



IDAHO DEPARTMENT OF HEALTH & WELFARE
DIVISION OF PUBLIC HEALTH

Cottage Food Public Meeting Transcript

H = Division of Public Health Employee

A = Meeting Attendee

H1, H2, etc = Health District Employee

April 29th – Moscow

H: So what are you guys thinking? What is going through your minds about cottage foods in Idaho? What do we do?

A: I have a question about the consistencies. So in different health districts, are there policies in place that are prohibiting sales of non-potentially hazardous foods?

H: Thank you! Thank you for asking that. That is a great question. To my knowledge, no there is not. Now, what can happen, none of the bills that were presented and anything they do in the future can preclude a farmers market management group from creating their own internal policies that they want specific to that market. In other words, it is possible for a market management team to say, 'we want everybody to operate from an approved kitchen regardless of the type of food they are selling.' That is a policy of the farmers market though, not the State. Now, if something like that were to happen, we at the Health District would try to honor that policy. And it is certainly possible, there are a couple of markets in the Boise area that have this type of policy, it is certainly possibly that if you were to call Central District Health in Boise, and ask, 'can I sell cookies at the farmers market?' they, without knowing the full background, you might hear the answer, 'no, you need to operate from an approved facility.' And what they are trying to do is honor and respect the farmer's market policy and not necessarily telling you State policy. So that is a possibility what I just described. Generally the Health Districts do not have independent policies like that that I am aware of. But it is possible that someone could have been told something like that because a policy of a farmers market that has already been implemented. Did I answer your question? I kind of went around it I know.

A: You have explained, in terms of farmer's markets situation. I'm just not clear, if the Health District, because they are autonomous can create policies that might limit the sale of something that is not limited in statute or in the rules.

H: They do not have the authority to write their own rules beyond what the Food Code says. So if the food code says, 'A, B and C' they can't add a 'D.' to it. Now this goes back again to the industry problem we are experiencing where we don't have the term cottage foods in the existing rule or statute. The Health Districts, to my knowledge, none of them have any policies that prohibit those kinds of sales. And they don't intend to implement those kinds of policies that would prohibit those kinds of sales. But it does kind of put us in a little bit of dilemma, as I said, we don't have, technically, a cottage food law in Idaho right now. So that is a question to consider what you are saying. I don't have a more clear answer than that right now, unfortunately.

A: Well, I guess what I am trying to ask, is, 'if it is not prohibited in statute or in some written regulation, can Health Districts prohibit it?'

H: Hypothetically, yes they can, but none of them are and none of them have the intention of doing that. That's a more direct answer

A: In your second option there it says 'Promulgate Rules' and then says 'is a clear definition desired?' I have a two-part question. First of all, is what you mean by that statement, is a clear definition what constitutes a cottage food in the Idaho Food Code desired?

H: Yes, that is part of what I am talking about. I can also follow up with that and say 'do we need definitions of the venues that we are talking about? Do we need a definition of the non-TCS foods?' I mean we have a definition of that, but do we need for example, a sample listing of some of these foods that we are talking about? That is kind of where I was going with that question.

A: Alright so, question number two – actually question number two will take the longest time to answer. Question number three then: If you were to be listing non-TCS foods and something happened like the Listeria outbreak in cantaloupe, then I'm thinking from a consumer safety standpoint, bugs are always changing; they do it faster than we do. Can you go through the Idaho Food Code and do it very quickly and say 'this was non-TCS, now that doesn't apply?'

H: That's a great question.

A: That would be something that we would all need, would be, 'hey everybody, we've got more information' science is always evolving, here is our new list.'

H: So in the other presentation that I do about the updated Idaho Food Code, I have a slide that talks about this TCS versus PHF concept. And I say that there is also a necessary change to statute. Because we have PHF defined in statute. Now the further definition of PHF that is currently existing in Idaho Statute, I think it is like the last line of the definition, it says, 'other foods deemed by the Department of Health and Welfare to be capable of supporting rapid and progressive growth.' So I believe the answer to your question is, 'yes, we already have that authority.' I believe, ultimately that would have to go through an attorney's review.

A: Sounds like that would be a really good thing to have, to have a website where people can go to and have updates that basically say, 'We have to change this food because of this information.' So if somebody is now saying, 'I would like to bring these dried herbs to the farmers market ' and we just suddenly figured out that this can grow this, then you can go that website and you can double check it and say, 'okay, I'm still good.' Or the farmers market would probably be the ultimate, but you could still be doing this at the food stand. Basically it would really be nice if there was a clearing house of information that just basically said, 'notice, notice, notice.' Or we could even write to you and say, 'give us notices.' That says, 'we've just now discovered that this is a problem, let's change this in the rules so we don't get people in trouble.

H: I appreciate that. Let me follow up with that a little bit. So the foodsafety.idaho.gov website ultimately is intended to be that clearinghouse. And that's one of the reasons why I'm trying to meet with the Health Districts now to identify some of these issues and try to compile that information. That's where that one-point source of information is intended to be that foodsafety.idaho.gov website.

A: So, the question number two; If in your promulgating of rules, you want a clear definition of cottage foods within the Idaho Code, what words would you use?

H: I would start by looking back at House Bills 106 and 258, which we did support, and the Health Districts supported those particular bills. Those bills did propose some language about a cottage food. I'm going off the top of my head now, so bear with me, it was something like, 'a cottage food is a non-TCS food prepared in a person's home and is not subject to regulation' or something like that. That is where I would start.

A: So it seems to me that we could easily have a cottage food law in Idaho, without having to go through anything legislative just by having the review of the attorney general and a couple of good wordsmiths and editors come up with what you want it to say, and then we have a cottage food law.

H: Thank you. That's, what you just said, to be fair, this is the second round of meetings that I have had. I was in Coeur d'Alene earlier this week; I am here in Latah County now, next week I will be in the Treasure Valley area, and the Magic Valley area, and the third week I will be in the Pocatello and Idaho Falls areas. So far, what you just said, seems to be the predominate theme that I am hearing but that's only based on two rounds of meetings also. But there does seem to be some general consensus support for exactly what you just said.

A: So after yesterday's meeting, I went on the internet and looked for models in other states on working with Farmers Markets and food. What Kansas does is they work with their Public Health, they work with their extensions, which again is the University of Idaho extension, which are in every county in the state which is a very large state. Then they also worked with an organization, possibly that could be the Idaho Farmers Market Association. The pamphlet could be living on a website, which is how to vend in a Market. Then you go through the best practices, which are the hand washing stations, and it goes through all the points to consider

like your pH's and stuff like that. So it's kind of like a how-to guide for the vendor who is always calling us saying I want to make a donut properly and we automatically send them to the Health Department. Which they would have to go to anyway, but some of the information could be very uniform for the entire State. And the other thing that I would recommend is that it would be able to look at the languages in the state that we might be able to do a transcription into other languages. So it could be not just in English and other languages, then we would be able to download it and we would be able to hand it out and say, 'here is a document that has been developed to assist you in your idea and help you out.'

H: Let me address two things that you said. First of all on the materials, some of those materials are already in existence through the Department of Ag. And I am certainly willing to work with them and clarify a little bit better and put the health stuff in there. So I appreciate that comment. About the language, I'm not opposed to translating it into some language. I don't have the ability or the resources to translate it into all possible languages that are spoken right now in Idaho. But we could perhaps identify some of the major languages that are spoken. Of course Spanish, English, and there is a fairly large Croatian population in the Magic Valley area. So maybe we can do something like that. I can't do every language. I know you understand that.

A: While we are on the record, there are other Departments in the State, the Department of Transportation, for instance, and they did a presentation here and they have more capacity as a department to do translations. They informed us as a City, that they can do that. And if we had to have a document, because of ADA and all this other compliance, that we needed to have transcribed, that they would be an agency within the state that would be able to do that. I was kind of surprised. I mean the Department of Transportation, but we didn't question it and our grants writer for the city has used them.

H: Okay, good to know. Other thoughts and comments? We spoke a little bit about trying to do some wordsmithing. Let me flash forward a little bit. If we write something into the Food Code, I will ultimately have to have some public hearings on that. I would have those public hearings somewhere around the middle of September. So if we went down that road, I would be back here in the middle of September to be able to show you that proposed language. And we could accept public comments on that proposed language as well. I'm just giving you that as a heads-up. If we were to do that, that's how it would proceed. I can talk about that a little more in the other presentation I do on Food Code updates. Other thoughts or questions?

A: So the Idaho Organization of Resource Councils has been circling different things about the cottage food laws. And I know that they were sponsoring a House Bill that went forward and into committee. So I saw some questions about different things that they have identified that we haven't talked about. Like tinctures and extracts. How do those types of things play into foods?

H: Great question, and I would probably allow them. I mean that list that I showed you is just some samples. It is not exhaustive, it is not exclusive. There are other things that we could certainly

put on that list and I think tinctures and extracts is one that I had spoken about with IORC. And I think that is something we can certainly have a conversation about and decide how that would be handled. My gut instinct is that that would be perfectly fine.

A: So when they, I think it is IORC, talks about things like wanting consistent policies across districts and this stuff about cottage foods being inconsistent across Health Districts. Is it a perception that those things are not really the same across districts now?

H: All of the Health Districts right now, have the same policy that they allow those non-TCS foods and others that we'll talk about. Their current policy and practice is that they allow that without regulation. So, yes there is the perception. I don't know what started the perception.

H1: I felt, when we were having a meeting with all of the Health Departments; we were having a few side-bar conversations and at least two of them mentioned that they did like the idea of excluding cottage foods from the – because what we are talking about is the difference between policy versus practice – so it is not codified in policy. And if you did say, cottage food or non-potentially hazardous foods, now you're changing that. Of course I have a hard time changing gears sometimes. But, it did seem like some of them, down south, not so much our Health District here, felt they liked being very clear to all of the Health Districts about how cottage foods were excluded.

H: And that's why, I think that's why. I am hearing so far what, (a meeting attendee) proposed is we could include some definitions here in the Food Code, and if so, what would that definition look like. And as I said, I would start by looking at some of that other language being presented about what a cottage food is and carry it out. Did you have other questions? I think you have a list there?

A: I do have a list. No, I'm just looking at the list to see about some things. So are eggs something that is regulated by a different department?

H: Ungraded farm fresh eggs sold directly to a consumer at a farmers market are currently exempted in statute. Exempt from regulations.

A: Does it matter how many hens a farmer owns?

H: Great question. My understanding is some of this might get into some Department of Agriculture's rules. So if I misspeak I'm just not as familiar with their rules as I am mine. My understanding is that if you have 300 laying hens or less, you are not required to grade those eggs. If you have more than 300 laying hens, then you are required to go through a grading process. And that is administered through the Idaho Department of Agriculture.

A: So when the Department of Agriculture and the Department of Health? I have a small goat herd exemption. I can sell raw milk but I can't sell USDA inspected lamb out of my freezer, by the piece.

H: That has to do with the fact that we no longer have meat inspection authority in Idaho. That was rescinded in the early 1980's by the Idaho legislature. Ever since that time, all meat must go through a USDA approval process. Now, if I understood your question correctly, you can sell your lamb out of your freezer.

A: I cannot!

H: According to whom?

A: The North Central Health District.

H: You can sell that meat if you meet the same requirements as other food establishments.

A: Food establishments. That's right.

A: But liquid milk is not under that rule.

H: Because liquid milk is under the jurisdiction of the Idaho Department of Agriculture.

A: One of the things that came up in the cottage food bill that was proposed that got pulled back was a \$30,000 revenue limit. Do you know how that came about or what purpose it served? Can you address that from a food safety standpoint?

H: Frankly I don't know the food safety behind that. I know that proponents of cottage food bills generally will try to write a dollar limit into that. It's an arbitrary number, no matter how we look at it. But at some point, the argument I have heard is that at some point you are no longer a cottage food operation, you are a commercial food operation. That is the argument that I have heard. Every dollar limit that I have ever seen ultimately is an arbitrary setting.

A: I proposed a greater limit.

H: Representative Troy did propose a greater limit.

A: I proposed \$100,000.

A: How can you possibly live on \$30,000?

A: You can't.

A: That's revenue, so it costs you \$20,000. To make the product and you only get \$10,000. We could never survive.

A: In all honesty, that is why I withdrew my name from 187 was because of that limit. I don't think the Idaho legislature should tell producers how much they can make in their cottage food business.

H: For the record, we the Health District and Health and Welfare don't limit that amount right now. And it certainly would not be my intention to write that type of limitation in the rule. I just have

no intention or desire to do that. I frankly don't believe I could get a rule like that approved by the legislature if I did have the desire to go down that road.

A: If you defined cottage foods in the Idaho Food Code, say you have these examples, and then would it also describe venues where they would sell?

H: We could certainly do something like that. So I think what I would do if I were to do something in rule, I would say. 'cottage foods include non-TCS foods made in a home kitchen, examples could include – then I would list that out – but like said, this list is not exhaustive, and I can't really make an exhaustive list, because every time there is a change in recipe or a change in formula, hypothetically that product could change status. I gave you the example of pastries. If I were to make pastries out of Crisco and a bunch of sugar in it and called it an icing that I wouldn't be worried about. But if there were a real whipped cream icing or something like that, that I would be worried about. So I can't really create an exhaustive list, but I can include examples. And the other thing we could do, is going back to the concept of the one-point source of information, we could always have a disclaimer that says, 'here are some examples of some of these foods. If you have questions, please contact your local Health District, or contact my office or something like that for clarification.'

A: Or you could include an appendix with all of the added information.

H: I'm sorry I keep going around this question. To go back to the heart of your question, 'yes we could include venue type settings, in some kind of definition like this too. 'Cottage foods are non-TCS foods, made in a home and sold to a consumer at venue such as farmers markets, road side stands,' something like that .

A: What do you think about the online sales of cottage foods?

H: I don't have any way to regulate it so I am not going to propose that we limit online sales. I am going to stick with this TCS stuff. If you are selling TCS foods online, then you are still subject to licensure and inspection. But I don't have any way to track who is selling online and who isn't.

A: Would that then fall, like if it was sold to Washington, would it then fall under Washington law?

H: Great question. Okay. Anytime you cross the state line, you have the potential of encountering Federal Regulation. I'm going to stress a couple of things. First of all, that 'potential'. Generally speaking, what we are talking about with this kind of sale, FDA would not be concerned about it. They look at it like it is a retail sale, so they are not going to be concerned about it. There are some food items that they might be concerned about. If you are making Juice, for example, or if you are involved with seafood processing or something like that, and going across State lines they will get concerned about that. But generally they would not. All I can do is give you that disclaimer though. Any time that you cross State line, you may encounter Federal Regulations. Now, I will tell you this, current FDA policy is they will not regulate internet sales even though it is across State lines. So that is their current policy. Will that policy ever change? I can't speak

on behalf of the FDA, I don't know. Their current policy is, let's suppose that you are online and you are selling to someone over in Pullman and that transaction takes place over the internet, my guess is that FDA is not likely to be concerned at all.

A: So if you were to put whole fruits and vegetables on the list. Would quarantines then apply?

H: That's a great question. If I am aware of a product that has been quarantined in another State, I have to honor what that other State is telling me. Similarly, we had a discussion yesterday about a vendor coming from Washington State. If Washington State tells me that vendor is not authorized to cross state lines, ethically speaking, I have to honor Washington States rules and policies on that. Now I'm not going to be at the border, out there checking names with my clipboard or anything. But if we are aware that a vendor has come over from Washington State and they are not authorized to be involved in that transaction or if their food is under quarantine or something like that, ethically speaking, as an Environmental Health Specialist and a Food Safety Specialist, I am obligated to honor what that other State is saying.

A: So they have a cottage food law then, a vendor coming from Washington into a farmers market in Idaho needs to follow the law in Washington.

H: Correct, that is exactly what I am telling you.

A: A good example of that is a new farmer, on the way to Pullman, who has honey. He will have to adhere to – even though he is two miles from here – and even though the bees are regional and bees are flying from here over there, he's in Washington and that does complicate the issue.

A: I have a question about a road side stand. I was wondering what is the difference between a road side stand and a farmers market when selling eggs and meats?

H: From my perspective there is no difference. If you are selling the meats you are still subject to licensure and regulation. The exemption in statute does specifically say ungraded eggs at farmers markets. But I don't think we would go out and look at a road side stand and say, 'oh, this isn't a farmers market, this is a road side stand.' We wouldn't do that.

A: But, she was mentioning she wasn't able to sell her meat at a road side stand. But they sell meat at the farmers market.

H: Right. Those vendors are inspected and licensed as temporary food establishments. And they are authorized to sell it.

A: So, just by being or selling at the farmers market?

H: They are licensed and inspected by the appropriate Health District as a food vendor in that case.

H2: If they want to sell to you, then they have a processors license.

- A: Right, but they can sell meat to anybody at the farmers market but you can't do it at a roadside stand?
- H2: Well you still have to have the same facilities, a freezer; the meat needs to be frozen and inspected.
- A: If the meat was inspected and it is frozen then you can sell it at a roadside stand?
- H2: Right, then you have to fill out the permit and application.
- A: Oh, that's it. You don't need food service laws?
- H2: The same rules, the rulebook applies, it's just minimum since you are only dealing with a frozen product. You need a freezer or a cooler with the right temperature. So a temporary permit to go to the market is \$65. Then you go to market and be sure the meat stays frozen or if it thaws out it is 41 degrees or below.
- A: The one thing a lot of people who are raising meat do, rather than going that USDA route by the piece, is they go custom. Case in point, you won't be able to sell under the USDA lamb out, what they would do instead is sell that lamb while it is live to an individual. And then they would agree to do the processing of that lamb for the individual, possibly, as a service.
- A: Right, I've done that. But I buy retail and sell wholesale. I have to sell retail if I want to raise lamb. And I need to sell my cuts at retail prices. Because when I sell a whole lamb on the hoof, I don't get returns.
- A: I understand.
- A: I've been doing this for 15 years so I do know, I have tried that. I just didn't know the rules that I would have to be a food establishment which meant I would have to have a bathroom, a separate septic system, and separate plumbing for a hand washing sink and a mop sink.
- A: In order to sell USDA meat frozen?
- H2: I had a different concept of what you had going out there. That's why I thought we had other options.
- H: This is a great conversation. I'm not trying to cut it off; I think it is an important conversation. I will say this, the current Idaho Food Code and the updated Idaho Food Code authorizes folks to request what is called a variance. What that means is that they can go to the regulatory authority, they can say, 'I understand the rules, I want you to vary those rules for me and here is what I am going to do around that rule.' Sometimes variances can be approved, sometimes they can't be approved. If I were your food safety consultant, I'm not, but if you want to hire me as your food safety consultant, you need to write a variance request. Yes?

A: I was just going ask one more question on distribution of meats, which I know is not exactly what you are looking for with the cottage issue. There are some people in the area who do have USDA meats, people order them online, and they then deliver them to the people's homes. And you can do that without being an establishment?

H: I would have to look at that.

A: I know those who do and they load up their truck once a week and they go through their route and they deliver it to the people who ordered meat.

H: Right. I don't have a clear yes or no answer for you on that right now.

A: Let me do a little bit of clarification. I know that farm intimately. He used to only have an outhouse for a bathroom for many years. It was only an outhouse. And he was doing over \$10,000 customers, farm sales; they were USDA certified meats because he built his own processing plant. But he did not have the USDA structure of bathrooms, hand washing sinks and everything else for a custom operation. It was a strictly a port-a-potty to be blunt and there was no hand washing station. He has since changed that. Currently he has a beautiful farm, sales building, complete with bathroom, sinks and everything else.

H: Are there other questions and comments about the cottage food stuff? Okay,