



August 8, 2019

Washington State Department of Health
111 Israel Rd SE
Tumwater, WA 98501
food.safety@doh.wa.gov by July 31, 2019

Re: Food Safety Rule Amendments – WAC 246-215

I. Introduction

PCC would like to thank the Washington State Department of Health (DOH) for the opportunity to provide comments on the proposed food safety rule amendments to chapter 246, section 215 of the Washington Administrative Code (WAC 246-215).

PCC Community Markets is a community-owned, co-operative food market that began as a food-buying club of 15 Seattle families in 1953. Today, we have 66,000 active member-owners and 11 stores in seven cities, generating \$288 million in annual sales and making PCC the largest consumer-owned and operated grocer in the United States. We are a triple bottom line organization, that advocates for consumers and the community in everything we do.

On a daily basis, consumers are demanding the ability to reduce their waste impacts. In turn, they are also demanding laws and regulations that balance food safety risks against waste stream and climate concerns. These consumer demands and expectations are part of what has driven PCC to set ambitious goals to reduce our carbon, waste, and toxics footprint, including eliminating plastics from our deli by 2022, increasing our organic offerings by 1,000 items, and achieving a zero waste (90 % diversion rate) by 2022.

Innovation concerning food packaging and food service practices, however, must also be supported by science, expertise, consistency, and clear direction when it comes to food safety. We recognize that the proposed changes to WAC 246-215 encompass a broad spectrum of modifications aimed at aligning Washington food safety regulations with the federal Food and Drug Administration (FDA) Food Code and food safety, but this cannot be the only consideration. The following comments identify PCC's observations and feedback on the proposed WAC 246-215 amendments with these overarching interests in mind.

II. WAC 246-215 Amendments

A. Person In Charge (PIC): Knowledge & Duties

Need for supporting guidance, best practices, and implementation tools concerning “Active Managerial Control.” While PCC supports the approach of DOH in adopting the 2013 Food Code requirements of one Certified Protection Manager per establishment (as opposed to one per shift) and



implementing more active managerial controls, the DOH’s emphasis on “active managerial controls” must also provide clear and consistent guidance on this new requirement. Food Safety Managers will need specific standards, implementation tools, and consistent messaging from DOH to local jurisdictions in order to effectively carry out these new provisions. Additionally, increased requirements of records and written documentation will need explicit provisions on which records and formats will satisfy documentation requirements.

B. Employee Health

PCC supports increased clearer standards concerning employee health so long as DOH provides explicit directions on employee education verification procedures. Regulations should detail education verifications procedures so that consistent records and practices are implemented across all food establishments. For example, should records documenting employee education require logged signatures or just managerial reports? We are open to whatever process DOH envisions, but it needs to be more clearly communicated within the regulations.

C. Date Making for 7 Day Shelf-Life

Cheese exemptions need to be expanded and clarified; non-exempt cheeses need an extended shelf-life or option for variance. While we appreciate the need for consistency across departments, the proposed regulations do not adequately detail the list of exempted cheeses or (mandate DOH development of such a list) that would support inspectors. Even under current standards we have encountered confusion over which shelf-life limits apply to particular cheese varieties. The regulations also lack clarity as to whether retailers who prepare individualized portions of cheese on premises would fall under the food-specific exemptions provided for “food processing plants.” Should retailers not be included under this exemption, this should be amended to allow for on-premises cheese preparation of designated cheeses for retailers. Additionally, provisions should include more flexibility to determine potential exemptions.

D. Refilling Reusable Consumer-Owned Containers

Proposed changes do not provide broad enough options for reuseable containers. PCC emphatically supports changes to WAC 246-215 that enable consumers to use reuseable containers. As drafted, however, the proposed changes do not accomplish the full scope of what is demanded by consumers and necessitated by environmental concerns. As we understand them, the proposed regulations concerning food (excluding beverages) offer three new options for reuseable food containers: (1) a reuseable container provide/purchase-and-return program (in the vein of milk bottle returns); (2) an optional consumer-owned reuseable container program for self-service/non-ready-to-eat foods; and (3) an optional consumer-owned reuseable container program for all foods so long as served by an employee. While all of these are far better than the existing full-scale prohibition on reuseable



containers, they do not go far enough or provide consumers with what they are demanding or what is required for meaningful change.

“Non-ready-to-eat” reference in subsection (10) should be replaced by “non-time/temperature control for safety food” to allow for self-service, consumer-owned container use in the full spectrum of bulk and produce departments. As a grocer, one of the primary places we receive requests for reusable container options is our bulk and produce sections. While some of the products found within these grocery sections might be allowed through the voluntary written plan provisions for self-service, non-ready-to-eat foods, some would not. For example, as we read the definition of ready-to-eat food,¹ nuts, granolas, dried fruits, olives, candies, trail mixes, shelf-stable baked goods, and spices would not allow for consumer-owned reusable container use. Yet, within the same bulk department, other items, such as flour and dried beans, would be allowed creating a confusing situation for grocers to monitor and message the distinction of such items without significant investments in store reorganization and/or staff engagement and monitoring. This confusion could ultimately discourage the behaviors of waste reduction that we are trying to encourage. Setting these concerns aside, this dichotomy is simply not what consumers want or envision and the alleged risk in this subset of circumstances is not supported by practices used throughout the country. ***We would suggest revising the proposed regulations to allow for self-service, consumer-owned containers to be used for non-time/temperature control for safety foods, thus allowing for use in the full spectrum of bulk and produce food products.***

Reusable beverage containers must be allowed to be refilled with certain time/temperature control for safety foods. In a city and region that prides itself on its café culture and industry, not allowing for consumers to bring their own beverage container and have it filled with a latte or other hot beverage utilizing time/temperature control for safety foods is perplexing and non-progressive. Enabling consumers to bring their own containers is a practice that the vast majority of cafes have implemented within Washington (whether it is in compliance or not) and across the country for decades without noticeable risks and outbreaks. ***We recommend that the provisions on reusable beverage containers be amended to allow for time/temperature control for safety foods.***

Reusable container provision need to be streamlined to reduce overlapping directives and confusion. The structure and terminology used within the proposed reusable container provision do not clearly communicate the standards and circumstances for use of reusable containers in a way that will foster consistent application and opportunity for consumers. For example, in subsection (1) and (2), “take-home” containers (a term not defined in the definitions section) are prohibited from being refilled with time-temperature control for safety food except if cleaned in accordance with separate provision of the code and filled with non-time/temperature control for safety. Later, however, another provision allows for “take-home” containers to be refilled with any food provided a different set of

¹ See WAC 246-215-01115 (97)(a) READY-TO-EAT FOOD means FOOD that: (i) Is in a form that is edible without additional preparation to achieve FOOD safety, as specified under WAC 246-215-03400 (1) through (3) or WAC 246-215-03405 or 246-215-03425. See also *id.* at subsection (b).



standards and cleaning requirements are followed. For even the educated regulatory reader, it is hard to decipher what categories of food and containers are envisioned by these provisions and to track what exemptions apply under which circumstances. ***We would encourage DOH to clarify the prohibitions, terms, and exceptions wherever possible so that food establishments can more easily ascertain and apply the new standards.***

Much like raw or undercooked seafood, increased risks associated with consumer-owned and cleaned containers could be addressed in many lower-risk circumstances through warning signage and/or labeling requirements. PCC understands and respects that many of the limitations within the propose regulations are rooted in food safety practices and precautionary principles. As with any risks in this category, however, consumer should be provided the opportunity to weigh these risks and make informed choices. ***We suggest that signage and warning provisions be considered, especially for non-time/temperature control for safety foods that are found in bulk and produce departments. We would also suggest that food establishments, where feasible given size and customer base, be encouraged to provide community outreach and education on food safety procedures when utilizing consumer-owned reuseables.***

Submission of a written plan for non-ready-to-eat foods should not be optional and provisions should mandate development of DOH guidance concerning content and format of plan and procedures for approval and submission. Our environment is past the point of optional initiatives. All consumers should have the right to walk into a food establishment and utilize waste-reducing practices and all food establishments should have to take steps to ensure this is an option wherever feasible. That being said, food establishments are not the regulatory or food safety experts and should not bear the burden of developing plans and procedures without specific guidance as to what is required and envisioned. ***We recommend that subsection (10) mandate publication of DOH guidance at the earliest date possible and mandate that all food establishments submit written plans in accordance with that guidance within the year following guidance publication.***

E. Service Animal Definitions and Dogs in Outdoor Areas

PCC supports clearer directives for service animal requirements and for dogs in outdoor environments, but requests stronger enforcement support. Because of the personal nature of the relationship between service animals/dogs and our customers, we have found this to be a difficult subject matter to address from a customer service and enforcement perspective. Increased clarity for these provisions is welcomed, however, we would also request that inspection and enforcement provisions be added to assist food establishments.

For dogs in outdoor areas, non-disposable water container options should be provided. It does not align with mandates on reduction of waste or the ambitions of other amendments concerning reuseable containers to mandate a single-use disposable option for dog water bowls. The provisions



should include procedures for the providing and washing of reuseable dog water bowls should food establishments wish to provide them.

F. Donated Foods

Regulations must have clear and easy-to-obtain exemption and compliance procedures for food donation services. PCC appreciates that in many instances the DOH recognizes the need for flexibility concerning food donations services and the new requirements of surrounding certifications, active managerial controls, and food handling. On behalf of our food donation partners, however, we would caution mandatory requirements that may present overly-burdensome costs or procedures. Because so many of these services rely on volunteer support with a high turnover rate, we would encourage DOH to provide workable solutions that avoid uncertainty and are easily achieved for these critical services in our community. Changes to transportation requirements, food handler licensing, and active managerial control provisions should be viewed with a compassionate lens towards these unique situations and contemplate strong educational support.

III. Conclusion

PCC supports many of the proposed food safety amendments and appreciates DOH's efforts to engage the community in this review process. As detailed in these comments, however, we would encourage DOH to expand its initiatives to offer more flexible and forward-thinking food safety approaches that will enable more meaningful environmental, climate-minded, and community-supportive solutions.

Sincerely,

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