

WASHINGTON STATE BOARD OF HEALTH

Date: June 8, 2022

To: Washington State Board of Health Members

From: Patty Hayes, Board Member

Subject: Petition for Rulemaking, chapter 246-215 WAC, Food Service

Background and Summary:

The Administrative Procedures Act (RCW 34.05.330) allows any person to petition a state agency to request adoption, amendment, or repeal of any rule. Upon receipt of a petition, the agency has sixty days to either (1) deny the petition in writing stating the reasons and, as appropriate, offer other means for addressing the concerns raised by the petitioner, or (2) accept the petition and initiate rulemaking.

On April 11, 2022 the Board received a petition for rulemaking requesting the Board adopt a rule to require food handlers to wear a mask at all times. The petition states that the rise of assembly line-style food preparation results in the spread of food handlers' bodily fluids on food, and that it would be prudent to require food handlers to wear a mask at all times to protect the public's health.

The Board's authority under RCW 43.20.050 requires the Board to adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness. Chapter 246-215 WAC, Food Service, outlines requirements for food establishments to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented. This chapter includes provisions regarding employee health and hygiene, sanitization, and contamination of food in alignment with the 2017 Food Code published by the Food and Drug Administration. While there are several requirements that food handlers must comply with, employees are not required to wear masks or face coverings under chapter 246-215 WAC.

The Centers for Disease Control and Prevention (CDC) maintains [a list of pathogens transmitted by food contaminated by infected persons](#). Some of these pathogens are frequently transmitted by food that becomes contaminated because of being handled by infected individuals. The failure of food handlers to wash hands in certain situations (e.g., using the restroom), wear clean, disposable gloves, or use clean utensils is responsible for pathogen transmission. Other pathogens usually cause disease when food is intrinsically contaminated or cross-contaminated during production, processing, or transportation.

There are currently no known food borne illnesses spread via droplets from the mouth or aerosolized saliva that masks or face coverings worn by the food handler would be

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effective in preventing. The spread of respiratory illnesses in enclosed spaces is a public health concern that is not limited to food service establishments.

The Board has broad authority under RCW 43.20.050 to prevent and control the spread of communicable diseases. Furthermore, there are many public health strategies carried out by local, tribal, and state agencies that can be implemented to prevent, control, and mitigate the spread of respiratory illnesses. As highlighted in different phases of the pandemic, mask mandates, distancing, improved ventilation, indoor capacity limits, and closure of certain public spaces were used to prevent the spread of COVID-19.

I have invited Kaitlyn Donahoe, Board Staff, to provide additional information from the petitioner and outline the Board's options for responding to the petition.

Recommended Board Actions:

The Board may wish to consider and amend, if necessary, one of the following motions:

The Board declines the petition to initiate rulemaking to adopt a rule to require food service handlers to wear a mask at all times under chapter 246-215 WAC for the reasons articulated by Board members and directs staff to notify the petitioner of the Board's decision. The Board also directs staff to provide an educational briefing at a future meeting regarding current state, local, and tribal health authorities and mitigation strategies to prevent and control the spread of respiratory illnesses in indoor settings.

OR

The Board declines the petition to initiate rulemaking to adopt a rule to require food service handlers to wear a mask at all times under chapter 246-215 WAC for the reasons articulated by Board members. The Board directs staff to notify the petitioner of the Board's decision.

OR

The Board accepts the petition for rulemaking to adopt a rule to require food service handlers to wear a mask at all times under chapter 246-215 WAC for the reasons articulated by Board members. The Board directs staff to notify the petitioner of its decision and to file a CR-101, Proposal of Inquiry, under its authority in RCW 43.20.050.

Staff

Kaitlyn Donahoe

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov. TTY users can dial 711.