



King County

King County Board of Health

Staff Report

Agenda item No: 8
Rule and Regulation No: 22-01

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Subject

A proposed rule and regulation to adopt the Washington State Retail Food Service Rule revisions effective March 1, 2022 (Chapter 246-215 WAC) by reference into the King County Food Code (King County Board of Health Code or “BOH” Title 5) and to repeal outdated sections from Title 5.

Summary

The Public Health- Seattle and King County (“Public Health”) Food and Facilities Program administers and enforces Chapter 246-215 WAC and BOH Title 5. Under its regulatory authority, Public Health issues permits for and regularly inspects food businesses in King County. The State of Washington Board of Health has adopted a variety of changes to Chapter 246-215 WAC ranging from simple edits, repeal of outdated sections, and definition updates to significant changes in food safety practices. Proposed R&R 22-01 seeks to align BOH Title 5 with newly adopted State regulations. The former version of Chapter 246-215 WAC was based on the 2009 U.S. Food and Drug Administration (FDA) Model Food Code. As of March 1, 2022, Chapter 246-215 WAC is based on the 2017 version of the FDA Model Food Code with modifications.

The primary changes that will affect King County licensed food establishments include:

- 1) Requiring a Certified Food Protection Manager (effective March 1, 2023)
- 2) Date marking certain foods capable of presenting a risk for foodborne illness
- 3) Allowing reusable food containers in limited applications
- 4) Requiring a vomiting and diarrhea clean-up kit at each licensed food establishment
- 5) Relaxing current rules for pet dogs in outdoor dining areas and some indoor facilities (e.g. wine tasting rooms, brew pubs)
- 6) Implementing requirement to allow mobile food unit operators to use commissary kitchens approved in neighboring counties

Background

The Chapter 246-215 WAC revisions are the outcome of a multi-year process coordinated by the Washington State Food Safety Advisory Committee (FSAC). The FSAC is comprised of voting stakeholders representing a variety of regulatory agencies, consumer advisory groups, hospitality businesses, and concerned citizens. The process also includes public input and education which Public Health's Food and Facilities program has participated in and coordinated. With Covid-19 response efforts the past two years, there has been a delay in rule implementation. This has given the Public Health Food and Facilities program additional time for King County stakeholder education and outreach. In collaboration with the Washington State Department of Health and with the Washington State Hospitality Association, we have been able to hold multiple stakeholder sessions with owners and operators of food businesses both in person before the pandemic and online since the pandemic. Our health investigators have been providing information to food businesses of the upcoming Food Code changes during their routine inspections and will continue to do so for the remainder of 2022. We are currently developing educational materials in multiple languages to ensure all food establishments are aware of the changes to the Food Code. Furthermore, the top ten changes are posted on our website along with the mini-quick-bite videos prepared by the Washington State Department of Health in collaboration with the Washington State Hospitality Association.

Analysis

Aligning King County's food code with the latest FDA Model Food Code will offer the residents of the county a higher level of protection from the risk of foodborne illnesses. In determining the positive and negative impacts of the most significant changes to the state Food Service rule, it is important to understand that additions such as the Certified Food Protection Manager requirement, date marking, and vomiting and diarrhea clean-up kits were part of earlier versions of the FDA Model Food Code (e.g., 2013) and are already implemented by many other states in the United States. Public Health's Food and Facilities program will be able to successfully prepare our licensed food establishments to be in compliance with the required changes.

The primary changes that will affect King County licensed food establishments include:

- 1) **Certified Food Protection Manager (CFPM) (effective March 1, 2023):** This rule requires food establishments with complex food handling practices to have an employee, or representative working on behalf of the food establishments, that have successfully completed the manager training course and have the required food safety knowledge. While this rule is new King County, the Certified Food Protection Manager requirements has been in FDA's Retail Model Code since 2013. The benefit to this requirement is that it will reduce the risk of foodborne illnesses resulting from improper food handling practices. Grocery stores and low risk food establishments are exempt from this requirement. The certified food protection manager doesn't have to be on premise at all times.

2) **Date Marking for 7-Day Shelf-Life:** This rule requires food establishments to label some perishable cold held foods for more than 24hrs (e.g., cheese and deli meats) with a discard date. It helps reduce the risk of Listeria from products cold held longer than seven days. This requirement will take time to operationalize, particularly for small operations or ethnic facilities.

3) **Refilling Reusable Consumer-Owned Containers:** This rule allows food establishments to fill, refill, or reuse clean reusable containers brought by customers. It helps reduce reliance on single-use, excessive packaging with every food sold. It benefits businesses, consumers, municipalities, and the environment.

4) **Cleanup of Vomiting and Diarrheal Events:** The rule requires food establishments to develop a written protocol and have cleanup kits to properly clean incidents of vomit and diarrhea in the establishment. The purpose is to reduce the risk of foodborne or person to person transmission of virus particles that are shed during vomit or diarrhea episodes. Department of Health will share sample plans/items to include for use in a variety of food establishment environments.

5) **Dogs in Outdoor and Some Indoor Areas:** The rule allows dogs to be with their owners in outdoor areas and in certain indoor areas of food establishments with limited food service (e.g., wine tasting rooms, brew pubs) under an approved plan.

6) **Use of Commissary Kitchens outside King County:** This rule allows mobile food units to use commissary kitchens located outside King County. The requirement used to limit food trucks to use only commissary kitchens located within the permitted county. This change increases the flexibility food truck have in accessing commissary kitchens outside the county, potentially reducing their operating cost.

All of Chapter 246-215 WAC is adopted by reference in the King County Food Code, with local amendments to selected sections. Therefore, when the State Board of Health amends the state Food Service Regulations, those amendments are automatically adopted as part of the King County Food Code. However, amendments to some of the local King County Food Code sections are necessary to maintain consistency with the order and content of the state regulations. Accordingly, Sections 1 through 12 of the proposed rule amends the internal section numbering of local definitions that supplement the definitions in the adopted state food service regulations, to maintain correct sequential numbering between the state and local definitions. Section 13 of the proposed rule conforms King County's mobile food unit requirements with the recently enacted state requirements for mobile food units. Section 14 of the proposed rule repeals the outdated meat cutter license requirements and product naming requirements for meat, poultry, rabbit and aquatic foods. Finally, section 15 contains the standard severability language customarily included in Board of Health rulemaking.

Equity Impact:

Given the R&R seeks to align with State policy, equity review focused on possible mitigations to unintended consequences and gaining feedback from operators about what supports are needed to implement the State Board of Health updated regulations. Overall, none of the changes are anticipated to have a significant negative economic impact on food businesses of any size.

Our multilingual inspection staff will help answer questions food businesses may have about the requirements during the course of conducting inspections. With all the changes, there is a 6-month educational grace period (and avoiding penalties for compliance deficiencies) to provide additional time for retail food business owners to fully understand the requirements and incorporate the changes into their practices.

Attachments

1. WA-Retail Food Rule: Top 10 Changes: [FoodCodeRuleRevision-Top10Changes.pdf \(wa.gov\)](#)