



Chapter 246-215 WAC  
Food Safety Program  
Washington State Board of Health  
April 8, 2020



**Susan Shelton**

*Public Health Advisor*

Susan.Shelton@doh.wa.gov



@WADeptHealth

# On the Menu: Goals for Today

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- Briefly explain the public health rationale of the food rule and history of the revision process
- Highlight the rationale and concerns identified in the draft rule language
- Review lessons learned and plans going forward

# Food Rule: Public Health Rationale

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- **Prevention of foodborne illness**
  - linked to restaurants, caterers, mobile units, farmers markets, community events, private homes, schools, hospitals, etc.
- **Compiles the lessons learned**
  - illness outbreaks, academic partners, industry representatives, and nationally-recognized food safety standards
- **Developed through a stakeholder process**
  - provides clear and consistent guidance regarding safe food preparation, storage, and handling
- **Highlighted by current events and the importance of food service in our communities**
  - trained food workers following sound food safety procedures reduce illness daily

## 1992 Chapter 246-215 WAC

First Chapter 246-215 WAC implemented

## 2003 Governor Gary Locke Signs HB1318

Chapter 43.20 RCW is modified for SBOH to consider the most current FDA Food Code

# Brief History of WAC 246-215

1992-2021

1992

2003

## 2013 Chapter 246-215 WAC

Washington adopted 2009 FDA Food Code with modifications

## 2005 Chapter 246-215 WAC

Washington's first adoption of the FDA Model Food Code. The state adopted 2001 version with modifications

2013

2005

## 2017 FDA Food Code

February: 2017 FDA Food Code Released

2018

July: Notice of Rule Making Preproposal (CR-101) filed to begin WAC 246-215 update

## Public Information Sessions

Kennewick, Spokane, Ferndale, Renton, Green Lake, Vancouver, and Online

## SBOH Briefing

Filing of CR-102 expected for June 2020

## Revised Food Rule

Goal is for early 2021 effective date

## FSAC Begins Review

September: FSAC began monthly public meetings to review provisions

2018

May

July

Oct

April

Aug

2021

## Draft Rule Shared

May-July: First Draft shared with stakeholders

## Final FSAC Review

FSAC provides input on comments for draft rule

## SBOH Hearing

Public Hearing in August; Filing CR-103 expected for September 2020

# Food Safety Advisory Council

Representing	First	Last	Phone	Email	Term
<b>Academia</b>	Stephanie	Smith	509-335-0972	steph.smith@wsu.edu	10/1/2021
<b>Consumers</b>	Sarah	Schacht	-	sarahschacht@mac.com	10/1/2021
<b>Farmers Markets/Temporary Food</b>	Colleen	Donovan	-	colleen@wafarmersmarkets.org	10/1/2021
<b>FDA</b>	David	Engelskirchen	206-452-9762	david.engelskirchen@fda.hhs.gov	10/1/2021
<b>Grocery</b>	Michael	Latham	206-423-4076	mchlatham@tc-markets.com	10/1/2021
<b>Local Health Jurisdiction – Voting</b>	Jessica	Gehle	253-798-4444	jgehle@tpchd.org	10/1/2021
<b>Local Health Jurisdiction – Voting</b>	David	Kavanagh	509-493-6211	davidk@klickitatcounty.org	10/1/2021
<b>Local Health Jurisdiction – Voting</b>	Steve	Main	509-324-1594	smain@srhd.org	10/1/2021
<b>Local Health Jurisdiction – Voting</b>	Jessica	Pankey	360-417-2418	jpankey@co.clallam.wa.us	10/1/2021
<b>Local Health Jurisdiction – Alternate</b>	Lisa	Breen	509-324-1585	lbreen@srhd.org	10/1/2021
<b>Local Health Jurisdiction – Alternate</b>	Kristina	Hollatz	360-964-1673	khollatz@co.grays-harbor.wa.us	10/1/2021
<b>Local Health Jurisdiction – Alternate</b>	Brigette	Bashaw	564-397-8411	brigette.bashaw@clark.wa.gov	10/1/2021
<b>Local Health Jurisdiction – Alternate</b>	Timm	Taff	509-488-2031	timmt@co.adams.wa.us	10/1/2021
<b>Mobile Foods</b>	Lori	Johnson	360-223-3801	lorij@wafoodtrucks.org	10/1/2021
<b>Restaurant</b>	Samantha	Louderback	360-789-7477	samanthal@wahospitality.org	10/1/2021
<b>Schools</b>	Leanne	Eko	360-725-0410	leanne.eko@k12.wa.us	10/1/2021
<b>State Facilities</b>	Susan	Shelton	509-212-1206	susan.shelton@doh.wa.gov	10/1/2021
<b>Tribes</b>	Karin	Knopp	-	kbkconsulting@comcast.net	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.

# 2017 FDA Model Food Code

## Food Code

U.S. Public Health Service



2017

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service • Food and Drug Administration

College Park, MD 20740

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# Materials Available

## [www.doh.wa.gov/foodrules](http://www.doh.wa.gov/foodrules)

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### Track Changes. Identifies intended changes.

#### Chapter 246-215 WAC FOOD SERVICE

##### RULE REVISION DRAFT FOR REVIEW

*This draft is under review prior to submission to the state board of health and will likely have modification prior to the public hearing which is expected for Summer 2020. Draft includes changes identified in either strikethrough or underlined blue font. Deletion of code year "2009" (now 2017) and "potentially hazardous food" (now time/temperature control for safety food) accepted for ease of reading.*

Last Update: 12/31/19

#### PART 1: INTENT, SCOPE, AND DEFINITIONS

**WAC 246-215-01100 Intent—Food safety, illness prevention, and honest presentation (2017 FDA Food Code 1-102.10).** The purpose of this chapter is to safeguard public health and provide to CONSUMERS FOOD that is safe, UNADULTERATED, and honestly presented.

[Statutory Authority: RCW 43.20.050 and 43.20.145. WSR 13-03-109, § 246-215-01100, filed 1/17/13, effective 5/1/13.]

**WAC 246-215-01105 Scope—Statement (2017 FDA Food Code 1-103.10).** This chapter establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE RESTRICTION, and PERMIT suspension.

[Statutory Authority: RCW 43.20.050 and 43.20.145. WSR 13-03-109, § 246-215-01105, filed 1/17/13, effective 5/1/13.]

**WAC 246-215-01110 Applicability.** (1) The requirements of this chapter apply to an operation that meets the definition of a FOOD ESTABLISHMENT as defined in WAC 246-215-01115(4b).

(2) When a LOCAL BOARD OF HEALTH adopts rules with more stringent provisions than those contained in this chapter, the more stringent rules apply.

[Statutory Authority: RCW 43.20.050 and 43.20.145. WSR 13-03-109, § 246-215-01110, filed 1/17/13, effective 5/1/13.]

WAC 246-215 Rule Revision Draft for Comment  
[www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/FoodSafetyRules/FoodCodeRuleRevision](http://www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/FoodSafetyRules/FoodCodeRuleRevision)

[1]

12-31-19

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### Summary. Lists changes by code number.

#### Summary of Draft Changes to Chapter 246-215 WAC, Food Service December 31, 2019

This summary is designed for stakeholders to identify changes recommended to chapter WAC 246-215 as part of the rule revision process. The rule remains open for comment and input. Note: editorial changes are not highlighted in this summary.

##### Part 1 – Intent, Scope, and Definitions

- 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.
- Adds "Active Managerial Control" definition used within FDA training and guidance.
- Definition for "Asian Rice-Based Noodles" was added due to questions at public comment sessions. The definition is from RCW 43.20.145.
- "Bed and Breakfast Operation" definition modified to specifically include short-term vacation rentals and food service. Additionally, owner-occupied B&Bs with 1-2 rooms and other conditions exempted from a Food Establishment (see definition of "Food establishment" for more information).
- Definition for "Certified Food Protection Manager" was added to clarify requirements and role. Note—the definition uses EMPLOYEE rather than PERSON IN CHARGE to allow for a CFPM to be off-premises/not on duty at all times of operation. Duties of the CFPM are listed in WAC 246-215-02110.
- "Conditional employee" definition aligns with FDA Food Code by replacing EMPLOYEE with FOOD EMPLOYEE.
- Removes mention of "previously table-mounted equipment" in definition of "Counter-Mounted Equipment" (2009 Food Code).
- Modifies "Donated Food Distributing Organization" to provide clarification that they are food establishments as defined by WAC 246-215.
- Modifies "Egg Product" to be consistent with FDA Model Food Code.
- Deletes "Enterohemorrhagic Escherichia coli (EHEC)" and all references in the chapter as use was outdated (2013 Food Code). Shiga toxin-producing Escherichia coli remains.
- Maintains deletion of "Core Item" as this term isn't used on the WA inspection report form.
- Maintains deletion of "material" from "Corrosion-resistant material" to fit the context of use.
- Maintains deletion of "Critical Item" as this term isn't used on the WA inspection report form.
- Maintains modification of "Cut leafy greens" and no additional modifications are proposed since previous adoption of WAC 246-215.
- Maintains deletion of "area" from "Dry storage area" to fit context of use.
- Definition of "Fidh" modified for clarity: "mollusks" is moved within the sentence to ensure it is clear that mollusks are considered fish and are not excluded with birds and mammals.
- Modifies "Food establishment"
  - Adds missing FDA Food Code language regarding markets, vending locations and conveyances to (a)(i)
  - Maintains addition of fresh herbs to (c)(ii)
  - Clarifies apple cider must be pasteurized in (c)(iv) and nonready-to-eat foods may receive no additional processing in (c)(vi) to be considered not a food establishment
  - Corrects code reference in (c)(ix) referencing (c)(viii) private kitchens used for bake sales
  - Adds (c)(xvi) to remove beverage stands, such as lemonade stands, from the definition of a food establishment
  - Adds owner-occupied bed-and-breakfast operations with 1-2 bedrooms that only serve breakfast and that notify the consumer that they are not regulated

Chapter 246-215 WAC: Retail Food Service [1] Summary of Proposed Changes for Comment  
[www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/FoodSafetyRules/FoodCodeRuleRevision](http://www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/FoodSafetyRules/FoodCodeRuleRevision)

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### Highlight. Top 10 potential changes.

#### Rule Revision Draft Changes Update

##### Retail Food Rule: Top 10 Potential Changes

\*The following provisions are being reviewed and are not final.\*

- Certified Food Protection Manager (CFPM)**  
At least one employee must be a CFPM with ANSI certification from one of six national tests. The CFPM does not need to be on premises, but must ensure all PICs are properly trained and able to ensure Active Managerial Control. There is a 1 year extension to meet CFPM requirement.
- Employee Health**  
Establishments must notify employees about reporting illness to the PIC and be able to verify they provided the notification. In addition, norovirus and all types of Salmonella are added to the list of reportable illnesses.
- Clean up of Vomiting and Diarrheal Events**  
Establishments must have a written plan to clean up vomit and diarrheal events. Department of Health will share sample plans/items to include for use in food establishments, such as temporary events, mobile food units, schools, and facilities serving highly susceptible populations.
- Bare Hand Contact with Ready-to-Eat Foods**  
Establishments wanting to prepare food with bare hands must demonstrate unique active managerial control requirements related to employee health in order to be approved. Department of Health is working on a sample application with guidance materials for local health.
- Date Marking for 7-Day Shelf-Life**  
Select ready-to-eat, refrigerated, perishable foods prepared in-house or in opened packages will need to be marked and used within 7 days. Able to reheat or otherwise remediate products that may be safely reconditioned.
- Refilling Reusable Consumer-Owned Containers**  
Establishments have the option to allow customers to bring in a clean container to fill, refill, or reuse under an approved plan.
- Dogs in Select Outdoor and Indoor Areas**  
Dogs may be allowed in outdoor areas under an approved plan and in indoor areas of establishments with limited food service under conditions.
- Mobile Food Units**  
Several changes were made for mobile food units based on recent state law changes and comments received.
- Donated Foods**  
Several sections were changed to clarify food source and reduce limitations to help safely rescue food. Additional changes to notification are expected.
- Food-Specific Changes**
  - Ground meats will need to be cooked to 158°F instantaneous
  - Fresh fish may be served partially-cooked with consumer advisory

For more information about the Food Service rule review, visit [www.doh.wa.gov/foodrules](http://www.doh.wa.gov/foodrules) > Retail Food Code Revision or contact Susan Shelton at 509-212-1206 or [susan.shelton@doh.wa.gov](mailto:susan.shelton@doh.wa.gov).

##### Progress Timeline

Current timeline has lengthened by three months.

- July 2018**  
Stakeholder comment on 2017 FDA Model Food Code
- September 2018**  
Food Safety Advisory Council rule review meetings begin
- May 2019**  
First draft of revised WAC 246-215 shared with stakeholders
- July 2019**  
Draft rule presented at five statewide locations and online
- October 23, 2019**  
Final Food Safety Advisory Council review of draft rule
- April 8, 2020**  
State board of health briefing
- Late Spring 2020**  
Submission of CR-102
- January or February 2021**  
Potential implementation date of revised WAC 246-215

##### Education Materials

Upcoming education materials.

- Mobile Food Unit Guides**  
Plan review guidance materials to be complete by April 2020
- Public Health Rationale**  
A written explanation of all Washington modifications to the FDA Model Food Code
- Training & Ed Materials**  
New Food Worker Card and Person in Charge materials by August 2020



# Legislative Changes & Input: Added to WAC 246-215

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- RCW 49.60 Modified definition of Service Animal.
- RCW 43.20.145 Added Asian Rice-Based Noodles to allow for receive of fresh noodles at ambient temperature.
- Remove beverage stands, such as lemonade stands, from the definition of a food establishment.
- Several sections added to address mobile food unit plan review reciprocity in RCW 43.20.149 and commissary exemptions in RCW 43.20.148.
- Expands options for safe “re-service” to help reduce food insecurity and food waste.
- Added subsection (5) to WAC 246-215-06570 to incorporate language allowing dogs in breweries with limited food prep [2019-2020 HB 2412].

# Key Concept: **Active Managerial Control**

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- ACTIVE MANAGERIAL CONTROL means the purposeful use of specific policies and procedures in the FOOD ESTABLISHMENT to control foodborne illness risk factors. It embodies a preventive rather than reactive approach to food safety through a continuous system of training, monitoring, and verification.

# Certified Food Protection Manager (CFPM)

WAC 246-215-02107

- Adds Certified Food Protection Manager (CFPM) requirement for at least one EMPLOYEE per establishment.
  - Six nationally accredited programs.
  - Cost estimated \$100/year per CFPM
- Section maintains FDA Food Code exemption for low-risk food establishments.
- Food establishments have 60 days to replace a Certified Food Protection Manager.
- Requesting a 1-year delayed implementation for the CFPM requirement.

# Person in Charge: Additional Duties

WAC 246-215-02115

- Verification of temperature and safe storage of foods delivered during non-operating hours.
- Oversight of routine food temperature monitoring during hot and cold holding.
- Notify employees of responsibility to report foodborne illnesses and symptoms in a verifiable manner.
  - WAC 246-215-02205 adds norovirus and all species of *Salmonella* to the diagnosed foodborne illnesses for employees to report (with hepatitis A, *Shigella* spp., STEC, *Salmonella* Typhi)
- Maintain and implement written procedures and plans (such as clean-up plans for vomit and diarrhea) to ensure **active managerial control**.

# Bare Hand Contact (BHC)

WAC 246-215-03300

- Food workers are a potential source of foodborne illness pathogens
- Industry petitions received to allow bare hand contact with ready-to-eat (RTE) food
  - Cost of consumables
  - Environmental waste stream
  - Consistency of application
- Modified new FDA Food Code allowance
  - Food worker may handle unwrapped RTE food if the food will be cooked in the food establishment.
- Current option of BHC with RTE food under approved plans
  - Preparing guidance materials and application

## **BHC Exception:** Food Establishment (non HSP) Approval

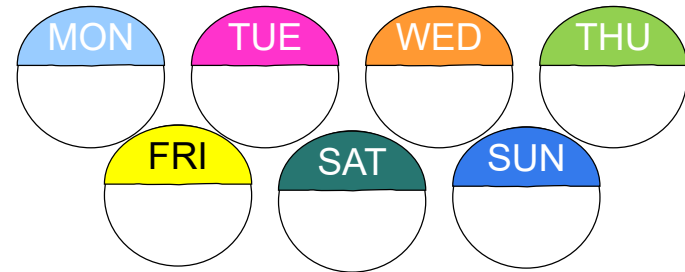
- Diagrams showing functional handwashing facilities in close proximity to the work station
- A written employee health policy
- Employees receive frequent training in hygienic practices
- Documentation that hands are washed before food preparation and as necessary
- Employees use two or more control measures (such as double handwash, nail brushes, antiseptic hand rubs)
- Documentation that corrective action is taken
- Allowance must be reinstated if revoked or discontinued

# Date Marking:

## Ready-to-Eat, Cold TCS, Held 24 Hours+

WAC 246-215-0326

- Ready-to-eat, **Time/Temperature Control for Safety (TCS)** (**replaced “Potentially Hazardous Food”**) foods prepared or opened in the food establishment *and* held >24 hours must have a 7-day shelf-life
- Designed to reduce listeriosis
- Provision concerns from stakeholders
  - Casualties: Morbidity and mortality
  - Cost: Materials, staff time, food waste
  - Clarity: Education on exempt foods
- Mismarked foods must be discarded or may be reheated or corrected



# Date Marking:

## Does Not Apply to Certain Foods

- Deli salads prepared & packaged in a food processing plant
- USDA-regulated products
  - **Shelf stable** fermented sausages & salt-cured meats
    - Dry Salami
    - Pepperoni
    - Prosciutto
- Shellstock
- Hard and semi-soft cheeses
- **Cultured** Dairy Products
  - Buttermilk
  - Yogurt
  - Sour cream
- **Preserved** Fish Products
  - Pickled Herring
  - Dried or salted Cod





# Refilling Returnables:

Industry provided & Consumer owned

- **WAC 246-215-03348** allows options for refilling reusable containers owned by consumers
  - Option 1 – Establishment provides reusable, clean container
    - No restrictions on the customer
  - Option 2 - Consumer provides visibly clean container
    - Establishment must have an approved plan
    - Consumers may fill using contamination free process
      - ◆ Beverages, non TCS non RTE food, and non TCS RTE food if gravity flow
    - Employees may fill with any food

# Partially-Cooked Fresh Fish:

## Removes Parasite Destruction

- Allows food establishments to partially cook fresh fish, such as halibut and salmon, upon consumer's request
- Modifies consumer advisory—both disclosure and reminder in WAC 246-215-03620.
  - **Disclosure:**
    - A description of the animal-derived FOODS such as "oysters on the half shell (raw oysters)," "fresh fish (can be cooked to order)," "raw egg Caesar salad," and "hamburgers (can be cooked to order)";
  - **Reminder:**
    - "Regarding the safety of consuming fresh partially cooked fish, information is available upon request."

# Ground Meat:

## Raise Cook Temperature to 158°F

- Current rule requires cooking hamburger to 155°F and hold for 15 seconds
  - Current rule allows modification of cook temp under approved plan
    - 145°F for 3 minutes
    - 150°F for 1 minute
    - 158°F Instantaneous
- Current FDA Food Code increased hamburger hold time at 155°F to 17 seconds
- Draft rule modifies cook temperature to 158°F (instantaneous—no required hold time)
  - Cooking to 155°F for 17 seconds allowed under an approved plan

# Allowing Pets:

## Dogs Indoors and Outdoors

	Indoors WAC 246-215-06570(5)	Outdoors WAC 246-215-06570(4)
Approved Plan		X
Notification of LHJ	X	
Limited Menu	X	
Not in Prep Area	X	X
Leashed/Confined	X	X
Not on Furniture	X	X
No Employee Contact	X	X
No Dog Bowl Washing	X	X
Cleaning of Waste	X	X
Customer Signage	X	X

# Required Posting: For Customer Access

- WAC 246-215-08350 requires the food establishment to notify customers that a copy or summary of the most recent inspection report is available for review

Food Establishment Inspection Report																																																																																																																																																																																																																					
My Local Health Department 123 Public Health Drive Healthy, WA 12345					PIC@foodestablishment.com																																																																																																																																																																																																																
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High Risk Factors are improper practices or procedures identified as the most prevalent contributing factors of foodborne illness or injury. Circle indicate compliance status (D = 100% Compliant, C = 75% Compliant, O = 50% Compliant, N/A = Not Applicable, N = Not Observed, R = Repeat Violation)																																																																																																																																																																																																																					
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<p>Person in Charge: <i>Mrs. Mum</i> (Signature)</p> <p>Inspector: <i>Mr. Food Inspector</i> (Signature)</p> <p>Date: 10/1/2013</p> <p>Follow-up Needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																																																																																																																																																																					

# Not a Food Establishment:

## Exempting from WAC 246-215

- (xvi) A location, not including special events as defined in RCW 82.32.033, operating thirty or fewer days per calendar year, used by a PERSON under the age of eighteen for the sale of non-alcoholic beverages, such as lemonade, using nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD with no direct hand contact and served directly into SINGLE-SERVICE ARTICLES; and
- (xvii) A **bed and breakfast operation** that prepares and offers FOOD to guests if the home is owner occupied, the number of available **guest bedrooms does not exceed two**, breakfast is the only meal offered, and the **CONSUMER is informed** in published advertisements, mailed brochures, and **placards posted at the registration area** that the FOOD is prepared in a kitchen that is **not regulated or inspected** by the REGULATORY AUTHORITY

# Mobile Food Units:

## Part 9 – Subpart A

- Part 9 is unique to Washington—Not in FDA Food Code
- Changes presented by FSAC Subcommittee
- Require business name posting
- Removal of explicit cooking and cooling restrictions
- Inclusion of commissary exemption language (RCW 43.20.148)
- Inclusion of plan review reciprocity language (RCW 43.20.149)

# Donated Food Distribution:

## Part 9 – Subpart D

- Part 9 is unique to Washington—Not in FDA Food Code
- Changes presented by FSAC Subcommittee
- Annual report detailed
- Written approval required from regulatory authority
- Equipment requirements detailed
- Allowable food sources have been expanded
- Explicitly restricted donation of raw milk and custom slaughter of domesticated animals



# Rule Revision: Lessons Learned & Moving Forward

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- **Current rule provisions were not fully understood**

- Additional training materials and modalities planned
- Public health rationale for Washington modifications

- **Consistency gaps were identified**

- Food Safety Advisory Council
- Development of guidance materials
  - Active Managerial Control and Certified Food Protection Manager
  - Bare Hand Contact with Ready to Eat Foods (with applications)
  - Date Marking Enforcement and Food Disposition
  - Clean Up of Vomiting and Diarrheal Events
  - Refilling Consumer-Owned Containers
  - Mobile Food Unit Plan Review Guide
- Increased partner outreach

# Next Steps

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- **April 2020**

- Brief State Board of Health

- **June 2020**

- File CR-102

- **August 2020**

- Public hearing

- **September 2020 - January 2021**

- File CR-103
- Education period

- **January - February 2021**

- Potential effective date

# Stay Connected...

## During the Rule Revision Process

### Website

SBOH: <https://sboh.wa.gov>

DOH: [www.doh.wa.gov/foodrules](http://www.doh.wa.gov/foodrules)



### Email

[food.safety@doh.wa.gov](mailto:food.safety@doh.wa.gov)



THANK YOU.



Washington State Department of Health is committed to providing customers with forms and publications in appropriate alternate formats. Requests can be made by calling 800-525-0127 or by email at [civil.rights@doh.wa.gov](mailto:civil.rights@doh.wa.gov). TTY users dial 711.