Adoption of PC Rule Challenges Overcome – The Washington State Story

Strong Upper Management Support
In October 2015, Washington State Department of Agriculture (WSDA) Assistant Director Candace Jacobs directed the Food Safety Program to make necessary improvements to conform to 2013 MFRPS and be prepared to show full implementation on all ten standards. Food Safety Program Manager Lucy Severs provided strong leadership, and FDA confirmed that WSDA achieved full conformance and full implementation at the March 2016 validation assessment.

A few months later, WSDA proceeded with adoption of CFR Part 117 by amending Chapter 16-167 WAC Intrastate Commerce in Foods. This was necessary to remain uniform with federal regulations so that food produced in Washington may be freely shipped in intrastate commerce.

Pre-Adoption Internal Discussions
Staff considered adopting CFR Part 117 with an amendment to also require firms grossing less than 1 million dollars to comply with the new regulations. In the end, WSDA decided to adopt CFR Part 117 as is, without the suggested amendments. This allowed WSDA to use the Expedited Rule Making process to adopt CFR Part 117.

Expedited Rule Making
The Washington State Administrative Procedures Act allows a state agency to file notice for the expedited adoption of rules when proposed rules adopt or incorporate by reference without material change federal statues or regulations [34.05.353(1)(b)]. When using expedited adoption of rules, the state agency is not required to:

- Prepare a small business impact statement under RCW 19.85.025,
- Prepare a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328,
- Prepare a significant legislative rule analysis under RCW 34.05.310, or
- Conduct a hearing for the expedited rule making.

WSDA filed CR-105 Expedited Rule Making on 8/4/16: required any objections to the use of expedited rule-making to be submitted in writing by 10/25/16. No written objections were received by WSDA.

WSDA filed CR-103P Rule Making Order on 10/31/16, making amendments to Chapter 16-167 WAC Intrastate Commerce in Foods effective on 12/1/16.

Benefits of CFR Part 117 Adoption
- Amended language of Chapter 16-167 WAC clarified that future amendments to the federal rules are incorporated and enforceable when WSDA provides notice of the federal rules amendment when final rule is published in the federal register. If and when WSDA determines the federal rules should not be adopted, WSDA must initiate rule-making to amend Chapter 16-167 WAC.

- Continued FDA/WSDA mutual reliance with WSDA providing continued contract inspection services on behalf of FDA without the need of credentialing or use of the FDA inspection forms for those contracted inspections.