



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 I ask you guys, what do you think? I had some very good feedback in the Coeur d'Alene area about what folks thought I should do. I don't want to tell you what that feedback was yet because I want to hear from you.

H: As you are thinking about this, let me go back and address the Kombucha and the pickles and stuff. I'm absolutely willing to have that conversation about allowing these kinds of foods, but I'm not sure how to do that without rules behind it. Because I can't say 'process A is acceptable for Kombucha and pickles, but process B is not.' So that is where I've got to try to balance that somehow. So right now, we don't really allow acidified products like that at the farmers market. I am willing to have a conversation about some parameters that could be in place for acidified foods but I'm not really sure how to do that without having some kind of rule behind it too.

A: So, in my role with the city, I visit with a lot of the farmers markets, and traveling and have attended national conferences on the Farmers Market. Also, I just attended the Washington State Conference in Olympia Washington where they had 250 attendees from various markets from throughout Washington State and last week what the extension is doing with Washington State Farmers Market Association and the Department of Ag. That being said, I've seen pickles sold, pickles sold in 5 gallon buckets, and different types of pickles using tongs then put in bags. So you have a vat of butter pickles, a vat of dill pickles, you have a vat of spicy pickles. Then the vendor is there with their pickles, and they have the pickle samples on toothpicks.

So I guess what I need is like, I have vendors that have done their own canning of pickles and work with a commercial kitchen to do that canning process. But I think there is better education out there is a different way to do things.

H: Let me address a couple of things that you said there. To be fair, Washington State requires a registration and they require in-home inspection of their cottage foods. We don't have the

capability to take that on at all. Washington State Department of Ag has about 100 staff members. I have one and a half. So I hear what you are saying. And I am certainly willing to have a conversation about it. Where I envision it going is if we allow acidified foods is – and there is another Bill that didn't get a public hearing, House Bill 106 – we actually supported House Bill 106., it did not get a hearing. House Bill 106 would have allowed something like a pickle, if, it was kept under refrigeration, marketed as 'kept under refrigeration' and it is exposed to the environment so it is not in a hermetically sealed container.

All of that has to do with control of *Clostridium botulinum*, that Botulism organism. C-Bot is an anaerobic bacterium, which means it need zero oxygen for growth. So when you put a food in a hermetically sealed container, you can it and that jar and that lid is sealed down, you have created the ideal conditions for C-Bot growth. C-Bot is one of those organisms that we want to put as many barriers as we can into it. *Clostridium botulinum* paralyzes your muscles, specifically your diaphragm, so you can effectively suffocate while you are fully conscious of that taking place. Not a very fun way to be sick. So we want to put as many barriers as we can for an organism like C-Bot.

In food safety we refer to this as hurdle technology. We want as many hurdles in place as we can get. The acidification would be one hurdle. Anything below 4.6 should not support bacterial growth. But the closer we get to 4.6 on the pH scale, the more likely it is that we could cross into that. So we want to see acidification and the pickling process produces that acidification. And I'm talking about Kombucha too, in the process of fermenting it to get to the finished product that is lowering the pH. The next hurdle that we want to put into place is refrigeration; some kind of temperature control so that we can maintain it under 41 degrees. Then third, that non-hermetically sealed container so that it is not a zero oxygen environment. With those three hurdles we could probably have a safe food. House Bill 106 would have allowed that. But again, I'm not sure how we get there. Like I was saying we could approve this process but if somebody shows up and those pickles are not under refrigeration that would not be allowed. Or if they are not at the right pH level they would not be allowed. So I'm not sure how to say, 'yeah we can do this' unless there is some kind of rule behind it that says, 'here are the standards you have to meet' in order to have this be allowed.

A: So a second thought on that, one way to review the education and outreach component of this whole process would be that – I'm with the Idaho Farmer's Market Association – and we could recommend that all markets have a winter meeting that is mandatory, and that is held, because right now we don't have a mandatory meeting that they have to have for food safety. The other thing we don't have as mandatory, where our prepared food vendors would have to have a hand washing station. So there are requirements that we can put in place as best practices throughout the state as farmers market managers. That we engage with our health department and that we make it mandatory that they take a class, that they prepare themselves in the off season, and that we do this annually.

So when there is change – but that would be best practices on our end as governance before they even get to market.

H: I was going to say, you brought up a great concept here. Neither House Bill 187 nor 106 does anything to prevent a farmer's market management team from creating their own internal policies. If the association did that I would give it my blessing. I would say 'great, go for it awesome!' I can't require it unless I had a rule behind it. You guys can. You guys aren't a governmental agency. You guys can create your own policies and rules. If you wanted to have a rule from the Farmer's Market Association that said 'this kind of training is mandatory, you have to come to it once a year or whatever it is, I'm absolutely open to having that conversation and I would do whatever I could from my end to work with you to help provide some of that training too. Nancy would also be willing...

H2: Sure.

A: I think that is something that we can work on for the 2016 season. One thing that I did learn at the Washing State Conference is like a lot of the larger markets do require that. That documentation actually does come in with their application. It's just an internal checks and balances and we don't have that in our policy at the Moscow Farmer's Market but I can see where as we look at policy revisions for 2016 that that would be a prepared food requirement and then any cottage food that is in the market for sale, the Health Department would host a class and you wouldn't be able to join the market until you've been signed off.

H: If the association were to come up with something like that, yeah, we certainly could have that conversation. And we could be talking about how you could have Kombucha and other acidified foods and other fermented foods at the market. If we could work out something, sure. I can't do it alone though. That's what 187 was basically saying, 'you create the training, you do this and we can't do this unless you want to give us some help.'

A: The other thing I want to bring up too, I've been all the way to Baltimore and New York City, for Green Market, and they have open containers of sauerkraut.

H: Yep, same concept.

A: Yeah same thing. I don't want to leave sauerkraut out of the conversation. And the other thing I want to get back in the conversations is being in the Olympia Farmers Market and having bulk kimchi from a Korean vendor. We have had another person ask to sell kimchi in the market. This was several years ago. They never went forward with coming to market. The kimchi is pretty acceptable on the west side of the state and we've never had it here.

H2: I've had calls about it but they don't take it to the next level.

H: We're talking about different foods, so let me just clarify for everyone's understanding, sauerkraut, kombucha and kimchi and other foods are fermented foods as opposed to acidified food. An acidified food is something you intentionally add acid to that food with the intention

of driving the pH down below 4.6. Pickling things are acidified foods. Fermented foods, on the other hand, are foods that will go through a natural fermentation process. One of the end results of that fermentation process is that the pH will be lowered to 4.6 but you are not intentionally adding acid to it, it is a natural fermentation process that takes place. So there is a little bit of difference between fermented foods and acidified foods. But if we can come up with a process, yeah, let's continue the conversation and figure out how we can do that. I can't require it without rules, but the association could absolutely require it.

A: Well, because then, when you are talking about manpower, not having enough manpower, if it is centralized where it is part of our policy that this will happen and you will do this. It is a gray, white black. There is no gray, just black and white. Then you are engaging that other entity to streamline their workflow, so it's not all come as you are.

H: Right.

A: I think this would be a really good thing to document for some of the small farmer's markets out in those rural areas. You know, they might only have like five people at their farmer's market.

H: Let me kind of take that concept and ask a question. At the Farmer's Market Association – Do you guys have all those other farmer's market's represented? Do you have the small markets?

A: No, we don't.

H: So, that might be an issue that still needs to be resolved. How do we get the word out to the small farmers market that maybe only has five vendors in the rural parts of the state?

A: Yeah, I think that's just a growing of the IFMA and their purpose in the state. And we have to refine that. This is a fairly new association. So we are going through some strategic planning, what we need to do next and where we fit with the Department of Agriculture, so we are speaking to the same issues. And I think that will develop. Farmers markets in this state have grown rapidly and so I think it is necessary but we are not that far yet.

H: I appreciate this kind of feedback. This is good information. This is what I am after because I want to hear from you.

A: This might be the type of information that you might be leading that will really be beneficial to some of those rural farmers markets, for sure.

H: I see a lot of things that the association can do that will help this cottage foods movement. At one point in the conversation I was asked 'well, if there is a law behind it then you can track the job growth, you can track the growth of the market.' Those are true statements, but it is better for the association to be doing that than a state agency. That is the role of an association. The association could say over a couple of years 'look at how our organization has grown, look at what we have done.' That is the role of an association. So what you are talking about, I think, is a good idea. Other thoughts about this?

- A: I have a couple. I think that one of the issues in talking to farmers all over the state is just the inconsistencies. I know you know that. And the other thing I noticed is that maybe one out of the seven Health Districts really has any information about food at the farmers market, maybe the rules and how they interpret it, I mean what is
- H: Let me address that. One of the things that we are already in the process of doing – I don't know if this will address the issue as you are seeing it – One of the things we are in the process of doing right now is compiling the information that is available from the Health Districts with the intention of creating, one – I don't want to say a one-stop shop – but one place, maybe the foodsafety.idaho.gov website or some other place where a vendor could go to download this packet of information and it would be consistent across the seven districts. That is one thing that we are looking into right now and trying to compile that kind of information.
- A: So it would have a link from each of the Health Districts so people can go there and find where they need to go, because it is hard to wade through some of this.
- H2: All of the Health Districts have links to his website already, so it would take you right to the site.
- H: And my website links to the Health Districts back. If you go to my website and scroll down to the bottom you will see that same map from the presentation, and you click on a county you are redirected to that districts website.
- A: And I don't think people have trouble finding like Nancy or you. I just think they kind of like to go and just see a list.
- H: I understand that. My only concern about that is – remember when I showed you that list of non-TCS foods and I said that it's not exhaustive? The reason is because I don't want people to think that if they are making something outside of that list, that means one thing, or if they take one of those items and they slightly tweak the formula that they are still okay. I'll give you an example here. I had a call about a week ago. Somebody wants to make candied bacon and will we exempt candied bacon. And we said 'no, because you are starting with a raw bacon product. That is a raw meat. That's a TCS food.' I know the end result is candy, I get that, but you are starting with a raw meat to make that candy. So I don't want somebody to think well, I'm going to call it candy, therefore it is exempt from the regulations. And I can't produce a full exhaustive list, because every time someone changes a recipe or something, the status of that food could change. That's why I am willing to say something like 'examples of these kinds of foods include...' But I need vendors to understand that if something isn't on the example list they can still call the Health District and say 'hey, what about this particular food' and we'll give them an answer. But I'm not going to be able to have something on the web that shows every single possible recipe of every food.
- A: And I think that I just want to follow up with that. I think that they should call the Health District, not that they could, but that they should.

H: Well I agree with you.

A: I hate to give more calls to you, but....

H2: No, that's alright, I would rather get the calls.

H: And I agree, and I recognize that some people don't want to call us. They want to just go online and see what it is. I recognize that and we are going to try to accommodate that too. But the folks that just want to go online and never call an agency need to understand somehow that there might be other questions about these foods and they're going to have to come talk to us or just operate at their own risk. One of the two.

A: Operating at your own risk. That is not a good thing to say.

H: I understand, but...

A: No, no, but as a city running a public market we have a 'hold harmless' sign by the vendor. But of course, if someone gets sick in our market, they're going to go into deep pockets. That being said, we try to send everyone that comes in the door to the Public Health. We say, 'we want this risk assessment form back' I don't care if it's, muffins, cookies, kettle corn. We had a call yesterday from the rotary. "Do we really have to go to the Health Department? We haven't changed anything." So this is another thing. This is annual. Just because you did a risk assessment in 2014 doesn't mean that actually rolls over to 2015. So that is another misnomer. It's like, 'no, wait a minute; we need a new sheet with a new date.'

H: I see this again as a great roll of the association. If you can get other farmers markets to do this, we welcome those calls. We're not going to turn people away, we are not going to say, I don't want to talk to you. We want people to call us with these same questions.

H2: I don't think that (local farmer's market manager) and her staff should be making that decision anyway. It should be us.

H: No! We are the food safety professionals. We should be making that decision. But we can't make that decision if somebody doesn't come to us and tell us what the decision is to make.

A: In defense of that too, it is like working with the tax commission. People come in and go 'what do you mean I need a tax form?' And we don't answer for the tax commission. 'Here is the form. You don't vend in the market until this form is completed. By the way, this form gets sent to the state of Idaho. No, we don't answer questions for the tax commission.' Our job, as the promoter, requires you to fill out this form. So there is another change there for the tax commission as well.

I want to bring up something that actually happened last summer. It is a risk. And that is, we have a vendor that got a signed paper assessment form for a donut product. Mid-way through the market I noticed that she was selling stuffed cabbage cold Asian products that was all

chopped and prepared at home and then sold at market. And I went up to her and I said do you have a new form that this product has been approved by the Health Department? It was just a simple observation. And she said, 'Well, no, I have my risk assessment form.' And I said, "But that's for your donuts, it's not for a cabbage roll." And it's funny, because then I shut her down, I sent her back to Nancy and she never reappeared in the market. Because I think it was too much too soon, not able to process, not able to recreate her product in a different environment. I don't know. But with that being said, just because somebody does a risk-assessment form doesn't mean that they don't get it in their head that 'oh, this has been very successful, now I think I will make another product.' They forget the process of the first product.

H: So first of all, thank you for doing that. If we maintain our current practice....

A: It goes back to communication - Making sure that those who sell at the Farmer's Market realize that the assessment form is for one product only.

A: When they put in their menu or list, one might be okay and another might not be. But that is Nancy's issue, that's not my issue. Catch the red flag in the market, this actually happened, that there was a miscommunication that they thought once they got their risk assessment that was a blanket okay for the remainder of the season to then get creative.

H: Let me just address this for a second, if we maintain our current practice from the public health perspective, about we're not going to regulate these non-TCS food, but there is a process where a vendor goes to the Health District to get this kind of a risk assessment form, ultimately we do have to rely on farmers market management groups to help enforce that. Someone shows up with a product that is not part of that risk assessment, we do have to ask for your help in enforcing that and doing exactly what you did. Either directing that person to get another risk assessment form or if they are unwilling to do that, they are not allowed to sell that product. Our food licenses are done the same way. When we issue a food license to a restaurant, we do a menu review. The food license is based on the menu. If someone presents to us that they are going to sell hamburgers and hot dogs and that's it and we give them that license, and we go out a couple months later and they are selling sushi and all kinds of other stuff. We can say 'wait a minute, that's not what you told us you were going to do.'" And so we have to re-evaluate things now. The license is issued for the menu.

A: And that brings up another question and issue. Food trucks are on the rise. Street food is on the rise. Street food in this town could totally go crazy. We could have food truck, like we have one out there right now that's out from 10pm to 2am and we had a hot dog guy that did the same thing. If anyone really wanted to be up all night, they could make a lot of money. When we come to Market on Saturday, we see the garbage from the food truck. I've never had their Mac and Cheese or anything. With that being said, a lot of people are watching street food and they are thinking 'wow, I should get in the street food business.' So, that's another Health Department thing? I even had some concern about a vendor who was preparing some food on-

site at the market and I keep calling Nancy saying 'I think we need an inspection' because the alarm for me was to see raw meat in a cooler. That's a whole other level.

H: It's not really related to the cottage foods, but as far as mobile trucks and things like that, our job is, if they meet the intention of the food code, they are issued a license. They can operate wherever they have permission to operate. That's what a mobile food establishment's license allows them to do. We are not authorized to come in and say 'you can't operate here', that's not for us to determine. That is for the property owner or manager to determine. If the property owner says 'nope I don't want mobile food trucks on my property', that's their call. But as far as what the truck is authorized to do, if they have the mobile permit, they can operate wherever they have permission to operate.

A: Has there ever been a lawsuit against any city or farmers market from any of this activity in cottage food or farmers market activities?

H: Not that I am aware of in Idaho. I'm not aware of any. Maybe, but I don't know.

A: I've seen in the street food and the carts, that they can have very good designs and they're really nice looking and it really sort of encourages pedestrians in a central park or downtowns and it's a real good feel factor. In the UK, specifically in a place called Cadsberry, they actually had permits on their food carts. So they are not allowed to be in the city in a particular space that has been assigned by the city.

H: And that's the decision of the city. Our purpose with mobile food trucks, there are two types of mobile permits. We are getting off topic from the cottage food – that's okay. There are two types of mobile food permits. There is either a fully enclosed mobile truck where they've got the sinks, a fully pressurized water system, they've got the grill, and they've got the temperature control right there in the truck. That is one category. The other category is a mobile truck with a commissary. That means they may not have all those set pieces of equipment, so at the end of the day they return to a licensed commissary where they can take care of things that couldn't be taken care of during the day. Those are the two types of mobile permits we have. If a mobile truck has one of those two permits, it meets the requirements. It either meets the requirements for a commissary or it meets the requirement of being fully enclosed. Now again, our perspective, once we issue that mobile truck license it is incumbent upon that operator to know where he or she is to operate. That's not our call, that's the municipalities call or the property owner's call. There is a property down in Boise where the property owner actively encourages mobile trucks to come in. That's his call. They've got the mobile and the mobile is permanent now. Are there any further questions on cottage foods?

A: I just want to clarify some of the non-cottage food items because you said something about those foods and pickles not at the market. You were just saying that if they are at the market they have to be in a commercial kitchen.

H: Correct, we don't prohibit them but we do say they have to be licensed and permitted. And that usually means they are operating out of an approved facility.

A: But also, I think you said, it's not just the facility, it's the process? Do you okay their process?

H: We can.

A: Like if somebody comes to you and they want to do pickles.

A: Yeah, like I had the red beet lady.

A: So you go through and you know what their process is and so you know they are getting down to the pH.

H2: Yes.

A: So, I'm just checking, they can't just go to a commercial kitchen without the process?

H: In that case, what we do is we refer them over to WSU which has what we call a process review authority and he goes through the process, so actually he's the one who is approving the process.

A: Is that the recipe that is being tested?

H: Yes. But it is also important for a vendor to understand that when the process review authority issues that approval letter it is specific to that recipe. If any factor of the recipe changes that process review authority letter is not valid and they have to go get another one.

A: So when they do process a batch of food like that using that recipe that has been approved does the business or the person who is producing that, do they have to have documentation that they have made those and tested the pH or whatever else that is required?

H: Ideally yes. Now we are getting into a little bit of difference between federal regulations and state regulations. Federal regulations say yes, they are supposed to have that. If I am doing a federal inspection of an acidified food plant and I ask to see their pH records midway through the batch, and they don't have it, that is a violation of federal rules. But that is federal rules not state rules. So, we normally do not do inspections of acidified foods in Idaho. Frankly, really none of us are qualified. I've been through the acidified foods class through North Carolina State University but Nancy hasn't been through it yet. So really, the reality, most of us are not qualified to do an acidified food inspection.

A: Why is it WSU? Is it the food science department?

H2: Well, you know U of I and WSU, that where they do it. It is about \$50 per recipe.

A: Is that state-wide? Like even if they are down southeast?

- H: They can go to another process review authority, but in this area, they generally go to WSU since it is only 8 miles that way. In southern Idaho we would probably refer them to Utah State University. There is also a process review authority there. There are some other process review authorities that work for private industry. They are probably going to charge more than someone at Utah State or WSU. But a person who needs to have their recipe reviewed by a process review authority can go to any one of those process review authorities. They are few and far between though. There are a couple in Oregon. There might be one with the Simplot organization, but I'm not sure about that. So they are tough to find.
- A: We had one person from Garfield that created a little granola and she needed to go to Portland.
- H: It might depend on the individual product that the person is making too.
- A: The Idaho tech lab used to do water activity.
- H: Yeah, they will do lab results but they are not process review authorities down at the U of I center.
- H2: I have a salsa guy who has been making salsa for years. He just takes his to get the equilibrium done for each new crop of tomatoes. We take that to the Anatek lab to do the three pH's on that.