

Significant Legislative Rule Analysis

Chapter 246-215 WAC
a Rule Concerning Food Service

July 2020

SECTION 1:

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The State Board of Health (board) is revising the Food Service rules, chapter 246-215 WAC to incorporate, with modifications, the 2017 U.S. Food and Drug Administration (FDA) Model Food Code and to address recent changes in state laws related to food safety to protect the health of the people of the state. The proposed rules require retail food establishments follow proper food safety practices. From 2014 to 2018, Washington has averaged 54 foodborne disease outbreaks with 602 reported cases annually.

Brief history of food safety and regulation in the United States. The Centers for Disease Control and Prevention estimate that 48 million Americans get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases every year.¹ The resulting annual cost is estimated to be \$77.7 billion.² Health effects from foodborne disease include diarrhea, vomiting, paralysis, kidney failure, and death. While most people recover fully from a foodborne illness, some have lifelong health complications from foodborne disease.

Although food safety recommendations were published previously under various authorities, the FDA didn't begin publishing the Model FDA Food Code (FDA Food Code) until 1993. The FDA Food Code is a model that establishes practical, science-based food safety standards and recommendations for mitigating risk factors known to cause foodborne illness. Implementation is intended to reduce the health, community, and financial burden from foodborne disease. The FDA Food Code is updated every four years, with a supplement provided in the middle of each four-year cycle. All states, except California, use a version of the FDA Food Code as the foundation of their retail food safety rules.

To help promote uniform national standards, the FDA recognizes input from the Conference of Food Protection (CFP), a national organization of industry, government, academia, and consumer stakeholders. The CFP meets biannually to identify and address emerging problems of food safety and to provide recommendations to federal and industry partners. Washington is a member and active participant with the CFP.

The leading causes of foodborne disease are food workers working while ill, improper handwashing, and handling ready-to-eat food with contaminated hands. In addition, serving products that are contaminated prior to delivery, and improperly cooking, cooling, and reheating food have often been linked to outbreaks.

Primary provisions of the FDA Food Code pertain to:

¹ <http://www.cdc.gov/Features/dsFoodborneEstimates/>

² Economic Burden from Health Losses Due to Foodborne Illness in the United States; Journal of Food Protection, Vol. 75, No. 1, 2012, Pages 123–131

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- Active managerial control (AMC) and the duties of the Person in Charge (PIC)
- Employee health, illness and hygiene
- Restricting bare hand contact with ready-to-eat food
- Control of food cooking, cooling, and storage temperatures
- Safety of ready-to-eat foods
- Approved sources of food

A diverse group of retail food establishments are responsible for protecting the public from the devastating effects of foodborne disease. These include, but are not limited to:

- Restaurants
- Grocery stores
- Caterers
- Schools
- Hospitals
- Convenience stores
- Mobile food units
- Food banks
- Temporary food booths at fairs, festivals, and farmer's markets

Brief history of retail food safety regulation in Washington. Prior to 2003, Washington State drafted rules for retail food safety without using the FDA Food Code. In 2003, the state legislature directed the board to consider the most recent version of the FDA Food Code whenever the board considers amendments to the food service rule under chapter 246-215 WAC. This direction is codified in Revised Code of Washington (RCW) 43.20.145. Washington first adopted the FDA Food Code (2001 version) into chapter 246-215 WAC effective in May 2005. The current chapter adopted in 2013 is based on the 2009 FDA Food Code.

Since the last chapter revision, the FDA has published the 2013 and 2017 FDA Food Code versions with three additional supplements. In July 2018, the board began the process of revising the current food service rules using the 2017 FDA Food Code as a basis. The proposed rules take these standards into consideration.

To assist the rule revision process, the board and the Department of Health (department) requested the input and review from the statewide Food Safety Advisory Council (FSAC). The FSAC was formed by the department in October 2017 to foster communication and cooperation between stakeholders and to promote food safety through the consistent application of chapter 246-215 WAC. FSAC members include representatives from industry, regulators, consumers, and academia. The members were tasked to review the differences between the current chapter and current FDA Food Code as well as input received from stakeholders represented by the FSAC.

The FSAC met eleven (11) times from September 2018 – May 2020 and prepared a first draft of the rules in May 2019. The department shared the draft with stakeholders for informal review and comment. In addition, the department conducted six (6) in-person and one web-based public presentation on the draft amendments in July 2019 and requested additional input on the draft. FSAC met to review the comments and draft changes in September and October 2019, which

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culminated with recommendations to submit to the board. The proposed rules reflect the work of the FSAC, the department staff, stakeholder input, and the board’s direction for the rule revision.

SECTION 2:

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328, portions of the proposed rule make changes to chapter 246-215 WAC and requires a significant analysis. The proposed amendments incorporate provisions of the most recent version of the FDA Food Code (2017) in order to implement the statutory direction provided in RCW 43.20.145.

The department evaluated the proposed rules to determine whether the changes in each section are considered “significant” or “non-significant” under RCW 34.05.328(5)(c). Based on the evaluation, twenty-seven (27) of the proposed food service rule sections are significant legislative rules and are subject to the requirements of RCW 34.05.328(5) and are analyzed in the Section-by-Section Cost/Benefit Analysis in Section 5. Many proposed rules are non-significant because they (1) Are taken from the 2017 FDA Food Code (National Consensus Code); (2) Change the title, section number, or code year only (Title, Number or Code Year Only); (3) Incorporate legislation passed by state legislature; (4) Incorporate RCW or rules currently in effect, or (5) Clarify the language of the rules without changing the effect. These three hundred ninety nine (399) non-significant proposed sections and the reason why the sections are exempt from analysis are listed in Table 1 below.

Table 1. Non-Significant WAC Sections Exempt from Analysis

Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-01100	Intent—Food safety, illness prevention, and honest presentation (2017 FDA Food Code 1-102.10).	Removed FDA code year in section title
246-215-01105	Scope—Statement (2017 FDA Food Code 1-103.10).	Removed FDA code year in section title
246-215-01115	Definitions, abbreviations, and acronyms (2017 FDA Food Code 1-201.10(B)).	New or change of terms analyzed in applicable sections
246-215-02100	Responsibility—Assignment (2017 FDA Food Code 2-101.11).	Removed FDA code year in section title
246-215-02105	Demonstration of knowledge (2017 FDA Food Code 2-102.11).	National Consensus Code
246-215-02200	Employee health—Reporting policy.	National Consensus Code
246-215-02205	Employee health—Reportable history of illness.	National Consensus Code

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-02210	Employee health—Prohibit a conditional employee from becoming a food employee.	National Consensus Code
246-215-02220	Employee health—Conditions of exclusion. Revised Language (Added Salmonella and Norovirus)	National Consensus Code
246-215-02235	Employee health—Other conditions.	Clarification
246-215-02250	Employee health—Removal of exclusion or restriction based on symptoms.	Removed FDA code year in section title & Clarification
246-215-02300	Hands and arms—Clean condition (2017 FDA Food Code 2-301.11).	Removed FDA code year in section title
246-215-02305	Hands and arms—Cleaning procedure (2017 FDA Food Code 2-301.12).	Removed FDA code year in section title
246-215-02310	Hands and arms—When to wash (2017 FDA Food Code 2-301.14).	Removed FDA code year in section title
246-215-02315	Hands and arms—Where to wash (2017 FDA Food Code 2-301.15).	Removed FDA code year in section title
246-215-02320	Hands and arms—Hand antiseptics (2017 FDA Food Code 2-301.16).	National Consensus Code
246-215-02325	Fingernails—Maintenance (2017 FDA Food Code 2-302.11).	Removed FDA code year in section title
246-215-02330	Jewelry—Prohibition (2017 FDA Food Code 2-303.11).	National Consensus Code
246-215-02335	Outer clothing—Clean condition (2017 FDA Food Code 2-304.11).	Removed FDA code year in section title
246-215-02400	Food contamination prevention—Eating, drinking, or using tobacco (2017 FDA Food Code 2-401.11).	Removed FDA code year in section title
246-215-02405	Food contamination prevention—Discharges from the eyes, nose, and mouth (2017 FDA Food Code 2-401.12).	Removed FDA code year in section title
246-215-02406	NEW: Food contamination prevention—Use of Bandages, Finger Cots, or Finger Stalls (2017 FDA Food Code 2-401.13)	National Consensus Code
246-215-02410	Hair restraints—Effectiveness (2017 FDA Food Code 2-402.11).	National Consensus Code
246-215-02415	Animals—Handling prohibition (2017 FDA Food Code 2-403.11).	Removed FDA code year in section title & Clarification
246-215-02500	NEW: Clean-up of Vomiting and Diarrheal Events (2017 FDA Food Code 2-501.11)	National Consensus Code
246-215-03100	Condition—Safe, unadulterated, and honestly presented (2017 FDA Food Code 3-101.11).	Removed FDA code year in section title
246-215-03200	Sources—Compliance with food law (2017 FDA Food Code 3-201.11).	Removed FDA code year in section title & Clarification
246-215-03205	Sources—Food in a hermetically sealed container (2017 FDA Food Code 3-201.12).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-03210	Sources—Fluid milk and milk products (2017 FDA Food Code 3-201.13).	Removed FDA code year in section title
246-215-03215	Sources—Fish (2017 FDA Food Code 3-201.14).	Removed FDA code year in section title
246-215-03220	Sources—Molluscan shellfish (2017 FDA Food Code 3-201.15).	Removed FDA code year in section title
246-215-03230	Sources—Game animals (2017 FDA Food Code 3-201.17).	Clarification
246-215-03240	Specifications for receiving—Additives (2017 FDA Food Code 3-202.12).	Removed FDA code year in section title
246-215-03245	Specifications for receiving—Eggs (2017 FDA Food Code 3-202.13).	Removed FDA code year in section title
246-215-03250	Specifications for receiving—Eggs and milk products, pasteurized (2017 FDA Food Code 3-202.14).	Clarification
246-215-03255	Specifications for receiving—Package integrity (2017 FDA Food Code 3-202.15).	Removed FDA code year in section title
246-215-03260	Specifications for receiving—Ice (2017 FDA Food Code 3-202.16).	Removed FDA code year in section title
246-215-03265	Specifications for receiving—Shucked shellfish, packaging and identification (2017 FDA Food Code 3-202.17).	Removed FDA code year in section title
246-215-03270	Specifications for receiving—Shellstock identification (2017 FDA Food Code 3-202.18).	FDA Removed FDA code year in section title
246-215-03275	Specifications for receiving—Shellstock, condition (2017 FDA Food Code 3-202.19).	Removed FDA code year in section title
246-215-03280	Specifications for receiving—Juice treated (2017 FDA Food Code 3-202.110).	Removed FDA code year in section title
246-215-03285	Original containers and records—Molluscan shellfish, original container (2017 FDA Food Code 3-203.11).	Clarification
246-215-03303	Preventing contamination by employees—Preventing contamination when tasting (2017 FDA Food Code 3-301.12).	Removed FDA code year in section title
246-215-03306	Preventing food and ingredient contamination—Packaged and unpackaged food—Separation, packaging, and segregation (2017 FDA Food Code 3-302.11).	National Consensus Code
246-215-03309	Preventing food and ingredient contamination—Food storage containers, identified with common name of food (2017 FDA Food Code 3-302.12).	Removed FDA code year in section title
246-215-03312	Preventing food and ingredient contamination—Pasteurized eggs, substitute for raw eggs for certain recipes (2017 FDA Food Code 3-302.13).	Removed FDA code year in section title
246-215-03315	Preventing food and ingredient contamination—Protection from unapproved additives (2017 FDA Food Code 3-302.14).	Clarification
246-215-03318	Preventing food and ingredient contamination—Washing fruits and vegetables (2017 FDA Food Code 3-302.15).	National Consensus Code & Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-03321	Preventing food and ingredient contamination—Pooling of raw eggs prohibited.	Clarification
246-215-03324	Preventing contamination from ice used as a coolant—Ice used as exterior coolant, prohibited as ingredient (2017 FDA Food Code 3-303.11).	Removed FDA code year in section title & Clarification
246-215-03327	Preventing contamination from ice used as a coolant—Storage or display of food in contact with water or ice (2017 FDA Food Code 3-303.12).	Removed FDA code year in section title
246-215-03330	Preventing contamination from equipment, utensils, and linens—Food contact with equipment and utensils (2017 FDA Food Code 3-304.11).	National Consensus Code & Removed FDA code year in section title
246-215-03333	Preventing contamination from equipment, utensils, and linens—In-use utensils, between-use storage (2017 FDA Food Code 3-304.12).	Removed FDA code year in section title & Clarification
246-215-03336	Preventing contamination from equipment, utensils, and linens—Linens and napkins, use limitation (2017 FDA Food Code 3-304.13).	National Consensus Code & Removed FDA code year in section title
246-215-03339	Preventing contamination from equipment, utensils, and linens—Wiping cloths, use limitation (2017 FDA Food Code 3-304.14).	Removed FDA code year in section title & Clarification
246-215-03342	Preventing contamination from equipment, utensils, and linens—Gloves, use limitation (2017 FDA Food Code 3-304.15).	Removed FDA code year in section title
246-215-03345	Preventing contamination from equipment, utensils, and linens—Using clean tableware for second portions and refills (2017 FDA Food Code 3-304.16).	Removed FDA code year in section title
246-215-03351	Preventing contamination from the premises—Food storage (2017 FDA Food Code 3-305.11).	Removed FDA code year in section title
246-215-03354	Preventing contamination from the premises—Food storage, prohibited areas (2017 FDA Food Code 3-305.12).	Removed FDA code year in section title
246-215-03357	Preventing contamination from the premises—Vended potentially hazardous food, original container (2017 FDA Food Code 3-305.13).	Removed FDA code year in section title & Clarification
246-215-03360	Preventing contamination from the premises—Food preparation (2017 FDA Food Code 3-305.14).	Removed FDA code year in section title
246-215-03363	Preventing contamination by consumers—Food display (2017 FDA Food Code 3-306.11).	Removed FDA code year in section title
246-215-03366	Preventing contamination by consumers—Condiments, protection (2017 FDA Food Code 3-306.12).	Removed FDA code year in section title
246-215-03369	Preventing contamination by consumers—Consumer self-service operations (2017 FDA Food Code 3-306.13).	Removed FDA code year in section title & Clarification

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-03375	Preventing contamination by consumers—Miscellaneous sources of contamination (2017 FDA Food Code 3-307.11).	Removed FDA code year in section title & Clarification
246-215-03405	Cooking—Microwave cooking (2017 FDA Food Code 3-401.12).	Removed FDA code year in section title
246-215-03410	Cooking—Plant food cooking for hot holding (2017 FDA Food Code 3-401.13).	National Consensus Code & Removed FDA code year in section title
246-215-03415	Cooking—Noncontinuous cooking of raw animal foods (2017 FDA Food Code 3-401.14).	National Consensus Code & Removed FDA code year in section title
246-215-03430	Freezing—Records, creation and retention (2017 FDA Food Code 3-402.12).	Removed FDA code year in section title & Clarification
246-215-03435	Reheating—Preparation for immediate service (2017 FDA Food Code 3-403.10).	Removed FDA code year in section title
246-215-03440	Reheating—Reheating for hot holding (2017 FDA Food Code 3-403.11).	Removed FDA code year in section title & Clarification
246-215-03445	Other methods—Treating juice (2017 FDA Food Code 3-404.11).	Removed FDA code year in section title & Clarification
246-215-03500	Temperature and time control—Frozen food (2017 FDA Food Code 3-501.11).	Removed FDA code year in section title
246-215-03505	Temperature and time control—Time/Temperature Control for Safety Food, slacking (2017 FDA Food Code 3-501.12).	Removed FDA code year in section title
246-215-03510	Temperature and time control—Thawing (2017 FDA Food Code 3-501.13).	National Consensus Code & Removed FDA code year in section title
246-215-03515	Temperature and time control—Cooling (2017 FDA Food Code 3-501.14).	Clarification
246-215-03520	Temperature and time control—Cooling methods (2017 FDA Food Code 3-501.15).	Removed FDA code year in section title & Clarification
246-215-03525	Temperature and time control—Time/Temperature control for safety food, hot and cold holding (2017 FDA Food Code 3-501.16).	Removed FDA code year in section title & Clarification
246-215-03526	NEW: Ready-to-eat, Time/temperature control for safety food, Date Marking (2017 FDA Food Code 3-501.17)	National Consensus Code
246-215-03530	Temperature and time control—Time as a public health control (2017 FDA Food Code 3-501.19).	National Consensus Code & Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-03535	Specialized processing methods—Variance requirement (2017 FDA Food Code 3-502.11).	Removed FDA code year in section title & Clarification
246-215-03540	Specialized processing methods—Reduced oxygen packaging without a variance, criteria (2017 FDA Food Code 3-502.12).	National Consensus Code & Removed FDA code year in section title
246-215-03600	Accurate representation—Standards of identity (2017 FDA Food Code 3-601.11).	Removed FDA code year in section title
246-215-03605	Accurate representation—Honestly presented (2017 FDA Food Code 3-601.12).	Removed FDA code year in section title
246-215-03610	Labeling—Food labels (2017 FDA Food Code 3-602.11).	National/RCW & Removed FDA code year in section title
246-215-03615	Labeling—Other forms of information (2017 FDA Food Code 3-602.12).	Removed FDA code year in section title
246-215-03700	Disposition—Discarding or reconditioning unsafe, adulterated, or contaminated food (2017 FDA Food Code 3-701.11).	Removed FDA code year in section title
246-215-03705	Disposition—Examination, hold orders, condemnation, and destruction of food.	Clarification
246-215-03800	Additional safeguards—Pasteurized foods, prohibited reservice, and prohibited food (2017 FDA Food Code 3-801.11).	Removed FDA code year in section title & Clarification
246-215-04100	Multiuse—Characteristics (2017 FDA Food Code 4-101.11).	Removed FDA code year in section title
246-215-04105	Multiuse—Cast iron, use limitation (2017 FDA Food Code 4-101.12).	Removed FDA code year in section title
246-215-04110	Multiuse—Lead in ceramic, china, and crystal utensils, use limitation (2017 FDA Food Code 4-101.13).	Removed FDA code year in section title
246-215-04115	Multiuse—Copper, use limitation (2017 FDA Food Code 4-101.14).	Removed FDA code year in section title
246-215-04120	Multiuse—Galvanized metal, use limitation (2017 FDA Food Code 4-101.15).	Removed FDA code year in section title
246-215-04125	Multiuse—Sponges, use limitation (2017 FDA Food Code 4-101.16).	Removed FDA code year in section title
246-215-04130	Multiuse—Wood, use limitation (2017 FDA Food Code 4-101.17).	Removed FDA code year in section title & Clarification
246-215-04135	Multiuse—Nonstick coatings, use limitation (2017 FDA Food Code 4-101.18).	Removed FDA code year in section title
246-215-04140	Multiuse—Nonfood-contact surfaces (2017 FDA Food Code 4-101.19).	Removed FDA code year in section title
246-215-04145	Single-service and single use—Characteristics (2017 FDA Food Code 4-102.11).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-04200	Durability and strength—Equipment and utensils (2017 FDA Food Code 4-201.11).	Removed FDA code year in section title
246-215-04202	Durability and strength—Food temperature measuring devices (2017 FDA Food Code 4-201.12).	Removed FDA code year in section title
246-215-04204	Cleanability—Food-contact surfaces (2017 FDA Food Code 4-202.11).	Removed FDA code year in section title
246-215-04206	Cleanability—CIP equipment (2017 FDA Food Code 4-202.12).	Removed FDA code year in section title
246-215-04208	Cleanability—"V" threads, use limitation (2017 FDA Food Code 4-202.13).	Removed FDA code year in section title
246-215-04210	Cleanability—Hot oil filtering equipment (2017 FDA Food Code 4-202.14).	Removed FDA code year in section title
246-215-04212	Cleanability—Can openers (2017 FDA Food Code 4-202.15).	Removed FDA code year in section title
246-215-04214	Cleanability—Nonfood-contact surfaces (2017 FDA Food Code 4-202.16).	Removed FDA code year in section title
246-215-04216	Cleanability—Kick plates, removable (2017 FDA Food Code 4-202.17).	Removed FDA code year in section title
246-215-04218	Cleanability—Ventilation hood systems, filters (2017 FDA Food Code 4-202.18).	Removed FDA code year in section title
246-215-04220	Accuracy—Temperature measuring devices, food (2017 FDA Food Code 4-203.11).	Removed FDA code year in section title
246-215-04222	Accuracy—Temperature measuring devices, ambient air and water (2017 FDA Food Code 4-203.12).	Removed FDA code year in section title
246-215-04224	Accuracy—Pressure measuring devices, mechanical warewashing equipment (2017 FDA Food Code 4-203.13).	Removed FDA code year in section title
246-215-04226	Functionality—Ventilation hood systems, drip prevention (2017 FDA Food Code 4-204.11).	Removed FDA code year in section title
246-215-04228	Functionality—Equipment openings, closures and deflectors (2017 FDA Food Code 4-204.12).	Removed FDA code year in section title
246-215-04230	Functionality—Dispensing equipment, protection of equipment and food (2017 FDA Food Code 4-204.13).	Removed FDA code year in section title & Clarification
246-215-04232	Functionality—Vending machine, vending stage closure (2017 FDA Food Code 4-204.14).	Removed FDA code year in section title & Clarification
246-215-04234	Functionality—Bearings and gear boxes, leakproof (2017 FDA Food Code 4-204.15).	Removed FDA code year in section title
246-215-04236	Functionality—Beverage tubing, separation (2017 FDA Food Code 4-204.16).	Removed FDA code year in section title
246-215-04238	Functionality—Ice units, separation of drains (2017 FDA Food Code 4-204.17).	Removed FDA code year in section title
246-215-04240	Functionality—Condenser unit, separation (2017 FDA Food Code 4-204.18).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-04242	Functionality—Can openers on vending machines (2017 FDA Food Code 4-204.19).	Removed FDA code year in section title
246-215-04244	Functionality—Molluscan shellfish tanks (2017 FDA Food Code 4-204.110).	Removed FDA code year in section title
246-215-04246	Functionality—Vending machines, automatic shutoff (2017 FDA Food Code 4-204.111).	Removed FDA code year in section title & Clarification
246-215-04248	Functionality—Temperature measuring devices (2017 FDA Food Code 4-204.112).	Removed FDA code year in section title & Clarification
246-215-04250	Functionality—Warewashing machines, data plate operating specifications (2017 FDA Food Code 4-204.113).	Removed FDA code year in section title
246-215-04252	Functionality—Warewashing machines, internal baffles (2017 FDA Food Code 4-204.114).	Removed FDA code year in section title
246-215-04254	Functionality—Warewashing machines, temperature measuring devices (2017 FDA Food Code 4-204.115).	Removed FDA code year in section title
246-215-04256	Functionality—Manual warewashing equipment, heaters and baskets (2017 FDA Food Code 4-204.116).	Removed FDA code year in section title
246-215-04258	Functionality—Warewashing machines, automatic dispensing of detergents and sanitizers (2017 FDA Food Code 4-204.117).	Removed FDA code year in section title
246-215-04260	Functionality—Warewashing machines, flow pressure device (2017 FDA Food Code 4-204.118).	Removed FDA code year in section title
246-215-04262	Functionality—Warewashing sinks and drainboards, self-draining (2017 FDA Food Code 4-204.119).	Removed FDA code year in section title
246-215-04264	Functionality—Equipment compartments, drainage (2017 FDA Food Code 4-204.120).	Removed FDA code year in section title
246-215-04266	Functionality—Vending machines, liquid waste products (2017 FDA Food Code 4-204.121).	Removed FDA code year in section title
246-215-04268	Functionality—Case lot handling equipment, moveability (2017 FDA Food Code 4-204.122).	Removed FDA code year in section title
246-215-04270	Functionality—Vending machine doors and openings (2017 FDA Food Code 4-204.123).	Removed FDA code year in section title
246-215-04272	Acceptability—Food equipment, certification and classification (2017 FDA Food Code 4-205.10).	National Consensus Code & Removed FDA code year in section title
246-215-04300	Equipment—Cooling, heating, and holding capacities (2017 FDA Food Code 4-301.11).	Removed FDA code year in section title
246-215-04305	Equipment—Manual warewashing, sink compartment requirements (2017 FDA Food Code 4-301.12).	Removed FDA code year in section title
246-215-04310	Equipment—Drainboards (2017 FDA Food Code 4-301.13).	Removed FDA code year in section title
246-215-04315	Equipment—Ventilation hood systems, adequacy (2017 FDA Food Code 4-301.14).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-04320	Equipment—Clothes washers and dryers (2017 FDA Food Code 4-301.15).	Removed FDA code year in section title
246-215-04325	Equipment—Designated food preparation sinks.	Removed FDA code year in section title
246-215-04330	Utensils, temperature measuring devices, and testing devices—Utensils, consumer self-service (2017 FDA Food Code 4-302.11).	Removed FDA code year in section title
246-215-04335	Utensils, temperature measuring devices, and testing devices—Food temperature measuring devices (2017 FDA Food Code 4-302.12).	National Consensus Code & Removed FDA code year in section title
246-215-04340	Utensils, temperature measuring devices, and testing devices—Temperature measuring devices, manual warewashing (2017 FDA Food Code 4-302.13).	National Consensus Code & Removed FDA code year in section title
246-215-04345	Utensils, temperature measuring devices, and testing devices—Sanitizing solutions, testing devices (2017 FDA Food Code 4-302.14).	Removed FDA code year in section title
246-215-04350	NEW: Cleaning Agents and Sanitizers Availability (2017 FDA Food Code 4-303.11)	National Consensus Code
246-215-04400	Location—Equipment, clothes washers and dryers, and storage cabinets, contamination prevention (2017 FDA Food Code 4-401.11).	Removed FDA code year in section title
246-215-04405	Installation—Fixed equipment, spacing or sealing (2017 FDA Food Code 4-402.11).	Removed FDA code year in section title
246-215-04410	Installation—Fixed equipment, elevation or sealing (2017 FDA Food Code 4-402.12).	Removed FDA code year in section title
246-215-04500	Equipment—Good repair and proper adjustment (2017 FDA Food Code 4-501.11).	Removed FDA code year in section title
246-215-04505	Equipment—Cutting surfaces (2017 FDA Food Code 4-501.12).	Removed FDA code year in section title
246-215-04510	Equipment—Microwave ovens (2017 FDA Food Code 4-501.13).	Removed FDA code year in section title
246-215-04515	Equipment—Warewashing equipment, cleaning frequency (2017 FDA Food Code 4-501.14).	Removed FDA code year in section title
246-215-04520	Equipment—Warewashing machines, manufacturer's operating instructions (2017 FDA Food Code 4-501.15).	Removed FDA code year in section title
246-215-04525	Equipment—Warewashing sinks, use limitation (2017 FDA Food Code 4-501.16).	Removed FDA code year in section title
246-215-04530	Equipment—Warewashing equipment, cleaning agents (2017 FDA Food Code 4-501.17).	Removed FDA code year in section title
246-215-04535	Equipment—Warewashing equipment, clean solutions (2017 FDA Food Code 4-501.18).	Removed FDA code year in section title
246-215-04540	Equipment—Manual warewashing equipment, wash solution temperature (2017 FDA Food Code 4-501.19).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-04545	Equipment—Mechanical warewashing equipment, wash solution temperature (2017 FDA Food Code 4-501.110).	Removed FDA code year in section title
246-215-04550	Equipment—Manual warewashing equipment, hot water sanitization temperature (2017 FDA Food Code 4-501.111).	Removed FDA code year in section title
246-215-04555	Equipment—Mechanical warewashing equipment, hot water sanitization temperatures (2017 FDA Food Code 4-501.112).	Removed FDA code year in section title
246-215-04560	Equipment—Mechanical warewashing equipment, sanitization pressure (2017 FDA Food Code 4-501.113).	Removed FDA code year in section title
246-215-04565	Equipment—Manual and mechanical warewashing equipment, chemical sanitization—Temperature, pH, concentration, and hardness (2017 FDA Food Code 4-501.114).	National Consensus Code & Removed FDA code year in section title
246-215-04570	Equipment—Manual warewashing equipment, chemical sanitization using detergent-sanitizers (2017 FDA Food Code 4-501.115).	Removed FDA code year in section title
246-215-04575	Equipment—Warewashing equipment, determining chemical sanitizer concentration (2017 FDA Food Code 4-501.116).	Removed FDA code year in section title
246-215-04580	Utensils and temperature and pressure measuring devices—Good repair and calibration (2017 FDA Food Code 4-502.11).	Removed FDA code year in section title
246-215-04585	Utensils and temperature and pressure measuring devices—Single-service and single-use articles, required use (2017 FDA Food Code 4-502.12).	Removed FDA code year in section title
246-215-04590	Utensils and temperature and pressure measuring devices—Single-service and single-use articles, use limitation (2017 FDA Food Code 4-502.13).	Removed FDA code year in section title
246-215-04595	Utensils and temperature and pressure measuring devices—Shells, use limitation (2017 FDA Food Code 4-502.14).	Removed FDA code year in section title
246-215-04600	Objective—Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils (2017 FDA Food Code 4-601.11).	Removed FDA code year in section title
246-215-04605	Objective—Equipment food-contact surfaces and utensils (2017 FDA Food Code 4-602.11).	National Consensus Code & Removed FDA code year in section title
246-215-04610	Objective—Cooking and baking equipment (2017 FDA Food Code 4-602.12).	Removed FDA code year in section title
246-215-04615	Objective—Nonfood-contact surfaces (2017 FDA Food Code 4-602.13).	Removed FDA code year in section title
246-215-04620	Methods—Dry cleaning (2017 FDA Food Code 4-603.11).	Removed FDA code year in section title & Clarification
246-215-04625	Methods—Precleaning (2017 FDA Food Code 4-603.12).	Removed FDA code year in section title
246-215-04630	Methods—Loading of soiled items, warewashing machines (2017 FDA Food Code 4-603.13).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-04635	Methods—Wet cleaning (2017 FDA Food Code 4-603.14).	Removed FDA code year in section title
246-215-04640	Methods—Washing, procedures for alternative manual warewashing equipment (2017 FDA Food Code 4-603.15).	Removed FDA code year in section title
246-215-04645	Methods—Rinsing procedures (2017 FDA Food Code 4-603.16).	Removed FDA code year in section title
246-215-04650	REPEALED: Methods—Returnables, cleaning for refilling (2017 FDA Food Code 4-603.17).	Repealed to align with FDA Food Code
246-215-04700	Objective—Food-contact surfaces and utensils (2017 FDA Food Code 4-701.10).	Removed FDA code year in section title
246-215-04705	Frequency—Before use after cleaning (2017 FDA Food Code 4-702.11).	Removed FDA code year in section title
246-215-04710	Methods—Hot water and chemical (2017 FDA Food Code 4-703.11).	Removed FDA code year in section title
246-215-04800	Objective—Clean linens (2017 FDA Food Code 4-801.11).	Removed FDA code year in section title
246-215-04805	Frequency—Specifications (2017 FDA Food Code 4-802.11).	Removed FDA code year in section title
246-215-04810	Methods—Storage of soiled linens (2017 FDA Food Code 4-803.11).	Removed FDA code year in section title
246-215-04815	Methods—Mechanical washing (2017 FDA Food Code 4-803.12).	Removed FDA code year in section title
246-215-04820	Methods—Use of laundry facilities (2017 FDA Food Code 4-803.13).	Removed FDA code year in section title
246-215-04900	Drying—Equipment and utensils, air-drying required (2017 FDA Food Code 4-901.11).	Removed FDA code year in section title
246-215-04905	Drying—Wiping cloths, air drying locations (2017 FDA Food Code 4-901.12).	Removed FDA code year in section title
246-215-04910	Lubricating and reassembling—Food-contact surfaces (2017 FDA Food Code 4-902.11).	Removed FDA code year in section title
246-215-04915	Lubricating and reassembling—Equipment (2017 FDA Food Code 4-902.12).	Removed FDA code year in section title
246-215-04920	Storing—Equipment, utensils, linens, and single-service and single-use articles (2017 FDA Food Code 4-903.11).	Removed FDA code year in section title
246-215-04925	Storing—Prohibitions (2017 FDA Food Code 4-903.12).	Removed FDA code year in section title
246-215-04930	Preventing contamination—Kitchenware and tableware (2017 FDA Food Code 4-904.11).	Removed FDA code year in section title
246-215-04935	Preventing contamination—Soiled and clean tableware (2017 FDA Food Code 4-904.12).	Removed FDA code year in section title
246-215-04940	Preventing contamination—Preset tableware (2017 FDA Food Code 4-904.13).	Removed FDA code year in section title
246-215-04945	Preventing contamination—Rinsing equipment and utensils after cleaning and sanitizing (2017 FDA Food Code 4-904.14).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-05100	Source—Approved system (2017 FDA Food Code 5-101.11).	Removed FDA code year in section title
246-215-05105	Source—System flushing and disinfection (2017 FDA Food Code 5-101.12).	Removed FDA code year in section title
246-215-05110	Source—Bottled drinking water (2017 FDA Food Code 5-101.13).	Removed FDA code year in section title & Clarification
246-215-05115	Quality—Standards (2017 FDA Food Code 5-102.11).	Removed FDA code year in section title
246-215-05120	Quality—Nondrinking water (2017 FDA Food Code 5-102.12).	Removed FDA code year in section title
246-215-05125	Quality—Sampling (2017 FDA Food Code 5-102.13).	Removed FDA code year in section title
246-215-05130	Quantity and availability—Sample report (2017 FDA Food Code 5-102.14).	Removed FDA code year in section title
246-215-05135	Quantity and availability—Capacity (2017 FDA Food Code 5-103.11).	Removed FDA code year in section title
246-215-05140	Distribution, delivery and retention—Pressure (2017 FDA Food Code 5-103.12).	Removed FDA code year in section title
246-215-05145	Distribution, delivery and retention—System (2017 FDA Food Code 5-104.11).	Removed FDA code year in section title
246-215-05150	Distribution, delivery and retention—Alternate water supply (2017 FDA Food Code 5-104.12).	Removed FDA code year in section title
246-215-05200	Materials—Approved (2017 FDA Food Code 5-201.11).	Removed FDA code year in section title
246-215-05205	Design, construction and installation—Approved system and cleanable fixtures (2017 FDA Food Code 5-202.11).	Removed FDA code year in section title
246-215-05210	Design, construction and installation—Handwashing facility, installation (2017 FDA Food Code 5-202.12).	Removed FDA code year in section title
246-215-05215	Design, construction and installation—Backflow prevention, air gap (2017 FDA Food Code 5-202.13).	National Consensus Code, alignment with WAC 246-290-010 & Removed FDA code year in section title
246-215-05220	Design, construction and installation—Backflow prevention device, design standard (2017 FDA Food Code 5-202.14).	National Consensus Code, alignment with WAC 246-290-490 and 51-56-0600 & Removed FDA code year in section title
246-215-05225	Design, construction and installation—Conditioning device, design (2017 FDA Food Code 5-202.15).	Removed FDA code year in section title
246-215-05230	Numbers and capacities—Handwashing sinks (2017 FDA Food Code 5-203.11).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-05235	Restrooms—Toilets and urinals (2017 FDA Food Code 5-203.12).	Removed FDA code year in section title & added WAC definition of an APPROVED air gap from WAC 246-290-010
246-215-05240	Service sink (2017 FDA Food Code 5-203.13).	Removed FDA code year in section title
246-215-05245	Backflow prevention device, when required (2017 FDA Food Code 5-203.14).	Removed FDA code year in section title
246-215-05250	Backflow prevention carbonator.	Removed FDA code year in section title
246-215-05260	Location and placement of backflow prevention device (2017 FDA Food Code 5-204.12).	Removed FDA code year in section title
246-215-05265	Location and placement of conditioning device (2017 FDA Food Code 5-204.13).	Removed FDA code year in section title
246-215-05270	Operation and maintenance—Using a handwashing sink (2017 FDA Food Code 5-205.11).	Removed FDA code year in section title
246-215-05275	Operation and maintenance—Prohibiting a cross connection (2017 FDA Food Code 5-205.12).	Removed FDA code year in section title
246-215-05280	Operation and maintenance—Scheduling inspection and service for water system device (2017 FDA Food Code 5-205.13).	Removed FDA code year in section title & added testing required in WAC 51-56-0600
246-215-05285	Operation and maintenance—Water reservoir of fogging devices, cleaning (2017 FDA Food Code 5-205.14).	Removed FDA code year in section title
246-215-05290	Operation and maintenance—System maintained in good repair (2017 FDA Food Code 5-205.15).	Removed FDA code year in section title
246-215-05300	Materials—Approved (2017 FDA Food Code 5-301.11).	Removed FDA code year in section title
246-215-05305	Design and construction—Enclosed system, sloped to drain (2017 FDA Food Code 5-302.11).	Removed FDA code year in section title
246-215-05310	Design and construction—Inspection and cleaning port, protected and secured (2017 FDA Food Code 5-302.12).	Removed FDA code year in section title
246-215-05315	Design and construction—"V" type threads, use limitation (2017 FDA Food Code 5-302.13).	Removed FDA code year in section title
246-215-05320	Design and construction—Tank vent, protected (2017 FDA Food Code 5-302.14).	Removed FDA code year in section title
246-215-05325	Design and construction—Inlet and outlet, sloped to drain (2017 FDA Food Code 5-302.15).	Removed FDA code year in section title
246-215-05330	Design and construction—Hose, construction and identification (2017 FDA Food Code 5-302.16).	Removed FDA code year in section title
246-215-05335	Numbers and capacities—Filter, compressed air (2017 FDA Food Code 5-303.11).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-05340	Numbers and capacities—Protective cover or device (2017 FDA Food Code 5-303.12).	Removed FDA code year in section title
246-215-05345	Numbers and capacities—Mobile food unit tank inlet (2017 FDA Food Code 5-303.13).	Removed FDA code year in section title
246-215-05350	Operation and maintenance—System flushing and sanitation (2017 FDA Food Code 5-304.11).	Removed FDA code year in section title
246-215-05355	Operation and maintenance—Using a pump and hoses, backflow prevention (2017 FDA Food Code 5-304.12).	Removed FDA code year in section title
246-215-05360	Operation and maintenance—Protecting inlet, outlet, and hose fitting (2017 FDA Food Code 5-304.13).	Removed FDA code year in section title
246-215-05365	Operation and maintenance—Tank, pump, and hoses, dedication (2017 FDA Food Code 5-304.14).	Removed FDA code year in section title
246-215-05400	Mobile holding tank—Capacity and drainage (2017 FDA Food Code 5-401.11).	Removed FDA code year in section title
246-215-05405	Retention, drainage, and delivery design, construction, and installation—Establishment drainage system (2017 FDA Food Code 5-402.10).	Removed FDA code year in section title
246-215-05410	Retention, drainage, and delivery design, construction, and installation—Backflow prevention (2017 FDA Food Code 5-402.11).	Removed FDA code year in section title
246-215-05415	Retention, drainage, and delivery location and placement—Grease trap (2017 FDA Food Code 5-402.12).	Removed FDA code year in section title
246-215-05420	Retention, drainage, and delivery operation and maintenance—Conveying sewage (2017 FDA Food Code 5-402.13).	Removed FDA code year in section title
246-215-05425	Retention, drainage, and delivery operation and maintenance—Removing mobile food unit wastes (2017 FDA Food Code 5-402.14).	Removed FDA code year in section title
246-215-05430	Retention, drainage, and delivery operation and maintenance—Flushing a waste retention tank (2017 FDA Food Code 5-402.15).	Removed FDA code year in section title
246-215-05435	Disposal facility design and construction—Approved sewage disposal system (2017 FDA Food Code 5-403.11).	Removed FDA code year in section title
246-215-05440	Disposal facility design and construction—Other liquid wastes and rainwater (2017 FDA Food Code 5-403.12).	Removed FDA code year in section title
246-215-05500	Facilities on the premises, materials, design, construction and installation—Indoor storage area (2017 FDA Food Code 5-501.10).	Removed FDA code year in section title
246-215-05505	Facilities on the premises, materials, design, construction and installation—Outdoor storage surface (2017 FDA Food Code 5-501.11).	Removed FDA code year in section title
246-215-05510	Facilities on the premises, materials, design, construction and installation—Outdoor enclosure (2017 FDA Food Code 5-501.12).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-05515	Facilities on the premises, materials, design, construction and installation—Receptacles (2017 FDA Food Code 5-501.13).	Removed FDA code year in section title
246-215-05520	Facilities on the premises, materials, design, construction and installation—Receptacles in vending machines (2017 FDA Food Code 5-501.14).	Removed FDA code year in section title
246-215-05525	Facilities on the premises, materials, design, construction and installation—Outside receptacles (2017 FDA Food Code 5-501.15).	Removed FDA code year in section title
246-215-05530	Facilities on the premises, numbers and capacities—Storage areas, rooms, and receptacles, capacity and availability (2017 FDA Food Code 5-501.16).	Removed FDA code year in section title
246-215-05535	Facilities on the premises, numbers and capacities—Toilet room receptacle, covered (2017 FDA Food Code 5-501.17).	Removed FDA code year in section title
246-215-05540	Facilities on the premises, numbers and capacities—Cleaning implements and supplies (2017 FDA Food Code 5-501.18).	Removed FDA code year in section title
246-215-05545	Facilities on the premises, location and placement—Storage areas, redeeming machines, receptacles and waste handling units, location (2017 FDA Food Code 5-501.19).	Removed FDA code year in section title
246-215-05550	Facilities on the premises, operation and maintenance—Storing refuse, recyclables, and returnables (2017 FDA Food Code 5-501.110).	Removed FDA code year in section title
246-215-05555	Facilities on the premises, operation and maintenance—Areas, enclosures, and receptacles, good repair (2017 FDA Food Code 5-501.111).	Removed FDA code year in section title
246-215-05560	Facilities on the premises, operation and maintenance—Outside storage prohibitions (2017 FDA Food Code 5-501.112).	Removed FDA code year in section title
246-215-05565	Facilities on the premises, operation and maintenance—Covering receptacles (2017 FDA Food Code 5-501.113).	Removed FDA code year in section title
246-215-05570	Facilities on the premises, operation and maintenance—Using drain plugs (2017 FDA Food Code 5-501.114).	Removed FDA code year in section title
246-215-05575	Facilities on the premises, operation and maintenance—Maintaining refuse areas and enclosures (2017 FDA Food Code 5-501.115).	Removed FDA code year in section title
246-215-05580	Facilities on the premises, operation and maintenance—Cleaning receptacles (2017 FDA Food Code 5-501.116).	Removed FDA code year in section title
246-215-05585	Removal—Frequency (2017 FDA Food Code 5-502.11).	Removed FDA code year in section title
246-215-05590	Removal—Receptacles or vehicles (2017 FDA Food Code 5-502.12).	Removed FDA code year in section title
246-215-05595	Facilities for disposal and recycling—Community or individual facility (2017 FDA Food Code 5-503.11).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-06100	Indoor areas—Surface characteristics (2017 FDA Food Code 6-101.11).	Removed FDA code year in section title & Clarification
246-215-06105	Outdoor areas—Surface characteristics (2017 FDA Food Code 6-102.11).	Removed FDA code year in section title
246-215-06200	Cleanability—Floors, walls and ceilings (2017 FDA Food Code 6-201.11).	Removed FDA code year in section title
246-215-06205	Cleanability—Floors, walls, and ceilings, utility lines (2017 FDA Food Code 6-201.12).	Removed FDA code year in section title
246-215-06210	Cleanability—Floor and wall junctures, covered and enclosed or sealed (2017 FDA Food Code 6-201.13).	Removed FDA code year in section title
246-215-06215	Cleanability—Floor carpeting, restriction and installation (2017 FDA Food Code 6-201.14).	Removed FDA code year in section title
246-215-06220	Cleanability—Floor covering, mats and duckboards (2017 FDA Food Code 6-201.15).	Removed FDA code year in section title
246-215-06225	Cleanability—Wall and ceiling coverings and coatings (2017 FDA Food Code 6-201.16).	Removed FDA code year in section title
246-215-06230	Cleanability—Walls and ceilings, attachments (2017 FDA Food Code 6-201.17).	Removed FDA code year in section title
246-215-06235	Cleanability—Walls and ceilings, studs, joists, and rafters (2017 FDA Food Code 6-201.18).	Removed FDA code year in section title
246-215-06240	Functionality—Light bulbs, protective shielding (2017 FDA Food Code 6-202.11).	Removed FDA code year in section title
246-215-06245	Functionality—Heating, ventilating, air conditioning system vents (2017 FDA Food Code 6-202.12).	Removed FDA code year in section title
246-215-06250	Functionality—Insect control devices, design and installation (2017 FDA Food Code 6-202.13).	Removed FDA code year in section title
246-215-06255	Functionality—Toilet rooms, enclosed (2017 FDA Food Code 6-202.14).	Removed FDA code year in section title
246-215-06260	Functionality—Outer openings, protected (2017 FDA Food Code 6-202.15).	Removed FDA code year in section title
246-215-06265	Functionality—Exterior walls and roofs, protective barrier (2017 FDA Food Code 6-202.16).	Removed FDA code year in section title
246-215-06270	Functionality—Outdoor food vending areas, overhead protection (2017 FDA Food Code 6-202.17).	Removed FDA code year in section title
246-215-06275	Functionality—Outdoor servicing areas, overhead protection (2017 FDA Food Code 6-202.18).	Removed FDA code year in section title
246-215-06280	Functionality—Outdoor walking and driving surfaces, graded to drain (2017 FDA Food Code 6-202.19).	Removed FDA code year in section title
246-215-06285	Functionality—Outdoor refuse areas (2017 FDA Food Code 6-202.110).	Removed FDA code year in section title
246-215-06290	Functionality—Private homes and living or sleeping quarters, use prohibition (2017 FDA Food Code 6-202.111).	Removed FDA code year in section title & Clarification

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-06295	Functionality—Living or sleeping quarters, separation (2017 FDA Food Code 6-202.112).	Removed FDA code year in section title
246-215-06300	Handwashing sinks—Minimum number (2017 FDA Food Code 6-301.10).	Removed FDA code year in section title
246-215-06305	Handwashing sinks—Handwashing cleanser, availability (2017 FDA Food Code 6-301.11).	Removed FDA code year in section title
246-215-06310	Handwashing sinks—Hand-drying provision (2017 FDA Food Code 6-301.12).	Removed FDA code year in section title & Clarification
246-215-06315	Handwashing sinks—Handwashing aids and devices, use restriction (2017 FDA Food Code 6-301.13).	Removed FDA code year in section title
246-215-06320	Handwashing sinks —Handwashing signage (2017 FDA Food Code 6-301.14).	Removed FDA code year in section title
246-215-06325	Handwashing sinks —Disposable towels, waste receptacle (2017 FDA Food Code 6-301.20).	Removed FDA code year in section title
246-215-06330	Toilets and urinals—Minimum number (2017 FDA Food Code 6-302.10).	Removed FDA code year in section title
246-215-06335	Toilets and urinals—Toilet tissue, availability (2017 FDA Food Code 6-302.11).	Removed FDA code year in section title
246-215-06340	Lighting—Intensity (2017 FDA Food Code 6-303.11).	Removed FDA code year in section title
246-215-06345	Ventilation—Mechanical (2017 FDA Food Code 6-304.11).	Removed FDA code year in section title
246-215-06350	Dressing areas and lockers—Designation (2017 FDA Food Code 6-305.11).	Removed FDA code year in section title
246-215-06355	Service sinks—Availability (2017 FDA Food Code 6-306.10).	Removed FDA code year in section title
246-215-06400	Handwashing sinks—Conveniently located (2017 FDA Food Code 6-401.10).	Removed FDA code year in section title
246-215-06405	Toilet rooms—Convenience and accessibility (2017 FDA Food Code 6-402.11).	Removed FDA code year in section title
246-215-06410	Employee accommodations—Designated areas (2017 FDA Food Code 6-403.11).	Removed FDA code year in section title
246-215-06415	Distressed merchandise—Segregation and location (2017 FDA Food Code 6-404.11).	Removed FDA code year in section title
246-215-06420	Refuse, recyclables, and returnables—Receptacles, waste handling units, and designated storage areas (2017 FDA Food Code 6-405.10).	Removed FDA code year in section title
246-215-06500	Methods—Repairing (2017 FDA Food Code 6-501.11).	Removed FDA code year in section title
246-215-06505	Methods—Cleaning, frequency and restrictions (2017 FDA Food Code 6-501.12).	Removed FDA code year in section title
246-215-06510	Methods—Cleaning floors, dustless methods (2017 FDA Food Code 6-501.13).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-06515	Methods—Cleaning ventilation systems, nuisance and discharge prohibition (2017 FDA Food Code 6-501.14).	Removed FDA code year in section title
246-215-06520	Methods—Cleaning maintenance tools, preventing contamination (2017 FDA Food Code 6-501.15).	Removed FDA code year in section title
246-215-06525	Methods—Drying mops (2017 FDA Food Code 6-501.16).	Removed FDA code year in section title
246-215-06530	Methods—Absorbent materials on floors, use limitations (2017 FDA Food Code 6-501.17).	Removed FDA code year in section title
246-215-06535	Methods—Cleaning of plumbing fixtures (2017 FDA Food Code 6-501.18).	Removed FDA code year in section title
246-215-06540	Methods—Closing toilet room doors (2017 FDA Food Code 6-501.19).	Removed FDA code year in section title
246-215-06545	Methods—Using dressing rooms and lockers (2017 FDA Food Code 6-501.110).	Removed FDA code year in section title
246-215-06550	Methods—Controlling pests (2017 FDA Food Code 6-501.111).	Removed FDA code year in section title
246-215-06555	Methods—Removing dead or trapped birds, insects, rodents, and other pests (2017 FDA Food Code 6-501.112).	Removed FDA code year in section title
246-215-06560	Methods—Storing maintenance tools (2017 FDA Food Code 6-501.113).	Removed FDA code year in section title
246-215-06565	Methods—Maintaining premises, unnecessary items and litter (2017 FDA Food Code 6-501.114).	Removed FDA code year in section title
246-215-07100	Original containers—Identifying information, prominence (2017 FDA Food Code 7-101.11).	Removed FDA code year in section title
246-215-07105	Working containers—Common name (2017 FDA Food Code 7-102.11).	Removed FDA code year in section title
246-215-07200	Storage—Separation (2017 FDA Food Code 7-201.11).	Removed FDA code year in section title
246-215-07205	Presence and use—Restriction (2017 FDA Food Code 7-202.11).	Removed FDA code year in section title
246-215-07210	Presence and use—Conditions of use (2017 FDA Food Code 7-202.12).	Removed FDA code year in section title
246-215-07215	Container prohibitions—Poisonous or toxic material containers (2017 FDA Food Code 7-203.11).	Removed FDA code year in section title
246-215-07220	Chemicals—Sanitizers, criteria (2017 FDA Food Code 7-204.11).	National Consensus Code & Removed FDA code year in section title
246-215-07225	Chemicals—Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria (2017 FDA Food Code 7-204.12).	National Consensus Code & Removed FDA code year in section title
246-215-07230	Chemicals—Boiler water additives, criteria (2017 FDA Food Code 7-204.13).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-07235	Chemicals—Drying agents, criteria (2017 FDA Food Code 7-204.14).	National Consensus Code & Removed FDA code year in section title
246-215-07240	Lubricants—Incidental food contact, criteria (2017 FDA Food Code 7-205.11).	Removed FDA code year in section title
246-215-07245	Pesticides—Restricted use pesticides, criteria (2017 FDA Food Code 7-206.11).	Removed FDA code year in section title
246-215-07250	Pesticides—Rodent bait stations (2017 FDA Food Code 7-206.12).	Removed FDA code year in section title
246-215-07255	Pesticides—Tracking powders, pest control and monitoring (2017 FDA Food Code 7-206.13).	Removed FDA code year in section title
246-215-07260	Medicines—Restriction and storage (2017 FDA Food Code 7-207.11).	Removed FDA code year in section title
246-215-07265	Medicines—Refrigerated medicines, storage (2017 FDA Food Code 7-207.12).	Removed FDA code year in section title
246-215-07270	First-aid supplies—Storage (2017 FDA Food Code 7-208.11).	Removed FDA code year in section title
246-215-07275	Other personal care items—Storage (2017 FDA Food Code 7-209.11).	Removed FDA code year in section title
246-215-07300	Storage and display—Separation (2017 FDA Food Code 7-301.11).	Removed FDA code year in section title
246-215-08100	Use for intended purpose—Public health protection (2017 FDA Food Code 8-101.10).	Removed FDA code year in section title
246-215-08105	Additional requirements—Preventing health hazards, provision for conditions not addressed (2017 FDA Food Code 8-102.10).	Removed FDA code year in section title
246-215-08110	Variances—Modifications and waivers (2017 FDA Food Code 8-103.10).	Removed FDA code year in section title
246-215-08115	Variances—Documentation of proposed VARIANCE and justification (2017 FDA Food Code 8-103.11).	Removed FDA code year in section title
246-215-08120	Variances—Conformance with approved procedures (2017 FDA Food Code 8-103.12).	National Consensus Code & Removed FDA code year in section title
246-215-08200	Facility and operating plans—When plans are required (2017 FDA Food Code 8-201.11).	Removed FDA code year in section title
246-215-08205	Facility and operating plans—Contents of the plans and specifications (2017 FDA Food Code 8-201.12).	Removed FDA code year in section title
246-215-08210	Facility and operating plans—When a HACCP plan is required (2017 FDA Food Code 8-201.13).	Removed FDA code year in section title
246-215-08215	Facility and operating plans—Contents of a HACCP plan (2017 FDA Food Code 8-201.14).	National Consensus Code & Removed FDA code year in section title
246-215-08220	Trade secrets (2017 FDA Food Code 8-202.10).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-08225	Construction inspection and approval—Preoperational inspections (2017 FDA Food Code 8-203.10).	Removed FDA code year in section title
246-215-08300	Requirement—Prerequisite for operation (2017 FDA Food Code 8-301.11).	Removed FDA code year in section title
246-215-08310	Application procedure—Submission thirty calendar days before proposed opening (2017 FDA Food Code 8-302.11).	Removed FDA code year in section title
246-215-08315	Application procedure—Form of submission (2017 FDA Food Code 8-302.12).	Removed FDA code year in section title
246-215-08320	Application procedure—Qualifications and responsibilities of applicants (2017 FDA Food Code 8-302.13).	Removed FDA code year in section title
246-215-08330	Issuance—New, converted, or remodeled establishments (2017 FDA Food Code 8-303.10).	Removed FDA code year in section title
246-215-08335	Issuance—Existing establishments, permit renewal, and change of ownership (2017 FDA Food Code 8-303.20).	Removed FDA code year in section title
246-215-08340	Issuance—Denial of application for permit, notice (2017 FDA Food Code 8-303.30).	Removed FDA code year in section title
246-215-08345	Conditions of retention—Responsibilities of the regulatory authority (2017 FDA Food Code 8-304.10).	Removed FDA code year in section title
246-215-08350	Conditions of retention—Responsibilities of the permit holder (2017 FDA Food Code 8-304.11).	National Consensus Code & Removed FDA code year in section title
246-215-08355	Conditions of retention—Permits not transferable (2017 FDA Food Code 8-304.20).	Removed FDA code year in section title
246-215-08400	Frequency—Establishing inspection interval (2017 FDA Food Code 8-401.10).	Removed FDA code year in section title & Clarification
246-215-08405	Frequency—Performance- and risk-based (2017 FDA Food Code 8-401.20).	Removed FDA code year in section title
246-215-08410	Frequency—Competency of inspectors (2017 FDA Food Code 8-402.10).	National Consensus Code & Removed FDA code year in section title
246-215-08415	Access—Allowed at reasonable times after due notice (2017 FDA Food Code 8-402.11).	Removed FDA code year in section title
246-215-08420	Access—Refusal, notification of right to access, and final request for access (2017 FDA Food Code 8-402.20).	Removed FDA code year in section title
246-215-08425	Access—Refusal, reporting (2017 FDA Food Code 8-402.30).	Removed FDA code year in section title
246-215-08430	Report of findings—Documenting information and observations (2017 FDA Food Code 8-403.10).	Removed FDA code year in section title
246-215-08435	Report of findings—Specifying time frame for corrections (2017 FDA Food Code 8-403.20).	Removed FDA code year in section title
246-215-08440	Report of findings—Issuing report and obtaining acknowledgment of receipt (2017 FDA Food Code 8-403.30).	Removed FDA code year in section title

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Section Number	Section Title	Reason Section is Exempt From Analysis
246-215-08445	Report of findings—Refusal to sign acknowledgment (2017 FDA Food Code 8-403.40).	Removed FDA code year in section title
246-215-08450	Report of findings—Public information (2017 FDA Food Code 8-403.50).	Removed FDA code year in section title
246-215-08455	Imminent health hazard—Ceasing operations and reporting (2017 FDA Food Code 8-404.11).	National Consensus Code & Removed FDA code year in section title
246-215-08460	Imminent health hazard—Resumption of operations (2017 FDA Food Code 8-404.12).	Removed FDA code year in section title
246-215-08500	Investigation and control—Obtaining information—Personal history of illness, medical examination, and specimen analysis (2017 FDA Food Code 8-501.10).	Removed FDA code year in section title
246-215-08505	Investigation and control—Restriction or exclusion of food employee, or summary suspension of permit (2017 FDA Food Code 8-501.20).	Removed FDA code year in section title
246-215-08510	Investigation and control—Restriction or exclusion order: Warning or hearing not required, information required in order (2017 FDA Food Code 8-501.30).	Removed FDA code year in section title
246-215-08515	Investigation and control—Removal of exclusion or restriction (2017 FDA Food Code 8-501.40).	Removed FDA code year in section title
246-215-08520	Investigation and control—Procedure when disease transmission is suspected.	Removed FDA code year in section title
246-215-08600	Permits required, suspension, revocation, enforcement.	Removed FDA code year in section title
246-215-08605	Service of notice.	Removed FDA code year in section title
246-215-08610	Hearings.	Removed FDA code year in section title
246-215-09110	Plan approval—Plan review.	Clarification
246-215-09120	Additional requirements—Standard operating procedures.	Clarification
246-215-09127	NEW: Commissary Exemption	Dictated by RCW 43.20.148
246-215-09130	REPEALED: Cooking thickness—Cooking raw meats.	Repealed
246-215-09180	REPEALED: Movable buildings—Lack of permanent plumbing.	Repealed
246-215-09210	Potentially hazardous food—Temperature control.	Clarification
246-215-09215	Thawing thickness—Thawing potentially hazardous foods.	Clarification
246-215-09300	Residential kitchen—Requirements and restrictions.	Clarification
246-215-09420	Receiving food—Food condition.	Clarification
246-215-09500	Requirements and exemptions.	Clarification

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Repealed Sections- The proposal repeals three rule sections.

WAC 246-215-04650 Methods—Returnables, cleaning for refilling (2017 FDA Food Code 4-603.17)

Repealed this section and relocated its requirements into WAC 246-215-03348 to align with language in the FDA Food Code.

WAC 246-215-09130 Cooking thickness—Cooking raw meats

Repealed this section to remove the potential restriction specific to mobile food units as menu approval is contingent upon equipment and procedures similar to all food establishments rather than mode of operation.

WAC 246-215-09180 Movable buildings —Lack of plumbing

Repealed this section because buildings without plumbing are not to be treated as mobile food units unless they are readily movable; nonpermanent structures are covered in other sections of the chapter.

SECTION 3:

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The general goal of RCW 43.20.050, Powers and duties of the state board of health, is to protect the health of the people of this state by ensuring retail food establishments follow proper food safety practices. The general goal of RCW 43.20.145, Food service rules, is to ensure the board considers the most recent version of the FDA Food Code when adopting rules for food service.

The specific objectives the rules implement are to:

1. Incorporate the most recent food science and technology;
2. Be more consistent with the FDA Food Code; and
3. Establish a mechanism for local and state governments to enforce food safety practices that protect the public from food safety hazards.

The proposed rules meet these general goals and specific objectives by incorporating requirements from the most recent FDA Food Code and incorporating stakeholder input that will enable more consistent implementation of food service rules statewide.

SECTION 4:

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

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The proposed rules will achieve the authorizing statute's goals and objectives because the rules provide a stakeholder-reviewed, science-based, current, and nationally consistent set of standards adopted in rule that local and state governments use when reviewing, permitting, and inspecting food establishments.

There are no feasible alternatives to rulemaking because RCW 43.20.050 requires the board to adopt rules that protect public health related to food service. Furthermore, RCW 43.20.145 mandates the board to consider the most recent version of the FDA Food Code when revising the food safety rules. The board last updated chapter 246-215 WAC in 2013 based on the 2009 version of the FDA Food Code. Since then, the FDA published updated versions in 2013 and 2017. If the board does not revise the rules based on the 2017 FDA Food Code, the rules will fall further behind the latest science used in other states and will not meet the general goals and specific objectives of the underlying statutes. In addition, the 2017 FDA Food Code incorporates several clarifications to current provisions that will assist in stakeholder understanding and safe, consistent, implementation of the rules.

SECTION 5:

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The FDA Food Code is updated regularly using input from the CFP, a national collaborative process that includes representatives from regulators, industry, and academia. It is based on the most current food science and technology and provides consistency for food service regulations nationwide. The proposed rules incorporate the following provisions of the most recent version of the FDA Food Code (2017) in order to implement the statutory direction provided in RCW 43.20.145. Sections adopted from the FDA Food Code are exempt from the requirement to analyze the cost and benefits per RCW 34.05.328(5)(b)(iii).

Section-by-Section Cost/Benefit Analysis

For each proposed rule deemed significant, the following section-by-section analysis, organized by different parts of the chapter, includes a description of the proposed changes as well as the associated costs and benefits of those changes.

Cost estimate methodology

The department sent surveys to an email food safety contact list of approximately 600 stakeholders. In addition, the department requested FSAC members, local health jurisdiction partners, mobile food and restaurant associations to survey their stakeholders on the cost impact of the proposed rules. The department sent reminder notices and received forty-four (44) responses. When cost estimates from the survey process are included, they are noted in the analysis below. In some cases, respondents provided time estimates with no dollar amounts. Based on survey responses, the department's assumption is that labor costs is approximately \$20

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per hour for food establishment staff, which was a representative value (i.e., some were lower some were higher) in cost-per-hour responses for food establishment staff which aligns with national employment wage estimates³. This value can be used to convert time-only responses to quantitative costs. .

Part 2, Management and Personnel

WAC 246-215-02107 Certified Food Protection Manager (FDA Food Code 2-102.12)

Description: This section identifies the need for each food establishment to have a certified food protection manager (CFPM) with certification from a nationally-accredited food safety testing program. In 2013, the FDA Food Code instituted the requirement for food establishments to have at least one CFPM per *establishment*. In 2017, the FDA amended the section to require food establishments to have a CFPM per *shift*.

The proposed rule requires one CFPM per food establishment as in the 2013 FDA Food Code. The board intends to implement a one-time, one-year phase-in period after the effective date of the rule to allow for a transition period and an additional 60-days when food establishments need to replace the CFPM staff during routine course of business.

The CFPM requirement does not apply to food establishments the regulatory authority deems to pose a minimal risk.

Cost: Twenty-four (24) out of forty-four (44) survey responders indicated that current staff already have the CFPM. Nine (9) responders indicated that they do not have any current staff with the certification. Eleven (11) responders did not provide an answer (no response).

The department researched costs associated with obtaining a CFPM certification for those food establishments that intend to have existing staff obtain the certification. The table below includes the estimated cost for an employee to receive a CFPM certification. The certification is valid for 5 years and must be renewed on or before expiration to be considered valid. As shown below, it will cost approximately \$511.50 for food establishments to have an employee obtain or renew a CFPM certification. This equates to \$102.30 annual cost (\$511.50/five year time period for CFPM approval). There may be some food establishments, however, which elect to hire a contractor to satisfy the requirement, cost estimates for this approach were not researched because it was presumed to be more costly.

Estimated cost for an employee to receive a CFPM certification

Provider	Course Title	Training Cost	Exam Cost	Test Center Cost	Total
360training.com, Inc.	Learn2Serve Food Protection Manager Certification Program	\$85	\$89 (On sale for \$55)	None	\$174

³ May 2018 National Occupational Employment and Wage Estimates United States

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Provider	Course Title	Training Cost	Exam Cost	Test Center Cost	Total
AboveTraining/StateFoodSafety.com	Certified Food Protection Manager (CFPM) Exam	Online \$0	\$28 + Proctor Fee	Testing Center: \$50 Proctor U (online with webcam): \$46	\$78
National Registry of Food Safety Professionals	Food Protection Manager Certification Program International Certified Food Safety Manager	\$24	\$47	Included in Exam Cost	\$71
National Restaurant Association	ServSafe Food Protection Manager Certification Program	\$125	Online with Proctor: \$36 Written with Proctor: \$38	None	\$163
Prometric Inc.	Food Protection Manager Certification Program	\$29 (book) \$70 (online)	Written or Online with Proctor: \$28 Prometric Training Center \$48	Included	\$118

Note: An additional service provider. Always Food Safe, was nationally accredited in February 2020 after stakeholders were surveyed and is not included in the above table.

Cost assumptions for travel and time spent on training and testing⁴

Exam and Test Costs	\$71-\$174 \$174
Transportation	100 miles (planning level estimate- testing sites include most colleges and universities), \$57.50 transportation cost based on OFM \$.575 per mile
Time	4 hours x \$20 per hour = \$80 (transportation) 8 hours x \$20 per hour = \$160 (training) 2 hours x \$20 = \$40 (test)
Total	\$ 511.50 every 5 years (\$102 annual cost)

Benefits: Manager-level food safety training leads to a CFPM better prepared to establish AMC in a food establishment. Recent national and local risk factor studies have indicated a trained manager helps reduce the number of observed critical risk factors, which should reduce foodborne illness. In addition, a study from 2014 indicated a food manager with an increase in food safety knowledge was linked to an increase in the food safety knowledge of workers.⁵

WAC 246-215-02110 Duties—Certified food protection manager (FDA Food Code 2-102.20)

⁴ Planning level cost estimates- actual individual costs will vary

⁵ Brown, L.G., Le, B., Wong, M.R., Reimann, D., Nicholas, D., Faw, B., Davis, E., & Selman, C.A. (2014). Restaurant Manager and Worker Food Safety Certification and Knowledge. Foodborne Pathogens and Disease, 11(11), 835-843.

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WAC 246-215-02115 Duties—Person in charge (FDA Food Code 2-103.11)

Description: These sections identify the role of the CFPM and the duties of the PIC of food establishments. The CFPM has nationally-accredited certification and is the food safety lead tasked with developing and implementing policies and procedures to identify and address food safety risks in the establishment. In addition, the CFPM is tasked with ensuring staff are trained on specific tasks and that persons in charge are able to take preventive or corrective actions as needed. The PIC requires no special certification but is expected to understand the food safety risks and implement preventive measures for the establishment as there must be at least one PIC in the facility at all items of operation. Washington first adopted the PIC provision in 2005 and is proposing to require the CFPM in this rule revision.

In addition to the expanded duties of the PIC in the 2017 FDA Food Code, the proposed rules include a requirement that the PIC ensure AMC. AMC is the purposeful use of specific actions and procedures in the food establishment to control foodborne illness risk factors. It embodies a preventative rather than reactive approach to food safety through a continuous system of training, monitoring, and verification. AMC is evaluated by observing current operating practices, discussions with staff, and conducting root cause analysis on documented food safety risks.

Cost: There is no anticipated compliance costs associated with proposed amendments. Most of the modification to the rule is based on the 2017 FDA Food Code and many of the changes are explicit additions of duties of persons in charge previously assumed. While the codification of the AMC concept is unique, the intent for this level of control of food safety risk factors has been a requirement of all food establishments since at least 2005.

Benefits: Focusing a CFPM to work on training persons in charge will help ensure a food establishment has a comprehensive food safety program and will be able to maintain a level of food safety expected in the 2017 FDA Food Code at all times of operation.

WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis

Description: This section specifies the PIC of a food establishment must obtain approval from a local health officer before reinstating a food employee that was excluded from the workplace due to symptoms of jaundice or a diagnosis of infection with hepatitis A, norovirus, *Salmonella*, *Shigella*, or Shiga toxin-producing *E. coli*. Including norovirus and all species of *Salmonella* to the list requiring exclusion will align Washington's rule with the FDA Food Code.

The department's assumption is these will be infrequent events. In addition to controlling for two additional pathogens, the amendments remove a reference for the local health officer to use a manual on communicable diseases when considering the reinstatement and now relies on professional judgement, current standards of practice, and the best available medical and scientific information.

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Cost: There is no significant compliance cost associated with the proposed changes. There will be the nominal infrequent cost for food establishments to contact the local health officer via phone or email to get approval for reinstatement.

Benefits: Aligning the state rule with the FDA Food Code by adding two additional pathogens able to spread from infected food workers will provide greater public health protection. Local health officers may decide not to use the referenced communicable disease manual when making the reinstatement decision in many circumstances. This change removes the unneeded mandate but they may elect to refer to the guide.

246-215-02255 Employee health—Removal of exclusion or restriction based on exposure.

Description: This section specifies the PIC of a food establishment that serves a highly susceptible population must obtain approval from a local health officer or regulatory authority if not the local health jurisdiction (e.g., department of health; department of social and health services; and department of children, youth and families) before reinstating a food employee restricted from food handling due to:

- Exposure to a confirmed foodborne illness outbreak;
- Preparing food identified in a confirmed foodborne illness outbreak;
- Working at a facility with a confirmed foodborne illness outbreak; or
- Exposure to a person with a diagnosed infection of hepatitis A, norovirus, *Salmonella*, *Shigella*, or Shiga toxin-producing *E. coli*.

Cost: Other than the nominal opportunity cost of the time to consult with the local health officer and regulatory authority (minutes), there is no anticipated compliance cost associated with the proposed changes.

Benefits: Involving the local health officer and regulatory authority will help ensure the highly susceptible population is properly protected from the potential spread of a foodborne disease or pathogens from exposure to infected food employees.

Part 3, Food

WAC 246-215-03235 Specifications for receiving—Temperature (FDA Food Code 3-202.11)

Description: This section allows food establishments to receive freshly-made Asian rice-based noodles at ambient temperatures. This change was directed by the Washington state legislature in RCW 43.20.145 in 2016 but the legislation did not establish the standards. The proposed language establishes a requirement for food establishments to properly heat or cool freshly-made noodles immediately after receipt if the noodles are warmer than forty-one degrees Fahrenheit. These established preparation procedures help control bacterial growth and are similar to language currently used in California.

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Cost: There is no anticipated compliance cost associated with the proposed changes. The department assumes the manufacturer and food establishments will adjust their practices to comply with the allowed receiving temperatures.

Benefits: This allows for distribution of freshly-prepared Asian rice-based noodles and for safe cooling or heating upon receipt.

WAC 246-215-03290 Original containers and records—Shellstock maintaining identification (FDA Food Code 3-203.12)

Description:

This section requires food establishments to leave tags and labels attached to shellstock (such as mussels, oysters, and clams) containers to remain attached until the container is empty unless an alternate record keeping system is approved. The existing rule requires food establishments to record the date the last shellstock is sold or served. The proposed change requires food establishments to also put the first date of sale on the shellstock tag or label in addition to the existing requirement to record the date the last shellstock is sold or served. It also clarifies that establishments may not commingle shellstock with different tag information into shared containers before being ordered by the consumer to ensure tracking information is accurately maintained.

Cost: Thirty-eight (38) out of forty-four (44) responders did not answer or provided an incomplete answer to this question (e.g., indicated that it was not applicable in their food establishment). Two (2) responders indicated they already use this date mark system and four (4) responders indicated that this requirement will only take a few minutes to complete this task. Based on the survey responses, the department's assumption is that there is a nominal compliance cost of writing the first date of sale on containers labels and tags (minutes to complete). Operators are already required to record the final date of sale on the tag and some routinely add both dates as standard practice. One responder questioned the benefit of marking the tags, which indicated a need for education.

Benefits: Requiring the first date will allow regulatory authorities to better identify shellfish growing areas associated with illness and more accurately inform the public about recalled shellfish. It will also enable regulatory authorities to respond more effectively on illness investigation events. Education on the provision will better prepare operators to respond effectively to a potential illness outbreak.

WAC 246-215-03300 Preventing contamination by employees—Preventing contamination from hands (FDA Food Code 3-301.11)

Description: This section addresses preventing potential food contamination from food worker hands and provides allowances for bare hand contact with ready-to-eat food in certain circumstances. The proposed change clarifies an additional option that allows bare hand contact of ready-to-eat food when the food is an ingredient, such as chopping carrots that will be added

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to a stew, which will be cooked in the establishment to a minimum temperature of 145 degrees Fahrenheit (°F) (63 degrees Celsius (°C)).

Another proposed change requires food establishments document when and how they inform food employees that the employees must report any gastrointestinal symptoms and diagnosis of specific diseases that are transmissible through food to the PIC. Food establishments that have approval to have bare hand contact with ready-to-eat food must record food employee illness information in a log and retain it for 90 days. They must also obtain written approval from the regulatory authority to reinstate bare hand contact if they voluntarily or involuntarily discontinued an approved allowance for bare hand contact.

Cost: Sixteen (16) responders indicated they were not interested in allowing bare hand contact of ready-to-eat food that will not be cooked. Twenty-three (23) responders did not provide an answer to these questions. Two (2) responders indicated they were interested and one (1) indicated they were interested in this practice for bartenders only. Six (6) responders indicated there will be minimal or no cost to track food employee illness information in a log retained for 90 days if they were going to implement a bare hand food contact practice. One respondent estimated it would take \$50 in administrative costs.

Benefits: The rule change and education on proper use of barriers and practices to reduce bare hand contact will reduce glove use. This will reduce gloves in the waste stream and also reduce food establishment operating costs. The changes related to employee health and hygiene will also help ensure food establishments requesting approval to use bare hand contact of ready-to-eat food use safe food handling practices.

WAC 246-215-03348 Preventing contamination from equipment, utensils, and linens—Refilling returnables (FDA Food Code 3-304.17)

Description: This section establishes safeguards for preventing equipment, utensils and linens from becoming contaminated when refilling returnable food and beverage containers. This includes containers returned to the establishment to be cleaned, sanitized, and reused as well as practices allowed with consumer-owned containers. It includes provisions for container type and prescribes who is allowed to refill the containers.

The proposed change gives the opportunity for food establishments to create and submit a written plan for approval from the regulatory authority. The plan must demonstrate a contamination-free process that allows (1) Consumers to refill a consumer-owned container with non-time and temperature controlled for safety food and (2) Food establishment employees to refill a consumer-owned container for all types of food.

Cost: This rule allows, but does not require, a food establishment to refill returnable food and beverage containers. If a food establishment offers this service it must comply with the rules. Most of the resulting required actions in this section are taken directly from the FDA Food Code and are exempt from analysis. The section adds a unique provision for consumers to supply their own containers for refilling that is not in the FDA Food Code. Ten (10) out of forty-four (44) responders indicated they were interested in exploring the practice of filling consumer-owned

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containers. Nineteen (19) indicated they would not pursue this practice and fifteen (15) did not provide a response. Responders indicated a broad range of time estimates to complete the written contamination-free process or policy (from hours, to weeks, to months). Based on these results, the department assumes most food establishments that elect to offer this service could develop processes in one to two days (\$80-\$160). After implementation, the department intends to develop templates that food establishments could use to develop their plans.

Local health departments reported a range of time and cost to review the written processes. Some indicated they would review plans for no costs and others estimated a review time from 15 minutes to 1 hour with hourly cost ranging from (\$60-\$229.80 per hour). Responders also indicated they were unsure of the equipment needed for a contamination free process. Based on searches of the internet, food grade gravity bins cost approximately \$172 for one unit.⁶ It is unknown how many units a food establishment will elect to put into service but these costs would be scalable. The department assumes food establishments will factor the anticipated cost when considering to offer this service. Ultimately, food establishments will incur cost from this section based on the cost of developing and obtaining approval of policies from the regulatory authority and location specific costs for making modifications to the equipment where food is stored or displayed to ensure the process used to refill the containers prevents contamination.

Benefits: The benefit of this section is food establishments will be able to safely refill a wider variety of food containers once they get their equipment and contamination free processes approved by the local health department. If implemented, this will reduce plastic in the waste stream, while still ensuring food establishments are using a contamination-free process. Additionally, the section will allow for growth of novel technologies and practices designed for waste reduction.

WAC 246-215-03372 Preventing contamination by consumers—Returned food and reservice of food (FDA Food Code 3-306.14)

Description: This section establishes when food, which has been in the possession of a consumer, may be re-served. This change provides an option for recovery of served food when it can be protected from contamination. Examples include whole uncut produce that is re-washed prior to service and unopened containers of time/temperature control for safety food if the food has been properly temperature-controlled as needed.

Cost: There is no anticipated compliance costs associated with the proposed amendments to this section.

Benefits: There is an economic benefit for food establishments to safely re-serve food when meeting the exception requirements. This practice will also reduce food in the waste stream and increase safe food recovery for donation.

⁶ Amazon Trade Fixtures Gravity Bin 6" X 18" Tritan by Freeman. Model # 06108TR-MBS

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WAC 246-215-03400 Cooking—Raw animal foods (FDA Food Code 3-401.11)

Description: This section establishes minimum requirements for the safe cooking of raw animal foods, such as meat, fish, and poultry. The FDA Food Code recognizes two methods to cook foods safely. The first is a designated temperature held for a specified time period (cook and hold). The second is the instantaneous method that requires foods to be cooked to a minimum temperature that kills pathogens instantly (instantaneous kill).

The current FDA Food Code increases the cook and hold time for comminuted (ground or tenderized) meat cooked to 155°F (68°C) from 15 to 17 seconds. This is the primary recommended method. The FDA Food Code also includes an instantaneous cooking temperature for comminuted meat of 158°F (70°C) with no hold time. The FSAC considered these two methods and recommended food establishments use the instantaneous method for cooking ground meat to the instantaneous kill temperature of 158°F (70°C) due to reduced need to monitor the increased holding time. The proposed change allows use of the instantaneous kill method without the need of regulatory authority approval. In addition to cook to 155°F (68°C) and hold for 17 seconds, a food establishment may also use two other cook and hold options (145°F (63°C) and hold for 3 minutes, 150°F (66°C) and hold for one minute), if they receive approval from the regulatory authority.

Cost: If a food establishment offers comminuted meat, the department assumes food establishments will need to adjust equipment operations, write procedures, and train staff on how to accommodate the cooking temperature and time. Survey responders indicated that it will typically be between one to two hours (\$20-\$40) to complete these tasks. For food establishments that want to continue using the cook and hold method, there is the administrative cost of getting regulatory authority approval. FSAC local health jurisdiction representatives indicated this could include a discussion with an inspector, a written correspondence, or a standard operating procedure amendment that clearly identifies the food establishment's plans. Based on the survey input, it could take approximately one hour (\$20) for a food establishment to develop the written document if they want to continue using the cook and hold method.

Benefits: This section improves public health and safety by encouraging food establishments to use the more conservative instantaneous cooking method but still allows food establishments flexibility on using the cook and hold method.

WAC 246-215-03425 Freezing—Parasite destruction (FDA Food Code 3-402.11)

Description: This section establishes the requirements for parasite destruction using freezing for fish products that are served raw, raw marinated, partially cooked, or marinated partially cooked. The amendment also adds fresh finfish such as salmon and halibut to the list of foods exempt from parasite destruction if the food establishment partially cooks the food based on an individual's order and if the food establishment complies with WAC 246-215-03620 (i.e., provides a modified consumer advisory notice specific to undercooked fish). The provision provides an option currently unavailable to food establishments that want to serve partially cooked fresh fish to the consumer.

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Cost: There is no anticipated compliance cost associated with the proposed change.

Benefits: The benefit of the proposed amendments is food establishments will be able to serve partially-cooked fresh fish if so ordered by the consumer, and the consumer will have proper notice of the risk of illness. Although not currently allowed, food establishments may be serving partially cooked fish in violation of rules and the proposed change will align the rules with current food practices while ensuring the public is informed when this occurs (discussed in WAC 246-215-03620 below).

WAC 246-215-03527 Ready-to-Eat, Time/Temperature Control for Safety Food, Disposition (FDA Food Code 3-501.18)

Description: This section establishes requirements when food must be discarded due to improper date marking of perishable, refrigerated, ready-to-eat food to control *Listeria monocytogenes* as listed in WAC 246-215-03526 (FDA Food Code 3-501.17 in 1999).

The amendment allows food establishments not serving a highly susceptible population to heat food to 165°F (74°C) prior to service that otherwise would have to be discarded if the product is approaching the end date. Heating the food destroys the threat of *Listeria monocytogenes*. In addition, the amendments allow the regulatory authority to consider additional evidence that enables the food establishment to correct improper date marking rather than require automatic discard.

Cost: There is no anticipated compliance cost associated with the proposed change to this provision. Food establishments will reduce costs associated with discarding food, which will be an economic benefit.

Benefits: The provision will reduce the amount of food that is wasted while still addressing the public health risk of *Listeria monocytogenes* associated with extended refrigerated storage of food in retail food establishments.

WAC 246-215-03620 Consumer advisory—Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens (FDA Food Code 3-603.11)

Description: This section requires food establishments to properly notify consumers, in writing, of the potential risk for eating undercooked animal products. The consumer advisory, as used in the FDA Food Code, notifies the consumer of increased bacterial infection risk from eating undercooked animal products. It is not designed for potential parasites in undercooked fish. The amendment to this section adds partially-cooked fresh fish to the list of foods allowed to be served undercooked with a proper written advisory.

Cost: Three (3) out of forty-four (44) respondents indicated they would like the option to serve fresh partially cooked fish. Fifteen (15) indicated they would not be interested and twenty-six (26) did not respond to the question. One respondent indicated they regularly update menus and

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including this information would not be a cost burden but were concerned with the requirement to include the word “parasite” as it would be a distraction.

Based on stakeholder input, inclusion of “parasite” on the menu was not recommended by the FSAC. Instead, a supplementary handout, which the department will provide in a print ready format, that explains the risks associated with parasites, as allowed by the FDA Food Code, is included in the requirement. Providing the handout will be a nominal cost (pennies per handout).

Benefits: The benefit of this amendment is it allows food establishments the option to cook and serve fresh fish, such as salmon and halibut, below the required temperature if an informed customer elects to accept the risk of a parasitic illness. Members of the FSAC stated fish cooked to the required cooking temperature diminishes the gastronomic experience and that some customers may elect to take a risk to eat the fish partially cooked.

Part 5, Water, Plumbing, and Waste

WAC 246-215-05255 Location and placement of handwashing sinks (FDA Food Code 5-204.11)

Description: This section establishes the placement of handwashing sinks in food establishments. The existing language has a 25 foot maximum distance to a sink from food preparation, food dispensing, and warewashing areas. The 25 foot distance is not codified in FDA Food Code but is provided as FDA guidance in plan review materials. The proposed rule allows the regulatory authority to approve a sink farther away than the 25 feet standard if the site specifics and procedures in the establishment warrant a safe distance increase. Determining sink distance is already included in the permitting process.

Cost: There is no anticipated compliance cost associated with the proposed rules.

Benefits: The benefit of this amendment is it provides the regulatory authority discretion of approving a food establishment that has a sink more than 25 feet from a food preparation area but still close enough to “allow convenient use by employees” so as not to hinder the practice of handwashing.

Part 6, Physical Facilities

WAC 246-215-06570 Methods—Prohibiting animals (FDA Food Code 6-501.115)

Description: This section establishes the general restriction of animals in food establishments and lists exceptions when animals are allowed. The first amendment restructures the sentence syntax without changing its intent to clarify that service animals, as defined in RCW 49.60.040, are allowed in areas that are not used for food preparation and in areas that are open for customers such as dining and sales areas. The proposed rule also expands the FDA Food Code

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provision and establishes that pet dogs, under the control of their owners, are allowed in the outdoor and indoor portions of a food establishment when food establishments meet several conditions.

Cost: Nine (9) out of forty-four (44) respondents indicated they are interested in offering this practice and provided time estimates to complete the required actions. Most of the costs are not significant and generally would require staff time to create a plan and submit to a local health department or regulatory authority for approval. Respondent time estimates had a large range from minutes, hours, days, and up to nine months. The department assumes it will take one to two days for food establishments to create a plan. A few respondents provided time estimates to train staff to prevent dogs from contaminating areas of the establishment in a range from minutes (time to write an email) to hours to weeks. There are also minor indeterminate costs if an establishment elects to provide single use disposable containers⁷ (\$18.99 for 100 dishes) to provide water to visiting dogs. The department will provide a print ready sign to notify other customers that dogs are allowed in the outdoor or indoor areas. The food establishment will have the nominal cost of printing the sign. Lastly, local health department members of FSAC indicated it would take approximately one to two hours (\$60-\$229.80 per hour) for the review and approval of the plan.

Benefits: The benefit of the proposed changes is it establishes safeguards if a food establishment elects to allow dogs on the outside premises. Participating in this practice is completely voluntary.

Part 8, Compliance and Enforcement

WAC 246-215-08305 Exempt with approval

Description: This section authorizes regulatory authorities to exempt individuals from the food establishment permit if the individual meets specified exemption criteria including limiting food handling of identified foods. In addition to a title change, the amendment reorders foods exempt from permitting and removes the requirement for immediate service for two foods currently listed--corn on the cob and whole roasted peppers.

Cost: There is no anticipated compliance cost associated with these amendments.

Benefits: The benefit of the amendments is it accurately describes current practice by removing the clause for immediate service. These foods are not typically “cooked to order” and instead are prepared ahead of time and held hot for short durations. The amendments still protect public health as the operator, if approved by the regulatory authority, must still maintain proper food temperatures.

⁷ Internet research- Amazon- Disco pets vet-grade biodegradable pet bowls 8 oz./1 cup

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WAC 246-215-08325 Application procedure—Contents of the application (FDA Food Code 8-302.14).

Description: This section includes the applicant demographic and food establishment operating information needed to submit a complete application for a new food establishment. The application must include: the name, birth date or Unified Business Identifier, mailing address, telephone number, and signature. The proposed amendment allows for a Unified Business Identifier to replace the submission of an applicant's birth date.

Cost: There is no anticipated compliance cost associated with this amendment.

Benefits: The benefit of the amendment is to allow a unique identifier for a food establishment without needing an applicant's personal information.

Part 9, Alternative Food Facilities

WAC 246-215-09100 Requirements and restrictions—Requirements

Description: This section establishes standard operating requirements for mobile food units and is unique to Washington; there is no similar section in the FDA Food Code. The amendment adds a requirement for a mobile food unit permit holder to immediately notify each local health jurisdiction if the mobile food unit permit is suspended by the regulatory authority that issued the permit.

Cost: There is no anticipated compliance cost associated with these amendments. There would be a nominal cost associated with a mobile food unit notifying regulatory authorities about a suspension due to a compliance event. This would be the opportunity cost of the few minutes to call or email the regulatory authorities that issued the mobile food unit permits.

Benefits: The benefit of these amendments will be that regulatory authorities will be notified if another authority suspends a mobile food unit's operations. To protect public health, the underlying cause of the suspension needs to be resolved before the mobile food unit can return to operation in any jurisdiction.

WAC 246-215-09115 Plan approval—Plan contents

Description: This section provides a framework for mobile food unit operators to obtain approval to operator in more than one jurisdiction and provides a process for reciprocity plan review by primary and secondary local health jurisdictions as authorized in RCW 43.20.149. The amendment also moves a requirement for operators to identify their proposed itinerary at plan review to their time of operation because operators may not know this information at plan review.

Cost: There are no anticipated compliance cost of these amendments.

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Benefits: The amendments will provide a process to implement reciprocal review of mobile food unit plans between multiple local health jurisdictions that removes an administrative burden and cost on mobile food unit operators.

WAC 246-215-09125 Time/temperature control for safety food—Temperature control postings

Description: This section remove a restriction for mobile food units to cool food cooked on the unit which previously could only be removed by a variance of the rule issued by the local health jurisdiction. The amendment allows cooling if approved by the regulatory authority. The amendments also remove a requirement to reheat food cooked at a food establishment to specified temperatures within one hour of cooking and aligns with the two hour allowance for other food establishments. Food safety temperature control is still required but these restrictions were removed because they were not justified.

Cost: There are no anticipated compliance cost of these amendments.

Benefits: The amendments will result in more flexibility for mobile food unit operators while still ensuring safe food practices.

WAC 246-215-09126 Commissary usage

Description: This new section establishes requirements or standards for mobile food units to be exempt from the requirement to use a commissary or service area. This section identifies requirements a written plan approval for many components of operating the mobile food units such as equipment and utensils needed for complete onboard preparation of an approved menu, how to protect the mobile food unit from environmental contamination when not in use, maintaining required food storage temperatures during storage, preparation, service, and transit, type of handwashing sink required and fresh water and warewashing facility capacity, cleaning and sanitizing unit, approved source required for food and ice used on the mobile food unit, wastewater and garbage removal.

Cost: There are no anticipated compliance costs associated with the proposed amendments.

Benefits: The amendments identify standards for mobile food units to obtain an exemption from commissary or service area requirement, which will be a cost savings to their operations.

WAC 246-215-09160 Required postings—Business name and operating locations

Description: This section establishes requirements for mobile food units to post their business name and operating locations. The proposed amendments add a requirement for mobile food units to permanently post the business name on the exterior of the mobile food unit using a minimum 4-inch size letters. The requirement is designed to notify consumers of the business

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name should a descriptor be needed for a complaint or illness investigation as well as help allow for cross-county plan-review reciprocity.

The amendment moves the requirement to notify the regulatory authority of the days, hours, and locations of operation from submission of the initial application (WAC 246-215-09115(5)) to when the food unit is operational. The amendment also clarifies the options for notification such as by telephone, electronic mail, written correspondence, social media, or other mutually-acceptable system.

Cost: There are nominal indeterminate costs associated with the proposed amendments. All survey respondents indicated they have signage that meets minimum standards that commonly consists of a “wrap” that is designed, manufactured, and installed. Mobile food unit wraps can cost thousands of dollars (\$1,000-10,000). Those that do not currently have their business name posted will not need to install a new wrap but could display the required information using other approaches (paint, tape, board, sign, etc.) that generally would not be a significant cost (e.g., \$10 for package of 4-inch letters).

Survey respondents indicated it would take a few minutes on a daily, weekly, or monthly basis to comply with keeping regulatory authorities informed about their days and hours of operation and locations when they are planning a change, which would be a nominal cost.

Benefits: The benefit of these amendments is consumers will be better able to describe or identify the mobile food units and regulatory authorities will be kept current about mobile food units operating in each jurisdiction. Identification will also help regulatory authorities during investigations of complaint and illness notifications received from the public as well as conducting routine inspections of food establishments.

WAC 246-215-09400 Requirements and exemptions

Description: This section establishes situations where donated food distributing organizations (DFDOs) are exempt from some sections of chapter WAC 246-215. The proposed amendment adds a requirement for DFDOs to provide the current 501(c) Internal Revenue Service (IRS) status or a letter of sponsorship from a valid non-profit organization to the regulatory authority upon initial application. Additionally, the DFDO must update the regulatory authority annually regarding the nature of food service activities or when food service changes or the IRS determination letter is revoked.

Cost: There are nominal costs with the proposed amendments. Non-profit organizations should already have a valid 501(c) determination from IRS to operate in this tax status and meet the federal definition of a distributing organization under chapter 69.80 RCW. Providing a copy of the most current letter to the regulatory authority will be a nominal cost.

Benefits: By definition, DFDOs must be a charitable non-profit organization in order to operate. Requiring a copy of the IRS letter is the most effective way for the regulatory authority to confirm the organization status.

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WAC 246-215-09405 Standard operating procedures

Description: This section establishes the standard operating procedures for DFDOs. The proposed amendments remove references to other sections that apply to DFDOs because they are explained more thoroughly in later subsections. It also explicitly adds, for clarification, a standard operating procedure for DFDOs to maintain equipment and food contact surfaces in good repair and condition, which is already included in WAC 246-215-04100.

Cost: There is no anticipated compliance cost associated with the proposed amendments.

Benefits: The benefit of the proposed changes is the requirements will be clearer to DFDOs and to regulatory authorities. Standard operating procedures are considered minimum activities needed to remain in compliance. For example, if food contact surfaces are not maintained in good repair, fragments from the surfaces could break off and end up in food prepared for consumption, which would be unsafe for consumers and could result in a violation.

WAC 246-215-09410 Sinks—Sink requirements

Description: This section clarifies sink requirements for DFDOs. The proposed amendment removes a requirement for DFDOs that do not handle unpackaged food to have a three-compartment sink but clarifies DFDOs must have at least a single sink available for employees to wash hands. The amendments clarify that DFDOs that wash produce on-site must have a separate food preparation sink or an alternative produce washing procedure that ensures produce is not directly placed in a handwashing or warewashing sink.

Cost: There is no anticipated compliance cost associated with the proposed amendments. The amendments lessen sink requirements based on determined need versus a blanket requirement for all DFDOs with differing operations to have the same number of sinks.

Benefits: The proposed changes have the benefit of identifying appropriate sink requirements based on DFDO planned use and need. This could result in cost savings for DFDOs with limited food operations that do not require a three-compartment sink.

246-215-09415 Food sources—Donated foods.

Description: This section clarifies sources of food available for donation. The amendments include several allowable sources that should expand the known avenues for food donation. Custom (non-USDA) slaughtered domesticated meat animals such as cows, sheep, goats, and pigs are removed from an allowable source for food donation. The provision regarding custom slaughter was removed to align with state law (chapter 16.49 RCW) that only allows custom slaughter of domesticated meat animals for the household end consumer. Instead, domesticated meat animals destined for donation will be required to be slaughtered in a USDA-approved facility.

Cost: There is no anticipated compliance cost associated with the proposed amendments; however, the change might reduce the availability of donated food.

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Benefits: The proposed changes have the benefit of aligning with state law.

246-215-09425 Prohibited food—Restrictions.

Description: This section clarifies food items specifically prohibited for donation. In addition to distressed, unsalvageable, or home-canned foods and out-of-date infant formula currently prohibited, this section prohibits the distribution of raw (unpasteurized) milk through donated food supplies.

Cost: There is no anticipated compliance cost associated with the proposed amendments; however, this change may reduce the availability of donated food.

Benefits: The proposed change has the benefit of potentially reducing risk of foodborne illness for populations that may be at increased risk.

WAC 246-215-09430 Food labels—Alternative labeling

Description: This section establishes food labeling requirements for DFDOs if they repackage food on premises. The proposed amendment adds a requirement for the name and place of business of the manufacturer, packer, or distributor to be included on each individual label. The department assumes this information is included in the label from the original container in most cases.

Cost: Survey respondents indicated they would incur additional costs in creating labels but did not provide specific cost estimates. One respondent indicated they repackage a lot of food and will have to arrange for another volunteer worker to complete this work. Label makers cost \$165 and labels cost \$12 for 500 ¾” by 2” labels⁸. The actual cost of this section will be determined by the type of products DFDOs receive and whether the food will need to be labeled.

Benefits: The benefit of the amendments is DFDOs will be able to provide the general public with recall information, once they are aware that they distributed suspect food. This will protect public health and potentially reduce the threat to illnesses or injury from recalled food.

WAC 246-215-09435 Record keeping—Receiving record

Description: This section establishes record keeping requirements for DFDOs. The proposed amendments increase the duration a DFDO must retain records from 30 days to 90 days.

Cost: Survey respondents indicated they already have to retain records for their own operations and the cost of retaining these records for additional time will not be significant. If a DFDO maintains hard copies of records versus electronic, they could have to obtain additional storage space, which again would be nominal.

⁸ Internet research- Dymo Label Printer Model #1752266

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Benefits: The benefit of this amendment is that identification of foodborne illnesses or recalled product may take several weeks. By extending the retention time, DFDOs could potentially notify people that received recalled food items about the recall and regulatory authorities could properly trace back contaminated products. This could prevent exposure to contaminated food and resulting foodborne illnesses.

Probable Cost and Benefit Conclusion

Overall, most proposed changes to chapter 246-215 WAC are taken directly from the FDA Food Code and impose no additional costs. As identified above, there are sections that impose costs on food establishments. In almost all of these sections, only a percentage of food establishments will incur compliance costs (i.e., the sections will not impact all food establishments). When there are likely costs, they are offset by the assumed reduction in foodborne illness from the proposed rule changes and other cost saving measures such as reducing the use of gloves. In many cases, the justification and description of the benefits of the proposed rules outweigh the costs. Collectively, the probable benefits of the proposed rules protect public health in Washington by ensuring retail food establishments follow proper food safety practices, making the rules more consistent with the latest FDA Food Code, and providing occasional cost savings and more flexibility for businesses on many aspects of their operations.

Based on the preceding analysis, the department concludes that the probable benefits of the proposed rules exceed the probable costs.

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

RCW 34.05.328(1)(e) requires that agencies determine, after considering alternative versions of the rule and this analysis, the rule being adopted is the least burdensome alternative for those required to comply.

Descriptions of alternatives considered

Staff worked closely with constituents to minimize the burden of these rules. The FSAC provided recommendations for revisions including representation from:

- Academia
- Consumers
- Farmers Markets/Temporary Food Vendors
- Grocers
- Local Health Jurisdictions
- Mobile Food Unit Operators
- Restaurants

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- Schools
- State Agencies/Facilities
- Tribes
- U.S. Food and Drug Administration

This workgroup was tasked with conferring with their stakeholders to review potential changes to the rule and to provide input to the FSAC at each meeting. The group discussed, debated, and voted on recommended changes to the rules.

Three subcommittees of the workgroup were also used to work on complex portions of the rule regarding mobile food units, employee health, and donated food distributing organizations. The members of each of these subcommittees represented affected stakeholders and evaluated the impacts of the changes throughout the process. Additionally, input from stakeholders received directly on the burden of the potential rule language was considered.

In the course of these and other efforts, the following alternatives are examples where potential changes were assessed and rejected:

Alternative #1: Require one Certified Food Protection Manager (CFPM) *per shift* as included in the 2017 FDA Food Code. The FSAC elected to recommend the least burdensome requirement of one CFPM *per establishment* (i.e., not each shift) as written in the 2013 FDA Food Code. This decision is supported with the corresponding modification of the rule [WAC 246-215-02110] that requires the CFPM to train staff and implement a program of food protection and education for all persons-in-charge to ensure AMC for the food establishment.

Alternative #2: Use current FDA Food Code language on date marking which requires the marking of all opened refrigerated potentially hazardous foods for a 7-day shelf life with an automatic discard of unmarked products or discard of any product unserved or not frozen after seven days. The FSAC considered using the FDA language directly from the FDA Food Code. After considerable discussion, the FSAC recommended changes to the language that were ultimately less burdensome. Changes include a modification to allow a food establishment to safely recondition food rather than automatically discard improperly marked foods. Allowing the food establishment to correct improper or missing date labels when validation of opening date is available or to cook certain foods to a specified temperature reduces the pathogen risk and maintains the intent of the provision. These allowances should ultimately improve safe practices and result in reduced food waste.

Alternative #3: Use FDA Food Code provision that allows employees to handle ready-to-eat food with bare hands (no gloves or other barrier to hand contact such as tongs) but may be interpreted to allow addition only at the time of cooking. The FSAC considered this version but elected to recommend to insert a clarification for food establishments that prepare food items for later cooking, such as morning preparation of slicing vegetables for a menu item cooked at dinner service. With the modification to the provision, employees may use bare hand contact if the food establishment can demonstrate the ingredient will ultimately be cooked at the

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establishment prior to service. This provision will reduce the use of gloves and reduce consumables and discarded food in the waste stream.

Least burdensome determination

Over its many months of discussions on the draft rules, the FSAC was aware of the potential impact of proposed rules and had the mindset “We can get the same food safety intent with a more practical approach for our stakeholders.” For example, regarding the CFPM requirement, the FSAC recognized that the proposal would have a large impact on food establishments but given the intent of the proposal elected to recommend the new requirement but not a CFPM for each shift. This is an example of how, as discussed above, the FSAC did consider some alternatives that would be more impactful and elected to recommend a less burdensome regulation. Collectively, the FSAC recommended the proposed rules that are the least burdensome but still achieve the main objectives of the authorizing statutes following proper food safety practices.

SECTION 7:

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rules do not require those to whom they apply to take an action that violates requirements of federal or state law. The department contacted the Department of Agriculture, Labor and Industries, the City of Seattle and asked for their review of applicable sections and provisions related to the state sick leave laws and mobile food unit facility review. These were also reviewed by legal counsel to ensure consistent application.

SECTION 8:

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rules do not impose more stringent performance requirements on private entities than on public entities.

SECTION 9:

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

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The intent of RCW 43.20.145 is to require consideration of the latest version of the FDA Food Code in rulemaking, but not necessarily adoption of all code language. The rule does differ from the FDA Food Code 2017 in several circumstances after stakeholder input. Where the proposal makes a change to a rule that does not align with the FDA Food Code, these differences are analyzed and justified in section 5 of this document.

SECTION 10:

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

Department staff invited participation or requested review of applicable rule sections from the FDA, other state agencies (Departments of Agriculture, Fish and Wildlife, Labor and Industries, Children, Youth and Families, Social and Health Services, Office of the Superintendent of Public Instruction), and many local health jurisdiction food safety program staff. In addition, the department conducted ongoing outreach and regular webinars with local health jurisdictions statewide to draft and refine the proposed rule language.