

CONCISE EXPLANATORY STATEMENT

Chapter 246-215 WAC, Food Service

Public Hearing: October 13, 2020

Adoption: October 13, 2020

Effective Dates: Select sections January 15, 2021; Full Rule March 1, 2022

Table of Contents

Purpose of Rulemaking1

Changes to the Proposed Rule.....2

Comments on Proposed Rule2

 Topic: Definitions, Abbreviations, and Acronyms, WAC 246-215-01105..... 2

 Topic: Certified Food Protection Manager Requirement, WAC 246-215-02107 2

 Topic: Responding to Vomiting and Diarrheal Contamination, WAC 246-215-02500..... 3

 Topic: Specifications for Receiving—Temperature, WAC 246-215-03235..... 3

 Topic: Refilling Reusable Containers, WAC 246-215-03348..... 3

 Topic: Date Marking, WAC 246-215-03526..... 4

 Topic: Methods—Prohibiting Animals, WAC 246-215-06570 4

 Topic: Dogs in Outdoor and Indoor Areas, WAC 246-215-06570 (4-5)..... 4

 Topic: Condition of Retention—Responsibilities of the Permit Holder, WAC 246-215-08350..... 4

 Topic: Imminent Health Hazard—Ceasing Operations and Reporting, WAC 246-215-08455 4

 Topic: Food Sources—Donated Foods, WAC 246-215-09415 5

 Topic: Rule Effective Date..... 5

Remaining Public Opposition to the Rule.....5

Purpose of Rulemaking

RCW 43.20.145 requires the State Board of Health (Board) to consider the latest version of the Food and Drug Administration (FDA) Food Code in adopting Washington’s state food safety rules. The previous rules were based on the 2009 FDA Food Code. Since then, the 2013 and 2017 FDA Food Code versions were published. The state rules have been revised to reflect these new standards and to:

- 1) Prevent foodborne illness by identifying food safety requirements for operators in restaurants, caterers, mobile units, farmers markets, community events, private homes, schools, hospitals, and others that provide food to the public,
- 2) Compile and incorporate lessons learned since the last rule update from knowledge acquired from illness outbreaks, academic partners, industry representatives, and nationally-recognized food safety standards, and

- 3) Reflect stakeholder process by using information from the legislature and people affected by the rule to provide clear and consistent requirements regarding safe food preparation, storage, and handling for the state of Washington. Other provisions of the rules were revised to clarify the intent.

Changes to the Proposed Rule

The adopted rules made three non-substantial changes to the proposed rule identified and explained in the summary of comments section below. One additional change removed an unnecessary and confusing term. All other changes are only editorial.

- Modification of WAC 246-215-03235(4): Clarification that freshly-made rice noodles may be served within 4 hours of production (and not only immediately reheated or cooled).
- Modification of WAC 246-215-08350: Clarification that an amended operating permit issued by the regulatory authority may be used to meet the public notification of inspection report availability.
- Strike WAC 246-215-06570 (4)(j) to remove the proposed requirement that food establishments post signage that dogs are allowed in outdoor areas of the establishment.
- Removal of an extraneous phrase “and nontime/temperature control for safety food” in WAC 246-215-03348(4). This term was unnecessary and potentially confusing.

Comments on Proposed Rule

The information below summarizes and includes the state Board of Health and Department’s responses to comments received on the referenced rule.

Topic: Definitions, Abbreviations, and Acronyms, WAC 246-215-01105.

Comment Clarify the difference between Person in Charge and Certified Food Protection Manager (CFPM).

Response

No change. The proposed rule modified the FDA Food Code to allow the CFPM to be an employee (who does not need to be on premises at all times) and not required to be the Person in Charge (who is required to be on premises).

Topic: Certified Food Protection Manager Requirement, WAC 246-215-02107

Comment Seasonal operators with minimal food should be exempt from requirement. Requirement would be an economic burden, particularly in the first year, to small operations or donated food. Changes to provisions should be viewed with a compassionate lens toward unique situations and contemplate strong educational support.

Response

No change. The Department will also work with the Food Safety Advisory Council to develop guidance to identify low risk food establishments that are exempt from requirement. Department staff will develop educational materials to be available in a variety of languages.

Topic: Responding to Vomiting and Diarrheal Contamination, WAC 246-215-02500

Comment Include exact procedures for Vomit Diarrhea Cleanup in rule. Proposed rule needs exact concentration of parts per million of cleaning solution to kill viral and bacteria contaminants. Proposed rules should state if bio bags are needed for disposal.

Response

No change. Staff will work with the Food Safety Advisory Council and communicable disease and academic partners to provide written guidance on cleanup of food environments exposed to foodborne pathogens, vomiting, and diarrhea.

Topic: Specifications for Receiving—Temperature, WAC 246-215-03235

Comment Amend to allow grocery delivery services to process, hold and transport rice noodles to end consumers at ambient temperatures. The requirement to immediately reheat or cool upon receipt limits the benefits of the rule change. California allows fresh rice noodles to be served without refrigeration up to four hours after they're made.

Response

The Board adopted a modification to the rule language that allows freshly-made rice noodles to be served within four hours of production.

Topic: Refilling Reusable Containers, WAC 246-215-03348

Pro Comment Reduces single-use, excessive packaging with every food purchase. Plastic packaging is ubiquitous and difficult or unable to be recycled. Benefit to businesses, consumers, municipalities, and the environment. Provide for self-serve, ready-to-eat food without employee assistance.

Con Comment Proposal is not based on science and has food safety implications, cross contamination challenges and is a liability to food establishments. Potential or unknown exposure to employees, facilities, and customers as customer-owned containers may not be washed, rinsed, sanitized.

Response

No change. Provision is optional and requires an approved, written plan submitted by an operator. Provision will provide consumer pressure, but industry may elect to participate as capacity allows. Includes contamination-free self-service of ready-to-eat foods. The Department will work with the Food Safety Advisory Council to provide written guidance for application.

Topic: Date Marking, WAC 246-215-03526

Comment Cheese and deli meats are not clearly labeled with moisture content to determine need for marking. Proposal puts burden on food establishments to determine if product needs to be marked. State needs to produce list of all products that need date marking (until then, no penalty). Burden on operators, particularly on small operations or ethnic facilities, and regulatory authority.

Response

No change. The Department will develop and maintain a list of cheeses and deli meat products exempt from the provision and focus enforcement on selected products listed as high-risk for severe listeriosis. The adopted rule allows for reheat of foods without discard in food establishments that do not serve highly susceptible populations. In addition, the Department will indicate in writing the high-risk products as red, critical factors requiring remediation.

Topic: Methods—Prohibiting Animals, WAC 246-215-06570

Comment Amend rule to allow food establishments to provide dog treats. Strike notification requirement for dogs in outdoor environments. Since service animals are already permitted inside retail food service establishments, signage does not offer a guarantee that a customer with allergies will not be exposed to pet hair/dander if they choose to enter our stores or eat in an outdoor dining area.

Response

The Board adopted a modification to the rule language by striking the entirety of WAC 246-215-06570 (4)(j) related to signage for dogs in outdoor areas of the food establishment.

Topic: Dogs in Outdoor and Indoor Areas, WAC 246-215-06570 (4-5)

Comment Support the proposed change to allow dogs in outdoor areas of establishments.

Response

No response needed.

Topic: Condition of Retention—Responsibilities of the Permit Holder, WAC 246-215-08350

Comment Explicitly allow language requirement on the already-displayed license.

Response

Board adopted a modification to the language to allow food establishments to post “a modified operating permit provided by the REGULATORY AUTHORITY” to satisfy retention.

Topic: Imminent Health Hazard—Ceasing Operations and Reporting, WAC 246-215-08455

Comment Strike notification requirement for imminent health hazards.

Response

No change. Food establishments must notify the regulatory authority if the emergency operation plan is activated to ensure follow up if needed.

Topic: Food Sources—Donated Foods, WAC 246-215-09415

Comment Do not adopt proposal that removes the exemption for donated red meats via 4H and FFA programs.

Response

No change. The current rule is out of compliance with state law. Custom slaughter of livestock must be conducted in an approved facility in accordance with chapter 16.49 RCW. The Department will continue to work with other agencies and partners to identify available avenues to safely increase food donation going forward.

Topic: Rule Effective Date

Comment Delay implementation until at least 8 months after return to Safe Start Phase 4 (COVID-19 Governor’s Proclamation 20-24.).

Response

The Board elected to phase in the effective dates for the sections affected by legislative activity on January 15, 2021 and extend the effective date for the remainder of chapter to March 2022.

- **Effective January 15, 2021:** Rule sections addressing legislative changes
 - WAC 246-215-01115 Definitions (including service animals and the removal of lemonade/beverage stands as defined from being considered a food establishment)
 - WAC 246-215-03235 Ambient receiving temperature of Freshly-Made Rice Noodles
 - WAC 246-215-06570 Pet dogs allowed indoors at food establishments with very limited food service
 - WAC 246-215-09100 through WAC 246-215-09160 Mobile food units, commissaries, mobile plan review
- **Effective March 1, 2022:** All remaining provisions of the rule including the delayed implementation of the Certified Food Protection Manager certification requirement in WAC 246-215-02107

Remaining Public Opposition to the Rule

Washington Hospitality Association, Northwest Grocers, and Washington Food Industry Association still oppose allowing food establishments the option to fill consumer-owned containers. The Washington Food Industry Association also objects to the date marking section. The Department has agreed to diligently work with the statewide Food Safety Advisory Council, of which Washington Hospitality Association and the Washington Food Industry Association are members, to determine guidelines for these and other provisions in the revised rule.