



Cottage Foods Stakeholder Meeting #4 - Meeting Notes

Date: 02/12/2016 **Time:** 9:00am - 12:30 pm **Location:** Colorado Department of Public Health & Environment
Room C1A

In Attendance:

CDPHE DEHS - Jeff Lawrence
CDPHE DEHS - Cary Ruble
CDPHE DEHS - Brianna Ratajczak
CDPHE DEHS - Erika Atherly
CSU Extension - Wendy Rice
CDA - Wendy White
CF Producer - Evelyn Evers
CF Producer - Joanne Littau
CF Producer - Marilyn Kakudo
CF Producer - Nancy McNally
CF Producer - Steve Bass
Natural Grocers - Alan Lewis
The Garden - Aleece Raw
To Market - David Moosman
Preserving Community - Luther Green
Western Colorado Congress - Monica Wiitanen
Western Colorado Congress - Rachel Zatterstrom

Teleconference Attendees:

CSU Extension Service - Anne Zander
CF Producer - Cece Crimholt
CF Producer - David Kaminer
CF Producer - Joanna Schlichenmayer
CF Producer - Mary Beth Harwood
CF Producer & Provider Group - Richard Gould
Environmental Consultant - Lauren Duncan
Local Motive - Elise Rothman d'Hauthuille
Student (CSPH) - June Samadi
Tri-County Health Department - Monte Deatrich

9:00 AM **Commence meeting with review of agenda and introductions.**

9:10 AM **Rulemaking Presentation by Deborah Nelson, Board of Health Administrator.**

Below is a brief summary of the information that was presented:
Ms. Nelson indicated a stakeholder is any person that's interested in the regulations (i.e., producer, regulator, government organization, citizen, advocacy group, etc.). The stakeholder process is an opportunity for you to bring issues to the table, and the length of the process depends on each particular group, the issue they are tasked with, and any necessitated timeframes. CDPHE's job is to ensure that everyone has notice and create a space for the group to discuss their ideas. All stakeholders are responsible for bringing their contributions.

After the stakeholder group has a final proposed regulation, the board of health (BOH) process begins. CDPHE creates a rulemaking packet and gives it to the BOH. The board will post it on their website and all board members will review it. DEHS will represent the regulation at a request for rulemaking hearing, which is a preliminary review of the regulation to determine if the board would like to take testimony. No testimony from stakeholders will be allowed at the request hearing, but stakeholders are welcome to attend and observe the meeting or can stream it and attend via Adobe Connect. During the meeting, the BOH may discuss any perceived or real gaps in the regulation and/or give recommendation(s). At that time, the BOH will schedule a date

for rulemaking hearing, which is typically 60 days later. All stakeholders may submit written testimony for consideration at the rulemaking hearing, which should be submitted to the board by the beginning of the month when the rulemaking hearing will be completed to allow time for review. There is usually an opportunity to provide oral testimony at the rulemaking hearing. Testimony is usually held to 2-3 minutes per speaker. The allowance for oral testimony is decided by the BOH.

Q: Can you discuss the concept of consensus?

A: Consensus is not required but something for the stakeholder group to strive for and valued by the BOH. In the request packet that DEHS will submit, there is a section where they must list the major issues that were encountered and a description of why, if applicable, the group couldn't come to a consensus.

Q: Can you describe the structure of the BOH (i.e., who sits on it and how they are appointed) and how the county boards fit into that?

A: The BOH is made up of 7 people who represent each congressional district and 2 at-large representatives. All are appointed by the governor and confirmed by the senate. The backgrounds of the members are varied, and we look for different strengths. The BOH has also tried to achieve generational diversity through the addition of a youth member. Dr. Wolk, Executive Director of CDPHE, sits as a non-voting member of the board. There is no direct relationship between state BOH and local boards. Some of our BOH members have experience in local public health to help provide representation and bring local expertise. Requirements for local boards of health are covered in 25-1-508 C.R.S.

Q: Where do you find research information to make the laws?

A: For each rule that comes to the BOH, as the BOH Administrator, Deborah reviews the specific bill associated with that rule and fiscal notes. She also looks for connections between the rule and other laws listed, particularly in Title 25. Some questions require a formal or informal opinion from the attorney general. The attorney general also reviews the final proposed rules prior to the request for rulemaking hearing.

Q: How much does information provided by the FDA influence you?

A: It depends on if the information provided by the FDA is guidance or law. Colorado does not have to adopt federal guidance, but we are required to comply with federal law. There is a need to evaluate it based on what we are trying to accomplish and the statutory authority given through state law.

Q: Is the legislative intent of the original law ever captured in your rulemaking process and can it be considered in the creation of the rule?

A: Deborah indicated that ultimately, we have the law that we have. The legislative intent can be considered, but it is a debate that has already been completed by the Colorado Legislature and cannot be revised. If it is a statutory problem, then changes must be made to the law. Statutory problems cannot be addressed in rule.

9:50 AM **Introduce proposed regulation with all references to Tier 1 cottage foods removed.** Prior to this meeting, all stakeholders had received the proposed version of the regulation that resulted from stakeholder meeting #3 on January 6, 2016. Based on group discussions during that meeting and conversations with Sen. Donovan and Rep. Hamner, DEHS removed all references related to Tier 1 cottage foods and producers. No changes were made to the language except to specify "Tier 2 foods/producers." In some sections, specifically labeling and training, the term "cottage food producers" was retained due to these also being requirements for Tier 1 producers in the Cottage

Food Act and to maintain a connection to the law. A copy of this version of the regulation was provided to all stakeholders in the room and will be sent out after the meeting. The group indicated they were not opposed to this new version of the regulation but would like the opportunity to review it with their respective groups.

10:00 AM Stakeholder questions.

Q: *Why does the regulation limit sales to only \$10,000 per product?*

A: This is stated in the law. Prior to 2015, sales were limited to \$5,000 per product. During the last legislative session, the proposal was to allow producers to earn \$20,000 per product, but the consensus of the legislature was to raise the net sales to \$10,000. Net sales are the amount of sales after the costs of producing and packaging the product have been deducted.

Q: *I would like to start making marijuana edibles. Does that fall under the Cottage Foods Act? What are the rules for doing that?*

A: Marijuana edibles do not fall under the Cottage Foods Act. All marijuana products are regulated by the Colorado Department of Revenue (DOR) and any local ordinances.

Q: *Can kombucha be made under the Cottage Foods Act? What are the rules if made at the commercial level?*

A: No. The cottage food act does not allow for the production and sale of beverages. Additionally, this would not be considered a pickled vegetable. The rules for commercial kombucha operations differ depending on if you're classified as a retail food establishment or a wholesale food manufacturer.

10:20 AM Review and revise sections 15.9.3 and 15.9.4.

Sec. 15.9.3 A lengthy discussion was held regarding whether or not to retain sections (A), (B), and (C) and if they provide additional clarity to the regulation that is not provided in 15.9.1(A). Some group members feel that the language in the sections is not proportionate to the type and quantity of food that will be produced by cottage food producers. Additionally, the language of confiscating and destroying a product due to a labeling error is overly harsh. The ultimate decision was to strike all text in sections 15.9.2 and 15.9.3. Section 15.9.1(A) was revised and a new section 15.9.1(B) was added. Changes are documented and available for review in the revised regulations and the Summary of Changes document.

Sec. 15.9.4 A discussion was held on whether the proposed fine of \$500 was too high and when that fine would be assessed by CDPHE (i.e., immediately upon finding a producer in violation of the regulation or only after they have been notified and given time to comply). CDPHE's enforcement process has yet to be determined but will include notification of the violation(s) via warning letters prior to assessing any civil penalties. In lieu of setting the amount of a civil penalty, it is suggested to rely on the already established enforcement provisions of the *Pure Food and Drug Law*. The group agreed with this and the proposed language was edited to reflect the change.

During this conversation, the discussion of guidance materials came up. The group indicated the most appropriate way to administer this regulation is through the use of guidance materials. It was recommended to revise section 15.3(B) indicating the guidance materials must be developed to facilitate cottage food production.

11:40 AM Review stakeholder proposed revision to Section 15.5, General Requirements.

Group feels that all items in this section should be addressed through the food safety training requirement set forth in the law. In lieu of these requirements, there should

be a section on what comprehensive food safety training for cottage food producers should include. The Cottage Food Law requires producers to take a food safety course that is comparable to one offered by Colorado State University (CSU); no other training courses address the cottage food specific items that are discussed in CSU's training. A subcommittee will draft language for this section based on the proposed language in 15.5 prior to the next meeting.

12:30 PM Meeting adjourned.

Next meeting: March 1, 2016 from 9:00 am to 4:00 pm

Location: TBD