



Cottage Food Public Meeting Transcript

H = Division of Public Health Employee

A = Meeting Attendee

H1, H2, etc = Health District Employee

April 27th – Coeur d’Alene

A: Has there been a situation or has there been an outbreak or health issue in Idaho? Or what has prompted this bill 187 and the concern for our present practice? As far as anything whether a rash or...

H: Sure, to answer your first question, no, there has not been an outbreak, that I am aware of, with these non-TCS foods. In fact, the whole reason we don’t regulate them is because these kinds of foods tend to pose very little, if any, risk to public health. By the way, I do have a recorder going just so we can keep accurate notes of the things that are said. If any of you are opposed to being recorded, just tell me you are opposed and I will shut off the recorder. That’s your right to tell me that.

So, to answer your first question, no, we are not aware of any outbreaks that are associated with these foods. I believe that a lot of the impetus behind 187, is there’s some folks that want to expand the definition of what is a non-TCS food in Idaho. That is a conversation we can have, but I don’t know how we control that or how we regulate that. I don’t want to go down the road where there is a problem with public health or there is a foodborne outbreak, because that will affect everybody. There’s not outbreak’s with cookies or things like that. But if there were ever an outbreak with salsa, for example, that affects everybody whether making salsa or not, it could affect us. So I don’t want to have to be reactionary to something in a couple of years that could happen. I’m afraid I don’t know the best answer to the second part of your question, which is - what is the driving force behind 187. I honestly don’t know, other than folks are concerned about whether our current practice is legal because it is not spelled out in law or rule – therefore, is it actually sanctioned or is it a problem? I don’t know the answer to that. Did I address your questions okay?

A: Yes.

H: Any other questions or comments? I either really did a good job of explaining things or you guys are just a quiet group. Yes, sir?

A: Well, I'm a beekeeper so I have honey. And the paper mentioned honey and there being a problem. But you know, what you showed up there, it's not a problem.

H: It's not! You can sell your honey at a roadside stand, you can sell it to your neighbor and friends or you can sell it from your home. We are not going to regulate that. If you want to start selling your honey to Albertson's and have them sell it, then you will be regulated. And I actually met with some beekeepers in Twin Falls on Saturday, and they invited me to talk with them a little bit, and I was asked a couple of questions that were very good questions. One person asked me – I made the comment – if you take your product across state lines, you might be subject to federal regulation. Now I want to stress the word "might" there, I also want to stress, that is not my rule, that's just the federal regulation. Now, we are in a different situation up here, because you guys are – let me get my bearings right – 11 miles that way is Washington state and 40 miles that way is Montana, right, or something like that? Oh, I see I got my directions wrong. It's very easy to cross state lines. Now, I'm not saying that you will be subject to federal inspection, but you might be subject to that. So someone asked, "Well, does that mean if I am selling from a roadside stand, outside of my home, do I have to get information from the person who is buying my honey and find out where they are from?" The answer is no, you don't need to do that, not at all. If somebody wants to come from Washington State, and buy your honey, you must have better honey than the folks in Washington State! Congratulations, that's great! Spend tax dollars here in Idaho, we all benefit from that!

A: They're mostly just friends you know.

H: Yes, and that's fine. That is perfectly allowed right now. You have a question?

A: What do you foresee happening with house bill 187 that died in committee? What do you think is going to happen this next year? Are they gearing up to push it even more or what is your feel on it?

H: My gut instinct is that, yeah, there is going to be another run at either 187 or a similar version. Now, this gentleman brought forward house bill 106, which was another bill that was put together that didn't get a public hearing. We supported 106. 106 incidentally, basically just spelled out what's exempt and left it at that. I mean I am paraphrasing what 106 says. But we were in full support.

A: What would be wrong with that?

H: Nothing.

A: Spelling it out and saying, 'okay, this is what's exempt and this is what isn't exempt?'

H: We supported that. This particular bill did not get a public hearing at the legislature. I don't know why. So, I'm certainly not telling you what to do, but I will tell you the Idaho legislature very much would like to hear from you on this and any other issue. So contact your legislators and try to pay attention to what's coming down next year, if there is a bill that is presented about cottage foods and let your legislator know what you think should be done.

I'm certainly willing to better define the rules. The rules are going to be open for revision and it certainly is possible to – do we spell this out in rules. Do we say, or do I write a rule, that says something like 'these foods are allowed without regulation.' I can do that, because the rules are going to be open. That may help to clarify, I'm sure it would somewhat help to clarify the issue. Yes ma'am?

A: When you are talking about this 187, now, how does that affect like the farmer's markets and that type of industry?

H: That is primarily where the folks that we are talking about here are folks that sell their goods through a farmer's market or something like that.

A: How is that going to affect them? I mean, I can see that it needs to have rules and regulations, and I can see that there are foods that need to be exempt or not be exempt from regulation, or whatever, but I see that type of a bill narrowing that market down and keeping the people that are really supporting and making it grow.

H: Yeah, so, I don't know if this is a direct answer to your question and if it's not, help me out and I'll find a direct answer. But, one thing that 187 did say, and 106 says the same thing, there is nothing that will preclude a farmer's market from maintaining its own rules and policies. If the farmer's market, if the Coeur d'Alene, I don't know what it is called here...is it called the Coeur d'Alene Farmer's Market?

A: Kootenai County.

H: Okay, if the Kootenai County Farmer's Market wants to establish its own rules and policies about what it will allow, that is perfectly fine and that's sanctioned. And it's allowed right now, and that might be some of what led to the confusion too, is the Boise farmer's markets have a policy where they want all operators or all food vendors, to operate from approved kitchens. That's not necessarily what the state has told them – that's what their policy is. And that also may have led to some of this confusion. But, it's important to understand that if a bill like 106, or 187 or anything else gets passed in the future, it's not going to preempt a farmers market management group from saying, 'well this is what our policy is, we know what the state policy is, but this is our policy'. That's perfectly acceptable and allowed to do and encouraged to do. Yes sir?

A: What can you tell us about the cottage food movement, in terms of historically and where it is going now. There have been farmers markets, it's a growing market, the whole farm to table

movement is a much more wide and growing part of industry, and therefore, I would presume that those foods, that fit within the cottage foods – well there is no cottage food definition – but we know what we are talking about here. I assume that that may be growing along with that. Is that true?

H: Yes, you are absolutely right, it is. And that might be part of the situation that we are faced with in Idaho also. It is true that we are only one of five or six states that don't have any specific language about cottage foods in our regulation or in our statute right now. But again, we look at this practice and we think that we have allowed it for a long time anyway. It is true that we don't define it, and if that's what we need to do, we can do that. But it absolutely is a growing trend and I think it will continue to grow. I think there are a lot of good reasons why that trend is taking place, and yeah, I believe it will continue to grow.

H2: I think most of the growth is in non-prepared items. The biggest growth is in allowing access to fresh fruits and vegetables right there, locally grown and harvested. That is the larger amount of the farmers market increase. Farm to table is not necessarily prepared food. We are not seeing huge increases in what is now being defined as cottage foods.

H: Right.

A: Well then let me ask then, what role do you guys play in public health districts as it relates to those foods?

H2: We're fine with the way it is now. We didn't see a problem or a need for the regulation. We evaluate the foods, as Patrick indicated, based on its potential for promoting bacterial growth, and if it does not, it's been allowed without a license and if it does then we regulate it just like we do any other foods. And again, that is direct to consumer. So, it's been done effectively and consistently for a number of years. Yes, sir.

A: I'm sorry. I think maybe I wasn't clear. In the list of the fresh food, the fresh produce, what role do you guys play at the public health district?

H2: None.

H: Yeah, again, it is not something that is regulated. Now, what we do, and this is something the health districts and I are working on, we generally do request that a vendor of a food, whether it is a raw produce item or any other food, we generally will request them to at least contact us and say 'hey, I want to sell this food here.' And then folks like Chris and Dale can make that decision of whether or not it needs a license. It is not a requirement that people do that, but if we find out you are making a food item that should be regulated then we will knock on your door and let you know.

H2: Well, I guess the piece that is in line with the requirement of some of the markets, some of them want to make sure that the vendors there are either properly licensed or have properly been evaluated. We give them low-risk letters for foods that do not meet the requirements. So there

is desire on the part of the farmers market to make sure that they are not, as an organization, putting the public, who they're bringing to that venue, at risk and or asking those vendors to either be evaluated one way or the other, and we do that on a regular basis.

H: Great point, and another good example of where a farmers market has established an internal policy that they say 'if you want to rent a booth at Kootenai County Farmers Market and you are selling food you need to go talk to Panhandle Health before we will rent you the booth'. You had a question?

A: Yeah, as someone who is sourcing food for production, what should we be looking for to make sure that people we are sourcing from are certified to be selling to us?

H: That's a great question. It really comes down to the type – I'm assuming you are talking about produce?

A: Yeah.

H: It really comes down to the type of produce and how you want that marketed. There is an organic program in Idaho. I don't run that program – that's through the Department of Agriculture that runs that program. So if a person is claiming that their products are organic, there are steps that you can go through to verify that they are, in fact, in compliance with the Department of Agriculture regulations that define what organic foods are. That's one thing.

There are some global trends that are taking place, not only here in the US but really throughout the world, that the acronym that we use in government, GFSI, Global Food Safety Initiative. And basically, it is kind of a voluntary agreement that's for all people that want to be involved with it that says, 'I'm growing produce or other items and I'm going to follow particular hygienic practices. I'm going to follow the good hygienic practices for hand washing and I'm going to make sure I don't have sick employees working around the food' and things like that. It's kind of a voluntary agreement that originated in Southern California. It started as what was called the California Leafy Greens Association Agreement, and it has kind of grown into what we call the Global Food Safety Initiative. It's mostly voluntary, but a lot of people that want to buy produce like that will say to the produce grower 'you know, if you are not compliant with these GFSI practices then I don't want to buy your food.' Just another step you can take.

H2: There isn't a prohibition for you buying your produce from a local vendor to use in food preparation. You should have the same concerns – I have more concerns about one that is coming on a truck from Mexico than I would be getting my produce from a local vendor. So there is no prohibition from you using locally grown produce to be served. And you need to handle it with the same caution you would and make sure it is washed if you are making salads and those kinds of things that you would if you were buying it from anywhere.

H: There is another program also, that the State Department of Agriculture is getting started, where they go out and do good agricultural practice inspections of farms and whatnot. So you

can check with the local Ag Department folks and see if there is something about what they call GAP analysis. GAP stands for Good Agriculture Practices.

A: Okay, one more question. What about wild harvested – like I know we have wild huckleberries here in abundance, and people sell them in their restaurants. So does that mean somebody is just picking them?

H: Not a problem. We look at that the same way we do other wild produce or other produce items. The only caution that I tell people about wild harvested stuff has to do with mushrooms. The state policy on mushrooms is – You, the buyer better be able to know what it is you are buying. Okay, are you really buying a Morel or is it a false Morel? You know, what are you buying? That is up to you to know.

So, what do you think? Should we keep it as it is? Do I write rules? What do you think we should do? Any thoughts?

A: Well, I think it should stay like it is because obviously it is working.

H: Okay, thank you.

A: I think too, if there are any issues on the safety, I think California just passed a law, like last year, something about doing home inspections, which if we are worried about safety issues, I think maybe that is a good idea.

H: They did. Now, one concern that the health districts and I have about doing a home inspection comes down again to resources. We just don't really have a lot of time and money. And you guys don't either as business operators.

H2: And too, what is the standard that we inspect against? It's not regulated – so what is approved and what is not? We know when we go into a licensed facility what those requirements are. I think that's a slippery slope. If you start doing inspections, you then have it regulated, and then you're going to have a lot more requirements. That is not the intent for those who are producing....

A: Yeah, absolutely, and I think they did do a lot of extra sinks or something.

H2: Yeah, those that are producing foods, non-TCS that are not potentially hazardous, then there is no need to do that.

H: Let me take that just a little bit further, if you will allow me to. I'm frequently asked 'can I use my home as a food establishment operation?' and we generally say no. The state policy is no on this, and here is why. I have not shown you, is just like you guys, we are bound by rules and regulations too. The state statute requires these folks to do unannounced inspections of food establishments. We don't feel it is fair, if you are a homeowner making food, to sit around waiting for us to show up to do an unannounced inspection. So we would either need to do an

announced inspection, in which case we're not compliant with our own laws, or we just say 'you know what – we don't want you to use your home'.

A: But isn't cottage foods that's what it is, that they are free to use their home?

H: It is, but again, this is not regulated stuff. Right now, we don't require inspections; we don't require a license or anything like that for these cottage foods. I think that is what Dale was saying, that if we go down the road of requiring a license or inspection or something like that, what would those standards be? Would we have to say 'well, that means you can't have any pets in your kitchen, period,' and how would we enforce something like that? It is an interesting conversation and it can get very complex as we try to have that conversation.

H2: I think so. Your starting point was the one where we need to put our resources where there is a threat. We do not believe that this has an area – we don't have any history of outbreaks with this type of food – so we would be better served to put those limited resources that do have potential.

A: I have to give credit to the farmers market, the people that organize it and run it. Because they really do watch, and really do care what is being produced and sold. So I think that is why we don't have that outbreak.

H3: Absolutely true. We have such a good relationship with our farmer's market. Like Gail and I talk all of the time. If she ever has a question – she manages the food at the farmer's market – she'll call me and say 'I have these people who want to come in, should they come to you, should they not' and it is a really good relationship. And a lot of times she will tell the folks 'can you please go to Panhandle and get that "low-risk" letter.' It makes her feel better and it has worked really well.

H: Now, one thing that I am hearing is that the "low-risk" letter that you guys use is different than the "low-risk" letter that North Central uses – or something like that. And that's some of the stuff that I am working with the Health Districts, collectively, to identify. Can we create one letter that is consistent statewide and will be recognized everywhere within the state? Yeah I think we can. That is something we can do to help clarify the whole issue and make sure the folks are aware of what the practice is.

H3: So, I don't personally really like the idea of having a set list of exempt foods that you have fruit jams and jellies on there. There is a lot of different ways to make a fruit jam and jelly you know. Some of those may end up being TCS at some point depending on how they are processed. Then to have it on an exempt list – it's like well, it's a fruit jam and jelly, and for this new rule it is exempt. That might be a TCS and maybe it should be regulated. You know what I mean?

H: Yes. I think I understand what you are saying, and so, if we had a list like that, I think I would have to include it, like I put in the slides – some "examples" can include...but that doesn't necessarily mean it is an exhaustive list. Then we would also have to include a statement –

some kind of caveat – that says ‘you may still have to have your product tested to verify that it fits in this non-TCS category.’

And I know up here, you guys have the advantage where you refer your folks over to Washington State University. WSU and U of I have teamed together in their food science programs and they can do these kinds of tests and analysis for you on a food items. I don’t know what it cost; I don’t think it is very expensive.

H3: I think now it is either \$50 or \$75. It used to be \$25.

H: That sounds about right. Sir, you have a question?

A: I’m not for any more government restrictions on things. If it’s not broke then don’t fix it. But it seems like a lot can be gained by using your examples here in identifying what cottage foods are, what the non-TCS food examples are. That would make it clear for everybody, because there is nothing that says ‘hey, this is a non-TCS food’ or that ‘this is a non-TCS type of food’. Not that it wouldn’t have to be verified down the road but to give somebody some direction as to what is or is not TCS. Not necessarily making any restriction for the sale of that food but simply identifying what they are.

H: I appreciate that comment. I think that we’re also interested in doing that too. I know as a group that I’ve been working with, we have talked about putting together some kind of fact sheet or something, where a person can go online and look at it and say, ‘okay, I am making a fruit jam, I’m making a strawberry jam. What do I need to do?’ Then they can follow a flow chart, if you will, about what they need to do.

H2: So you are supporting that it could just be done with a rule change without having a statute by defining it?

H: Or defining it in rule?

A: Correct – defining it.

H2: Well, I think there was a lot of clamor just to have the word “cottage food” somewhere identified and defined, that might be helpful. Because right now, it does not show up in rule so just having that term defined... What was the original one? 106?

H: 106 was the original bill that didn’t get a hearing.

H2: That had reasonable definition and not overly restrictive and regulatory.

A: Yeah, well, some of 106 I don’t necessarily agree with. But the majority of it, I thought, if you defined what cottage foods were or if it had some other listing about farmers markets, roadside stands and things of this nature, to be sold directly to your friends or consumers. That kind of stuff I don’t have a problem with. But having to have my label approved or having a separate label on there that it was done in a home kitchen and not in federal regulations or something

like that – I don't necessarily agree with that. But I do think that some sort of definition certainly clears it for everybody. It allows the farmers markets to understand – because when things are ambiguous that's where somebody comes up with their own ideas and interpretations.

H2: So including that in the new Food Code could solve this without having to get it into legislation.

H: That's what I'm hearing. I'm certainly willing to do that. For clarification, this is the very first meeting, the very first stop on this tour of Idaho that I am doing. Barb and I are going to be going around the State for the next three weeks, and you guys are number one.

I appreciate the comments you guys are telling me. My intention is to solicit more comments throughout the next three weeks and also up until July 24th I can accept comments. I want to see what the majority of people are saying about this. And it certainly is possible that the majority of people agree with what you just said, sir, 'you know what, just define this in your rules and make it more clear' and if the majority of people tell me that, by golly, that's what we will do and hopefully it will solve all the problems.

The other thing, you can absolutely feel free to send me any kind of comments at all. My email address is up there, last name and 1st initial @dhw.idaho.gov. We also have just a general food protection email box, and it is simply that, foodprotection@dhw.idaho.gov. We are soliciting comments until the 24th. I didn't show you my calendar. I have to work backwards. To do any rule changes or define it in rule, that means I have to present to the legislature in January 2016. Then I have to backup and present to my Board in November of 2015 and I have to allow myself time to incorporate all the comments and analyze all those comments. So that's what that deadline of July 24th is about.

H2: It has to be posted in August.

H: Right, the final draft proposal has to be posted in August and that is open for public comment as well. And I will give you the heads up that if we have to write something in rule, I will be back up here having public hearings on what the proposed rules would look like. So pay attention. I will try to get those published as well.

A: Seems like you could publish what is okay and maybe have a deal, or something, or maybe this might be marginal, or in that area.

H: Okay, maybe use your comment and combine it with this gentlemen's comment and maybe come up with something like that too. Any other thoughts, comments, questions? Okay, again, thank you for your attendance. I really do appreciate your time. I'll be here all day long. If you have any other questions you can certainly feel free to stop by again. If you ever have any questions about food safety or what the regulations say, that kind of thing, please feel free to give me a call.