



## **Cottage Food Public Meeting Transcript**

H = Division of Public Health Employee

A = Meeting Attendee

H1, H2, etc = Health District Employee

May 11<sup>th</sup> – Idaho Falls

H: So, then again, what are your opinions? Tell me your thoughts because I've got to hear from the stakeholders on this. Help me out here folks. Any thoughts?

A: My name is (meeting attendee) and I'm from Salmon. I'm a vegetable grower in the valley. And I look at this list and I think maybe a different practice and giant red flags go off. No, we can't maintain the current practice, simply because my experience and many people in our region feel that there needs to be some changes to the overall system. There are inconsistencies with how things are interpreted and how the rules are looked at.

H: Right now, I'm interrupting you, but right now there are no rules for cottage foods.

A: Right.

H: So you are saying you want to see rules for cottage foods?

A: Well, you say there are no rules for cottage foods; however, to put it delicately, the small business food entrepreneurs in our area attempt to create food businesses. Some use potentially hazardous foods, some do not. Regardless, there are inconsistent messages from our Health District that sometimes give different answers to that question.

A: My name is (meeting attendee); I'm a member of Salmon Valley Stewardship in Salmon, Idaho. Part of what our organization does is we attempt to bolster the local foods network in our region where we are obviously very geographically isolated place with not a lot of technological resources or educational resources for our community. So what we noticed and what people brought to us over the past few years is that small food entrepreneurs who are controlled by few resources in the area have sort of confusing regulatory barriers to navigate in order to create, well often the most difficult is probably the value-added product, but you know, pastries and pies and such things as that. The message that they are getting from our public health

entities are inconsistent at best. We have a number of documented pieces of misinformation and inconsistent messages from area producers who have attempted to do this sort of thing. And those are just the ones that have been documented. There is pervasive verbal information offered throughout the community as well.

H: Just for purposes of the conversation, can you give me some examples of the situation that you are describing where there have been some inconsistent messages?

A: Well, I prefer not to use names. But one product in particular was a jarred mustard product that had been sold throughout the community, both wholesale and retail, for a number of years, and for whatever reason a couple of years into this business, it was brought to the entrepreneurs attention that she was no longer able to market that product. She attempted to work with the Health District to navigate that and tried to work out whatever new regulation she was going to have to try to fit within. But the support from the Health District was non-existent, basically an environment of no support. So she traveled to the Food Technology Center in Caldwell, Idaho. It took several days away from her business and added expense trying to get some technical help to get up to code. She was told that the information she received from the Health Department in the first place was inaccurate, her product was shelf stable and there was nothing else needed. She came back and took it to market. She was given a letter telling her she had to remove her product from the shelves of everywhere it had been marketed. There was no real follow-up on that. What I am attempting to really say here is that because our Health Districts seem to operate autonomously, there is no real clear pathway for accountability. If you are a small food entrepreneur and you feel you have been treated unjustly and in a lot of cases in these rural communities it is an economic injustice. That agricultural resource is difficult. There is no real streamlined process for appealing or holding people accountable or oversight. That I think, rather than an actual policy change in the Idaho Food Code, that is what needs to be addressed.

H: Okay, just let me address that for a second. The Health Districts were established by the 1971 legislature. They are established in Idaho Law under existing statute and you say. 'They seem to operate autonomously.' I will scratch the word "seem". They are autonomous agencies. And ultimately to change that would require a change in Idaho Law. They have been in place in Idaho since the 1971 legislature. You described a mustard operation. That is food production. That is beyond cottage foods, it is being sold beyond the 'direct to consumer'. Now, I have heard the statement made that the food safety rules are not geared around the needs of a small entrepreneurial business. Largely, that is probably a true statement. The food safety regulations are geared around the science of food safety. They are not necessarily geared around the economic needs of a small business. They are not supposed to be, they are supposed to be geared around the science of food safety.

A: Let me just be clear. I would like to say that I do not feel that there is a need for a definition for cottage foods in the Idaho Food Code. I think the Food Code as it stands is adequate. But I think the problem is the inconsistency in how it is interpreted from one district to another throughout

the State. Particularly for these small isolated rural communities without a lot of other resources. There is no educational support provided and I can say I have little confidence...

H: Okay, let me address that. As public health agencies, the environmental teams really aren't there to provide, unfortunately, they are really not there to provide public education. There are other aspects of public health they do, they are regulatory agencies. They are there to enforce the law. Ultimately, that is their role.

A: I think Patrick, though that they are there to enforce the law, however, if each health agency, health district, is interpreting statute differently, that's where the economic injustice comes from. These rural communities are then being – well the deck is stacked against us, because of lack of resources, because of lack of education, because of lack of training and professionals that could improve public health in our area. In our minds, in our experience in our valley, it is proving to be a real economic disadvantage because there are producers who are willing to do the work and follow the rules in public safety. But it depends on who you talk to and depending on the day you talk to the right person and they say, 'yes or no' then that is a problem and public health becomes a political issue and not a science issue.

H: I understand what you are saying. I appreciate that. Other thoughts about cottage foods, the need to have rules, or the need to change our existing approach to cottage foods in terms of what we regulate and what we don't regulate?

A: I have a question. As far as the cottage foods, would that affect things like public bake sales? Like at my elementary school we will do like a neighborhood bake sale and stuff like that. Would those kinds of things, would they be affected by regulation and changes of cottage foods?

H: Possibly, and that is why we are looking at this. There is part of the prevailing statute that exempts fraternal, non-profit, benevolent organizations. So you would have to look at something like the school basically and where it fits in terms of the fraternal, benevolent, and non-profit. It would likely still be exempt. But it could have an impact on what we are talking about.

A: But those regulations we heard of first, those have not been finalized.

H: No, right now there are no regulations being proposed. Right now, the purpose of this meeting is to gather information from the stakeholders to try to determine the extent of the problems, if you will, and if so, based on the extent of the problem, then what we do as public health agencies to address what those problems that are being expressed to us.

A: So maybe we should pass a rule for that type of situation and regulate it.

H: I don't know the answer right now. That is the kind of thing we have had to look at and balance in existing statute. Off the top of my head, I would have to say 'no' but it is the kind of thing we would have to look at and balance with the existing statutes.

A: How would you enforce those types of regulations? How are you going to stop the farmers who decide to bring his tomatoes to the Farmers Market? That doesn't say you have to have an approved kitchen at the Farmers Market so how are you going to enforce it?

H: That's a great question and that came up in a discussion that I had with the legislature during the 2015 session. I had the exact same question. That's part of why we are here. Part of why 187 failed is because the logistical concerns that were being expressed, not only by my office but by the seven Health Districts around the State as well. They were asking the same questions, how are we going to enforce this? So that is kind of the other reason why we are here.

A: When the group first approached you on this legislation, what was their reasoning behind it?

H: Their reasoning was because Idaho does not have a cottage food law. Therefore, their interpretation was the cottage foods are illegal in Idaho. And that's not the case. I'm not going to debate or throw anybody under the bus, but there are active campaigns on the internet right now that are blatantly saying that these foods are illegal in Idaho. That is not the case. We wholeheartedly endorse these foods, we welcome them, and they help the local economy. We understand that. We are also part of the local economy. We are government officials and ultimately our success depends on the local economy. So we want the local economy to be successful.

A: I'm (meeting attendee) a producer in Blackfoot, and a Board of Director at a local Farmers Market. We grow a lot of produce, we operate a corn maze, we have a little corn business, and make homemade jams and jellies and syrup and our produce. To help understand some of this, there was an article in the Capital Press a couple of weeks ago. And this is where it really developed from was the Boise Farmers Market. Not to put them under a magnifying glass, but because of their regulation of asking those producers to use a certified kitchen, it makes it hard for other people to get into a market or have access to that. So because there is no food cottage bill, or no food cottage law or definition of things, these other producers felt like they are being pushed out, so to speak, because they can't segue in to develop a market because of the extra level of risk protection so they think they are protecting the market. I think we've got to realize here that, you know, when at first 106 came out I was in favor of it, however, it morphed into 187 before it became a disaster because then they had the Northwest Food Processors come in to dictate. Now those guys are big guys, okay? I used to work for a Fortune 500 company in...division and believe when an outbreak happened in 2007, us and our team of people were right there in the middle of that as well as other things. So food safety to me, I have been involved and seen it from both sides for ongoing decades. I am also a producer, so it's one of those things, where do you find the common sense structure, and the balance. And also the Farmers Market and being a board of directors there and I buy a lot of stuff from there, we can stipulate those different criteria if we choose to do so. For the markets we go to and we go up to Jackson, Wyoming, as well as Rexburg, and Pocatello. And Jackson is even a pain. I had to send my product to a lab and do a water activity and pH, were given the test results and we

were good to go. It's pretty simple, it works, and part of the clarity is that we don't have a clear definition between the separate Health Districts because they are autonomous. But personally, but also as part of a Farmers Market, there is no need to fix what is not broke. It is really not broke. It was fine. There probably needs to be some educational resources available, I think. There needs to be some continuity, which I think is happening because of this thing. In fact, in this article, one of the Republican Legislators says, 'we've reached an impasse, we'll reintroduce the bill and send it back, if we can't then we will come back next year and write a law. If we don't need a law, there is no sense in passing one.' I think that clarifies the whole thing. Really, this stems from a few minor people trying to segue into a marketplace where they are alienated from, because of the higher set of regulations based upon the criteria from the Farmers Markets laws. So that's why this whole thing has come about. Let's just face the facts. It's unfortunate that the few trying to dictate to the many and we don't need this, in my opinion.

H: You wanted to say something else too?

A: I did. What I wanted to say was, adding additional specific language surrounding these types of foods previously unregulated is not the direction we want to go, obviously, I want to get more specific about the code. However, I wanted to ask you, you mentioned the way the bill was written was going to place a cap at \$30,000 income on producers. What I didn't catch was how did it regulate direct to consumer versus wholesale or retail?

H: It is just direct to consumer.

A: No wholesale or retail?

H: No.

A: How did the \$30,000 cap come about?

A: That came from Northwest Food Processors; Treetop, Con-Agra, Satori, and all of these big companies. I mean when I worked for....I was part of that association. I saw what the big guys do. And they are protecting their business, but those guys come in and try to tell us what to do. If you looked at what happened a couple of years ago Washington State passed a food cottage bill, believe me, Northwest Food Processors were in there heavily. And they pretty much squelched that food cottage industry. It really doesn't thrive. I think there are only about 200 businesses that are registered. Therefore, then you look at a \$30,000 cap on something, that's a small business but it is not a sustainable small business. So they have some legal folks with a money machine in Idaho who dictate to the small farmer what we can and cannot do.

A: Yeah, so that will actually, basically, put a cap on activities that was already legal, because you could already sell out of your home kitchen. So, it's ridiculous. It doesn't need to move forward. What I would like to take a moment to ask you is what the protocol is currently for appealing a decision of the local Health Districts that you think is unjust, if you are a small producer?

H: I will come back and visit with that in a little more detail later on. But to give you a preview, ultimately, any decision that is relative to the food program can be appealed to the State. It does get into kind of a legal sphere. I don't know what the right terminology is. We can go into a contested case hearing which could take several weeks to resolve. You can also appeal things directly through the local Health Districts; generally you get a quicker resolution that way. And you have a right as a business owner to appeal decisions either through the local Health District or to the Department of Health and Welfare. But if it does come to us, this is a heads-up, it does take a little bit longer to resolve simply because we have to go into contested case and that takes scheduling issues and all the logistics involved with that.

A: I would love more information on that if you have it.

H: Yeah I will be happy to talk about that.

A: Yeah I can speak upon that. I've worked with several people at different Health Districts because we travel. I even go to Wyoming so I deal with people in Jackson Hole. The City of Jackson has different kind of parameters as well. But most generally, I found that everybody adheres to the Federal Code. So like us, when we do our Mexican Crazy Corn, I have to heat stuff at a certain temperature and once that is expired I've got to change that. Part of that is being a producer or retailer or whatever. But also the people in Idaho in our Health District and in Jackson, they've been very helpful. I mean these guys are not here to carry a big club and knock their way in. I've asked so many questions, they've been to my place of business; we've gone over things, they are not in a hurry, they are taking the time to go over stuff and educate us. And if people would just take a step back, take a deep breath and say, 'hey, this is where I am going, how do I get there, how do I do it?' and I found it very helpful. But you have to be able to be engaging and get the dialog going. Generally speaking, I've found it very helpful.

H: So you mentioned the Federal Code. One thing I am trying to do with my program right now. We use, right now in Idaho, the 2001 version of that FDA Food Code. We are in the process of trying to update to the 2013 version of the Food Code. I am an active and vocal participant in a group that kind of helps steer that Food Code and how things are put together. Sometimes I am a little too active and too vocal. The 2016 meeting for the Conference for Food Protection will be in Boise in the middle of 2016. So in April of next year I will have 350 food safety professionals from around the country converging on Boise. I wanted to address also, with an updated Food Code, you mentioned earlier that in Wyoming, they will let you bring your water activity test and a pH test. One of the things the updated Food Code will allow us to do is provide a better parameter, a better definition of TCS food and will allow us to do the same thing. We can say, 'yes, bring us a sample from a lab that will cost maybe \$15-\$20 dollars and when you get that lab sample, bring that to us so we can see the results.' Then we can say, 'yeah, your food is a non-TCS food and we're going to be happy with what you are doing right now.' That's just kind of one of the things that I am trying to do with the Food Code.

Back to the cottage foods issue, so that you all are aware, we are accepting public comments until July 24<sup>th</sup>. Because of the deadlines that I have to work with, that July 24<sup>th</sup> deadline allows us the time that we need to be able to meet our deadline in terms of if we need to promulgate rules or anything like that. So if you would like to submit comments, this first email goes right to my desk, the second email address is a general email address that we do try to monitor daily. Sometimes we are not able to monitor it every day, but we do try to monitor it regularly. You've got both of our phone numbers. 5938 goes right to Barb's desk and 5936 goes right to mine. Then if you want to submit written comments in the mail, you include this address right here: Food Protection Program, 450 West State Street, 4<sup>th</sup> floor, you do have to include that 4<sup>th</sup> floor notation, Boise ID 83720, if I can get those comments from you.

Let me tell you what I am hearing, predominately, so far, from other folks around the State, then I'll go back to this. So far, what I am hearing is a combination of these top two things. But, when we are looking at this, what people are telling me is that they would like to possibly see that sample list of foods in the food code as a definition, they would like to see it defined as direct to consumer sales, and what we mean by that is we are not including wholesale transactions involved there. That is about the extent of the rules that people are telling me 'if you are going to do rules that is where we want it to end.'

The other thing they are telling me is, yes, we definitely do want some improved consistency here. I have already met with the Health Districts twice since the end of the legislative session. We will continue to meet and continue to work on these consistency issues specific to the cottage foods. The intention, and I don't know what it's going to look like at the end, but what we envision is some kind of a packet of information, or a fact sheet, or something like that that somebody can download from the state website. By the way, it is [www.foodsafety.idaho.gov](http://www.foodsafety.idaho.gov). So that information could be housed there and vendors could look at it, they could download it, and have all that information available at that one website. With the caveat that there may be instances where they still need to contact their local Health District for specific information about a local situation that might be going on. I frequently tell people, 'I don't know the local situations that are going on in every community in Idaho. I have the disadvantage of being in my office in Boise. There might be a situation in Salmon, or in Blackfoot, or something like that that is going on and I'm not aware of, that might dictate some local needs. And that is where you need to be in touch with your local Health District and try to enquire about what those are. So yes we are accepting comments. I do appreciate everyone's attendance today. You can always feel free to contact me at the phone number or email address if you have any questions relevant to food safety. I will be happy to discuss them with you.