

Preliminary Small Business Economic Impact Statement
Chapter 246-215 WAC, Food Service

Washington State Department of Health
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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 risk 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

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

- 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 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 amends 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 to 135 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: Which businesses are impacted by the proposed rule package? What are their North American Industry Classification System (NAICS) codes? What are their minor cost thresholds?

Businesses with Employees

NAICS Code	Description	Number of Establishment Washington	Minor Costs Threshold 1% of Annual Payroll	Minor Costs Threshold 0.03% of Annual Receipt
445110	Supermarkets and other grocery (except convenience) stores	1,431	9,688	26,117
445120	Convenience stores	598	574	2,112
4452	Specialty food stores	630	1,006	1,716
446191	Food (health) supplement stores	225	809	1,661
447110	Gasoline stations with convenience stores	1,750	1,171	9,882
452910	Warehouse clubs and supercenters (this includes sales for the entire store not just food sales)	125	66,082	240,967
624210	Community food services	138	1,351	4,408
722110	Full-service restaurants	5,273	2,829	2,392
722211	Limited-service restaurants	4,821	1,655	1,892
722310	Food service contractors	447	3,565	3,926
722330	Mobile food services	79	336	455

Source: U.S. Census Bureau, 2007 Economic Census, Geographic Area Series
Release Date: 7/1/2011

Preschools are not included in this table because the proposed rule is expected to reduce cost for preschools. Hotels and motels are not identified separately in the table. Although many hotels and motels have restaurant services this analysis assumes that the restaurants will be captured under either the NAICS Code 722110, full-service restaurants, or the NAICS Code 722211, limited-service restaurants.

Section 4: What are the cost estimates per business of the proposed rule?

To determine the possible costs of the proposed rules, staff conducted internet research and collected cost estimates from local health jurisdictions, food service associations, and professional service providers. The cost information is presented below as ranges of cost from lowest to highest.

WAC 246-215-03420, Cooking – Unattended Cooking and Hot Holding

Since unattended cooking is not allowed under the proposed rule, food establishments can use a data logger to meet the requirement for attended cooking. The cost for a wireless data logger varies as indicated below.

- \$199 based on the following costs:
 - Wireless data logger with a data logging program: \$85
 - Thumb drive receiver: \$35
 - Sending unit: \$79
- Data logger with single probe \$300
- Data logger without probes \$400

Based on this information, the costs for requiring attended cooking during the day can range from \$199 to \$400.

WAC 246-215-05255, Location and Placement of Handwashing Sinks

Handwashing sinks must be within 25 feet of food preparation areas. This may require some new food establishments to install additional sinks in new or existing buildings. This requirement is not retroactive so does not affect existing food establishments unless they remodel. This requirement does not apply to temporary food establishments and those providing food samples as these types of activities are regulated under WAC 246-215-09225 and WAC 246-215-05210 respectively.

For new construction, costs to comply with this rule are negligible. Placement of sinks to meet the requirements of the rule 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.

Based on this information, the costs of requiring a handwashing sink within 25 feet of food preparation areas could range from \$280 for simple installation of a sink (\$80 sink and \$200 for labor) to an unknown amount for a more significant remodel.

WAC 246-215-08305, Exempt from Permit

Requires food establishment permits for vendors making caramel apples and pork skins. The following are permit costs from selected local health jurisdictions:

- Benton-Franklin: “Limited Menu” permit category. Annual cost: \$159.
- Chelan-Douglas: “Low Risk” permit category. Annual cost: \$48.
- King: “Limited prep” permit category:
 - Temporary event permit: \$55 per event.

- Farmers market: \$55 per season.
- Pierce: “Limited” permit category:
 - Less than 14 days: \$45 per event.
 - 14 – 21 days: \$68 per event. (This includes the Puyallup Fair which is a 17 day event.)

Based on this information, the costs for permits for caramel apples and pork skins can range from \$48 to \$159.

Summary of Compliance Costs

NAICS Code	NAICS Business Description	Unattended Cooking and Hot Holding	Location and Placement of Handwashing Sinks	Previous Exempt from Permit	Total
445110	Supermarkets and other grocery (except convenience) stores	0	\$280	0	\$280
445120	Convenience stores	0	\$280	0	\$280
4452	Specialty food stores	0	\$280	0	\$280
446191	Food (health) supplement stores	0	\$280	0	\$280
447110	Gasoline stations with convenience stores	0	\$280	0	\$280
452910	Warehouse clubs and supercenters	0	\$280	0	\$280
624210	Community food services	0	\$280	\$159	\$439
722110	Full-service restaurants	\$400	\$280	0	\$680
722211	Limited-service restaurants	\$400	\$280	0	\$680
722310	Food service contractors	0	\$280	\$159	\$439
722330	Mobile food services	\$400	\$280	\$159	\$839

Section 5: Does the rule impose more than minor costs on impacted businesses?

Cost range per business: \$159 - Indeterminate (from Section 4)
 Minor cost threshold - 1% payroll: \$574 - \$66,082 (from Section 3)
 Minor cost threshold - 0.03% of receipts: \$455 - \$240,967 (from Section 3)

As illustrated above, the average known costs the rules impose on businesses may not exceed the minor cost thresholds for payroll or receipts. However, since the cost of installing additional handwashing sinks in a remodeled food establishment is unknown, staff assumes the average cost per business may exceed both of the minor cost thresholds.

Section 6: Does the rule have a disproportionate impact on small businesses?

The costs outlined in Section 4 of this SBEIS apply universally to all businesses, regardless of size. Because of this, staff assumes the proposed rules have a disproportionate impact on small business.

Section 7: Was an effort made to reduce the impact of the rule?

1. Were substantive regulatory requirements reduced, modified, or eliminated?

In the course of rule development, the following alternatives were assessed and rejected because they were overly burdensome:

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 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 provisions of the rule regarding pooled eggs. Compared to the alternative version, the changes to this provision in the proposed rule are less burdensome because the current rule prohibits combining 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 existing rule.

Alternative version #4: Don't modify the provisions of the rule 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 #5: 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.

2. Were record keeping and reporting requirements simplified, reduced, or eliminated?

The date marking requirements of the 2009 FDA Food Code were considered during rule development, but not included in the proposed rule. 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 without an increased risk to public health. 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.

3. Were the frequency of inspections reduced?

This rule revision does not reduce frequency of inspections.

4. Were compliance timetables delayed?

The rules will be implemented a minimum of four months after they are adopted. The effective date is expected to be in the spring of 2013. The delayed effective date allows those who must comply with the rules time to receive training and implement changes to business practices prior to compliance and enforcement activities by the regulatory authority.

5. Were fine schedules for noncompliance reduced or modified?

The proposed rules do not include fine schedules.

6. Were other mitigation techniques created or implemented.

The mitigation techniques included in this rule revision are described above.

Section 8: Were small businesses involved in the rule development process?

Representation for small businesses was provided by the Washington Restaurant Association (WRA) representative who participated on the rule development Core Workgroup. Eighty-five percent of the restaurants the WRA represents are considered small businesses which equates to over 4,000 small businesses. The WRA representative attended all meetings during the

course of rule development which took place monthly for over a year. He contributed to the development of the proposed rules through participation in the workgroup meeting, subcommittee meetings, and email correspondence.

Section 9: Will businesses have to hire or fire any employees because of the requirements in the rule?

The proposed rules do not require the businesses affected to hire or fire any employees.