

Oregon Department of Agriculture
Foods Safety Division
Food Code Adoption Meeting
1/29/08

Attendees: Kristine Rogers, Fred Meyer; Steve Ramsey, Safeway; Adam Johnson, Albertson's; Malinda Boothe, Albertson's; Dave Martin, DHS; Katey Kennedy, FDA; Carolyn Raab, OSU Extension (via phone); Shawn Miller, Northwest Grocers Association; Vance Bybee, ODA; Mike Govro, ODA; Ellen Laymon, ODA; Maryam Shadbeh-Evans, ODA; Susan Kendrick, ODA

Chapter 2, Management and Personnel

2-201 Employee Health

- At our last meeting, we decided to follow DHS's lead as far as using language from OAR 333. It had been noted that in 2-201.12, diarrhea and vomiting are restricted symptoms and in the epidemiology rules this is exclusion. Dave checked with epidemiology and found that 2-201.12(A) has to be a diagnosis and if it includes diarrhea and vomiting it is exclusion. ODA's proposal is to define the illnesses that are of concern so that (A) reads: "Exclude a food employee from a food establishment if the food employee is diagnosed with diphtheria, measles, Salmonella Typhi infection, shigellosis, Shiga-toxigenic Escherichia coli (STEC) infection, hepatitis A, tuberculosis, Norovirus, or open or draining skin lesions infected with Staphylococcus aureus or Streptococcus".
- Steve- this does not say anything about how long you have to be free of symptoms.

Propose to adopt DHS language with above revisions, which were provided to the group as a handout during this meeting- no objections.

2-301.14(H) When to Wash- Before donning gloves for working with food

- Steve- this is difficult to manage, how would it be interpreted during inspection? Would it help to clarify the issue if we distinguish between serving and preparation?
- Adam- other jurisdictions have cited a violation when an employee has changed gloves without handwashing when moving from one ready to eat food to another. (Ellen checked with Washington State and they did not make a code clarification for this item) Could add language stating if hands could have become contaminated, than employee must wash hands prior to donning gloves.
- Katey- it is confusing, the glove is similar to use of a utensil and handwashing may not always be necessary.
- Kristine- raw chicken to helping customers is a change of task, but is moving from the cold case to the hot case considered a task change?

Propose to adopt 2005 language- no objections if we can add language that clarifies what it means to change tasks. Adam suggested that everyone submit suggestions to help clarify section (H).

Chapter 3, Food

3-201.16 Wild Mushrooms

- Question has been about what is an “approved mushroom identification expert” and where do you find them?
- Katey- in the food code Annex there are some updates that replace this phrase with “written buyer specifications”.
- Mike- use of wild mushrooms is not much of an issue in our facilities. Ellen will check with other jurisdictions to see what language they are using.

ODA will look at the options and form a proposal - no objections.

3-202.18(c) & (d) Shellstock Identification

- Language change allows harvester tags to go forward through distribution to the retailer as long as there is a place for the dealer info (in Oregon, the harvester cannot sell directly to the retailer- they must go through a shellfish shipper which is the dealer).

Propose to adopt 2005 language- no objections.

3-301.11 Preventing Contamination From Hands (No Bare Hand Contact)

- Shawn- sent a memo to all NW Grocer Association members with an explanation of the no bare hand contact proposal and information regarding norovirus - all of the responses were in favor of the proposal to adopt this section and many said they already practice no bare hand contact. Both convenience stores and independents stores responded. Shawn also made calls to independents that didn't respond to the memo, but no further comments were received. Members did have a follow up question: will there be any changes to how RTE is defined (like produce)? This group doesn't see any changes to RTE definition. The person handling produce to stock display is handling food that is intended to be washed so this is not RTE, but if the employee is cutting melon and putting it in trays, this would be RTE.
- Carolyn- is there anything in the code that advises to keep gloves clean? Katey- There is a section about proper glove use and hand washing.

Propose to adopt 2005 language – no objections.

3-302.11(2)(d) Packaged & Unpackaged Food- Separation, Packaging, and Segregation

- Section (d) was added by DHS this for unpackaged meats in the walk in cooler to further clarify (b) which covers cross contamination.
- Steve- this would be a change for Safeway. What about frozen meat? In a display case, when pulling unpackaged meat from the front of the case to the back of the case, is it okay to drip over meat on the way out of the case?
- Kristine- should (d) say “unpackaged”?

- Vance- (d) is in the wrong place. It would be better as a numbered paragraph or as 2(b)(1). The list under (A) “Food shall be protected from cross contamination by:” ends with “and” (after (7)) which means where applicable you have to do all of these things, otherwise it would say “or”.
- Adam recommends that we leave (d) out as it was developed for a different industry and is not part of the 2005 food code.

Propose to leave (d) out – no objections.

3-302.11 Can or should this language be changed to suggest that packages of different species of raw meat be kept separated, or that packaged raw meats and packaged RTE foods be stored separately?

- Industry feels packaging is adequate protection even if it is leaking onto another package as long as the package it is leaking onto is intact. This is in conflict with FDA’s guidance in the food code annex.
- Katey- if the package has obviously failed, do we have a mechanism for dealing with the contamination on another package? Should we add something about packaging could be damaged and it is not enough in of its own to protect the foods? FDA wants separation of the product in addition to the packaging.

ODA will decide if further separation is needed and will propose how to handle this

3-304.14(E) Wiping Cloths, Use Limitation – Containers of chemical sanitizing solutions... shall be stored off the floor...

- Adam- enforcement in the past has been to not allow buckets of sanitizer on the counter next to the slicer or other work surfaces.

Propose to adopt 2005 language and train inspectors that storing the sanitizer container on the counter or shelf is not a violation – no objections.

3-404.11 Treating Juice

- This is a HACCP requirement for packaged juice to have a 5 log reduction or be labeled with a warning statement.
- Carolyn- pregnant women are not included in the warning statement. ODA will check with CFSAN regarding this omission.

Propose to adopt 2005 language- no objections.

3-501.17 (D) and (C) RTE, Potentially Hazardous Food, Date Marking

- Allows more flexibility in date marking.
- Steve and Adam- will date marking remain a critical violation? Katey- the criticality of this violation will come forward again at CFP this year.

Propose to adopt 2005 language (adopt (D) and delete (C)) - no objections.

3-501.19 (B) & (C) Time as a Public Health Control

- New language allows 6 hours out of temperature control with certain restrictions. There are different organisms of concern depending on where you are on the growth curve. Listeria is the concern at colder temperatures and it grows slowly and C. perfringens is the concern at warmer temperatures and it grows rapidly.

Propose to adopt 2005 language- no objections.

3-502.11 Variance Requirement

- Adam- how is current system working? Ellen answered that the only variances we now have are the customer assembled meal places. Current system sounds loose, on a case-by-case basis, which can cause it to vary widely. If the process is on file it is easier for the operator to comply and it would benefit the state to have an idea of what is going on where. The food code provides a mechanism to allow a variance to be granted, but the question is, does the infrastructure allow for this request to be processed.
- Dave- most county inspectors don't have the technical ability to evaluate these processes. DHS has only granted one variance, but they have had lots of requests that they have put on hold until they decide how to handle the variance issue. DHS is dealing with questions such as: Are some of the processes even appropriate in restaurants? Should there be a committee to evaluate variance requests? Who should be evaluating the requests? What kind of testing should the operator be asked to provide? What kind of training should inspectors be attending? Currently, DHS is advising new operators that they can't start processes needing a variance. County inspectors have been asked to gather information on operations that have been processing without a variance for a long time (there are 25-30 places mostly in Portland).
- Shawn- has there been a problem? Mike answered that there has not been a foodborne illness history and that granting a variance requires HACCP and inspectors may not be asking the right questions to determine if the process is under control in the absence of a HACCP plan.
- Katey- this is a growing issue and is not likely to go away.
- Ellen- the new code would require a HACCP plan with every variance and now it is at our discretion whether or not a HACCP plan is required.
- Shawn- if is not an issue and we are not getting a flood of variances maybe we don't need to change.
- Mike- the types of businesses affected by this section of the code are the retail fish purveyors on the coast that smoke and vacuum pack, any operation that smokes and cures, ROP and Molluscan shellfish life support tanks.
- Adam- consider a two step process. The current language would work if there is an in-state variance review committee. This would provide written documentation that could be kept on file to build a history, so that the next time we adopt a food code we could actually implement.
- Steve – most of the corporate stores are not doing anything that requires a variance.
- Mike – ODA maybe should consider whether or not there is an intermediary step that could move us in the direction of the 2005 code. May want to consider use of a risk control plan - kind of an abbreviated HACCP where risks are evaluated and recorded that would specify what the operator needs to do and it would give the inspector something to verify that the operator is doing what they need to do.
- Kristine- agrees with Adam and Steve, this doesn't currently affect their stores.
- Carolyn- appreciates dilemma of enforcing variances.

- Vance- Consistency is important and doing things on a case-by-case basis may not be best for consistency, fairness and possibly safety. Enforceability is an issue - we would want to have resources in place (people and finances) prior to starting a program. ODA is still considering their position - tabled.

ODA will discuss and communicate their position to the group at a later date.

3-502.12 Reduced Oxygen Packaging

- Closely related to 3-502.11, as a variance and a HACCP plan are required for ROP. This affects anyone vacuum packaging anything such as smoked salmon and cheese.
- Katey- this specific requirement is in place because of the concern about C botulinum.
- Carolyn- would put ROP at different level than the variance section. In favor of looking at this issue differently due to heightened concerns over C bot and listeria.
- Dave- they changed their food code language to mirror ours. DHS is fairly strict on this issue. They usually tell people they can't do ROP, but they do require a HACCP plan when ROP is allowed.
- Adam- the current plan just leaves out the formal requirement for HACCP, but it does give the department the ability to require a variance. If ODA implemented a formal variance process it seems like it would enhance this section without requiring HACCP. ODA has to have the resources and process to do this if it is adopted in the code.
- Vance- if this is the more acute of the two, and we are talking about a step process, we could adopt this first as the phase one of the process. Also suggest that we take out the phrase "at the agencies discretion" so we can provide industry with something more consistent
- Ellen – line one refers to 3-502.11 so we need to look at both sections.
- Shawn- industry has stepped up to fund the department and lobby for more money in the last two legislative sessions. A broader discussion would be needed to come up with more resources. Mike- funding discussion might take place at public hearings.

ODA will further review - tabled.

3-602.11 (B)(7) Labeling- canthaxanthin

- Katey – although this is not a food safety issue, it is in the CFRs which is why it is included in the food code.
- Mike- we think this means that "canthaxanthin" would have to be on the label in addition to "color added". Katey will check on the meaning.
- Steve – the customers won't know what canthaxanthin is.
- Adam- okay with this section of the code as long as "color added" is sufficient. Canthaxanthin would create customer confusion.
- Carolyn- agrees that the words "color added" would be adequate although she is not familiar with this issue.

Propose to adopt 2005 language if "color added" is adequate and "canthaxanthin" does not have to be used. Also propose to add the CFR language to the definition for additive - no objections.

Non-food code issues:

Salvage Code

- Mike- this is an updated version of the previously adopted code from the 1980's. The new code modernizes some of the language but does not represent a lot of big changes. Would we need to undertake the same process as we are doing with the food code or can we send it to everyone and ask for comments?
- Adam- it would be helpful to have a summary of the differences. Ellen will provide a summary.

Addition of requirements for customer assembled meal operations

- Mike- we view the customer assembled meal operations as retail establishments and they are subject to the food code. Since the code does not allow customers to handle raw meat, a variance is required and sometimes the lack of sneeze guards are an issue. ODA is proposing that we insert language in the food code to address this market segment so a variance doesn't have to be granted each time- we have required them to proportion meats, most are frozen but this hasn't been required. We have also required that all food has a cook step (no food for immediate consumption) and we have required them to provide cooking instructions. The variance process requires extra time from ODA to process the request, but the upside is it forces the operator to document their procedures.

Propose to insert language into the food code regarding customer assembled meal operations -no objections.