Preliminary Significant Analysis

Chapter 246-215 WAC
Food Service

August 2012

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Section 1: Introduction

In 2003, the Legislature directed the State Board of Health (Board) to consider the most recent version of the Food and Drug Administration (FDA) Food Code whenever the Board undertakes rule development for food service. This direction is codified in RCW 43.20.145. The Food Code promotes uniform national food safety standards. Washington is 1 of 49 states to use some version of the FDA Food Code as the foundation of its retail food safety rules. The FDA Food Code is a model that establishes practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. This reduces the health and financial burden from foodborne disease.

The Centers for Disease Control estimate that 48 million Americans get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases every year.[1] The resulting annual cost is estimated to be $77.7 billion.[2] Health effects from foodborne disease include diarrhea, vomiting, numbing of extremities, kidney failure, and death. Some people have lifelong health complications from foodborne disease. Washington State has averaged 35 foodborne disease outbreaks per year during the last five years.

The leading causes of foodborne disease are improper handwashing, food workers working while ill, food workers using bare hands to handle ready-to-eat food, contaminated products, and improper cooking, cooling, and reheating.

Foods that cause the most outbreaks include fresh produce, poultry, beef, and dairy products.

The most important provisions of the FDA Food Code pertain to:

- Potentially hazardous foods (PHF), which are those that support the growth of pathogens
- Food employee health
- Handwashing
- Prohibiting bare hand contact with ready-to-eat food
- Handling produce

A diverse group of food establishments in Washington are responsible for following the rules so they can protect the public from the devastating effects of foodborne disease. These include:

- Restaurants
- Grocery stores
- Schools
- Hospitals
- Convenience stores
- Mobile food units
- Food banks
- Temporary food booths at fairs, festivals, and farmer's markets

In January 2010, the Board began the process of revising the current food safety rules, chapter 246-215 WAC. Representatives from industry, regulators, the public, and academia formed a

[1] http://www.cdc.gov/Features/dsFoodborneEstimates/

[2] Economic Burden from Health Losses Due to Foodborne Illness in the United States; Journal of Food Protection, Vol. 75, No. 1, 2012, Pages 123–131

Core Workgroup to discuss changes to the rules and to formulate recommendations to the Board. (See Appendix A for a list of Core Workgroup members.) The proposed rules reflect the work of the Core Workgroup, the Department of Health (Department), and the Board's direction for rule revision.

Section 2: What is the scope of the rule?

This proposal amend chapter 246-215 WAC, Food Service. RCW 43.20.145 requires the Board to consider the most recent version of the FDA Food Code in adopting the state food safety rules. The current rules are based on the 2001 FDA Food Code. Since then, the 2005 and 2009 FDA Food Code versions have been published. The rules need to be revised to consider these new standards.

The Board is also considering a new section to address the current gaps and overlaps in food safety rules for various facilities responsible for providing meals for young children. In addition, some provisions in the rules need to be revised so they are more clear and understandable by the public and those who must follow them.

Some examples of the changes proposed in this revision to address these underlying issues are to:

- Refrigerate cut leafy greens and cut tomatoes
- Reduce the hot holding temperature of food to135 degrees F
- Identify the source of wild harvested mushrooms and only use the species of wild harvested mushrooms listed
- Reduce the physical facility requirements for pre-schools that meet specific food safety criteria
- Exclude food employees diagnosed with Norovirus from working in food establishments serving a highly susceptible population
- Prohibit conditional employees from beginning employment if they report symptoms of or diagnosis with a foodborne disease
- Require produce to be rinsed under running water as part of the washing procedure
- Require handwashing sinks to be within 25 feet of food preparation areas

Section 3: What are the general goals and specific objectives of the proposed rule's authorizing statute?

RCW 34.05.328(1)(a) requires that agencies clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The general goal of RCW 43.20.050, Powers and duties of the state board of health, is to protect the health of the people of this state by ensuring retail food establishments follow proper food safety practices. The general goal of RCW 43.20.145, Food service rules, is to ensure the Board considers the most recent version of the FDA Food Code when adopting rules for food service.

The specific objectives the rules implement are to:

1. Incorporate the most recent food science and technology;
2. Be more consistent with the national FDA Food Code; and
3. Establish a mechanism for local and state governments to enforce food safety practices that protect the public from food safety hazards.

The proposed rules meet these general goals and specific objectives by incorporating requirements from the most recent FDA Food Code and establishing requirements for more consistent implementation of food service rules statewide.

Section 4: What is the justification for the proposed rule?

RCW 34.05.328(1)(b) requires agencies to determine the rule is needed to achieve the general goals and specific objectives stated under (a) and analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rules will achieve the authorizing statute's goals and objectives because the rules provide a science-based, up-to-date, nationally consistent set of standards that local and state government can use when inspecting food establishments.

There are no feasible alternatives to rulemaking because RCW 43.20.050 requires the Board to adopt rules that protect public health related to food service. Furthermore, RCW 43.20.145 mandates the Board to consider the most recent version of the FDA Food Code when revising the food safety rules. The FDA updated the Food Code in 2009. If the Board does not revise the rules based on the 2009 Food Code, the rules will fall further behind the latest food science being used in other states and will not meet the general goals and specific objectives of the underlying statutes.

Section 5: What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

RCW 34.05.328(1)(d) requires agencies to determine that the probable benefits of the rule are greater that its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

Several of the proposed food service rules are significant legislative rules and are subject to the requirements of RCW 34.05.328(5). The proposed rules were evaluated to determine whether the changes in each section are considered "significant" or "non-significant" under RCW 34.05.328(5)(c). Based on the evaluation, several proposed rules are non-significant and therefore do not require further analysis. These proposed rules and the rationale for the determination of non-significance are listed below. The remaining proposed rules are significant and are analyzed in the Section-by-Section Benefit and Cost Analysis following the table.

The proposed changes in the following sections are non-significant because they change only section numbers and titles, clarify the language of the rules without changing their effect, or incorporate requirements previously adopted by reference in WAC 246-215-005.

Proposed Section Number	Proposed Title
01100	Intent – Food Safety, Illness Prevention, and Honest Presentation
01105	Scope – Statement
01110	Applicability
02100	Responsibility – Assignment
02110	Duties – Food protection manager certification
02115	Duties – Person in charge
02120	Duties – Food worker cards
02210	Employee Health – Prohibit a Conditional Employee from Becoming a Food Employee
02215	Employee Health – Notify Health Officer
02225	Employee Health – Conditions of Restriction
02230	Employee Health – Aiding Illness Investigations
02235	Employee Health – Other Conditions
02240	Employee Health – Complying with Local Health Officer
02300	Hands and arms – Clean condition
02305	Hands and arms – Cleaning procedure
02325	Fingernails - Maintenance
02335	Employee Health – Other Conditions
02400	Food contamination prevention – Eating, drinking, or using tobacco
02405	Food contamination prevention – Discharge from the eyes, nose, and mouth
02410	Hair restraints – Effectiveness
02415	Animals – Handling prohibition
03100	Condition – Safe, Unadulterated, and Honestly Presented
03205	Sources – Food in a Hermetically Sealed Container
03210	Sources – Fluid Milk and Milk Products
03215	Sources – Fish
03220	Sources – Molluscan Shellfish
03230	Sources – Game Animals
03255	Specifications for Receiving – Package Integrity
03260	Specifications for Receiving – Ice
03275	Specifications for Receiving – Shellstock, Condition
03303	Preventing Contamination by Employees – Preventing Contamination When Tasting
03324	Preventing Contamination from Ice Used as a Coolant – Ice Used as Exterior Coolant, Prohibited as Ingredient

Proposed Section Number	Proposed Title
03327	Preventing Contamination from Ice Used as a Coolant – Storage or Display of Food in Contact with Water or Ice
03336	Preventing Contamination from Equipment, Utensils, and Linens – Linens and Napkins, Use Limitation
03342	Preventing Contamination from Equipment, Utensils, and Linens – Gloves, Use Limitation
03345	Preventing Contamination from Equipment, Utensils, and Linens – Using Clean Tableware for Second Portions and Refills
03351	Preventing Contamination from the Premises – Food Storage
03354	Preventing Contamination from the Premises – Food Storage, Prohibited Areas
03357	Preventing Contamination from the Premises – Vended Potentially Hazardous Food, Original Container
03360	Preventing Contamination from the Premises – Food Preparation
03366	Preventing Contamination by Consumers – Condiments, Protection
03375	Preventing Contamination by Consumers – Miscellaneous Sources of Contamination
03405	Cooking – Microwave Cooking
03435	Reheating – Preparation for Immediate Service
03500	Temperature and Time Control – Frozen Food
03530	Temperature and Time Control – Time as a Public Health Control
03600	Accurate Representation – Standards of Identity
03605	Accurate Representation – Honestly Presented
03615	Labeling – Other Forms of Information
03700	Disposition – Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food
03705	Disposition – Examination, Hold Orders, Condemnation, and Destruction of Food
04100	Multiuse – Characteristics
04105	Multiuse – Cast Iron, Use Limitation
04115	Multiuse – Copper, Use Limitation
04120	Multiuse – Galvanized Metal, Use Limitation
04125	Multiuse – Sponges, Use Limitation
04130	Multiuse – Wood, Use Limitation
04135	Multiuse – Nonstick Coatings, Use Limitation
04140	Multiuse – Nonfood-Contact Surfaces
04145	Single-Service and Single Use – Characteristics
04200	Durability and Strength – Equipment and Utensils
04202	Durability and Strength – Food Temperature Measuring Devices
04204	Cleanability – Food-Contact Surfaces

Proposed Section Number	Proposed Title
04206	Cleanability – CIP Equipment
04208	Cleanability – "V" Threads, Use Limitation
04210	Cleanability – Hot Oil Filtering Equipment
04212	Cleanability – Can Openers
04214	Cleanability – Nonfood-Contact Surfaces
04216	Cleanability – Kick Plates, Removable
04218	Cleanability – Ventilation Hood Systems, Filters
04220	Accuracy – Temperature Measuring Devices, Food
04222	Accuracy – Temperature Measuring Devices, Ambient Air and Water
04226	Functionality – Ventilation Hood Systems, Drip Prevention
04228	Functionality – Equipment Openings, Closures and Deflectors
04232	Functionality – Vending Machine, Vending Stage Closure
04234	Functionality – Bearings and Gear Boxes, Leakproof
04236	Functionality – Beverage Tubing, Separation
04238	Functionality – Ice Units, Separation of Drains
04240	Functionality – Condenser Unit, Separation
04242	Functionality – Can Openers on Vending Machines
04248	Functionality – Temperature Measuring Devices
04260	Functionality – Warewashing Machines, Flow Pressure Device
04262	Functionality – Warewashing Sinks and Drainboards, Self-Draining
04264	Functionality – Equipment Compartments, Drainage
04266	Functionality – Vending Machines, Liquid Waste Products
04270	Functionality – Vending Machine Doors and Openings
04300	Equipment – Cooling, Heating, and Holding Capacities
04305	Equipment – Manual Warewashing, Sink Compartment Requirements
04310	Equipment – Drainboards
04315	Equipment – Ventilation Hood Systems, Adequacy
04320	Equipment – Clothes Washers and Dryers
04325	Equipment – Designated Food Preparation Sinks
04330	Utensils, Temperature Measuring Devices, and Testing Devices – Utensils, Consumer Self Service
04335	Utensils, Temperature Measuring Devices, and Testing Devices – Food Temperature Measuring Devices
04340	Utensils, Temperature Measuring Devices, and Testing Devices – Temperature Measuring Devices, Manual Warewashing
04345	Utensils, Temperature Measuring Devices, and Testing Devices – Sanitizing Solutions, Testing Devices
04400	Location – Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention

Proposed Section Number	Proposed Title
04500	Equipment – Good Repair and Proper Adjustment
04505	Equipment – Cutting Surfaces
04510	Equipment – Microwave Ovens
04515	Equipment – Warewashing Equipment, Cleaning Frequency
04520	Equipment – Warewashing Machines, Manufacturer's Operating Instructions
04525	Equipment – Warewashing Sinks, Use Limitation
04530	Equipment – Warewashing Equipment, Cleaning Agents
04535	Equipment – Warewashing Equipment, Clean Solutions
04540	Equipment – Manual Warewashing Equipment, Wash Solution Temperature
04545	Equipment – Mechanical Warewashing Equipment, Wash Solution Temperature
04550	Equipment – Manual Warewashing Equipment, Hot Water Sanitization Temperatures
04555	Equipment – Mechanical Warewashing Equipment, Hot water Sanitization Temperature
04570	Equipment – Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers
04575	Equipment – Warewashing Equipment, Determining Chemical Sanitizer Concentration
04580	Utensils and Temperature and Pressure Measuring Devices – Good Repair and Calibration
04585	Utensils and Temperature and Pressure Measuring Devices – Single-Service and Single-Use Articles, Required Use
04590	Utensils and Temperature and Pressure Measuring Devices – Single-Service and Single-Use Articles, Use Limitation
04595	Utensils and Temperature and Pressure Measuring Devices – Shells, Use Limitation
04600	Objective – Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils
04610	Objective – Cooking and Baking Equipment
04615	Objective – Nonfood-Contact Surfaces
04620	Methods – Dry Cleaning
04625	Methods – Precleaning
04630	Methods – Loading of Soiled Items, Warewashing Machines
04635	Methods – Wet Cleaning
04640	Methods – Washing, Procedures for Alternative Manual Warewashing Equipment
04645	Methods – Rinsing Procedures
04650	Methods – Returnables, Cleaning for Refilling
04700	Objective – Food-Contact Surfaces and Utensils
04705	Frequency – Before Use After Cleaning

Proposed Section Number	Proposed Title
04800	Objective – Clean Linens
04810	Methods – Storage of Soiled Linens
04820	Methods – Use of Laundry Facilities
04905	Drying – Wiping Cloths, Air-Drying Locations
04915	Lubricating and Reassembling – Equipment
04925	Storing – Prohibitions
04930	Preventing Contamination – Kitchenware and Tableware
04935	Preventing Contamination – Soiled and Clean Tableware
05105	Source – System Flushing and Disinfection
05110	Quality – Bottled Drinking Water
05115	Quality – Standards
05125	Quality – Sampling
05130	Quantity & Availability
05135	Quantity and Availability
05140	Distribution, Delivery and Retention – Pressure
05145	Distribution, Delivery and Retention – System
05150	Distribution, Delivery and Retention – Alternate Water Supply
05200	Materials – Approved
05205	Design, Construction and Installation – Approved System and Cleanable Fixtures
05215	Design, Construction and Installation –Backflow Prevention, Air Gap
05220	Design, Construction and Installation – Backflow Prevention Device, Design Standard
05225	Design, Construction and Installation –Conditioning Device, Design
05230	Numbers and Capacities - Handwashing Sinks
05235	Restrooms – Toilets and Urinals
05245	Backflow Prevention Device, When Required
05260	Location and Placement of Backflow Prevention Device
05265	Location and Placement of Conditioning Device
05280	Operation and Maintenance – Scheduling Inspection and Service for Water System Device
05290	Operation and Maintenance – System Maintained in Good Repair
05300	Materials – Approved
05305	Design and Construction – Enclosed System, Sloped to Drain
05310	Design and Construction – Inspection and Cleaning Port, Protected and Secured
05315	Design and Construction – “V” Type Threads, Use Limitation
05320	Design and Construction – Tank Vent, Protected
05325	Design and Construction – Inlet and Outlet, Sloped to Drain
05330	Design and Construction – Hose, Construction and Identification
05335	Numbers and Capacities – Filter, Compressed Air

Proposed Section Number	Proposed Title
05340	Numbers and Capacities – Protective Cover or Device
05345	Numbers and Capacities – Mobile Food Establishment Tank Inlet
05355	Operation and Maintenance – Using a Pump and Hoses, Backflow Prevention
05360	Operation and Maintenance – Protecting Inlet, Outlet, and Hose Fitting
05365	Operation and Maintenance – Tank, Pump, and Hoses, Dedication
05400	Mobile Holding Tank – Capacity and Drainage
05405	Retention, Drainage, and Delivery Design, Construction, and Installation – Establishment Drainage System
05415	Retention, Drainage, and Delivery Location and Placement – Grease Trap
05420	Retention, Drainage, and Delivery Operation and Maintenance – Conveying Sewage
05425	Retention, Drainage, and Delivery Operation and Maintenance – Removing Mobile Food Establishment Wastes
05430	Retention, Drainage, and Delivery Operation and Maintenance – Flushing a Waste Retention Tank
05435	Disposal Facility Design and Construction – Approved Sewage Disposal System
05440	Disposal Facility Design and Construction – Other Liquid Wastes and Rainwater
05500	Facilities on the Premises, Materials, Design, Construction and Installation – Indoor Storage Area
05505	Facilities on the Premises, Materials, Design, Construction and Installation – Outdoor Storage Surface
05510	Facilities on the Premises, Materials, Design, Construction and Installation – Outdoor Enclosure
05515	Facilities on the Premises, Materials, Design, Construction and Installation – Receptacles
05520	Facilities on the Premises, Materials, Design, Construction and Installation – Receptacles in Vending Machines
05525	Facilities on the Premises, Materials, Design, Construction and Installation – Outside Receptacles
05530	Facilities on the Premises, Numbers and Capacities – Storage Areas, Rooms, and Receptacles, Capacity and Availability
05535	Facilities on the Premises, Numbers and Capacities – Toilet Room Receptacle, Covered
05540	Facilities on the Premises, Numbers and Capacities – Cleaning Implements and Supplies
05545	Facilities on the Premises, Location and Placement – Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location
05550	Facilities on the Premises, Operation and Maintenance –Storing Refuse, Recyclables, and Returnables

Proposed Section Number	Proposed Title
05555	Facilities on the Premises, Operation and Maintenance – Areas, Enclosures, and Receptacles, Good Repair
05560	Facilities on the Premises, Operation and Maintenance – Outside Storage Prohibitions
05565	Facilities on the Premises, Operation and Maintenance – Covering Receptacles
05570	Facilities on the Premises, Operation and Maintenance – Using Drain Plugs
05575	Facilities on the Premises, Operation and Maintenance – Maintaining Refuse Areas and Enclosures
05580	Facilities on the Premises, Operation and Maintenance – Cleaning Receptacles
05585	Removal – Frequency
05590	Removal – Receptacles or Vehicles
05595	Facilities for Disposal and Recycling – Community or Individual Facility
06105	Outdoor Areas – Surface Characteristics
06200	Cleanability – Floors, Walls and Ceilings
06205	Cleanability – Floors, Walls, and Ceilings, Utility Lines
06210	Cleanability – Floor and Wall Junctures, Covered and Enclosed or Sealed
06215	Cleanability – Floor Carpeting, Restriction and Installation
06220	Cleanability – Floor Covering, Mats and Duckboards
06225	Cleanability – Wall and Ceiling Coverings and Coatings
06230	Cleanability – Walls and Ceilings, Attachments
06235	Cleanability – Walls and Ceilings, Studs, Joists, and Rafters
06240	Functionality – Light Bulbs, Protective Shielding
06245	Functionality – Heating, Ventilating, Air Conditioning System Vents
06250	Functionality – Insect Control Devices, Design and Installation
06255	Functionality – Toilet Rooms, Enclosed
06260	Functionality – Outer Openings, Protected
06265	Functionality – Exterior Walls and Roofs, Protective Barrier
06270	Functionality – Outdoor Food Vending Areas, Overhead Protection
06275	Functionality – Outdoor Servicing Areas, Overhead Protection
06280	Functionality – Outdoor Walking and Driving Surfaces, Graded to Drain
06290	Functionality – Private Homes and Living or Sleeping Quarters, Use Prohibition
06295	Functionality – Living or Sleeping Quarters, Separation
06300	Handwashing Facilities – Minimum Number
06330	Toilets and Urinals – Minimum Number
06335	Toilets and Urinals – Toilet Tissue, Availability
06345	Ventilation – Mechanical
06350	Dressing Areas and Lockers – Designation
06355	Service Sinks – Availability
06405	Toilet Rooms – Convenience and Accessibility

Proposed Section Number	Proposed Title
06410	Employee Accommodations – Designated Areas
06415	Distressed Merchandise – Segregation and Location
06420	Refuse, Recyclables, and Returnables – Receptacles, Waste Handling Units, and Designated Storage Areas
06510	Methods – Cleaning Floors, Dustless Methods
06515	Methods – Cleaning Ventilation Systems, Nuisance and Discharge Prohibition
06540	Methods – Closing Toilet Room Doors
06545	Methods – Using Dressing Rooms and Lockers
06555	Methods – Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests
06560	Methods – Storing Maintenance Tools
06565	Methods – Maintaining Premises, Unnecessary Items and Litter
07100	Original Containers – Identifying Information, Prominence
07105	Working Containers – Common Name
07200	Storage – Separation
07215	Container Prohibitions – Poisonous or Toxic Material Containers
07230	Chemicals – Boiler Water Additives, Criteria
07235	Chemicals – Drying Agents, Criteria
07240	Lubricants – Incidental Food Contact, Criteria
07245	Pesticides – Restricted Use Pesticides, Criteria
07250	Pesticides – Rodent Bait Stations
07260	Medicines – Restriction and Storage
07265	Medicines – Refrigerated Medicines, Storage
07270	First Aid Supplies – Storage
07275	Other Personal Care Items – Storage
07300	Storage and Display – Separation
08105	Additional Requirements – Preventing Health Hazards, Provision for Conditions Not Addressed
08115	Variances – Documentation of Proposed Variance and Justification
08120	Variances – Conformance with Approved Procedures
08205	Facility and Operating Plans – Contents of the Plans and Specifications
08210	Facility and Operating Plans – When a HACCP Plan is Required
08215	Facility and Operating Plans – Contents of a HACCP Plan
08220	Trade Secrets
08225	Construction Inspection and Approval – Preoperational Inspections
08300	Requirement – Prerequisite for operation
08310	Application Procedure – Submission 30 Calendar Days Before Proposed Opening
08315	Application Procedure – Form of Submission
08320	Application Procedure – Qualifications and Responsibilities of Applicants
08325	Application Procedure – Contents of the Application

Proposed Section Number	Proposed Title
08330	Issuance – New, Converted, or Remodeled Establishments
08335	Issuance – Existing Establishments, Permit Renewal, and Change of Ownership
08340	Issuance – Denial of Application for Permit, Notice
08345	Conditions of Retention – Responsibilities of the Regulatory Authority
08355	Conditions of Retention – Permits Not Transferable
08400	Frequency – Establishing Inspection Interval
08405	Frequency – Performance- and Risk-Based
08415	Access – Allowed at Reasonable Times after Due Notice
08420	Access –Refusal, Notification of Right to Access, and Final Request for Access
08425	Access – Refusal, Reporting
08435	Report of Findings – Specifying Time Frame for Corrections
08440	Report of Findings – Issuing Report and Obtaining Acknowledgement of Receipt
08445	Report of Findings – Refusal to Sign Acknowledgement
08450	Report of Findings – Public Information
08455	Imminent Health Hazard – Ceasing Operations and Reporting
08460	Imminent Health Hazard – Resumption of Operations
08510	Investigation and Control – Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order
08520	Investigation and Control – Procedure When Disease Transmission is Suspected
08600	Permits Required, Suspension, Revocation, Enforcement
08605	Service of Notice
08610	Hearings
09100	Requirements and Restrictions - Requirements
09105	Requirements and Restrictions – Restrictions
09110	Plan Approval – Plan Review
09115	Plan Approval – Plan Contents
09120	Additional Requirements – Standard Operating Procedures
09125	Potentially Hazardous Foods – Temperature Control
09130	Cooking Thickness – Cooking Raw Meats
09135	Water and Wastewater – Water System
09145	Handwashing – Handwashing Waiver
09155	Sink Compartment Requirements – Warewashing Facilities
09160	Required Postings – Business Name
09165	Required Postings – Permit
09170	Food and Equipment Protection – Overhead Protection
09175	Food and Equipment Protection – Food and Food Service Supplies
09180	Movable Buildings – Lack of Permanent Plumbing
09200	Requirements and Restrictions
09205	Food and Equipment Protection – Standard Operating Procedures

Proposed Section Number	**Proposed Title**
09210	Potentially Hazardous Food – Temperature Control
09215	Thawing Thickness – Thawing Potentially Hazardous Foods
09220	Public Access – Separation Barrier
09225	Handwashing and Wastewater – Facilities
09230	Employee Restrooms – Toilet Facilities
09235	Sink Compartment Requirements – Warewashing Facilities
09240	Sink Compartment Requirements – Food Preparation Sink
09300	Residential Kitchen – Requirements and Restrictions
09305	Food Protection – Standard Operating Procedures
09310	Sinks – Sink Compartment Requirements
09405	Standard Operating Procedures – Food Protection
09410	Sink Compartment Requirements
09425	Prohibited Food – Restrictions
09430	Food Labels – Alternative Labeling
09435	Record Keeping – Receiving Record
10000	Severability

The FDA Food Code is updated regularly using a national collaborative process that includes representatives from regulators, industry, and academia. It is based on the most current food science and technology and provides consistency for food service regulations nationwide. The proposed rules incorporate the following provisions of the most recent version of the FDA Food Code (2009) in order to implement the statutory direction provided in RCW 34.20.145.

Proposed Section Number	Proposed Title
02220	Conditions of Exclusion
02315	Hands and arms – Where to wash
02320	Hands and arms – Hand antiseptics
03200	Sources – Compliance with Food Law
03235	Specifications for Receiving – Temperature
03240	Specifications for Receiving – Additives
03245	Specifications for Receiving – Eggs
03250	Specifications for Receiving – Eggs and Milk Products, Pasteurized
03265	Specifications for Receiving – Shucked Shellfish, Packaging and Identification
03270	Specifications for Receiving – Shellstock Identification
03280	Specifications for Receiving – Juice Treated
03285	Original Containers and Records – Molluscan Shellfish, Original Container
03290	Original Containers and Records – Shellstock, Maintaining Identification
03300	Preventing Contamination by Employees – Preventing Contamination from Hands

Proposed Section Number	Proposed Title
03306	Preventing Food and Ingredient Contamination – Packaged and Unpackaged Food – Separation, Packaging, and Segregation
03309	Preventing Food and Ingredient Contamination – Food Storage Containers, Identified with Common Name of Food
03312	Preventing Food and Ingredient Contamination – Pasteurized Eggs, Substitute for Raw Eggs for Certain Recipes
03315	Preventing Food and Ingredient Contamination – Protection from Unapproved Additives
03330	Preventing Contamination from Equipment, Utensils, and Linens – Food Contact with Equipment and Utensils
03333	Preventing Contamination from Equipment, Utensils, and Linens – In-Use Utensils, Between-Use Storage
03369	Preventing Contamination by Consumers – Consumer Self-Service Operations
03372	Preventing Contamination by Consumers – Returned Food and Fast Food
03410	Cooking – Plant food Cooking for Hot Holding
03425	Freezing – Parasite Destruction
03430	Freezing – Records, Creation and Retention
03440	Reheating – Reheating for Hot Holding
03445	Other Methods – Treating Juice
03505	Temperature and Time Control – Potentially Hazardous Food, Slacking
03510	Temperature and Time Control – Thawing
03525	Temperature and Time Control – Potentially Hazardous Food, Hot and Cold Holding
03535	Specialized Processing Methods – Variance Requirement
03610	Labeling – Food Labels
03620	Consumer Advisory – Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens
03800	Additional Safeguards – Pasteurized Foods, Prohibited Re-Service, and Prohibited Food
04110	Multiuse – Lead in Ceramic, China, and Crystal Utensils, Use Limitation
04224	Accuracy – Pressure Measuring Devices, Mechanical Warewashing Equipment
04230	Functionality – Dispensing Equipment, Protection of Equipment and Food
04244	Functionality – Molluscan Shellfish Tanks
04246	Functionality – Vending Machines, Automatic Shutoff
04250	Functionality – Warewashing Machines, Data Plate Operating Specifications
04252	Functionality – Warewashing Machines, Internal Baffles
04254	Functionality – Warewashing Machines, Temperature Measuring Devices
04256	Functionality – Manual Warewashing Equipment, Heaters and Baskets
04258	Functionality – Warewashing Machines, Automatic Dispensing of Detergents and Sanitizers
04268	Functionality – Case Lot Handling Equipment, Moveability
04405	Installation – Fixed Equipment, Spacing or Sealing
04410	Installation – Fixed Equipment, Elevation or Sealing
04560	Equipment – Mechanical Warewashing Equipment, Sanitization Pressure

Proposed Section Number	Proposed Title
04565	Equipment – Manual and Mechanical Warewashing Equipment, Chemical Sanitization – Temperature, pH, Concentration, and Hardness
04605	Objective – Equipment Food-Contact Surfaces and Utensils
04710	Methods – Hot Water and Chemical
04805	Frequency – Specifications
04900	Drying – Equipment and Utensils, Air-Drying Required
04910	Lubricating and Reassembling – Food-Contact Surfaces
04920	Storing – Equipment, Utensils, Linens, and Single-Service and Single-Use Articles
04940	Preventing Contamination – Preset Tableware
04945	Preventing Contamination – Rinsing Equipment and Utensils after Cleaning and Sanitizing
05240	Service Sink
05250	Backflow Prevention Device, Carbonator
05270	Operation and Maintenance – Using a Handwashing Sink
05275	Operation and Maintenance – Prohibiting a Cross Connection
05285	Operation and Maintenance – Water Reservoir of Fogging Devices, Cleaning
05350	Operation and Maintenance – System Flushing and Sanitation
05410	Retention, Drainage, and Delivery Design, Construction, and Installation – Backflow Prevention
06100	Indoor Areas – Surface Characteristics
06285	Functionality – Outdoor Refuse Areas
06305	Handwashing Facilities – Handwashing Cleanser, Availability
06310	Handwashing Facilities – Hand Drying Provision
06315	Handwashing Facilities – Handwashing Aids and Devices, Use Restriction
06320	06320 Handwashing Facilities – Handwashing Signage
06325	Handwashing Facilities – Disposable Towels, Waste Receptacle
06340	Lighting – Intensity
06400	Handwashing Facilities – Conveniently Located
06500	Methods – Repairing
06505	Methods – Cleaning, Frequency and Restrictions
06535	Methods – Cleaning of Plumbing Fixtures
06550	Methods – Controlling Pests
07205	Presence and Use – Restriction
07210	Presence and Use – Conditions of Use
07220	Chemicals – Sanitizers, Criteria
07225	Chemicals – Chemicals for Washing, Treatment, Storage, and Processing Fruits and Vegetables, Criteria
07255	Pesticides – Tracking Powders, Pest Control and Monitoring
08100	Use for Intended Purposes – Public Health Protection
08110	Variances – Modifications and Waivers
08350	Conditions of Retention – Responsibilities of the Permit Holder
08410	Frequency – Competency of Inspectors
08430	Report of Findings – Documenting Information and Observations

Proposed Section Number	Proposed Title
08500	Investigation and Control – Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis
08505	Investigation and Control – Restriction or Exclusion of Food Employee, or Summary Suspension of Permit
08515	Investigation and Control – Removal of Exclusion or Restriction

The proposed changes in the following sections are non-significant because they clarify the language of the rules without changing their effect and re-number and re-title current sections.

Proposed		**Current WAC**	
Section Number	**Title**	**Section Number**	**Title**
02105	Demonstration of Knowledge	005(1)(a)	Minimum performance standards
02200	Employee Health – Reporting policy	251(3)	Employee health
02245	Employee Health – Removal of Exclusion or Restriction Based on Diagnosis	251(8)	Employee health
02330	Jewelry - Prohibition	031(2)	Employee hygiene
03515	Temperature and Time Control – Cooling	005(1)(a)	Minimum performance standards
03520	Temperature and Time Control – Cooling Methods	005(1)(a)	Minimum performance standards
03540	Specialized Processing Methods – Reduced Oxygen Packaging Without a Variance, Criteria	005(1)(a)	Minimum performance standards
04272	Acceptability – Food Equipment Certification and Classification	005(1)(a)	Minimum performance standards
04815	Methods – Mechanical Washing	005(1)(a)	Minimum performance standards
05100	Source – Approved System	005(1)(a)	Minimum performance standards
05120	Quality – Nondrinking Water	005(1)(a)	Minimum performance standards
08200	Facility and Operating Plans – When Plans are Required	005(1)(a)	Minimum performance standards
09140	Handwashing – Handwashing Facilities	121(12)	Mobile food units
09150	Employee Restrooms – Toilet Facilities	121(14)	Mobile food units
09415	Food Sources – Donated Foods	151(7)	Donated food distributing organizations
09420	Receiving Food – Food Condition	151(8)	Donated food distributing organizations

Section-by-Section Benefit and Cost Analysis
For each proposed rule deemed significant, the following section-by-section analysis includes a description of the proposed changes as well as the associated benefits and costs of those changes.

Part 1, Purpose and Definitions
Subpart C, Definitions

WAC 246-215-01115(48), Food establishment

Description: The current definition of food establishment includes a list of food operations that are excluded from the definition of a food establishment. These operations are exempt from the provisions of the food safety rules because they pose little or no risk to public health or because the activity is regulated by another agency with specific authority to do so. The proposed rule excludes hotels and motels that maintain ice dispensing machines for self-service use by guests. The proposed change maintains inclusion of ice dispensing machines used by a food establishment.

Benefits: Public health is not impacted by this change because the Department's Transient Accommodations Program regulates hotels and motels, including ice machines used by guests. Also, ice machines in hotels and motels that are used for food service will continue to be regulated under the food safety regulations as part of the food establishment permit requirements. As a result, this proposed change eliminates duplicate requirements for hotels and motels without jeopardizing public health.

Avoided Costs: Hotels and motels that meet the requirements for exclusion will not be required to obtain a food service permit from the local health jurisdiction. This could save them $70 to $350 per year depending on the fee amounts of the county in which they operate.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

Part 2, Management and Personnel
Subpart B, Employee Health

WAC 246-215-02205, Reportable History of Illness
Description: For *Salmonella,* the rule currently requires food employees diagnosed with an infection from any species of *Salmonella* to report the condition to the person in charge. The 2009 FDA Food Code only requires food employees to report infections of *Salmonella* Typhi (typhoid fever). The proposed rule follows the 2009 FDA Food Code convention. Food employees will only have to report to the person in charge when diagnosed with *Salmonella* Typhi.

However, the proposed rule will require food employees who work in a food establishment serving a highly susceptible population (these include hospitals, pre-schools, and senior centers) to report to the person in charge when diagnosed with an infection from any species of *Salmonella*, which is consistent with the current rule; and when diagnosed with Norovirus, which is consistent with the 2009 FDA Food Code.

Benefits: Staff assumes that the reporting requirement for diagnosis of *Salmonella* species (other than typhoid fever) would effectively exclude food employees from food establishments with little to no public health benefit. This is because the food employee is almost always past the communicable period of the disease when a diagnosis is made. Public health is adequately protected by current rule including requiring food employees to report their symptoms to the person in charge and requiring the person in charge to exclude symptomatic food employees. These protective measures combined with required handwashing and prohibited bare hand contact with ready-to-eat food are effective measures for preventing foodborne disease caused by ill food employees.

The proposed rule provides additional protections for people who are more likely to become ill. The rule retains the requirement for food employees who work in food establishments serving a highly susceptible population to report diagnosis with Norovirus and any species of *Salmonella*. This requirement, coupled with maintaining the current rule requirements for handwashing and prohibiting food employees from contacting ready-to-eat food with their bare hands create effective interventions for this population.

Avoided Costs: Food workers who do not serve a highly susceptible population and are diagnosed with non-Typhi *Salmonella* or Norovirus won't have to wait for the results of two tests to return to work. This means these employees will have fewer medical costs and less time lost from work.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-02250, Removal of Exclusion or Restriction Based on Symptoms
Description: The rule currently specifies when the *regulatory authority* may allow a food employee to return to work after being excluded due to illness. It does not address when the *person in charge* may allow a food employee to return to work. The 2009 FDA Food Code gives the criteria the person in charge must use to allow a food employee to return to work. The proposed rule adopts these criteria with the following changes:

- Jaundice
    - The 2009 FDA Food Code requires the person in charge to get approval from the regulatory authority and to ensure the food employee meets several conditions identified in the FDA Food Code.
    - Instead, the proposed rule requires the person in charge to get local health officer approval to allow the food employee to return to work and does not incorporate the conditions identified in the 2009 FDA Food Code. The proposed rule relies

on the professional judgment of the local health officer to make this determination.

- Sore throat with fever
  - The 2009 FDA Food Code requires food employees to provide medical documentation to the person in charge showing they have one of the following for *Streptococcus pyogenes*:
    - Taken antibiotics for more than 24 hours;
    - At least one negative throat culture; or
    - A diagnosis by a health practitioner that they are free of infection.
  - Instead, the proposed rule allows the food employee to return to work when they no longer have a sore throat and fever. The proposed rule does not adopt the medical documentation required by the 2009 FDA Food Code.

Benefits: Removing the conditions that a jaundiced food employee must meet before returning to work and specifying that the local health officer approve their return will allow flexibility to use the latest medical information for making this determination. This does not impact public health because local health officers are qualified to evaluate persons with jaundice.

Allowing food employees to return to work when their sore throat and fever are gone without medical documentation to prove they are not contagious with *Streptococcus pyogenes* does not impact public health. *Streptococcus pyogenes* is very rarely transmitted through food. In addition, the provisions of the rule have redundant measures to prevent contamination of food and utensils by ill employees.

Avoided Costs: Some food employees with jaundice will be able to return to work sooner than the current rule allows since the decision to return to work can be made by the health officer based on medical judgment rather than specific conditions. Food employees with sore throat and fever will potentially be able to return to work sooner than under the 2009 FDA Food Code requirements. Both these changes could result in fewer lost wages for food employees as well as the cost of seeking medical assistance versus letting the disease "run its course", and offset potential costs related to proposed changes in WAC 246-215-02220, Conditions of exclusion.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

Part 2, Management and Personnel
Subpart C, Personal Cleanliness

WAC 246-215-02310, Hands and Arms – When to Wash

Description: The rule currently requires food employees to wash their hands before putting on gloves to work with food. Practical application of this requirement means that every time food employees change gloves they need to wash their hands even when the glove change is not required due to contamination. The proposed rule will allow food employees to change gloves without washing hands if the glove change isn't the result of glove contamination.

Benefits: The proposed change allows more flexibility and provides nominal cost savings to business without jeopardizing public health. Public health is protected because the food employees' hands remain clean throughout the glove change process.

Avoided Costs: This proposed change will save water, soap, towels, and time at food establishments where food employees change gloves frequently for aesthetic reasons only (grocery delis, sandwich shops, and so on) rather than for public health reasons.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

Part 3, Food
Subpart B, Sources, Specifications, and Original Containers and Records

WAC 246-215-03225, Sources - Wild Mushrooms

Description: The current rule does not address acquisition, preparation, or service of wild mushrooms in food establishments. The proposed rule:

- Identifies the locations from where wild mushrooms may be harvested;
- Limits wild harvested mushrooms for sale or service to those species identified in the rule;
- Requires wild harvested mushrooms to be cooked to 135°F except for those sold for home use from grocery or farmer's markets;
- Requires the person in charge to keep written documentation for 90 days;
- Gives specific details for the information that must be on the written documentation; and
- Excludes from this rule dried or fresh mushrooms that are grown, processed or packaged in a food processing plant.

Benefits: The proposed rule identifies which wild harvested mushrooms are approved for sale or service by food establishments. A committee of industry members, regulators, and mushroom experts developed the list of mushroom species and harvest locations with food safety as the primary concern. In addition to these requirements, the proposed rule establishes a cooking temperature to reduce toxicity and invoicing and record keeping requirements similar to those required for other food products. Invoicing and record keeping allows the regulatory authority to verify mushrooms are being acquired consistent with the rule and aids in illness investigations should that be necessary. These measures mitigate the public health risk posed by serving wild mushrooms.

Cost: Food establishments that choose to serve or sell wild harvested mushrooms may incur minimal costs associated with the time needed for tracking, processing, and maintaining invoices. However, since food establishments use similar processes for tracking other food purchases, staff assumes the cost to be minimal. In addition, the Department will provide a model form that food establishments can use to track the information this provision requires.

Part 3, Food

Subpart C, Preventing Contamination After Receiving

WAC 246-215-03318, Preventing Food and Ingredient Contamination – Washing Fruits and Vegetables

Description: The rule currently requires food establishments to thoroughly wash produce but does not specify that produce must be rinsed as part of the produce washing procedure. The proposed rule clarifies that washing means "rinsed under running water to remove soil and other contaminants" and specifically adds sprouts to the type of produce that must be washed.

Benefits: This change will ensure more thorough washing of produce. This will reduce the amount of harmful bacteria on the produce, reducing the number of potential foodborne illnesses from fresh produce. The proposed rule requires sprouts to be washed because they are a significant source of foodborne illness. More thorough washing and rinsing procedures and inclusion of sprouts in the types of produce that must be washed will reduce the likelihood of illness outbreaks from fresh produce.

Cost: Businesses that do not rinse produce or wash sprouts may incur nominal costs associated with the added time required to properly wash these food items.

WAC 246-215-03321, Preventing Food and Ingredient Contamination – Pooling of Raw Eggs Prohibited

Description: The current rule prohibits combining eggs for any use other than immediate service in response to a consumer's order and provides no definition for "pooled." This provision was stricter than intended. The Department created an interpretive statement to clarify that pooled was the combination of four or more eggs, and that eggs could be pooled for use in certain low risk foods. The proposed rule incorporates this clarification. It defines "pooled" as "the combination of four or more raw eggs, egg yolks, and/or egg whites." The proposed rule prohibits pooled eggs unless they are used in batters or are pooled immediately before cooking.

Benefits: The proposed rule makes compliance with this provision easier and clearer for food establishments. It protects public health by maintaining the requirement that pooled eggs must be cooked immediately after they are combined thereby reducing the likelihood of illness associated with consuming eggs.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-03339, Preventing Contamination from Equipment, Utensils, and Linens – Wiping Cloths, Use Limitation

Description: The current rule does not include provisions for single-use disposable sanitizer wipes. The proposed rule allows the use of single-use disposable sanitizer wipes and requires them to be used according to label directions. The proposed rule also excludes dry cloths used with spray sanitizer from the requirement to be stored in sanitizer solutions. All other changes

within this section are exempt from significant analysis because they adopt provisions of the 2009 FDA Food Code without material change.

Benefits: The proposed rule provides food establishments more options for sanitizing surfaces after cleaning.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-03348, Preventing Contamination from Equipment, Utensils, and Linens – Refilling Returnables

Description: The rule currently allows food employees to refill customers' reusable take-out beverage containers with non-potentially hazardous food. The proposed rule will now also allow food employees to refill single service cups with non-potentially hazardous food using the contamination free process required when refilling reusable take-out beverage containers.

Benefits: The proposed rule provides flexibility for businesses and consumers without increasing public health risk. Public health is protected because food employees must still refill the cups using a contamination free process.

Avoided Costs: Food establishments may save a nominal amount under the proposed rule because they will use less single service cups.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-03363, Preventing Contamination by Consumers – Food Display

Description: The rule currently requires ready–to-eat food to be fully enclosed in order to protect it from contamination. Food establishments that display hard crusted bread for sale have quality issues with this requirement. The Department issued guidance clarifying that hard crusted breads may be displayed in bags with one end open so long as it is at least 30 inches off the floor. The proposed rule will now incorporate this allowance.

Benefits: The proposed rule provides more flexibility for businesses without increasing public health risk. Public health is protected because the bread is within the bag and the rule requires food such as this to be at least 30 inches off the floor to prevent contamination from dust and debris from the floor as required under WAC 246-215-03369.

Avoided Costs: Food establishments may save a nominal amount of money on food costs because the bread will retain the desired quality and they won't have to discard it as quickly.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

Part 3, Food
Subpart D, Destruction of Organisms of Public Health Concern

WAC 246-215-03400(4)(b), Cooking – Raw Animal Foods
Description: The rule currently allows food establishments to offer raw or undercooked food from a children's menu. The proposed rule will now prohibit raw or undercooked animal food such as raw egg, raw fish, or rare meat from being offered from a children's menu. All other changes within this section are exempt from significant analysis because they adopt standards of the 2009 FDA Food Code without material change.

Benefits: Children, a highly susceptible population, will be less likely to consume raw or undercooked food at food establishments if it is not included on the menu. This will reduce the likelihood of foodborne illness, particularly those caused by the pathogenic organisms *Salmonella* and *E. coli*.

Cost: The proposed rule may cause some food establishments to revise their menus, although staff are not aware of any that currently offer this. Revising menus could include getting rid of an insert, crossing out a menu item, or replacing the menu. As a result, this rule change could result in a minimal cost for food establishments.

WAC 246-215-03415, Cooking – Non-Continuous Cooking of Raw Animal Foods
Description: The rule currently does not speak to the practice of non-continuous cooking (commonly referred to as partial cooking) which is the practice of partially cooking a food to be completely cooked later.

The 2009 FDA Food Code requires food prepared using a non-continuous cooking process to reach a final cooked temperature of 165º Fahrenheit before serving.

Caterers and banquet operators found the 2009 FDA Food Code too restrictive for their current "grill marking" procedures for meats. To address this concern, the proposed rule:

- Defines "grill marked" as food that has been seared using a non-continuous cooking process in which the food is placed on a heated cooking surface for no more than one minute on each side.
- Allows grill marked food to reach the final cook temperature specified in the current rule for that food. For example, chicken must be cooked to 165º Fahrenheit while fish must be cooked to 145º Fahrenheit.
- Allows the food establishment to undercook the food and provide a consumer advisory and does not require the person in charge to develop written procedures for grill marking.

For all other foods prepared using non-continuous cooking, the proposed rule incorporates the 2009 FDA Food Code requirements. These changes are exempt from significant analysis because they adopt standards of the 2009 FDA Food Code without material change.

Benefits: The proposed rule allows caterers, banquet operators, and other food establishments to continue using current grill marking cooking practices rather than prohibit this activity as the FDA Food Code does. Public health is protected by restricting grill marked food to a one minute heating time on each side, and maintaining the requirements of the 2009 FDA Food Code that require food to be properly cooled and refrigerated between partial cooking and final cooking. This limits pathogen growth on the food, thereby keeping the illness potential low.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-03420, Cooking – Unattended Cooking and Hot Holding
Description: The rule currently prohibits unattended *overnight* cooking or hot holding of food unless the food establishment uses continuous temperature monitoring. Unattended cooking means the cooking process is not monitored with either an electronic monitoring device or by a person on the premises. The proposed rule prohibits *all* unattended cooking, no matter when it occurs. Food establishments that leave food to cook without oversight during the day will have to use continuous temperature monitoring.

Benefits: The proposed rule protects public health because it will reduce improper cooking and avoid associated foodborne illnesses.

Cost: Staff assumes very few food establishments do unattended cooking during the day, but if any do, these businesses will need to provide for continuous temperature monitoring. This can be accomplished by using continuous temperature monitoring equipment, or data loggers. The cost for these devices ranges from $199 to $800 depending on style.

Part 5, Water, Plumbing, and Waste
Subpart B, Plumbing System

WAC 246-215-05210, Design, Construction and Installation – Handwashing Facility, Installation
Description: The rule currently requires permanently plumbed handwashing sinks for vendors who offer food samples in food establishments. The proposed rule allows these vendors to have handwashing sinks consisting of:

- Potable, warm, running water;
- Soap and paper towels;
- Insulated container with warm water delivered through a continuous-flow spigot; and
- Wastewater retention tank.

These are the same requirements as handwashing sinks in temporary food establishments. This allowance does not apply to vendors handling raw meat, fish, or poultry.

Benefits: The proposed rule provides more flexibility to businesses without increasing public health risk. The proposed rule may improve vendor handwashing compliance since temporary handwashing sinks can be easily set up right next to vendors. Handwashing has been shown to reduce the incidence of foodborne illness.

Avoided Costs: Food establishments that choose to provide food samples will experience cost savings associated with this proposed change. They will be able to meet the requirements of the rule without adding permanent plumbing or rearranging stores.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

WAC 246-215-05255, Location and Placement of Handwashing Sinks
Description: The rule currently requires handwashing sinks for permanent and temporary food establishments to be located to allow convenient use by employees. The proposed rule specifies that handwashing sinks must be within 25 feet of food preparation, food dispensing, and warewashing areas. Although this is not in the 2009 FDA Food Code, the FDA Plan Review Guide suggests that a handwash sink be located within 25 feet of a work station. This requirement applies to new construction and existing facilities when they are remodeled. It does not apply to existing food establishments until they are remodeled unless the regulatory authority determines it is necessary to protect public health as allowed under WAC 246-215-08105 of the proposed rule.

Benefits: The proposed rule provides more access to handwashing facilities in order to increase handwashing by food service employees. Handwashing has been shown to reduce the incidence of foodborne illness. This change will make locating handwashing sinks clearer when planning food establishments.

Temporary food establishments and those providing food samples will have no cost because they are allowed to have handwashing sinks without permanent plumbing. If the sink is not within 25 feet, the food employee or person in charge can easily move it to meet the requirement of the proposed rule. Mobile food units are so small that by design handwashing sinks are always within 25 feet.

Cost: Permanent food establishments constructed or remodeled after the effective date of this rule may incur additional costs related to installation of an increased number of handwashing sinks. Costs to comply with this rule for new construction are negligible because they would be absorbed in the design and construction process.

Costs to comply with this rule for remodeled food establishments could vary greatly depending on the scope of the remodel, age and condition of the building, and specific construction of the building, e.g., concrete versus wood floors. This results in a range of cost from $280 for simple installation of a sink to an unknown amount for a more significant remodel.

Part 8, Compliance and Enforcement
Subpart B, Permit to Operate

WAC 246-215-08305, Exempt from Permit

Description: The rule currently identifies specific foods that local health jurisdictions may exempt from permit. Vendors who limit their food service to these items do not need to get a permit from the regulatory authority, but must apply for the exemption provided in rule. Most local health jurisdictions charge a nominal fee for the exemption application, but the fee for exemption is lower than the food establishment permit fee. Exemption from permit does not mean exemption from the other requirements of the rule. Vendors are required to follow all applicable provisions of the rule. In addition, vendors are seldom inspected as the exempted foods pose almost no risk to public health. The proposed rule keeps these conditions, but modifies the list of foods exempt from permit by removing two items and adding language that clarifies none of the foods on the list can be potentially hazardous foods.

Food on Current List	Proposed Change
Popcorn and flavored popcorn	Must be made from commercially packaged popcorn and cannot contain potentially hazardous ingredients
Crushed ice drinks	Must be dispensed from a self-contained machine that makes its own ice. Snow cones and shaved ice are not crushed ice drinks, and; therefore, are not exempt from permit.
Corn on the cob	Must be prepared for immediate service, meaning it must be served within 30 minutes of preparation
Roasted nuts and roasted candy-coated nuts	Adds “roasted peanuts” to clarify these are included in this exemption because they are not true nuts.
Deep fried pork skins	Removed from list
Caramel apples	Removed from list

Benefits: These proposed changes ensure that no potentially hazardous foods are exempt from permit. Since vendors selling exempt foods are typically not inspected, this proposed change reduces the risk of foodborne illness. Removing deep fried pork skins and caramel apples also reduces this risk of foodborne illness because pork skins are often improperly cooked and caramel apples involve a lot of hand contact, which is a major risk factor for foodborne illness.

Avoided Costs: Adding clarity to some of the food items reduces time and money vendors might spend trying to determine if their food is exempt from permit or not.

Cost: Removing caramel apples and deep fried pork skins will affect very few vendors because they are rarely sold foods. The few vendors who serve these foods will need to get a permit and pay the associated fee. Fees range from $15 to $159 depending on the county in which the vendor operates.

Part 9, Alternative Food Facilities
Subpart A, Mobile Food Units

Former WAC 246-215-121(20) Pushcart Menu Limitation
Description: The proposed rule eliminates this section. The rule currently defines pushcarts as mobile food units that can be readily moved between locations by being pushed by a single person. Because of the size and limited facilities on pushcarts, the rule restricts their menus to non-potentially hazardous food, hot dogs, and espresso drinks. The current rule also allows the regulatory authority to approve additional menu items. The proposed rule will delete this distinction between types of mobile food units, and pushcarts will be treated like all other mobile food units. The regulatory authority will still be able to restrict pushcart menus based on WAC 246-215-09105.

Benefits: The proposed rule allows more flexibility to businesses without jeopardizing public health. Public health is protected by maintaining the current requirement for regulatory authority evaluation and approval of pushcart menus based on the facilities or equipment.

Cost: This proposed change does not impose any additional costs for those who must comply with the rule.

Part 9, Alternative Food Facilities
Subpart D, Donated Food Distributing Organizations

WAC 246-215-09400, Requirements and Exemptions – Exempt from Permit and Notification Requirement
Description: The current rule exempts donated food distributing organizations (DFDO) from permit. A DFDO is currently defined as any nonprofit organization that distributes food free of charge to the public. This means local health jurisdictions do not charge them fees and usually do not inspect them. They are also exempt from meeting certain provisions of the rule if they only serve food within eight hours of when they prepare it and do not cool and reheat food. The proposed rule changes the definition to be consistent with the original intent of the law, chapter 69.80 RCW, that the rule is based on. It would require those who want to be categorized as a DFDO to donate food *to the needy*.

The current rule requires DFDO to receive cold food at 45°F or below or hot food at 140°F or above. It exempts a DFDO from some other food temperature receiving provisions of the current rule. The proposed rule removes these exemptions and makes requirements more consistent with 2009 FDA Food Code provisions. A DFDO will need to receive most cold food at 41°F or below or hot food at 135°F or above. It will now be clear that a DFDO can receive food at other temperatures if that food is regulated by a law governing its distribution at a different temperature. For example, removing this exemption will allow a DFDO to receive raw shell eggs at 45°F ambient temperature.

The current rule exempts a DFDO from having to sanitize food contact surfaces after cleaning. The proposed rule removes that exemption so a DFDO will be required to sanitize food contact surfaces after cleaning.

The current rule requires a DFDO to store toxic chemicals in accurately labeled containers away from all foods and food service supplies, but it exempts them from all other provisions of Part 7, Poisonous or Toxic Materials. In addition to keeping the storage and labeling requirement, the proposed rule will require a DFDO to comply with all of Part 7 of the rule. Examples of these requirements are:

- Allow only poisonous or toxic materials that are necessary for the DFDO operation;
- Use all poisonous or toxic materials according to law, the food rule, and manufacturer's instructions;
- Not use containers previously used to store poisonous or toxic materials for storing, transporting, or dispensing food;
- Handle and store pesticides according to the food rule; and
- Only keep medicines for employees and to segregate those from food.

The current rule requires a DFDO to serve *all* potentially hazardous food within eight hours of preparation. The intention was that the rule would apply to food prepared in a DFDO. However, a strict interpretation would also mean this restriction applies to food prepared in a permitted food establishment, properly cooled or kept hot, and then donated to a DFDO. The proposed rule allows permitted food establishments to donate potentially hazardous food to a DFDO that was prepared more than eight hours prior to delivery.

Benefits: Public health will be better protected with the proposed definition change because it meets the original intent of the rule and limits the types of food establishments that are allowed to give away food to the public without having a permit and being inspected. Other activities, such as promotional events, will be required to obtain a permit. This means local health jurisdictions will inspect more food establishments, ensuring they are meeting applicable food safety standards. Public health will also be improved with the proposed limitations on the use of poisonous or toxic materials. A DFDO will be able to accept more food because of the proposed changes to the rule for receiving food and the clarification of the eight hour service limitation. This will facilitate distribution of food to the needy.

Cost: Only a few organizations have operated under this exemption without donating food to the needy, but they will now need to obtain permits. The cost for these organizations to obtain a permit ranges from $15 to $808 per event depending on the county in which the organization operates and they type of foods they offer. The cost to comply with the additional requirements of Part 7 is minimal.

Part 9, Alternative Food Facilities
Subpart E, Pre-schools

WAC 246-215-09500 through 09515
Description: The rules currently do not distinguish what a pre-school is so they are required to meet all provisions of the chapter. The proposed rules define pre-schools as "programs that provide organized care and education for children below the age required for kindergarten entry . . . [and] operate for two or more days per week with no child enrolled on a regular basis for more than four hours per day." This definition is consistent with chapter 43.215 RCW. The proposed rules exempt pre-schools from the following provisions as long as they have a limited menu:

- WAC 246-215-02315
- WAC 246-215-03610
- WAC 246-215-04212
- WAC 246-215-04214
- WAC 246-215-04216
- WAC 246-215-04224
- WAC 246-215-04228
- WAC 246-215-04250
- WAC 246-215-04254
- WAC 246-215-04260
- WAC 246-215-04264
- WAC 246-215-04410
- WAC 246-215-04500(1)
- WAC 246-215-04525
- WAC 246-215-04545
- WAC 246-215-04555
- WAC 246-215-04560
- WAC 246-215-04610(2)
- WAC 246-215-05240
- WAC 246-215-06100
- WAC 246-215-06290
- WAC 246-215-06355

In order for pre-schools to be exempt from the above requirements, they must limit their menu as follows:

- Food service is limited to enrolled children, staff, and volunteers at the pre-school;
- Potentially hazardous foods are prepared for immediate service; and
- Cooked, reheated, and/or hot held potentially hazardous foods are not cooled for future service. They must be either consumed hot or discarded each day.

This proposed change does not increase the public health risk because the exemptions only apply if they have a limited menu. If they have a more complex menu, they must follow all the chapter requirements.

Benefits: The proposed changes provide an additional option for pre-schools to comply with the rules without jeopardizing public health. Limiting the menu protects public health because simpler food preparation is safer.

Avoided Costs: Pre-schools that meet the limited menu criteria in the proposed rules will not be required to have the same equipment as other food establishments. This will avoid the cost of upgrading to commercial grade equipment such as refrigerators and stoves. This will save them a significant amount of money. For example, at one internet restaurant equipment supplier, a commercial undercounter refrigerator costs from $835 to $8,835, and gas economy ranges cost from $1,475 to $8,087.75.

Cost: This is a lessening of a current requirement so there is no added cost of the proposed rules.

Probable Benefit and Cost Conclusion

The probable benefits of the proposed rules include protecting public health, being more consistent with the latest FDA Food Code, and providing cost savings and more flexibility for businesses. The proposed rules provide cost savings for food establishments such as pre-schools by reducing the equipment requirements if they limit their menus. They save food employees medical costs and lost wages by eliminating some of the testing requirements when they are ill. Food establishments will save material costs if they choose to refill single service cups, which the proposed rules allow. They will save costs for food establishments that provide samples by allowing temporary handwashing sinks, which are less expensive than permanent plumbing.

The proposed rules clarify what businesses, such as hotels with ice machines, are considered food establishments. They also add flexibility for the person in charge of food establishments by clarifying when they can allow a food employee to return to work after being excluded for an illness. Food employees will have more flexibility regarding washing their hands when changing gloves and when they are allowed to pool eggs. The proposed grill marking provisions will allow food establishments such as catering and banquet operators to be more flexible when preparing large amounts of food.

The proposed rules protect public health by ensuring no potentially hazardous foods are exempt from permit, meaning those serving the most hazardous foods will be permitted and inspected. They also protect public health by requiring rinsing of produce, excluding food employees positive with Norovirus from working in establishments serving highly susceptible populations, providing criteria for food establishments' use of wild mushrooms, and allowing pooling of eggs if they are cooked immediately after they are combined.

Overall, most proposed changes to chapter 246-215 WAC impose no additional costs. Where costs are incurred, the proposed rules provide a mechanism for businesses to provide services that were previously unaddressed in rule, such as with the wild mushroom provisions. Additionally, potential costs are mitigated by the assumed reduction in foodborne illness from the proposed rule changes. One example is the proposed requirement for handwashing sinks to be within 25 feet of food preparation areas. This will impose a cost on new or remodeled food

establishments, but will make handwashing more available for food workers. Handwashing is a crucial food safety practice and is one of the leading factors for reducing foodborne disease.

Based on the preceding analysis, the Board concludes that the probable benefits of the proposed rule exceed the probable costs.

Section 6: What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

RCW 34.05.328(1)(e) requires that agencies determine, after considering alternative versions of the rule and this analysis, that the rule being adopted is the least burdensome alternative for those required to comply.

Descriptions of alternatives considered

Staff worked closely with constituents to minimize the burden of these rules. The Core Workgroup that was convened to provide recommendations for revisions included representatives from:

- the restaurant industry
- the grocery industry
- local health jurisdictions
- the public
- Washington State Department of Agriculture
- Department of Early Learning
- Office of the Superintendent of Public Instruction
- academia

This workgroup debated and voted on proposed changes to the rules.

Several subcommittees of the workgroup were also used to work on more complicated parts of the rules such as employee health, pre-schools, and wild mushroom harvesting. The members of each of these subcommittees represented various stakeholders and evaluated the impacts of the changes throughout the process. In the course of these and other efforts, the following alternatives were assessed and rejected:

Least burdensome determination

Alternative version #1: Adopt the FDA version of Part 2-2, Employee Health, exactly as it appears in the 2009 FDA Food Code.

For Norovirus, the current rules do not require food employees to report a diagnosed illness from Norovirus. The 2009 FDA Food Code requires food employees to report diagnosis of Norovirus. The proposed rules retain the current rule language and do *not* require food employees diagnosed with Norovirus to report the condition to the person in charge.

Compared to this alternative version, the proposed rules are less burdensome for food establishments to comply with because the proposed rules are clearer and more concise. Also,

they give the person in charge of a food establishment more specific criteria to use when making decisions about allowing ill employees to return to work.

Alternative version #2: Don't adopt a new section exempting pre-schools from specified code requirements based on menu complexity. Compared to the alternative version, the proposed rules are less burdensome because it will be easier and less expensive for pre-schools to comply with these reduced equipment standards rather than having to meet the requirements of the entire chapter regardless of the food provided.

Alternative version #3: Don't modify the rule regarding pooled eggs. Compared to the alternative version, the changes to this provision are less burdensome because the current rule prohibits the combining of more than two eggs unless the eggs are broken and prepared for immediate service in response to a consumer's order. Food employees will now be allowed to combine large numbers of eggs immediately before cooking and won't have to spend time changing processes and recipes to meet the requirements of the current rule.

Alternative version #4: Adopt the date marking provisions from the FDA Food Code. The proposed rule is the same as the current rule and does not contain date marking provisions. Compared to the alternative version, the proposed rule is less burdensome because food employees will not have to mark food with expiration dates. This is a savings in labor costs. Local health jurisdictions will not need to spend time learning how to apply this rule and will not spend valuable inspection time on a complicated rule provision with questionable public health benefit.

Alternative version #5: Don't modify the provisions regarding food sources for donated food distributing organizations (DFDO). Compared to the alternative version, the proposed rule is less burdensome because it allows DFDO to receive food from food establishments that has been prepared more than eight hours in advance. Most food that food establishments donate is leftovers they have usually held for more than eight hours. Continuing to prohibit this would decrease the amount of food donations to DFDO. The proposed rule is also less burdensome because it allows DFDO to receive ready-to-eat, non-potentially hazardous packaged food from private homes as well as commercially packaged frozen food. These types of foods are essential donations to a DFDO.

Alternative version #6: Adopt education and certification requirements for harvesters of wild mushrooms. Compared to this alternative version, the proposed rule is less burdensome because it does not impose costs for meeting education and certification requirements. Assuming there would be fewer harvesters under a certification program and therefore reduced supply of wild harvested mushrooms, the proposed rule also does not needlessly reduce the supply of wild mushrooms available to food establishments.

Section 7: Did we determine that the rule does not require anyone to take an action that violates another federal or state law?

The proposed rules do not require those to whom they apply to take an action that violates requirements of federal or state law.

Section 8: Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The proposed rules do not impose more stringent performance requirements on private entities than on public entities.

Section 9: Did we determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary?

The proposed rules do not differ from any applicable federal regulation or statute.

Section 10: Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

The proposed rules are coordinated to the maximum extent practicable with other applicable laws, including rules under the Department of Early Learning, Washington State Department of Agriculture, the United States Department of Agriculture, and the Food and Drug Administration.

Appendix A: Food Code Workgroup Members

Washington State Retail Food Code
2010-2011 Rule Revision Process

Core Workgroup Members

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