

Summary of Proposed Changes to Chapter 246-215 WAC, Food Service

DRAFT FOR REVIEW AND COMMENT

Washington is reviewing the 2017 FDA Model Food Code for inclusion in chapter 246-215 Washington Administrative Code, Food Service.

As part of the rule revision process, a draft of the proposed rule is provided for consideration and comment. The following list summarizes proposed additions and modifications to the proposed rule. This list does not include corrections to typographical errors, other editorial corrections, or conventions used that vary from the FDA.

Comments are encouraged.

A final draft will be prepared in late 2019 after a review of comments received. The final draft will be submitted to the state board of health in November 2019 to continue the rule revision process.

For more information, to provide comment, to view timelines, or to be added to email distribution, please email food.safety@doh.wa.gov or see www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/FoodSafetyRules/FoodCodeRuleRevision.

Overall

1. State law requires the state board of health to consider the most current version of the FDA Model Food Code. The 2017 FDA Model Food Code is the most current version available.
2. Washington Administrative Code (WAC) format
 - a. FDA "Chapters" are listed as "Parts" in WAC
 - b. Part 9 is unique to Washington; there is no Chapter 9 in FDA Food Code
 - c. FDA references will be in parentheses after each section title
 - All sections that use FDA Food Code as a basis have been updated by code year (from the 2009 version to the 2017 version)
 - If there isn't an FDA reference it's because that section does not exist in the Food Code
 - References to Core, Priority, Priority Foundation have been removed
3. Several words (such as "shall" instead of "must") are changed to meet WAC convention; additional changes for consistency will be made throughout the rule revision process
4. Potentially Hazardous Foods (PHF) has been replaced with Time/Temperature Control for Safety (TCS) Foods in the FDA Model Food Code and in this version of the draft WAC 246-215. The change is noted in Part 1—Definitions, but each change is not highlighted in remaining portions of the draft language.

Part 1 – Intent, Scope, and Definitions

1. Keeps numbers for definitions, even though they are not used in the FDA Food Code. Note: several definitions are added and removed; numbers will be updated with final draft.
2. Adds "**Active Managerial Control**" definition used within FDA training and guidance
3. Removes mention of "(previously table-mounted equipment)" in definition of "**Counter-Mounted Equipment**" (2009 Food Code)
4. Modifies "**Donated Food Distributing Organization**" to provide clarification that they are food establishments as defined by WAC 246-215
5. Modifies "**Egg Product**" to be consistent with FDA Model Food Code
6. Deletes "**Enterohemorrhagic Escherichia coli (EHEC)**" and all references in the chapter as use was outdated (2013 Food Code). Shiga toxin-producing *Escherichia coli* remains.
7. Maintains deletion of "**Core item**" as this term isn't used on the WA inspection report form

8. Maintains deletion of “material” from “**Corrosion-resistant material**” to fit the context of use
9. Maintains deletion of “**Critical item**” as this term isn’t used on the WA inspection report form
10. Maintains modification of “**Cut leafy greens**” and no additional modifications are proposed since previous adoption of WAC 246-215.
11. Maintains deletion of “area” from “**Dry storage area**” to fit context of use
12. Modifies “**Food establishment**”
 - a) Adds missing FDA Food Code language regarding markets, vending locations and conveyances to (a)(i)
 - b) Maintains addition of fresh herbs to (c)(ii)
 - c) Clarifies apple cider must be pasteurized in (c)(v) and nonReady-to-eat foods may receive no additional processing in (c)(vi) to be considered not a food establishment
 - d) Corrects code reference in (c)(ix) referencing (c)(viii) private kitchens used for bake sales
13. Corrects capitalization of PERMIT in “**Food Worker Card**” to clarify a food worker card is not considered authorization to operate a food establishment as PERMIT is defined in this chapter.
14. Removes “**Grill Marked**” as this definition was unique to Washington and was removed due to federal updates to the noncontinuous cooking section (see WAC 246-215-03415).
15. Aligns language of “**Highly Susceptible Population**” with FDA Model Food Code.
16. Adds “**Intact Meat**” definition from Food Code.
17. Adds “**Mobile Primary Permit**” and “**Mobile Secondary Permit**” to address RCW 43.20.148 (see Part 9 for additional information on mobile food unit changes).
18. Adds language to “**Permit Holder**” to clarify operators that are not required to hold a permit (such as donated food distributing organizations) are still considered responsible for the operation.
19. Removes “**Potentially Hazardous Food**”. This phrase replaced with “Time/Temperature Control for Safety Food (TCS)” throughout the entire rule. (TCS was introduced in 2005 Food Code and PHF was phased out in successive versions)
20. Restricts public advertising for community “**Potluck**” events.
21. Adds language to “**Reservice**” to explicitly exclude food on a monitored self-service operation from being considered served.
22. Modifies “**Service Animal**” to reflect changes to the statewide definition of service animal in RCW 49.60.218 effective in January 2019.
23. Modifies “**Shiga toxin-producing E. coli**”.
24. Adds “**Time/Temperature Control for Safety Foods (TCS)**”. First used the FDA Food Code in 2005, this term replaces “Potentially Hazardous Foods” throughout the document. No other changes were made to the definition in the 2013 version of WAC 246-215.
25. Adds language to “**Vending Machine**” to include additional forms of payment.

Part 2 - Management and Personnel

1. **WAC 246-215-02110** Adds Certified Food Protection Manager requirement for at least one person in charge per establishment have a valid certification from an accredited program by July 1, 2021. (2013 Food Code requires one per establishment and 2017 Food Code requires one per shift; Washington proposes to adopt the 2013 version with a delayed implementation and focus on Active Managerial Control)
2. **WAC 246-215-02115**
 - a) Adds verification of temperature and safe storage of foods delivered during non-operating hours. (2017 Food Code)
 - b) Adds oversight of routine food temperature monitoring during hot and cold holding. (2017 Food Code)
 - c) Adds language requiring notification of employees of responsibility to report foodborne illnesses and symptoms to the person in charge. (2017 Food Code)
 - d) Adds requirement to have written procedures and plans to ensure active managerial control.

3. **WAC 246-215-02200 through 02255**

- a) Food employees that work in a facility serving a Highly Susceptible Population need to report a diagnosis or exposure to potential foodborne illness to the person in charge.
 - b) Food employees need to report to the person in charge and be excluded from the food establishment if they have a diagnosed infection with norovirus or any species of *Salmonella* (in addition to hepatitis A, Shiga toxin-producing *E. coli* or *Shigella*).
 - c) Person in charge must ensure a conditional employee that exhibits symptoms of foodborne illness not become a food employee until symptoms have resolved.
 - d) Allows medical documentation to be presented to the person in charge or the regulatory authority if a food employee has other conditions that allow working without special restrictions.
 - e) Removes the reference to the “Control of Communicable Disease Manual” to allow for the local health officer to use measures deemed necessary to make health determinations.
 - f) Includes approval of the regulatory authority to remove exclusion from jaundice restrictions.
4. **WAC 246-215-02320** Amended to align text with applicable federal rules regarding use of hand antiseptics as a food additive. (2013 Food Code)
5. **WAC 246-215-02406** New section added regarding covering bandages located on the wrist, hand, or finger when working with exposed food. (2017 Food Code)
6. **WAC 246-215-02410** Adds exceptions listed in FDA Food Code regarding hair restraint requirements.
7. **WAC 246-215-02500** New section added requires written procedures for clean up of vomiting and diarrheal events in the food establishment.

Part 3 – Food

- 1. **WAC 246-215-03235** Allows for receipt of *fresh* rice-based noodles processed in facilities licensed by Washington State Department of Agriculture to be received at 70°F or colder as long as the noodles are properly reheated or cooled immediately upon receipt.
- 2. **WAC 246-215-03280** Changes section title to clarify that the section applies to treated pre-packaged juice from a commercial processor. (2005 FDA Food Code)
- 3. **WAC 246-215-03290** Adds requirement to include both the first and last dates shellstock are served from a container on the shellstock tag. Also clarifies that shellstock with different certification numbers may not be commingled. (Food Safety Advisory Council and 2017 Food Code)
- 4. **WAC 246-215-03300**
 - a) (4) incorporates a modified clarification from the 2017 Food Code that allows for bare hand contact for ready-to-eat food that will be cooked to at least 145°F before service.
 - b) (5)(c)(i) includes clarification from Food Code regarding the requirements for the written employee health plan for establishments that have approved bare hand contact with ready-to-eat food.
 - c) (5)(h) adds the caveat that if a bare hand contact with ready-to-eat food allowance is revoked or discontinued it may not be reinstated without written approval.
- 5. **WAC 246-215-03315** Includes allowance for grapes to have sulfiting agents before receipt by the food establishment. (2005 Food Code)
- 6. **WAC 246-215-03318** Removes reference to raw when discussing fruits and vegetables (2005 Food Code) and includes new language regarding on-site generation of produce washing chemicals (2011 Supplement).
- 7. **WAC 246-215-03330** Specifies that linens may be used to contact food (2013 Food Code)
- 8. **WAC 246-215-03336** Clarifies that napkins used in this section refers to cloth napkins, not paper. (2013 Food Code)
- 9. **WAC 246-215-03348** Allows consumer-owned reusables to be returned for refilling (2017 FDA Food Code) and modification in (10) provides allowance for establishments to further expand refilling reusables under a written plan.
- 10. **WAC 246-215-03369** Corrects missing POULTRY (editorial)

11. **WAC 246-215-03372** Adds subsection unique to Washington to allow the re-service of certain foods under an approved plan
12. **WAC 246-215-03400**
 - a) Alters cooking temperature for comminuted meat to 158°F instantaneous (instead of 155°F for 15 seconds)
 - b) Includes new FDA Food Code cooking dwell time for comminuted meat of 17 seconds (instead of 15 seconds) to chart allowable under an approved plan
 - c) Updates dwell time for poultry and other products cooked to 165°F to instantaneous (instead of 15 seconds) to align with FDA and USDA standards
13. **WAC 246-215-03410** Replaces 'fruits and vegetables' with 'plant foods'. (2017 Food Code)
14. **WAC 246-215-03415** Noncontinuous cooking section modified to align with current Food Code final cooking temperatures and removal of Washington-specific section on grill marking. (2013 Food Code)
15. **WAC 246-215-03425**
 - a) Corrects language regarding holding products for a minimum time (2009 Food Code)
 - b) Adds scallop products with only adductor muscle exempt from parasite destruction (2013 Food Code)
 - c) Corrects language to include aquacultured fish and skein-free fish eggs as exempt from parasite destruction requirements (2009 Food Code).
 - d) Adds fresh finfish that are served undercooked for an individual consumer's order with a modified consumer advisory as exempt from parasite destruction.
16. **WAC 246-215-03440** Clarifies that reheating provision applies to all commercially processed TCS foods—not just those immediately removed from intact package. (2013 Food Code)
17. **WAC 246-215-03510** Adds requirement that vacuum-packaged fish labeled to be kept frozen until use must be removed from the reduced oxygen environment before thawing in refrigeration or immediately after thawing under running water. (2013 Food Code)
18. **WAC 246-215-03515** Clarifies alternative cooling procedures allowed in Washington, particularly regarding intact pieces of meat.
19. **WAC 246-215-03526 and WAC 246-215-03527** Adds date marking and storage time requirement for refrigerated TCS foods held more than 24 hours, with some exceptions. (1999 Food Code)
20. **WAC 246-215-03540** Extends the hold time for raw, vacuum-packaged products from 14 days to 30 days without a variance, clarifies that plans must be submitted to the regulatory authority prior to implementation, and updates the cold holding requirements. Additionally, allows vacuum packaging of raw or ready-to-eat foods that are properly labeled and refrigerated for up to 48 hours without a HACCP plan. (2013 FDA Food Code)
21. **WAC 246-215-03610** Adds labeling requirements for astaxanthin a color additive potentially present in salmonid fish (2013 Food Code). Also editorial correction in (3)(b) to reference proper subsection.
22. **WAC 246-215-03620** Adds modification for consumer advisory to allow operators that want to serve partially-cooked fresh fish without parasite destruction (freezing). The practice is currently not allowed.

Part 4 – Equipment, Utensils, and Linens

1. **WAC 246-215-04335** Aligns language regarding small-diameter probe with Food Code. (2001 Food Code)
2. **WAC 246-215-04340** Requires irreversible temperature indicator to be accessible for measuring utensil surface temperature in mechanical warewashing operations. (2013 FDA Food Code)
3. **WAC 246-215-04350** Adds new section to require that cleaning and sanitizing solutions to be available for use during all hours of food preparation. (2017 FDA Food Code)
4. **WAC 246-215-04565** Adds language regarding on-site generation of chemical sanitizers. (2017 FDA Food Code)
5. **WAC 246-215-04605** Requires cleaning of food equipment used with raw fish, a major food allergen. (2013 Food Code)

6. **WAC 246-215-04650** Section deleted and requirements relocated to WAC 246-215-03348. (2013 FDA Food Code)

Part 5 – Water, Plumbing, and Waste

1. **WAC 246-215-05255** Allows regulatory authority to approve handwashing sink locations greater than 25 feet of food preparation, food dispensing, and warewashing areas

Part 6 – Physical Facilities

1. **Subpart C and D** Aligns section titles with Food Code (replaces Handwashing ‘facilities’ with Handwashing ‘sinks’)
2. **WAC 246-215-06350** Corrects spelling of ‘designated’ instead of ‘designed’.
3. **WAC 246-215-06570**
 - a) Reconfigures (c) to clarify that it’s service animals that may be in dining and sales areas.
 - b) Also adds a new section (d) allowing dogs in outdoor areas within prescribed parameters.

Part 7 – Poisonous or Toxic Materials

1. **WAC 246-215-07220** Aligns language regarding sanitizing solutions generated on-site with Food Code (2011 Food Code Supplement)
2. **WAC 246-215-07225** Aligns language regarding chemicals used to wash or peel raw fruits or vegetables with Food Code (2011 Food Code Supplement)
3. **WAC 246-215-07235** Aligns language regarding chemicals used as drying agents with Food Code (2011 Food Code Supplement)

Part 8 – Compliance and Enforcement

1. **WAC 246-215-08215** Adds new specification to include general information with the HACCP plan, clarifies requirement to include any information required, clarifies what a flow diagram should include, clarifies either food employees or the person in charge may monitor critical control points and take corrective actions, clarify training and supervisory plans required (2017 Food Code)
2. **WAC 246-215-08305** Adjusts the section title to clarify the section is not exempt from food safety but may be exempt from permit with approval. Also reorders list of foods and removes restriction on ‘immediate service’ of cooked whole peppers and corn.
3. **WAC 246-215-008350** Adds requirement for permit holder to notify customers that a copy of the most recent inspection report is available. (2013 Food Code)
4. **WAC 246-215-08410** Adds new paragraph to address access to training and continuing education of inspectors. (2017 Food Code)
5. **WAC 246-215-08455** Adds new language allowing continued operation during times of electrical or water interruptions with an approved written emergency operation plan. (2017 FDA Food Code)

Part 9 - Alternative Food Facilities (sections in Part 9 are not in FDA Model Food Code)

1. **WAC 246-215-09100** Removes the language regarding permit holders obtaining approval from other jurisdictional agencies prior to operating a mobile food unit and adds a requirement for permit holders with secondary permits to notify regulatory authorities regarding permit suspensions.
2. **WAC 246-215-09110** Reconfigures section for readability.
3. **WAC 246-215-09115** Removes requirement for mobile food unit itinerary to be provided at the time of plan review (adjusted to providing itinerary when operational) and provides plan contents for mobile food unit secondary permits using plan review reciprocity. Plan review reciprocity is a legislative change to chapter 43.20 RCW.
4. **WAC 246-215-09125** Allows for a regulatory authority to approve cooling on a mobile food unit without a variance and aligns reheating requirements in mobile food units with other food establishments.
5. **WAC 246-215-09126** Adds a new section regarding commissaries and usage.

6. **WAC 246-215-09127** Adds a new section regarding commissary exemptions as described in chapter 43.20.148 RCW.
7. **WAC 246-215-09130** Removes section restricting cooking thickness of meat to one inch on mobile food units. Meat thickness and other menu approvals are considered during plan review.
8. **WAC 246-215-09150** Updates section to reflect increased approvable distance (from 200 to 500 feet) for restroom access without a variance.
9. **WAC 246-215-09155** Reconfigures section to clarify that regulatory authority may approve a mobile food unit without a three-compartment sink if the menu, processes, equipment, and commissary availability provide safe operation.
10. **WAC 246-215-09160** Requires mobile food units to permanently display the business name on the exterior of the mobile food unit and requires vending itinerary to be submitted through a method acceptable to the regulatory authority.
11. **WAC 246-215-09180** Removes movable buildings with lack of permanent plumbing from the mobile food subpart.
12. **WAC 246-215-09400** Clarifies initial and annual reporting requirements from the donated food distributing organization and requires regulatory authority to provide written approval. Section is also modified regarding exceptions for equipment and facilities throughout subpart.
13. **WAC 246-215-09405** Modifies section regarding equipment to support changes in later sections in subpart.
14. **WAC 246-215-09406** Adds new section to clarify food handling oversight expected by person in charge at donated food distributing organization.
15. **WAC 246-215-09407** Adds new section regarding cleanliness of transport vehicles owned by donated food distributing organizations.
16. **WAC 246-215-09410** Details handwashing, food preparation, and warewashing sink facilities needed at a donated food distributing operation based on varying levels of food handling.
17. **WAC 246-215-09415 and 09420** Expanded sections to clarify food sources acceptable for donation to donated food distributing organizations.
18. **WAC 246-215-09425** Section restricts donated food distributing organizations from serving or distributing raw unpasteurized milk or foods prepared with specialized processes at donor kitchens.
19. **WAC 246-215-09430** Adds requirement to include additional information on the label of foods repackaged at a donated food distributing organization.
20. **WAC 246-215-09435** Increases record retention at donated food distributing organizations from 30 to 90 days.