



September 29, 2019

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

Re: Food Safety Rule Amendments – WAC 246-215

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 82,000 active member-owners and 15 stores in seven cities, generating over \$300 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.

We are grateful to DOH for making significant improvements to the proposed food safety rules from the previous version and commend your perseverance under the extraordinary circumstances and stresses that the pandemic has placed on DOH. Overall, we are supportive of the proposed rule, but do offer the following as additional considerations:

A. Refillable Containers

It is hard to imagine a world more different than the one in which this process began over a year ago. There is no question that as a community we have had a necessary shift in our awareness surrounding food and public safety to ensure that we are protecting the most susceptible in our community and our frontline, essential workers against the pandemic. Yet, we are also in the midst of a climate crisis—a key part of which is our reliance on single-use plastic and over-abundance of food and packaging waste. We are encouraged by our members and customers who respect the need for certain safety precautions during the pandemic but continue to demand that we find innovative ways to curb our single-use packaging waste and use of plastic. These consumer demands and expectations are part of what has continued to move us forward on our 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 zero waste (90 % diversion rate) by 2022.

**For these reasons, we are pleased with DOH for clarifying and expanding the opportunities for food retailers to establish DOH-approved plans for consumer-owned, refillable containers to be used in certain self-serve, ready-to-eat circumstances, as well as employee-served circumstances.** We do, however, still see some gaps in the allowances that could create potential confusion for consumers and retailers and ultimately discourage this important practice:



### 1. Self-Serve Containers and Ready-to-Eat Foods in Non-Gravity Fed Service Systems

Our primary concern is that as written, the rule would still not allow for retailers to create an approved plan for customers to bring their own reusable container and self-fill that container with ready-to-eat foods in non-gravity fed dispensing systems. In other words, our shoppers could not fill their own container at an olive bar, salad bar, hot bar, baked goods display, or from a grocery dry bulk scoop bin without the assistance of an employee. While we appreciate the balance that DOH is trying to strike, it is unrealistic to expect retailers to support additional staffing for this purpose and is an important part of a comprehensive policy to curb single-use container waste. We believe that the experience of implementing strict COVID-19 safety protocol throughout the retail food industry has demonstrated that it is possible to maintain self-service environments in conjunction with rigorous safety protocol. **We recommend that DOH amend the proposed rule to allow for retailers to develop an approved plan for consumer-owned, refillable containers to be used in ready-to-eat, non-gravity-fed circumstances.**

### 2. WAC 246-215-03348 (6)(b) Gravity Flow Units Meeting Liquid Food and Ice Standards

While we believe the intent of WAC 246-215-03348 (6)(b) is to permit the use of refillable, consumer-owned containers for ready-to-eat foods, such as granolas, nuts, candies, etc., dispensed through common gravity-fed systems found in grocery stores everywhere, as written the provision raises concerns that this allowance would only be for (a) liquid foods and ice or (b) for gravity-flow systems meeting the liquid food and ice requirements. Neither of these scenarios would be acceptable as the first interpretation would exclude the majority of bulk self-service food options, and the second option seems to exclude current gravity-flow systems for dry, ready-to-eat foods. If, however, it is the intention of the DOH to allow for (with an approved plan) consumer-owned, refillable containers for dry ready-to-eat foods dispensed from commonly-used gravity-flow systems, then the language does not reflect this intention. **We would recommend that the language of this subsection be revised for better clarity and to ensure that this allowance expands reusable options for ready-to-eat, self-service foods without requiring undue operational and economic burdens on food retailers.**

### 3. Submission of Plans and DOH Guidance Should be Mandatory

We also maintain that 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 plans 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 WAC 246-215-03348 (6) be amended to state that a “food establishment under an approved plan MUST allow consumers to” and that a timeline for submission of that plan and mandatory guidance from DOH on developing those plans be integrated into this subsection.**



## B. Service Animal Definitions and Dogs in Outdoor Areas

We appreciate DOH's amendment on allowing for reusable water and food containers for animals, provided they are not cleaned within the establishment. PCC also still supports the incorporation of clearer directives for service animal requirements and dogs in outdoor environments. Because of the personal nature of the relationship between service animals/dogs and our customers, however, we have found this to be a difficult subject matter to address from a customer service and enforcement perspective. **We would request that inspection and enforcement provisions be added to assist food establishments in carrying out these additional standards.**

## C. Donated Foods

As we noted in our first round of comments, many food donation services rely on volunteer support with a high turnover rate. COVID-19 has increased these factors exponentially and pushed many of these essential community support systems to their breaking points. Balancing the need for food safety, we would encourage DOH to review any additional regulations with a lens of minimizing burdensome requirements that could further jeopardize these critical services. We must provide workable solutions that avoid uncertainty and are easily achieved. 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.

## I. Conclusion

PCC would like to reiterate our gratitude toward DOH in continuing this important work under the swiftly changing regulatory and public safety landscape of the pandemic and appreciates DOH's efforts to continue to engage the community in this review process.

Sincerely,

**Aimee M. Simpson, J.D.**

Director of Advocacy & Product Sustainability  
PCC Community Markets