



# Chapter 246-215 WAC Rule Revision Public Hearing

Washington State Board of Health  
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# Presenter

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# Food Rule Revision: Public Health Rationale

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## **Prevent foodborne illness**

- Identify 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

## **Compile lessons learned**

- Incorporate knowledge acquired from illness outbreaks, academic partners, industry representatives and nationally-recognized food safety standards

## **Reflect stakeholder process**

- Use information from the legislature and people affected by the rule to provide clear and consistent requirements regarding safe food preparation, storage, and handling in the state of Washington

# Food Safety Advisory Council Members

Representing	First	Last	Term
Academia	Stephanie	Smith	10/1/2021
Consumers	Sarah	Schacht	10/1/2021
Farmers Markets/Temporary Food	Colleen	Donovan	10/1/2021
FDA	David	Engelskirchen	10/1/2021
Grocery	Michael	Latham	10/1/2021
Local Health Jurisdiction – Voting	Jessica	Gehle	10/1/2021
Local Health Jurisdiction – Voting	David	Kavanagh	10/1/2021
Local Health Jurisdiction – Voting	Steve	Main	10/1/2021
Local Health Jurisdiction – Voting	Jessica	Pankey	10/1/2021
Local Health Jurisdiction – Alternate	Lisa	Breen	10/1/2021
Local Health Jurisdiction – Alternate	Kristina	Hollatz	10/1/2021
Local Health Jurisdiction – Alternate	Brigitte	Bashaw	10/1/2021
Local Health Jurisdiction – Alternate	Timm	Taff	10/1/2021
Mobile Foods	Lori	Johnson	10/1/2021
Restaurant	Samantha	Louderback	10/1/2021
Schools	Leanne	Eko	10/1/2021
State Facilities	Susan	Shelton	10/1/2021
Tribes	Karin	Knopp	10/1/2021

## **Mission**

The mission of the Retail Food Safety Advisory Council is to foster public-private sector communication and cooperation and to promote food safety through the consistent implementation and evidence-based application of the Washington State Retail Food Code.

# Rule Revision Activity Highlights

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## ● **Summer 2018: Filing of CR-101**

- June 14: State Board of Health briefing
- July 2: File CR-101
- July 12 – Aug 29: Unofficial comment period on updated 2017 FDA Food Code

## ● **Fall 2018 – Fall 2019: Stakeholder Review and First Draft**

- Sept – May: Monthly FSAC meetings to review comments
- May 31 – July 31: First draft and informal comment period
- Aug 14: State Board of Health update

## ● **Fall 2019 – Fall 2020: Filing of CR-102**

- Oct 23: Final Food Safety Advisory Council review
- Dec 31: Final proposed rules and required analyses
- Apr 8: State Board of Health briefing
- July 22: File CR-102
- Sep 29: Official public comment window closed

# Comments in **Support** of Proposed Provision

## Dogs in outdoor and indoor areas

WAC 246-215-06570 (4-5)

- National pet product retailer (1)
- Washington winery owner (1)
- PCC Community Markets

### Summary of Comments

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

Agree with proposed restrictions to allow outdoor dogs.

Markets request that inspection and enforcement provisions be added to assist food establishments in carrying out these additional standards.

### DOH Staff Comment

DOH will provide guidance. Service animals are protected under ADA. DOH will identify guidance from other agencies related to service animals (such as Human Rights Commission or Department of Justice) for stakeholders.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.  
DOH to provide guidelines in advance.**

# Comments **For** and **Against** a Proposed Provision

## Certified food protection manager

WAC 246-215-02107

- Seasonal Washington Food Business Selling Ice Cream (1)
- New Hunger Coalition- Coalition of food pantries

### Summary of Comments

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.

### DOH Staff Comment

Guidance to be developed through Food Safety Advisory Council to identify low risk food establishments that are exempt from requirement. Educational materials will be developed and available in a variety of languages.

### DOH Staff Recommendation

**No change. Adopt rule as proposed with 1-year delayed implementation. DOH to issue guidelines in advance.**

# Comments **For** and **Against** a Proposed Provision

## Refilling Reusable Containers

WAC 246-215-03348

### For

- Consumers (400+)
- Seattle Aquarium
- Starbucks
- PCC Community Markets

### Against

- Washington Hospitality Association
- Washington Food Industry Association

### Summary of Comments

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.

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.



# Comments **For** and **Against** a Proposed Provision, cont.

## Refilling Reusable Containers

WAC 246-215-03348

### Options

1. Maintain current language: No refilling of beverages with time temperature control for safety food.
2. Adopt 2017 FDA current language: Other than glassware, will not allow customer-owned containers to be refilled at a food establishment.
3. Adopt proposed rule language.

### DOH Staff Comment

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. DOH will provide guidance for application.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Comments **Against** a Proposed Provision

## Date Marking WAC 246-215-03526

- Washington Food Industry Association
- Regulator

### Summary of Comments

Cheese and deli meats are not clearly labeled to identify 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.

### DOH Staff Comment

DOH 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.

Proposed modification allows for reheat of foods without discard in food establishments that do not serve highly susceptible populations.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Comments **Against** a Proposed Provision

## Food Sources – Donated Foods

WAC 246-215-09415

- Consumer (1)

### Summary of Comments

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

### DOH Staff Comment

Custom slaughter of livestock must be conducted in accordance with chapter 16.49 RCW.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Request to Modify Proposed Rule

## Specifications for Receiving -- Temperature

WAC 246-215-03235 (4)

- Consumer

### Summary of Comments

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.

### DOH Staff Comment

The proposed language can be modified to indicate service within four hours is acceptable.

### DOH Staff Recommendation

**Modify provision to: “Freshly made ASIAN RICE-BASED NOODLES ...must be served within four hours of production ... or immediately cooled in accordance with WAC 246-215-03515(3).”**

# Request to Modify Proposed Rule

## Responding to Vomiting and Diarrheal Contamination

WAC 246-215-02500

- Washington Food Industry Association

### Summary of Comments

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 and bio bags are needed for disposal.

### DOH Staff Comment

Staff will work with communicable disease and academic partners to provide written guidance on cleanup of food environments exposed to foodborne pathogens, vomiting, and diarrhea.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Request to Modify Proposed Rule

## Clarify Person in Charge and Certified Food Protection Manager WAC 246-215-01100

- Washington Food Industry Association

### Summary of Comments

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

### DOH Staff Comment

Proposed modification of CFPM changes FDA definition from “Person in Charge” to “Employee”

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Request to Modify Proposed Rule

## Strike Notification Requirement for Imminent Health Hazards

WAC 246-215-08455(3)(c)

- Washington Food Industry Association

### Summary of Comments

Strike notification requirement for imminent health hazards.

### DOH Staff Comment

FDA provision allows for continued operation during short-term power or water outages. We concur with need to notify regulatory authority if the emergency operation plan is activated to ensure follow up if needed.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Request to Modify Proposed Rule

## Prohibiting Animals WAC 246-215-06570 (4)(j)

- Starbucks

### Summary of Comments

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.

### DOH Staff Comment

The current proposed language prohibits employees handling pets, but pet snacks may be provided to pet owners.

### DOH Staff Recommendation

**Modify provision by striking the entirety of WAC 246-215-06570 (4)(j) related to signage for dogs in outdoor areas of the food establishment.**



# Request to Modify Proposed Rule

## Condition of Retention

WAC 246-215-08350(11)

- Washington Food Industry Association

### Summary of Comments

Explicitly indicate that it is ok to have language requirement on the already-displayed license.

### DOH Staff Comment

Operating permits are issued by the regulatory authority and must be posted for public review.

### DOH Staff Recommendation

**Modify provision:** “Notify customers that the inspection report ... is available for review by posting a sign, placard, **or modified operating permit** in a location ...conspicuous to customers or by another method acceptable to the REGULATORY AUTHORITY.

# Request to Modify Proposed Rule

## Seek authority to pre-empt local health discretion

- Washington Food Industry Association

### Summary of Comments

DOH should seek authority to pre-empt local health jurisdiction.

### DOH Staff Comment

This is likely a legislative change as local control is covered under the state constitution and state law.

Inconsistent application of the food rule across the state was discussed often throughout the rule revision process.

FSAC issue review, written guidance, and increased education are intended to increased consistency.

### DOH Staff Recommendation

**No change. Adopt rule as proposed.**

# Request to Modify Proposed Rule

## Effective date of rule

- Washington Hospitality Association

## Summary of Comments

Delay implementation until at least 8 months after return to Safe Start Phase 4.

## DOH Staff Recommendation

Delay effective date of rule until March 2022 with the following alterations.

1. Delay the Certified Food Protection Manager requirement to March 2023.
2. Approve the following provisions related to legislative changes effective January 1, 2021.
  1. WAC 246-215-01115(113) Modified definition of Service Animal RCW 49.60.
  2. WAC 246-215-03235(4) Rice-Based Noodles RCW 43.20.145.
  3. WAC 246-215-01115(50)(xvi) Remove lemonade stands from food establishment definition.
  4. WAC Part 9, Subpart A Mobile food units RCW 43.20.149 and RCW 43.20.148.
  5. WAC 246-215-06570 allowing dogs in establishments with limited food prep RCW 66.24.240(7).

# Key Changes without Official Comment

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- **Employee Health**
- **Bare Hand Contact with RTE Foods**
- **Exempt from the definition of food establishment**
  - Bed and breakfasts up to 2 bedrooms
  - Lemonade stands
- **Raw Milk**
  - Changed “Off premises” to “not used as ingredient”
  - Explicitly disallowed for donation
- **Fish/Shellfish/Meat**
  - Consumer Advisory for undercooked fresh fish
  - 158°F Cooking standard for ground beef/sausage

# Lessons Learned & Moving Forward

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- Current rule was not fully understood
  - Delayed implementation requested to allow for education
  - Additional training materials and modalities will be developed for this rule revision education period
- Consistency gaps were frequently identified
  - Food Safety Advisory Council efforts
    - Development of guidance materials
    - Issue review
    - Stakeholder outreach
  - Written public health rationale for Washington modifications to be prepared



Thank you.

Any questions?

