years from now, we'd like to have doubled our production acreage and gross revenue. There is a lot of cash flow and we are proud to be a part of our local economy. We do it because we love it and can not imagine doing anything else. We have been able to grow to this level partly because of the lack of interest by the state and the federal governments.

We have been providing safe and healthy certified organic produce to our customers for 11 years now, and food safety is a major concern with our operation, more and more every year. When we first started out, (1 acre, and about \$5k savings on rented land) the gallatin county sanitarian handed us the booklet to create a certified

kitchen. We discarded it as much of it was not applicable to direct marketing, and the rest of it was contradictory to making a living. Overkill and stifling. We do believe that at the level we are now at, we are not opposed to and may be able to afford some regulation about how we wash and pack our produce, but please make this a participatory process for us. Because of the low profit margins involved, for those just getting started and on a small scale, much in the way of mandatory facilities for washing/packing will be a deal breaker and financially prohibitive to grow their businesses. I would suggest a sliding scale of regulation that pertains to who the produce is sold to (direct CSA and farmers markets, scaling up to restaurant and wholesale marketing) and how much the farm is grossing (\$0-\$5000, backyard growers; \$5000 to \$25000 getting started; \$25000 to \$150,000, serious grower; and \$150000 and up, professional). Just some ball park, off the cuff estimates from my perspective.

Also, the regulation needs to come in one neat package for cottage industries.

What needs to be included? Water testing. Wash/pack facilities. Refrigeration (All scales of growers need refrigeration). Farmer and Employee education concerning hand washing and safe handling practices. I'm sure more, but the more basic, the better.

How is this to be paid for? We growers in Mt do not generally have the scale of production, the migrant labor, or luxury of a year round growing season to help make our produce farms profitable. We scrape by. Fees might need to be phased in. Perhaps the regs could be voluntary for a number of years to get feedback from the farmers and from the microbiologists and from the regulating agency.

Also, life and health are not guaranteed. It is full of joys and pitfalls. Risk can never be mitigated to zero. I'd hate to live in that boring world. This all needs to be reasonable. Diverse farms have healthy, diverse soil microbiota, and grow the healthiest most nutritious vegetables in the world. Sterilizing the fields and growing under plastic with distilled water and hydroponics is a health nightmare waiting to happen. Just like the over use of antibiotics and over sanitizing of our hands is proving.

Wash up! Eat a little dirt! It keeps us healthy!

Comment 7

I attended the morning portion of the meeting in Bozeman and while I didn't have a comment at that time, I do now.

I would like to strongly encourage the legislature to consider either participating in the new USDA Cooperative Interstate Shipment (CIS) Program for meat and poultry or, alternatively, to approve meat plant operations under the provisions of the Talmadge-Aiken Federal State Cooperative Act of 1962. Either of these programs would allow small, state inspected, meat processors, such as ours, to sell and ship our products outside the state border. Presently, except for certain exempt categories, the interstate sale and distribution of non-USDA inspected Montana processed meat and poultry is strictly prohibited.

As a point of competitive interest, North Dakota entered the CIS program last year.

Comment 8

I couldn't make it to the Missoula meeting but do have a comment. I read the comments that Angie said were brought up at the meeting but some of them seemed to skate around the subject so I'm going to say this as blunt as I can.

We own and operate a food business where we manufacture low acid foods. We had to attend a special course at WSU and become certified to continue to cook our products. People that produce salsa's, BBQ sauces and any type of pickled products are all supposed to go through this certification which is a Federal law. I can't tell you how many vendors we have seen in our 13 years of business who are selling these types of food and don't have the certification (we ask). It makes me angry because we spent the money and made the time to do the right thing and so many people don't. There is a huge breakdown between Federal regulations and State or City. i.e. The Sanatarians don't feel they should police this regulation because it is a Federal provision. I think a "hotline" should be set up where vendors could leave a message that someone might need to be checked out to see if they have been certified to process low acid foods. Also, you have to register your products on a Federal data base and be audited by the FDA every other year for your processing records. We feel that this is such an important issue and should be addressed. I would be glad to help in any way I can regarding this issue.

Comment 9

Thank you for the opportunity in participating in the Billings session, this forum was very informative especially for small innovative companies trying to remain compliant of new by-laws

Thank you for your sharing your expertise.

Comment 10

I saw your name in an article about cottage food in the Bozeman Chronicle of Jan 13th. I think you will find the article at the link to be interesting. And, the article mentions two resources that I think you will find interesting: <http://www.goodeggs.com/> and the Sustainable Economics Law Center, which has a web site. You might note the role the internet is playing in marketing cottage food.

(My son lives in Eureka, MT, and he and I have been watching developments re cottage food.)

Comment 11

I would like to give my support of the "cottage food" movement or industry, HB 630. I would like to be able to buy meat, eggs, milk, vegetables, jams, pies, etc from local providers. I live within 3 miles of multiple ranchers and believe it should be legal for them to sell products too me, and for me to buy it legally.

I know as with all issues there are proponents and opponents. So I'm sure it isn't a 10 minute conversation but I also know that other states are doing it and it works! States such as Vermont have built an entire industry by letting individuals run a small business and either succeed or fail. I don't believe it should be done unchecked but it also shouldn't have so many hurdles that it can't be done,

certifications, testing, licensing, taxing etc. Some sort of simplified streamlined approach as anyone in the food industry would follow. It must be safe but not smothering.

Montana prides itself on it's history of agriculture, let's support that. Let's find a way for the people of our great state to eat food that we can trace back to the field!

Thanks and please work hard to make this a reality.

Comment 12

On behalf of the Montana Co-op members, our input is about creating a more collaborative effort with the government in meeting the values of the people.

Process: Survey the people and find out what they need and help create action steps that meet our goals as a state of people in cooperation.

We would like to share with you our survey we performed with 400 regional responses (MSO, Kalispell, Ronan, Polson, etc.), and our plans of growing and producing more of our own local healthy food. We were involved in the Polson Heart & Soul Project in Polson, MT that took our community through a process of discovering the peoples values and developing actions steps out of those values. I chaired the committee that coordinated 19 neighborhood gatherings (each with 3 hr. meeting and local food dinner).

So, once you know what the people want, then work to create or change regulations that benefit those needs. This often means thinking outside the box on solutions. Whatever regulation issue is causing the problem, additional safety measures could be implemented.

What we can you do to assist local businesses and individuals to make our state food laws work more effectively is become a hands-on partner in the immediate need of strengthening our local food economy.

Comment 13

I have now specific comment for the new Food Regulations, but in general I have found that amongst the farmers and ranches looking to serve the local markets in Montana, many of them are looking as ways to develop small scale processing and value added operations on their farm or at congregate facilities. So many are excited to hear that the State is working on good and clear rules to provide opportunities for small scale producers to be allowed to produce or process products for local markets. As you may remember, I teach multifunctional agriculture in the Flathead and now also in Lake County, Missoula and the Bitterroot (about 50 Montana farmers and ranches have been engaged in the classes so far); the trends are the same across the board.

Be it a cottage food law, or another set of rules, people want to find ways to produce or process foods in small scale affordable settings; especially regarding processing of fruit or vegetables for chutneys, jams, etc.

At the same time, people are realistic about the use for rule to safeguard food safety. Especially when meat or eggs are involved.

So that is what I hear.

Good luck on that.

Are people also working on rules to include farm based activities in the assumption of risks scheme, like rafting and rock climbing companies are?

Comment 14

In regards to HB630 I would like to see Montana adopt food rules, regulations, and guides on producing non-traditional sources of protein such as insects.

I was encouraged to see the United Nations promoting insect production as a source of sustainable protein. It's wise for Montana to take a proactive stance on encouraging it's citizens to look at all forms of farming as a way of encouraging economic growth that has high returns and low environmental impact. I can imagine the problems if people tried to produce and sell without any guidelines..

Links to supporting data:

<http://www.un.org/apps/news/story.asp?NewsID=44886#.Ut8ckhYQGM4>

<http://news.nationalgeographic.com/news/2013/13/130514-edible-insects-entomophagy-science-food-bugs-beetles/>

<http://www.neontommy.com/news/2014/01/will-america-embrace-insect-eating>

Best regards and thanks for doing what you do.

Comment 15

Thank you for the opportunity to comment on the Montana food laws as assigned by House Bill 630. The Northern Plains Resource Council is a grassroots family farmer and rancher organization that works to protect the water, air and unique quality of life. One of our particular interests is the success of family farmers and ranchers, and the importance of agriculture to our state and rural economies. One issue of particular interest is interstate meat shipment, an opportunity that was authorized in the 2008 Farm Bill, and USDA issued final rules in 2011. Since that time, only Ohio has been approved to participate in the program.

Meat and poultry products from 38 foreign countries can be shipped and sold anywhere in the United States. State inspection programs undergo annual audits on more than 125 pages of compliance procedures. By comparison, USDA's audit document for evaluating foreign inspection systems is a one-page checklist. By streamlining our state inspection process, local businesses will be afforded the opportunity to access bigger markets.

Under the new program, USDA will designate a federal employee as a state coordinator for each state agency that has a state meat or poultry inspection program. Although the meat and poultry are inspected by state-employed inspectors, the federally-employed state coordinator will oversee the training and inspection activities of state agency personnel, assure that meat and poultry processing plants are in full compliance with the Federal Meat Inspection Act and the Poultry Products Inspection Act, and report to USDA on the status of the processing operations. USDA is required to reimburse the states for at least 60% of the costs related to inspection of the meat and poultry processors selected for the new inspection program.

In Montana, we are waiting for our state to come up rules on how we will comply with federal Cooperative Meat Shipment. Currently this law is logistically not feasible. Many processors have shown great interest in this opportunity but current hurdles make it impossible for them to consider this. In Montana, as we understand the language, the law would require both Federal and State inspectors to be present for inspections, which would make the state inspectors moot. Also, once a processor is signed up for this program, if they want out, there is no option to return to a simple state inspected plant. Instead, they must become federally inspected. Among these few instances are several other obstacles in the law that could be simplified while still maintaining the high safety standards of the state inspection program.

Thanks again for taking the time to hear some of our hopes for a successful interstate meat shipment program in Montana.

Sincerely,

Northern Plains Resource Council, Ag Task Force

Comment 16

In my capacity as the Executive Director for the Association of Montana Public Health Officials (AMPHO), please accept the following comments relative to H.B. 630, which established the Montana Food Policy Modernization Project. AMPHO is a leadership and policy development organization composed of City-County Health Officials representing departments of all sizes from across the state.

AMPHO contributed to the development and passage of H.B. 630 during the 2013 legislative session and has also provided testimony on numerous food safety bills over the years. We are encouraged by the opportunity that H.B. 630 offers to help provide consistency, simplification, and modernization in this area. The Public Health and Safety of Montanans and visitors to the state should be the first priority as potential changes to MCA 50-50 are considered. We believe this priority can be met while at the same time assuring opportunities for the business community as the cottage food industry continues to expand.

AMPHO has met regularly over the past several months with the Montana Environmental Health Association (MEHA) and the Montana Public Health Association (MPHA) to build unified feedback within

the public health community regarding food safety. As such, AMPHO fully endorses the guiding principles submitted by MEHA and would encourage their adoption.

Specific to the Cottage Food industry, AMPHO concurs with the comments submitted by MPHA and MEHA on the following points:

- The health and safety of Montana residents and visitors needs to remain first and foremost
- The best available scientific research must be utilized
- The Farmer's Market standards and cottage food standards need to be combined for simplification
- The Department of Public Health and Human Services should be allowed to develop rules regarding cottage food operation
- Cottage food rules should include:
 - o Annual registration with a regulatory authority (with an associated fee)
 - o No high-risk foods, procedures or packaging
 - o Clear labeling indicating that food was not produced in a licensed facility
 - o Required food safety training
 - o Limiting of sales to public events
 - o Allow the regulatory authority the right to inspect and investigate as needed

Please contact me with any questions. Please also add me to the H.B. 630 interested parties list and let me know if I can be of any assistance throughout the remainder of the interim legislative process.

Sincerely

Erin McGowan Fincham
AMPHO Executive Director

Comment 17

I'd like to comment on the food safety laws. I am the food service manager at a small critical access hospital in SW Montana. We have been purchasing a variety of foods for use in our hospital kitchen for 7 years now. I purchase the bulk of our products from Sysco and FSA, but reserve an average of 25% of our food dollar for Montana produced foods. I also try to prioritize products from our tri-county area Park, Sweet Grass and Gallatin. I know that some of the food service managers at CAHs in other counties are unable or unwilling to purchase from anyone other than their commercial food service vendor such as Sysco for fear of food safety violations. Some don't think they have the authority to purchase from producers other than their primary vendors d/t constraints from their administration, their county

sanitarians or some may be bound by contracts from their primary vendors. I think we have been so successful at LHC b/c my administration and my county sanitarian allows me the autonomy to purchase from whomever I choose knowing that the risk falls on me to make sure my staff follow appropriate food handling practices with all food purchased. If the food service manager or director does not have the autonomy or authority to purchase food locally, this could be a major barrier.

Comment 18

I read in the Missoulian where you are taking public comment about food regulations. I feel strongly that there needs to be some major changes in the regulations. It is getting so bad that many community organizations, who are often made up of volunteers, cannot offer food at any gathering or event unless it comes from a licensed caterer, or go through some lengthy, expensive process that drains the vitality and efforts of the community. Time and time again we are told we can't serve food at any of our functions without all the red tape, hassle, and expense. I have lived all my life in the country (60 + years) and have until recent years enjoyed many healthy, delicious potluck meals, community spaghetti dinner fundraisers for a worthy cause, chuck wagon cookouts, etc. Now it seems we can't do anything without a lot of hassle. In our small rural community it seems ludicrous that we have to bring in an outside food caterer at great expense when the area is full of great cooks willing to volunteer to throw a delicious meal together for a worthy cause or fundraiser. Get somebody with a bit of common sense to re-write the regulations.

Comment 19

I know this will not fly with the super clean crowd who have prevented us from attaining childhood and adolescent immunities by preventing us from coming in contact with germs early in life.

But this thing about wearing gloves while serving or handling food has gone overboard. Education and common sense has been replaced by regulations.

When we were slicing bologna in the 50th , we used a paper to hold under the cuttings and stacked them without ever touching a slice, I still hold on to using paper towels when handling solid foods and never touch the product. I see slices handled individually and stacked on the pile albeit with gloves, which have touched the wrapping and boxes. Now I am required to use gloves and on exhibitions and have to have a hand washing facility within my booth when serving samples.

The use of hand sanitizer is more convenient and sanitary than gloves which can touch any surface and then handle food the next moment. This is done mostly subconsciously, if you watch food handlers. Using paper towels makes you definitely more aware of your touch.

Some of the regulations are enforced even at times when they are not necessary or not appropriate. Like washing your hands, and then--- drying them on a contaminated towel.

To have a regulation that the served food is not to be touched in unsanitary ways, should suffice , rather than micromanaging every aspect of food preparation.

This is just to vent my frustration Thanks for reading

Comment 20

When I first got involved as a manufacturer of a food product, I had no idea what would be required. I jumped through all the hoops, use a commercial kitchen that I rent, which is much less clean than my home kitchen, and did everything the state required. There were long delays in all processes regarding state licensing, and becoming a certified organic producer. Making the application process simpler, and offering a more concise guideline for new manufacturers would be very helpful. In the case of licensing, I am thankful I went through that process since it allowed me to be involved in some shows, etc. that would not have allowed me entrance without it. I also think getting established as a new product is often more difficult than people imagine.

I have completed HACCP training, because I wanted to be sure the product I was offering was up to safety standards, and am very glad some of the current controls are in place, because of my own consumption of foods.

I am unhappy when I see other producers working and still in business, yet not following label requirements, etc. Some of the requirements I think are justified, others not so much.

I am glad I introduced a new product in Montana, since there are lots of entities in place to help assist with growth and education for new producers. My sister started up a business in Michigan at the same time, where the state is much less helpful and is already not doing business.

Comment 21

Montana is home to many small local farms. This is good. More small local farmers are also getting into growing. This is also good.

With more and more Montana grown crops, fruit and vegetables transported across the state to be sold in another county, it would be beneficial that any modernization establish a statewide approach. Fruit, crops and produce grown in one county in Montana should be under a consistent modernization standard as those grown in another county.

Thank you for your consideration and your service to the great people of the state of Montana. Please feel free to contact me if you have questions

The Following Comments were included as pdfs and are included as well

Comment 22 – (by phone summarized)

Please make sure any label that is used for cottage food makes clear no inspection took place and include a warning to eat at your own risk.

Comment 23- Northwest Montana Sanitarians Association

Comment 24- Northwest Montana Sanitarians Association Recommendations

Comment 25- Montana Environmental Health Association

Comment 26- Montana Environmental Health Association Guiding Principles

Comment 27- Missoula City-County Health Department

Comment 28- Montana Public Health Associations

Northwest Montana Sanitarians' Association
106 4th Avenue East
Polson, Montana 59860



February 14, 2014

Cort Jensen, Attorney
Montana Department of Agriculture
P.O. Box 200201
Helena, Montana 59620-0201

RE: Comments Regarding HB 630

Mr. Jensen:

The Northwest Montana Sanitarians' Association (NWMSA) is a group of Registered Sanitarians located in northwest Montana which is comprised of approximately thirty members. The majority of the membership works in food science in some capacity, such as retail food inspections or for the Milk and Egg Bureau, under the Montana Department of Livestock.

The NWMSA would like to make the following comments regarding sections (b) – (d) of HB 630:

(b) 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;

Comments: The NWMSA is in strong support of expanding the current farmer's markets regulation to incorporate the cottage food industry. Montana currently allows cottage foods to be sold to the public without a license in a limited scope through the current farmer's market exemptions. However, the need to expand this regulation to include more wide-ranging public events is apparent. Our association is in support of the Montana Environmental Health Association's (MEHA) HB 630 Guiding Principles, as well as the NWMSA's Recommended Structure and Contents of Montana's Cottage Foods Program dated February 14, 2014. See included.

The purpose of attaching the latter document is to give an example of a potential framework for a cottage food system in Montana. The NWMSA document is largely based on the Association of Food & Drug Officials' (AFDO) Regulatory Guidance for Best Practices: Cottage Foods dated April 2012. While the NWMSA document is slightly different than the AFDO document, we believe the differences proposed in our document make it a better fit for Montana. However, these are merely recommendations and the details can be ironed out through the rulemaking process.

(c) the relative availability of community-based commercial kitchens and their use; and

Comments: The NWMSA believes this was addressed in a survey performed by the Montana Department of Public Health and Human Services (DPHHS) – Food and Consumer Safety Section.

The results of the survey showed there are many kitchens available to the public throughout the state that can be used to produce food for sale to the public.

(d) inconsistencies and inefficiencies in Montana’s food laws that could be improved and streamlined.

Comments: The NWMSA believes that DPHHS, specifically the Food and Consumer Safety Section, should have greater rule writing authorities. Please note Part II of the Montana Environmental Health Association HB 630 Guiding Principles.

The following amendments to existing statutes are needed:

(If the cottage food act moves forward, there are other definitions that will need to be examined)

50-50-102. Definitions

- A definition for Perishable Foods is needed.
- (16)(e) include pitting (ie: pitting cherries).

50-50-208. Local board to report number of licenses to department

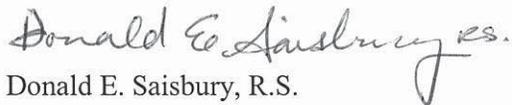
- Delete this section as it is unnecessary.

50-57-102. Definitions

- (14)(a) “Wholesale Food Warehouse” – suggest adding (d) to this definition with the effect of the following language: “The term does not include a warehouse that stores only packaged, shelf-stable without refrigeration foods in unbroken and original containers, in a location separate from the facilities where the food manufacturing occurs.”

Thank you for your consideration.

Sincerely,



Donald E. Saisbury, R.S.
President

Recommended Structure and Contents of Montana's Cottage Foods Program

February 14, 2014

This document describes the Northwest Sanitarians Association's recommendations for cottage foods in Montana. The overarching structure would be contained in law, and the details would be established in rule. Note that this document does not contain recommendations for actual statutory or regulatory language.

The recommendations in the document are based in large part on the "Regulatory Guidance for Best Practices: Cottage Foods," April 2012 by the Association of Food and Drug Officials. It also conforms to the recommendations of the National Environmental Health Association, as established in the "Consensus on Cottage Food Movement" resolution, adopted April 21, 2012.

The concept is to expand the opportunities for very small businesses to engage in food preparation and sale, while safeguarding the public's health. This program is intended to take the place of the existing baked goods and drink exemptions at Farmer's Market in Montana state law.

Making changes to Montana's food laws and regulations will provide opportunities for more Montanans to prepare limited quantities of non-potentially hazardous foods in home kitchens for sale. In part, this gives them a chance to test the market and hone their products. Some cottage food entrepreneurs will want to expand upon their success and reach even larger audiences, at which point they will need to meet the same rules and standards of licensed food businesses throughout Montana.

The reasons for some of the recommendations may not be clear at first. Food safety is paramount. In addition, the laws and regulations have to delineate a clear line between a business that can prepare food at home, and one that is large enough to require licensure, inspections and commercial equipment. Many cottage food programs in other states rely on gross sales to cap cottage food production. This does not work in Montana, because without a sales tax there isn't an agency that collects gross sales information. So instead, we recommend limiting where the products can be sold. In addition, the AFDO recommendations further limit the amount of food that can be produced before requiring a licensed kitchen by restricting production to a home kitchen, and prohibiting the use of large commercial equipment.

These recommendations will allow cottage foods to be prepared and sold in a safe and reasonable way, while also ensuring that those small businesses that choose to open retail candy stores, bakeries and wholesale operations are treated fairly, with their investments protected.

Northwest Montana Sanitarians' Association

DEFINITIONS

- (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 a public event. A cottage food operation may not operate as a food service establishment, retail food store, or a 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.
- (3) "Department" means the Montana Department of Public Health and Human Services.
- (4) "Domestic residence" means a single family dwelling unit where the cottage food operator actually resides. A domestic residence does not include a group or communal residential setting, or an outbuilding, shed, barn or other similar structure.
- (5) "Home kitchen" means a kitchen designed and intended for use by the residents of a home but that is also used by a resident to produce cottage food products. It may contain one or more stoves or ovens of the size of typical residential uses. It may not include commercial types of equipment that are of the size typically used for large wholesale manufacturing.
- (6) "Permitted area" means that portion of a domestic residence, which houses a home kitchen where the preparation, packaging, storage or handling of cottage food products occurs.
- (7) "Public event" means a farmers market, craft fair, bazaar, or similar community event that has been organized for the purpose of selling crafts and foods, and which has multiple vendors and is not a retail space in a private home or retail business.

PREREQUISITE REQUIREMENTS

- (1) All cottage food operations must register annually with the local health department on forms approved by the Department.
- (2) In order to register, the cottage food operation must submit:
 - a. A list of products proposed to be made and sold;
 - b. Proposed labels for each product;
 - c. A signed document attesting that the cottage food operation agrees to operate according to the rules established by the Department;
 - d. A signed statement and that, by opting to register, the cottage food operation expressly grants to the local health department the right to enter the domestic residence at reasonable times to investigate as established in the rules;
 - e. A fee established by rule and payable to the local health department that reflects the local health authority's cost of registration services;
 - f. Evidence of relevant food safety training within the last 5 years; and
 - g. If the cottage food operation is served by a private water supply, evidence that the water supply has been tested within the last year, and shown to be potable;

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- h. If the cottage food operation is served by an onsite wastewater treatment and disposal system, evidence that the system is adequate for the proposed use, and
- i. If applicable, evidence that the cottage food operation complies with applicable county and municipal laws and zoning ordinances that apply to conducting a business from one's home residence.
- j. Registration fees (established in rule).

COTTAGE FOOD PRODUCTS

(1) A cottage food operation may produce food items which do not require temperature control for safety or include an inherent risk for botulism. The following foods are examples of products that may be prepared in a home kitchen, as long as the ingredients or processes don't result in a potentially hazardous food. While this list is not all inclusive, it provides for most types of approved cottage food products.

- Breads, rolls and biscuits
- Cakes
- Pastries and cookies
- Candies and confections
- Fruit Pies
- Jams, jellies and preserves
- Dried Fruits
- Dry herbs, seasonings and mixtures
- Cereals, trail mixes and granola
- Coated or uncoated nuts
- Flavored vinegars
- Popcorn, popcorn balls, cotton candy
- Raw honey (no flavorings added)
- Dried legumes and grains
- Hot coffee and tea, without fresh cream or milk

(2) A cottage food operation may not produce items that require temperature control for safety or foods that present a food safety risk such as many canned foods. The following foods are examples of foods which may not be produced in a cottage food operation. Although the list is not all inclusive, it provides for most types of unapproved cottage food products.

- Bakery goods which require refrigeration such as those with cream cheese fillings and frostings and cream, custard or meringue pies.
- Focaccia-style breads or muffins, topped with meats, vegetables or cheeses
- Milk and dairy products including hard, soft and cottage cheeses and yogurt.
- Canned fruits, vegetables, fruit or vegetable butters, salsas, etc.
- Acidified foods, like ketchup, barbeque sauces and salsas
- Low acid canned foods, like heat and pressure canned tomatoes, green beans, etc.
- Canned pickled products such as corn relish and pickles
- Fermented foods such as Kim Chi, sauerkraut and Kombucha
- Raw seed sprouts

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- Fresh or dried meat, fish, or poultry or meat, fish or poultry products, including jerky
- Cut fresh fruit or vegetables
- Products made with cooked vegetable products
- Garlic in oil mixtures
- Juices made from fresh fruits or vegetables
- Ice and ice products
- Moist carbohydrates, such as batters
- Soups, stews, etc.

SALES VENUES

- (1) Products produced by a cottage food operation must be sold directly to the consumer at a public event. The cottage food operation must have permission from the event organizer to sell food at the event.
- (2) Sales by internet, mail or phone order are prohibited. Cottage food operations may not sell food in a permanent retail setting, by consignment, or to licensed food establishments. A cottage food operation may not operate as a food service establishment, retail food store, or wholesale food manufacturer.
- (3) A cottage food operation must display a copy of its registration at the public events where they are selling cottage foods.

OPERATING REQUIREMENTS

- (1) No person, other than the registrant or a person under the direct supervision of the registrant may be engaged in preparing, packaging or handling of cottage food products or be in the home kitchen during the preparation, packaging or handling of cottage food products.
- (4) No preparation, packaging or handling of cottage food products may occur in the home kitchen concurrent with any other domestic activities such as family meal preparation or clean up, clothes washing, kitchen cleaning, or guest entertainment.
- (5) No infants, small children or pets may be in the home kitchen during the preparation, packaging or handling of cottage food products.
- (6) Only residential-sized equipment may be used to produce cottage food products.
- (7) All food contact surfaces, equipment and utensils used for the preparation, packaging or handling of cottage food products must be washed, rinsed and sanitized before each use.
- (8) All food preparation and food and equipment storage areas must be maintained free of rodents and insects.

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- (9) A person involved in the preparation, packaging or handling of cottage food products may not work in the home kitchen when ill.
- (10) A person involved in the preparation, packaging or handling of cottage food products shall wash their hands before preparing or packaging cottage food products.
- (11) Bare hand food contact with ready-to-eat foods must be eliminated through the use of single-service gloves, bakery papers, tongs or other utensils.
- (12) Cottage food operations using private water supplies must ensure the water supply is potable by completing the annual water sampling as established by the Department in rule. A cottage food operation may not operate without adequate hot and cold potable water available under pressure at all appropriate fixtures.
- (13) Cottage food products must be packaged in sales units in the home kitchen.
- (14) Packaging must contain a label meeting the requirements in the label section below.

FOOD LABELING

A cottage food operation may only sell cottage food products which are pre-packaged with a label affixed that contains the following information (printed in English):

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- Allergen information as specified by federal labeling requirements;
- The date the food was made;
- A statement that the food was made in a home kitchen that is not subject to routine safety inspections (e.g, HOME PRODUCED WITHOUT INSPECTION.)

A label sample is shown below.

HOME PRODUCED WITHOUT INSPECTION

Chocolate Chip Cookies

Ashley Bryant
2550 Kingston Lane
Montana City, Montana 55555

Ingredients: Enriched flour (wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin, walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.

Contains: Wheat, eggs, milk, soy, walnuts.

Made on December 3, 2015

ENFORCEMENT AND INSPECTIONS

- (1) Unless they are registered with the regulatory authority, a cottage food operation may not prepare, package, handle or sell cottage food products to the public.
- (2) It is the responsibility of the cottage food operation to prepare, package and handle food in compliance with the operating requirements.
- (3) The regulatory authority may investigate a home kitchen when it has reason to believe that the cottage food operation is not following the operating requirements or is operating in an unsanitary manner. The regulatory authority may also investigate the home kitchen in response to a potential foodborne illness outbreak, consumer complaint or public health emergency.
- (4) If the regulatory authority finds that the cottage food operation is not substantially following the operating requirements or that they are operating in an unsanitary manner, the regulatory authority may require a plan of correction or may revoke the cottage food operation's registration.

OTHER CONSIDERATIONS

- (1) The details of required food safety training should be established by the Department in rule. Food safety training must cover topics that are relevant to cottage food operations. Approvable training must be widely available, and include an on-line option. Cottage food producers are not required to, but may choose to take more comprehensive training.

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- (2) Testing and potable water requirements should be defined in rule by the Department and at a minimum should include annual sampling for bacteria and every three sampling for nitrate.
- (3) Licensed food businesses selling the types of food that qualify as cottage food products may sell those products at a public event without an additional license (temporary food license) from the Department.

Frequently Asked Questions:

Where can I sell my cottage food products?

Cottage food items may only be sold directly to the consumer at Farmer's Markets, craft bazaars, and other similar public events. See definition of "public event".

What types of cottage foods can I produce in my home?

You may produce the foods listed in the guidance document.

Will I need to meet local zoning or other laws?

Cottage food producers must comply with all requirements in their jurisdiction, zoning or otherwise. That being said, requirements may vary from jurisdiction to jurisdiction. Contact local agencies to determine if there are any requirements that may apply. Also note that local jurisdictions may restrict some cottage food operations even if they are allowed by state law.

The farmers market where I want to sell my products says I need a food license, even though I am a cottage food business. Can the market require a license?

Yes. Even though an entity may meet the requirements of a cottage food operation and be permitted, some farmers markets or other direct marketing venues may require vendors to have a food establishment license or to meet other requirements. Local policies enacted by farmers market boards and other local governing bodies are generally outside the scope of any cottage foods regulations.

Can I utilize commercial equipment?

While commercial equipment is not required in a cottage food operation, commercial grade equipment may be used if they are not designed to create batches in excess of residential size. Commercial grade equipment designed to produce large, commercial batch-sizes like (e.g. steam jacketed kettles and floor-stand rotary mixers) are beyond the scope of a cottage food operation.

Does my equipment, stove and/or refrigerator need to be NSF (National Sanitation Foundation, an equipment evaluation group) certified?

No. As a cottage food operation, you are not required to meet NSF standards; however, you will need residential equipment that can meet your needs.

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My home is not served by a municipal or public water supply. What special requirements does my home on-site well need to meet?

Your water supply must meet potable water standards. It is your responsibility to have the well tested at least annually for coliform bacteria, and at least every three years for nitrates. If your water supply doesn't meet the drinking water standard, you cannot operate until it does.

Where can I get my water tested?

There are several certified labs in Montana that can meet your testing needs. Contact your local health department for information.

Why are some items not allowed under the cottage food exemption?

While there is a risk of foodborne illness with all types of food, the items allowed under the exemption are those which are the lowest risk from a food safety perspective. The idea is that if the foods are prepared in a clean environment and handled properly by the producer, licensing and inspection requirements can be waived with minimal risk to the public. On the other hand, foods that are higher risk must be produced in a licensed, inspected facility to ensure that proper controls are met for the protection of public health.

Are pet treats covered under the exemption?

No. Please contact the Montana Department of Agriculture for more information: 406-444-3144.

Can I produce and sell cooked vegetable products, like salsas, tomato or barbecue sauces, spaghetti sauces, or focaccia bread with roasted vegetables?

Except for vegetables that have been incorporated into batter and baked (e.g. zucchini bread), food products that are made with cooked vegetables do not fall under the exemption. This is because most items made with cooked vegetables have the ability to support the growth of dangerous bacteria if not stored at safe temperatures.

In addition, sauces and salsas that have been bottled or canned can support the growth of *Clostridium botulinum*, the cause of botulism, if not prepared under strict controls. Due to the risks associated with these foods, they cannot be prepared outside of a licensed and inspected facility.

Can I roast coffee beans in my home kitchen and sell them?

Yes. You can roast and sell whole bean coffee or ground coffee. You may also sell it as a hot beverage as long as you do not offer it with fresh cream or milk.

Can I make and sell apple butter, pumpkin butter, or other fruit butters?

No. Fruit butters have significantly less sugar than a traditional jam or jelly. It is the combination of acid, sugar, pectin, and heat that assures the safety of the jam/jelly. In fruit butters, the combination of sugar and pectin is not large enough to protect the food from the growth of harmful bacteria. Additionally, with lower sugar and pectin levels, spoilage organisms are more likely to survive the cooking process.

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Can I press and sell apple cider or other fruit juices?

No. Apple cider and other fruit juices are not allowed under the cottage food exemption. This is because the juicing process introduces pathogens like *E. coli*, *Salmonella* spp. and parasites, as well as mold toxins. In order for juices and ciders to be served safely, they must be done in a licensed facility with the proper food safety controls in place.

Are honey and maple syrup covered under the exemption?

Depending on your product and your method of production, honey or syrup may be exempt. Raw honey in the comb, or raw honey that is extracted and bottled, do fall under the exemption, but flavored honey does not. To determine if your honey or syrup product is exempt, contact your local health department.

I lease a space in retail building where I operate a small gift shop. As a cottage food producer, can I sell my products at my shop?

The exemption only covers direct sales at Farmer's Markets, craft bazaars, street fairs, and similar public events.

Can I make and sell candies, lollipops, popcorn, and baked goods?

Yes. All of these items are listed as approved low-risk items under the exemption.

Can I make and sell sweet breads, muffins, or other baked goods made with fresh fruits and vegetables like zucchini, pumpkin, and strawberries?

Yes, as long as the fruits or vegetables are washed thoroughly, and then incorporated into the batter and properly baked. The baked goods may not be decorated or garnished with fresh fruits or vegetables however.

Can I use fruits and vegetables that I grew at home?

Yes, providing that they are thoroughly washed before use, and then incorporated into the batter and properly baked. Baked goods cannot be decorated or garnished with fresh fruits or vegetables.

Can homegrown produce be canned and used for making baked goods, like sweet breads, at a later date?

No, but you can use commercially canned products for baked goods. Home-canned products, with the exception of jams and jellies, are not approved under the exemption. This is due to the risk of botulism associated with canned foods.

Can I freeze homegrown produce to use later in baked goods and sweet breads?

Yes, as long as the fruit is thoroughly washed before freezing or after it is thawed, and then incorporated into the batter and properly baked. Baked goods cannot be decorated or garnished with fresh or frozen fruits or vegetables.

Can I make and sell dry bread or "instant" bread mixes?

Yes. Dry mixes are approved under the exemption.

Northwest Montana Sanitarians' Association

Does my chocolate fountain business qualify as a cottage food operation? I deliver and set up the fountain, and provide chocolate sauce and items to dip that I have prepared in my home kitchen.

No. This type of food service would require a retail food license and a commercial kitchen.

Are food safety classes required? If so, where can I get training and what will the courses cover?

Yes, food safety classes are required as a part of the exemption, and providing documentation of training is required at the time of registration. The reason for the training is simple—protect your operation and your customers. This training component is especially important considering that you may not have an opportunity to interact with a public health professional to learn how to address potential risks in the kitchen. Getting training is simple. There are many online resources and some local classes at your health department. The class does not need to be a full manager certification course; however, it does need to cover the basics: cleaning and sanitizing, health and hygiene, and proper handling. Packaging, labeling, and allergen best practices may also be included.

Do I have to put a label on my cottage food products?

Yes, you do need to label your cottage food items. The minimum information required on the label is as follows:

- The name and address of your cottage food operation.
- Name of the cottage food product (if the name doesn't clearly indicate what type of food it is, include the common name of the food, e.g. Montana Jam doesn't tell the consumer what type of jam, so include Huckleberry Jam below the name)
- The ingredients of the cottage food product, in descending order of predominance by weight. If you use a prepared item in your recipe, you must list the sub ingredients as well. For example soy sauce is not acceptable; soy sauce (wheat, soybeans, salt) would be acceptable.
- Potential allergens
- Date the food was made; and
- Disclosure statement: Home produced without inspection.

Hand written labels are allowed if they are legible and written in permanent ink.

Will the health department or the state review my labels for accuracy?

As part of your registration process, the local health department will review to make sure that your labels contain all the required elements, but they will not verify that you have listed all the ingredients or the known allergens. It is your responsibility to ensure that your products are labeled correctly and that all information is disclosed. There are resources online that can help you.

Northwest Montana Sanitarians' Association

What does “allergen labeling as specified in federal labeling requirements” mean?

It means that you must identify if any of your ingredients are made from one of the following food groups: milk, eggs, wheat, peanuts, soybeans, fish (including shellfish, crab, lobster or shrimp) and tree nuts (such as almonds, pecans or walnuts.) So, if you have an ingredient made with a wheat-based product, you have two options:

1. Include the allergen information in the ingredient list. For example, a white bread with the following ingredient listing: whole wheat flour, water, salt and yeast. In this example, the statement “whole wheat flour” meets the requirements of federal law.
2. Include an allergen statement (“Contains”) after the ingredient list. For example a white bread with the following ingredients: whole wheat flour, water, sodium caseinate, salt and yeast. Contains wheat and milk.

If a customer is concerned about allergens, what do I do?

Food allergies can be severe and life threatening and customers have a right to know if the product you sell contains a potential allergen. This is why allergen labeling is required by Federal Law on all consumables with the exception of raw agricultural products. In addition to labeling the product with the ingredients, you should think about possible cross contamination. If you cannot guarantee that the product is free from the allergen of concern, tell the customer that there is a potential risk and encourage them to buy something else. Ensuring that the customer has all of the information they need to make a safe, educated decision is your responsibility.

Are there any special requirements for tree nut labeling?

Yes. You must disclose which tree nut your product contains.

For example, if you made Nut Bread, an acceptable ingredient list would be:

Ingredients: wheat flour, water, almonds, salt, yeast.

The following would not be acceptable:

Ingredients: flour, water, nuts, salt, yeast.

Do I have to include my home address on my product labeling or is a post office box sufficient?

You must use the physical address of your home kitchen on your product label, not a post office box. The purpose of including an address on the label is to be able to locate the business in case of a recall or traceback associated with a foodborne illness complaint or outbreak.

Am I required to send my products to a laboratory to obtain an official ingredient list, or is it something I can put together on my own?

You are not required to have your product analyzed by a laboratory to obtain an official ingredient list. You must, however, list all ingredients, in descending order of predominance by weight. If you use a prepared item in your recipe, you must list the sub-ingredients as well. For example, if you use soy sauce as an ingredient, listing “soy sauce” is not acceptable; “soy sauce (wheat, soybeans, salt)” would be acceptable. Allergen labeling, as specified in federal labeling requirements must also be included.

Northwest Montana Sanitarians' Association

Am I required to send my product to a laboratory to show that they are non-potentially hazardous?

If your products are on the approved list, you do not need to send them out for testing. However, if there is a product that is not on the approved list such as cream cheese filling or frosting, you may ask the health department if testing for water activity and/or pH may demonstrate its acceptability under the exemption. If you have questions regarding testing, consult your local health department. Note that depending on the food or the process, you may not be able to produce the food you wish despite water activity or pH levels.

If I make wedding cakes and deliver them, am I a cottage food producer?

No. If you are in the business of taking orders and delivering the food that you make, you are operating outside of the exemption and need to license.

Why can't I sell my cottage food products to my favorite restaurant or grocery store?

You are not a licensed, inspected manufacturing facility and your products are not considered an approved source for use in a grocery store or restaurant. In addition, you are not required to meet the full labeling standards required by the FDA for wholesale producers, or their operational requirements.

Can I make and sell products from my motor home kitchen, or summer home?

The cottage food exemption only applies to products made out of your primary residence. Second homes, vacation homes, etcetera, do not meet this requirement.

Can I make products in a rented kitchen and sell them?

No. The cottage food guidance document applies only to an approved set of non-potentially hazardous food items made in the kitchen of your primary residence. If you want to use a commercial kitchen to expand what you can create, you must license.

Can I make cottage food products in an outbuilding on my property, like a shed or barn?

No. The exemption requires cottage food items to be made in the kitchen of your primary residence.

Where can I store ingredients and finished products?

Ingredients and finished products may be stored in your primary residence where they are made. This includes the kitchen, spare room, or basement that is free from dampness, water, pests, or other unsanitary conditions. You may not use a garage, shed, or other outbuilding as a storage area.

Can non-profit organizations produce and sell cottage foods?

No. Non-profits do not operate out of a primary residence; however, there are exemptions for non-profits that may apply.

Northwest Montana Sanitarians' Association

Can I sell my cottage foods over the internet?

No. While you may advertise your product on the internet, you cannot take orders over the internet and ship the product. Sales must be direct to the end consumer as a person-to-person transaction at a public event, and not delivered by mail.

Can I sell my cottage foods to a wholesaler, broker, or distributor?

No. Sales must be direct to the end consumer at a public event. Sales to second parties like distributors would require a wholesale food license for indirect sales.

Can I advertise my products on my website?

Yes; however, you cannot take orders over the internet and ship the product. Sales must be direct to the end consumer as a person-to-person transaction at a public event and not delivered by mail.

Can I advertise my business in the newspaper or at trade shows?

Yes. Advertising is allowed; however, the actual sale must be made person-to-person between you and the end consumer at a public event.

What about liability? Will I need liability insurance? What happens if someone gets sick?

There is the potential for liability if someone gets sick or injured. Whether or not liability coverage is needed is a question that should be directed to an insurance agent or attorney.

What if I want to sell over the internet, open a store front, or sell at venues not covered under the exemption?

You would need to contact your local health department and obtain a license in a commercial kitchen that meets your needs.

I have decided to expand beyond what is allowed as a cottage food vendor. How do I get a commercial kitchen?

Contact your local health department. They can provide you with plan review information if you would like to build your own commercial kitchen. However, you do not need to build your own kitchen unless that is what you choose to do. There are many kitchens available that can act as a commissary kitchen for renters: places like restaurants, community kitchens, community centers, schools, churches, and the like. The key points when it comes to a commercial kitchen are 1) does the facility have everything that you need to produce your product, and 2) can you separate your operation by time or space from another user.

What does it take to register?

Contact your local health department with list of the products that you would like to sell under the exemption. In addition, bring a copy of your food safety training card or certificate of completion. If you have questions about products or where to get food safety training, contact your local health department.

Montana Environmental Health Association



PO Box 741, Helena, MT 59624

admin@mehaweb.org

February 14, 2014

Cort Jensen,
Montana Department of Agriculture
302 N Roberts
Helena, MT 59601
cojensen@mt.gov

RE: House Bill 630 public Comments

Dear Mr. Jensen,

The Montana Environmental Health Association (MEHA) would like to thank you for the opportunity to send written comments as part of the public meeting process for HB 630. MEHA is a nonprofit group of professionals who work to protect public health in ways that are related to our everyday environment. Many of our members work in the fields of food safety, public accommodations, drinking water protection, wastewater treatment, air quality, solid waste disposal and public health complaints. Our membership is comprised of professionals who are registered sanitarians, engineers, hydrologists, environmental consultants, and health educators.

The Montana Environmental Health Association has met with its partner agencies, the Montana Public Health Association and the Association of Montana Public Health Officials, to discuss HB 630. Specific items of focus were cottage food operations and inconsistencies and inefficiencies in Montana's food laws that could be improved.

In addition, MEHA surveyed its membership and forwarded the survey to all sanitarians across the state. The survey consisted of questions regarding the principles of cottage food operation and inefficiencies and inconsistencies in current retail food statute. This information was used to develop/finalize MEHA's House Bill 630 - Guiding Principles, which is attached as part of our written comments. The document is divided into two parts. The first is a discussion of the cottage food industry. The second is the modernization of the retail food statute in general.

Please accept these comments as part of the growing body of information gathered to identify important concerns and issues related to HB-630.

Sincerely,

Laurel Riek, President Montana Environmental Health Association
Lewis & Clark City-County Health Department

Enclosure: House Bill 630- Guiding Principles

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.



February 14, 2014

Cort Jensen,
Montana Department of Agriculture
302 N Roberts
Helena, MT 59601
cojensen@mt.gov

RE: House Bill 630 public Comments

Dear Mr. Jensen,

Please accept these comments on behalf of the Missoula City-County Health Department concerning HB 630. Missoula County contains about ten percent of Montana's population and currently has eight City or County approved Farmers Markets. Our Department is a strong supporter of healthy foods and locally grown foods. As a public health department our overriding responsibility is to ensure that the public is not exposed to significant unnecessary risks from the preparation and distribution of foods to the public. We believe that all of these goals can be accomplished with modifications to MCA Title 50 and associated rules.

With that background given, we support the "Guiding Principles" document already submitted to you by MEHA and the attached document entitled "Recommended Structure and Contents of Montana's Cottage Foods Program." This document is based on a similar AFDO document but has been modified to parallel the MEHA Guiding Principles and Montana's special circumstances. It has been drafted by our staff and reviewed and modified to its present form based on comments from the Northwest Sanitarians group as well as other members of MEHA. We intend that it provide more guidance for the preparation of possible changes to State law and State regulations on this subject.

Thank you for your efforts in carrying out the public input process concerning HB 630.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Carlson". The signature is fluid and cursive, with a large initial 'J' and 'C'.

Jim Carlson, R.S.
Director of Environmental Health

Enclosure: Recommended Structure and Contents of Montana's Cottage Foods Program



February 13, 2014

Cort Jensen,
Montana Department of Agriculture
302 N Roberts
Helena, MT 59601
cojensen@mt.gov

Dear Mr. Jensen,

On behalf of the Montana Public Health Association (MPHA) please accept this letter in reference to House Bill 630. MPHA is a diverse member driven organization with a mission of seeking optimal health and working to shape the public health policy for all Montanans. MPHA currently has 175 members across Montana. The members provide representation from local public health departments, the state health department and public health focused organizations. MPHA has been actively involved with both the Montana Environmental Health Association and the Association of Montana Public Health Officials on discussing House Bill 630 with a specific focus on cottage food and methods for improving Montana's food laws. The below comments summarize the stance of MPHA on this topic and are in agreement with the guiding principles submitted by the Montana Environmental Health Association.

MPHA recognizes that there is an increased demand for cottage food businesses in Montana and believes that making changes to Montana's food laws and regulations will provide opportunities for these businesses while at the same time protecting the health of Montana residents. MPHA puts forward the following guiding principles regarding cottage food:

- The health and safety of Montana residents and visitors needs to remain first and foremost
- The best available scientific research must be utilized
- The Farmer's Market standards and cottage food standards need to be combined for simplification
- The Department of Public Health and Human Services should be allowed to develop rules regarding cottage food operation
- Cottage food rules should include:
 - Annual registration with a regulatory authority (with an associated fee)
 - No high-risk foods, procedures or packaging
 - Clear labeling indicating that food was not produced in a licensed facility
 - Required food safety training

- Limiting of sales to public events
- Allow the regulatory authority the right to inspect and investigate as needed

In addition to the cottage food guidelines above MPHA would also like to see the following changes made to Montana's food laws:

- Allow the Department of Public Health and Human Services greater flexibility in creating rules
- The language in MCA 50-50 should be simplified and modernized

We thank you for the opportunity to provide comment on Montana's food regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Alicia Thompson". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Alicia Thompson
President, Montana Public Health Association

HB 630--First Advisory Committee Meeting 11/21/2013

[Incorporate by reference the meeting agenda created by Joan Miles]

On phone: Joe Russell, Health Officer for Flathead County; Lynne Paul representing the MSU extension service; Shantil Siapera - MT Assn. of Counties.

Advisory Committee members and Agency representatives are introduced.

Committee members in attendance – (in addition to Joe Russell and Dr. Paul on the phone)

Laurel Riek
Corrine Rose
Stephanie Potts
Jan Tusick
Shorty Hofer
Joe Waldner
Andy Hunthausen
Jim Hart

Committee members absent –

Brent Sarchet
Brad Griffin
Dave Prather

Agency representatives in attendance:

Health – Jane Smilie, Shannon McDonald, Jim Murphy, Melissa Tuemmler, Jeff Havens
Agriculture – Joel Clairmont, Cort Jensen, Collin Watters, Nancy Matheson
Livestock – Gary Hamel
Office of the Attorney General – Chuck Munson

Meeting facilitator/consultant:

Joan Miles

AGR = Department of Agriculture

DOL = Department of Livestock

PHHS = Department of Public Health and Human Services

We start by reviewing the responsibilities this group has under HB 630. We have to submit a report to the legislative economic affairs committee in May. Outside of that responsibility, Joan suggests we consider a longer-term effort to create a food safety/food business council with a variety of individuals from the stakeholder organizations, producers, state agencies and business people.

Cort gives us a summary of HB 630. There were a number of food related bills this past session and this is reflective of a nationwide trend. States have been reviewing their respective food laws as the federal regulatory landscape changes and consumers desire more local food.

Rep. Williams proposed a study bill—HB 630—but she wanted to make it somewhat unique to other study bills. She assigned responsibilities to the affected departments to come up with a report and recommendations for the committee’s use. Differing duties have been assigned by this bill. The bill direct an evaluation of potential changes in MT law and regulations that would run parallel to compliance with the food modernization act, consideration of the propriety of a cottage food law, and an assessment of the availability of commercial kitchens for use by community members. Any other inconsistencies and inefficiencies in MT food law (broad provision) that are identified are meant to be addressed. Public meetings will start in January. The law puts responsibilities on DOL, AGR and PHHS.

“Farm to Fork” food system progression –

We distribute Joe Russell’s visual—it is a diagram called ‘Farm to Fork.’ [incorporate by reference]

To ground ourselves on the regulatory framework in Montana, we go over the diagram that traces the movement of food from ‘farm to fork.’ The diagram shows a food continuum and we identify agencies that are a part of regulation at each stopover for food product along the continuum. There are different pathways into this continuum.

Farm level: DOL, AGR, FED

Post farm transport: FED, State and Fed transportation, DOL, AGR

Processing: DOL (meat processing, milk), AGR (any commodity buyer, grains, oilseeds, pulses, produce) FED under the food modernization act, FDA (milling, PHHS can do contract work for FDA), AGR (feed).

Post processing transport to warehouse: FED, State and Fed transportation, DOL, AGR. PHHS gets involved in food truck accidents, and local health is implicated as well.

Storage/Warehouse site: DOL inspects and licenses meat depots; FEDs (USDA meat), PHHS.

Post storage transport: FED, State and Fed transportation

The consumer markets: primarily PHHS and local health departments; except for grading of produce where AGR does that at the supermarket—however, grading relates to consumer quality concerns, not consumer safety. We are reminded that there are markets that are exempt, for example, bake sales and many of the farmers market participants.

Moving along from the diagram, Joan focuses the group on the day’s agenda.

Joan suggests that farm to market logistics is a complicated topic, which is why we need to work together.

Jan Tusick comments that there is a big responsibility on consumers to practice safe food handling themselves, and that this is unregulated, likely can’t be regulated, but one of the most important levels in Joe’s ‘farm to fork’ continuum. Nobody disagrees; however, it is also suggested that consumers have a certain expectation of safety when they purchase food. The local food movement is a direct response

to the anonymity of the modern food marketplace, and we need to update our regulations to reflect this consumer demand.

A comment on farmers markets is made stating it is easy for produce dealers to sell out of state produce. It is suggested that in-state producers are doing what they can to follow our MT rules, but folks that bring in the out-of-state produce don't have the same level of responsibility and safety concerns and this is an area that exposes the state population to a potential outbreak.

It is suggested that eggs are a good "example commodity" to track farm to table outbreaks. The evidence with eggs is plentiful.

PHHS points out that localized outbreaks are much harder to ID than large, national outbreaks.

On a related note, at Mission Mountain Food Enterprise Center (MMFEC), Jan T. says that the local, state and feds often inspect that facility. Over time, her observation is that these entities are not in communication with each other as to that facility. This doesn't seem like a logical way to regulate, she suggests.

*Steering committee members took some time to talk about what they've done to date.

Joan reviewed the landscape of the law, regs and agency collaboration. [Incorporate by reference the overview of priority issues and project goals worksheet]. In that document, the state agencies involved aligned on the priority issues to be addressed, create "HAL" (health, ag and livestock collaboration), and work together to complete the HB630 project.

- Farmer's Markets regulations are very confusing because it is all by exemption
- Cottage Foods – not produced in commercial kitchens/home-cooking entering commercial stream. If legislation proposed - need to address where made, where sold, what, how much, fees/licensures.

The state DPHHS writes the rules, trains the local sanitarians, and processes licenses for food establishments. It is at the county level that the licenses are either substantively approved or denied. What is difficult for merchants is when they see different rules in different counties, but that is the nature of the jurisdiction in MT currently. It is suggested that there could be a better effort to get a uniform interpretation of similar laws, rules and regs. One way to do that would be to enhance the State's effort in encouraging more uniform interpretation by ongoing training of local sanitarians.

At the county level, no rules or regs can be *less* stringent than the state rules and regs. They can be more stringent if that rule or regulation is adequately justified.

It is suggested that not even the "experts in the room" know where the specific differences lie in county to county regulations that exist at the county level. (Gallatin, Missoula and Flathead counties each has

its own food safety regulations; Cascade has some minimal local regulations; unknown if other counties have local regulations.)

Jan T. brings up the example of Flathead Cheese manufacturer that is licensed by DOL. They sell all over Flathead Co., and Lake Co., but cannot sell in Missoula Co. It is suggested by PHHS that if they obtained a retail license they could sell anywhere. However, Jan suggests that we look at the creation of opportunities in the state for a small business like the Flathead Co. Cheese manufacturer. One of the big areas of “need” here is farmers markets. One of the goals here is to simplify the regulations where one can both manufacture and sell, without having to obtain multiple licenses. PHHS says that we should be careful what we wish for (this could require significant uniform requirements and licenses for all involved in the food business – even very small or limited businesses), but Jan reminds the group that part of our task is to simplify and help producers and businesses tap into market opportunities. Having a streamlined process in licensure for cottage food manufacturers who want to sell products in a direct market needs to be explored.

Joe asks about the committee’s awareness of who oversees farmers markets, community to community. It seems there isn’t much awareness because it is different in many of the communities. In order to technically benefit from exemptions, the law requires that the farmers market be an officially recognized farmers market.

Farmers market—codified in MCA §50-50

Everybody agrees that MT needs a cottage food law, separate from the existing laws. We would need to define cottage food, who can produce cottage food, where, how much, how they did it. Also, fees and license fees can be separated without disregarding the licensure requirement.

There may be some tension with allowing too much freedom to cottage food industry when there are a lot of restaurants and retailers who do go through the trouble to get licensed. We should maintain that awareness.

Another confusing area is the PHHS and DOL effort on the 1,000 bird poultry exemption. There was a federal exemption adopted by DOL. However, when one went to try and sell an “exempt bird” at retail, the interpretation was that the bird’s meat was not inspected from an approved source. Perhaps the law can be changed to assume the inspections have been occurred. PHHS thinks this can be cleared up by a collaborative effort underway with DOL. The suggestion is made that this group is not going to be dealing with the bird exemptions.

Poultry Growers Coop in the state is asking Jan Tusick many questions—she would like more clarity.

In the CFR, there are requirements for potentially exempt poultry producers. However, DOL doesn’t think it is clear enough on the levels of cleanliness. There needs to be some clarification in a MT ARM on how the exemptions will be interpreted. We do want to have this as a committee effort on the HB630 team. (Do we have more conclusions on this issue and how it is to be resolved?)

Pre-break we discuss what’s to come in the meeting:

- Food Safety Modernization Act (FSMA): the rules are out for produce, facilities, import, feed and AGR will be monitoring closely to tell the committee how to address its mandate to update state rules and regs to reflect FSMA requirements.
 - Discuss specific information requested in the bill regarding commercial kitchens and extent to which home kitchens can be used to prepare foods for public consumption.
-

Post break—

PHHS reviews ongoing efforts to improve implementation of Montana’s food safety laws outside of HB630 efforts. (These are summarized in the overview of priority issues and project goals document attached to these notes.)

We move to an open discussion for the participants to chime in on what they want to highlight.

Public meetings: Jan. 9, Missoula, Jan. 21, Billings public meetings will be at the extension offices in both communities. We may go to BZN library as well, but no dates. How do we advertise the meetings and what do we ask for? (*Note – Bozeman has been set up for Monday, Jan. 13 at the Public Library*)

- We want to encourage regulated folks to participate, including food businesses and growers. Most everyone agrees that the purpose of the meeting should be open comment. Informal written comments will be encouraged from statewide stakeholders. Concerns and perspectives of food laws and issues and obstacles for farmers, ranchers, and local food businesses doing business in Montana.
- How will we set up a comment forum? Online?
- AGR PIO may write something for a newspaper?
- We will likely announce the week after black Friday.
- Also, we need to look into a webinar for these events to provide remote accessibility.

Discussion then turned to the King amendment to Farm Bill—the group needs to read the amendment and be aware of its impact on 630 and ongoing efforts. For interstate commerce, it just expressly preempts state laws that are more stringent than the federal laws for products that are in interstate commerce. Northern Ag network is going to do some promotion.

The suggestion was made that we include the tribes in the HB 630 discussion. Perhaps involve a tribal sanitarian and an IHS sanitarian. Lynne P. can provide us with a contact list for the tribes’ sanitarians. CSKT may be a good partner to bring in the fold of the committee.

Melissa T. talks about a survey of ‘community based commercial kitchens’ the PHHS recently did. They were looking at the relative availability of local commercial kitchens and their use in MT. They have information on licensed and unlicensed public kitchens. Relative availability of a commercial kitchen that is open and *usable* by the public to get a product to market is very low in MT. There is one in Ronan, one in Billings, and a small facility in Missoula. According to the survey, however, there is some type of facility that may be used by the public like a commercial kitchen in 37 counties, and maybe more.

We need to define a commercial kitchen because right now, there is no consistent definition.

Next steps: PHHS will analyze more of what they found out about licensed kitchens available to the public. We will also meet again after the public meetings. We need to set up a drop box for our materials—Cort will figure something out. Lynne suggests that we define “cottage foods” as well. She thinks a clear understanding of the terminology we are using is important and that we need to come up with a common agreement on definitions. The steering committee should have a call with Rep. Williams to help shape definitions that will ultimately be commonly used by the advisory committee. Joan will get in contact with Rep. Williams. Definitions are key for the Economic Affairs Committee.

Also, follow up on tribal representation on Advisory Committee.

Next meeting will be scheduled following the public meetings.

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 HAACP 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 HAACP. 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.

**Summary of Montana DPHHS-Food & Consumer Safety HB 630 Survey of County Sanitarians
Regarding the Availability of Community-based Commercial Kitchens**

HB 630, also known as the “Food Study Bill,” requires an assessment of **“the relative availability of the community-based commercial kitchens and their use.”** To perform this assessment, DPHHS asked county sanitarians to respond to four questions. This report summarizes the county health departments’ answers.

Data for this report was compiled using submissions from 50 of 56 counties, one reservation and one city for a total of 52 responding jurisdictions. See the attached map for details about regulatory authorities that submitted information.

Question 1: “Are there any community based commercial kitchens available for food production (i.e. senior centers, schools, churches, hospitals, fairgrounds, etc.) that can be used/rented/leased by members of the general public?”

39 of 52 reporting jurisdictions indicated that they have at least one community-based commercial kitchen available for food production within their jurisdiction.

Question 2: “Please list all of the counties in your jurisdiction and the approximate number of these facilities in each that are licensed.”

The table below reports the number of licensed community-based commercial kitchens per reporting county. The left hand column is the number of licensed commercial kitchens per jurisdiction, and the right hand column is the number of counties that reported having a licensed commercial kitchen in that range. Example: There are 22 counties that reported having between 1 and 4 licensed facilities.

Range of Licensed Facilities/County	Number of Counties in that Range
0	8
1- 4	22
5 - 10	6
11 - 20	8
21 - 30	2
Total Licensed Facilities: 266	

Question 3: “Please list all of the counties in your jurisdiction and the approximate number of these facilities in each that are NOT licensed. We are not asking you to take an inventory, just a rough estimate based on your experience and knowledge.”

The following table reports the number of unlicensed community based commercial kitchens reported for each county. Example: 9 counties reported that they have no unlicensed community based commercial kitchens.

Range of Unlicensed Facilities/County	Number of Counties in that Range
Unknown	11
0	9
1 - 5	19
6 - 10	6
11 - 15	0
> 15	1
Total Unlicensed Facilities: 128	

Question 4: “How many of these kitchens, either licensed or unlicensed, have been inspected in the past year?”

There are approximately **185 inspected** community based commercial kitchens in the reporting jurisdictions.

Summary: One of the requirements of HB 630 is to assess the current availability of community-based commercial kitchens. These kitchens may be used under existing statutes and rules to produce food items for sale. This survey did not address “cottage food” kitchens specifically, but does identify sources that may be available to entrepreneurs who are interested in expanding their operation.

This survey identified 394 community-based commercial kitchens throughout the state, including 266 that are currently licensed (requiring inspections). Some counties were not able to determine how many existed in their areas or did not respond to survey questions. These kitchens may be available to individuals for use in food manufacturing.

DPHHS recognizes the interest by entrepreneurs who are in need of a facility to rent or lease. There are also facilities that may be interested in making their operation available for rent or lease. DPHSS will work with owners of licensed establishments to make this information readily available to entrepreneurs via the DPHHS website.

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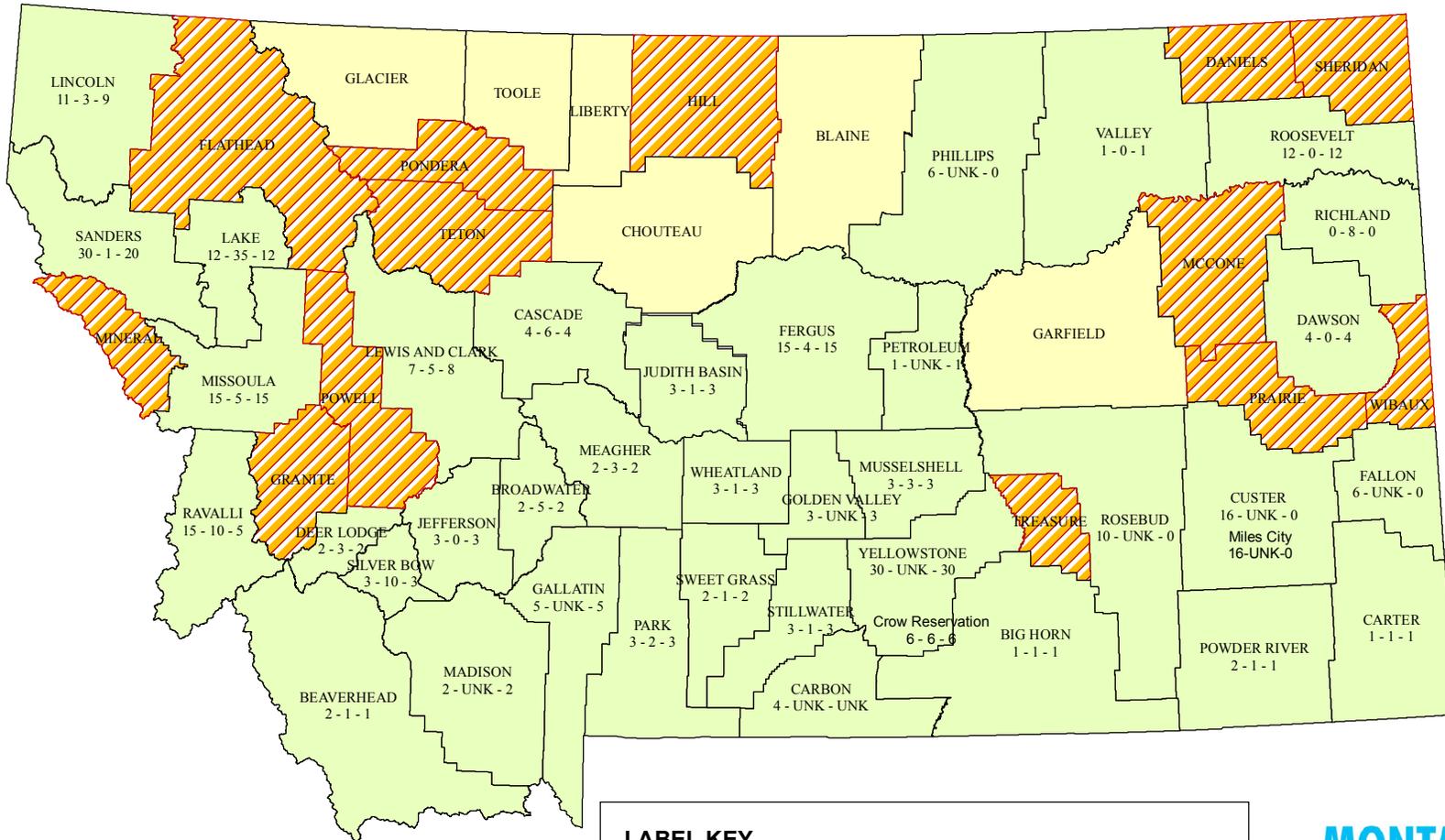
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Potentially Available Community Based Commercial Kitchens in Montana



LABEL KEY

County
Licensed-Unlicensed-Inspected (e.g. 2-3-2)

- Have Community Based Commercial Kitchens
- Do Not Have Community Based Com. Kitchens Available
- No Information Provided



Appendix J

Comments regarding the HB-630 report and cottage food proposal 2 May 2014

The Grow Montana coalition recently participated in the Montana Food Policy Modernization Project, an effort to streamline and improve food safety regulations as authorized by HB 630 (2013). We commend the intent of the project, because experience has showed us that burdensome and confusing food safety regulations are one of the biggest barriers to the development of a robust, vibrant local food system in Montana. We were glad to be asked to participate, and look forward to continued work and dialogue on this subject. However, we have some concerns about who was represented throughout the process, and with certain elements of the cottage food regulation proposal that is coming out of the advisory and steering committee. In the interest of better serving Montana's food producers, entrepreneurs, and food consumers, we offer the following comments:

Summary of comments and suggestions:

- A. Make up of advisory committee: essential to include a diverse range of stakeholders
- B. Comments regarding cottage food proposal:
 - I. Impact on producers currently selling under *MCA 50-50-202*
 - II. Allowed products: Strongly encourage expanded list of allowed products
 - III. Product registration: re-registration seems unnecessary
 - IV. Product labeling: a reasonable way to ensure public knowledge
 - V. Production in home vs. commercial kitchens: production should not be limited to only homes
- C. Poultry processing: input for implementation of 1000-bird exemption

A. Make up of the advisory committee

HB 630 mandated that the process be overseen by a broad-based stakeholder advisory board. Grow Montana was invited to be a part of this board, the only community group represented. In addition, there were two large producers, one processor, and the rest were sanitarians and other regulators. An institutional buyer was added halfway through the process. Given this makeup, the discussions and proposals tended towards favoring regulation. We feel a more diverse group of stakeholders, and a more conciliatory atmosphere towards critiques and new ideas, could have potentially resulted in a more innovative proposal.

We recommend: One suggestion from the project is the continuation of a stakeholder advisory committee, by replacing and updating the advisory council mandated under MCA 50-50-103.

Department authorized to adopt rules- advisory council. We support the move towards more stakeholder involvement, but feel it is essential that the group is truly diverse and better represents the wide array of actors in Montana's local food system, including producers, processors, purchasers, and local food advocates. This should be spelled out in statute, if necessary.

Grow Montana, a project of NCAT, is a broad-based coalition working on projects, research, and policies that help Montana retain more of the value of its agriculture within our communities, reconnect rural and urban economies, and improve access to healthy and nutritious food. Our steering committee members include representatives from Alternative Energy Resources Organization (AERO), Artemis Common Ground, Lake County Community Development Corporation, Montana Farmers Union, Missoula County Community Food & Agriculture Coalition, and the National Center for Appropriate Technology (NCAT). The coalition also welcomes input from state agencies.

B. Specific Comments Related to Cottage Food Proposal

These comments are based on the proposed cottage food regulation presented by DPHHS representatives at the HB 630 advisory committee. In general, we support the idea of expanding opportunities for small food businesses to produce and sell non-hazardous products made at home. However, the current proposal does not go far enough to expand market opportunities, and we feel that it may create unwanted burden on producers currently selling under the farmers' market exemption (50-50-202). Cottage food regulations vary widely between states, and we wish that the HB 630 process would have dug deeper into models and examples from other states to meet the needs of more producers. Our specific concerns include:

I. Impact on producers currently selling under 50-50-202

There are many producers who have been safely producing and selling baked goods and jellies at home and selling them at farmers markets under 50-50-202, with no fee, registration, or other requirements. The new proposal would cost labor, money, and time for these producers, while offering them only the ability to sell at other, direct-sale locations. There are likely a number of producers who would not gain additional markets, and for whom this would only be a burdensome regulation.

We recommend that a new Montana cottage food law be crafted in such a way that those who produce and sell only at farmers markets continue to be exempted from additional fees, or they gain the ability to expand their product line beyond what is already allowed or expand their sales beyond direct sales. (For instance, the new regulation could exist either alongside the current farmers market exemption, or contain an additional exemption from fees for those selling only baked goods and jellies at farmers markets. An example of a state with a graduated level of licensing for cottage foods, based on product and sales type, is California). We do not feel a one-time registration is a major burden (see comment on re-registrations, III below), but fees and required trainings may be.

II. Allowed products

The proposal from DPHHS would cover only goods currently exempted in 50-50-202, essentially baked goods and jellies. We strongly encourage an expanded product list, including pickles, sauces, and other non-hazardous goods, which are not time or temperature-sensitive.

We recommend: There are many states that allow cottage food production of pickles, sauces, and other such goods (including California, Texas, Alaska, Wisconsin, Maine, North Carolina, Utah, and Indiana). In fact, number of states do not have a list of "allowable" foods in their cottage food law, but instead allow any food that is below a certain pH and water activity (and thus, is not hazardous). There is ample precedent and models for how home production of such goods can be done affordably and safely, and we encourage Montana to expand our cottage food product list look to these states for examples of how to ensure safe products.

III. Product registration

We understand the need for cottage food companies to register. However, under the current proposal, cottage food producers would have to register each product, and re-register (paying another fee) for each time they want to add a recipe. We are concerned about the burden this would cause for producers as well as for local health departments who would need to process the re-registrations.

We recommend: there should be a *one-time* registration and fee. We do not see the need for additional registration and fees with new products, and also are concerned about the burden it would cause to county health offices.

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IV. Product labeling

Earlier versions of a cottage food proposal shown to the advisory committee included simple labeling requirements for the home-produced food. Labeling of home-produced products is a reasonable way to inform consumers and allow for cottage food production; Grow Montana hopes this remains in a final proposal.

V. Production in home kitchens vs. commercial kitchens

We are concerned about the restriction stating, “Cottage food products must be produced in a residential, home kitchen.” This excludes entrepreneurs who may want to use a commercial kitchen that they own or have access to from benefitting from the proposal, for instance a deli owner who might want to can jam and sell it directly to customers to take home, or an apartment-dweller who wants to start a small food business but needs slightly better, more sanitary facilities available at a community-based commercial kitchen.

We recommend: Cottage food rules should apply to everyone who is producing non-hazardous food for direct sale to the public (however, see notes above on the impact of the rule on current farmers market producers). There should not be an additional requirement that it *must* be produced in a home; production in a sanitary commercial-grade kitchen should be allowed.

VI. Elements of the proposal we commend

Some elements of the current proposal from DPHHS are good steps forward, and Grow Montana hopes they will remain in a future version of the bill:

- Avoiding home inspections will lessen burdens on county health departments and producers
- Including a provision to allow DPHHS to add additional products to the list of allowable foods could allow them to create more business opportunities for local food producers in the future. (However, if Montana adopted a pH and water activity standard instead of an allowed products list, as some states have, this may not be as necessary.)
- Cottage food licenses should be valid across all counties in the state. (We strongly encourage this for *all* food licenses, to improve consistency and lessen burdens for producers.)

C. Poultry processing

There is a strong demand in Montana for locally produced poultry, and a desire among producers to fill this demand. The best way to do so would be through the 1000-bird poultry exemption; we are pleased that the Department of Livestock is moving forward with writing rules for its implementation. We hope it is a public process, allowing for input from stakeholders. As they move forward with this process, we strongly encourage Department of Livestock to look to examples of states such as Massachusetts, where 1000-bird rules have been written in a way that protects the consumer, but also allow a variety of business models and sizes to exist without creating undue burden on producers. Grow Montana has conducted research into examples of innovative 1000-bird exemption rules from other states, and we also have connections with local producers who are interesting in engaging with the DOL on this issue. We would be happy to engage with Department of Livestock and share this information with them.

The Grow Montana Food Policy Coalition works to support our Montana's food and agricultural economy through common-sense solutions. One of the most common-sense things we can do to support local food in Montana right now is fix the tangled web of food regulations that local producers must navigate in order to bring their products to market. Doing so would keep more money in our communities and increase the availability of healthy, local food for all Montanans. We should take the opportunity afforded by the HB 630 process to ensure that any new food regulations in Montana truly serve the widest array of producers, consumers, and communities.

Thank you for considering our input,

A handwritten signature in black ink, appearing to read 'Stephanie Potts', written in a cursive style.

Stephanie Potts, Grow Montana Coordinator

Stephaniep@ncat.org
406-494-8688

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