

Form #2

Do Not Mark In This Box

JUN 30 4 07 PM '99

OFFICE OF THE ATTORNEY GENERAL
 SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Health
Department of Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY WV Code §16-1-7

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Food Establishments

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 1999 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE
FOLLOWING ADDRESS.


Beth Marquart, Director, Regulatory Development

Department of Health & Human Resources

Capitol Complex - Building 3, Room 265

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Joan E. Ohl, Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$27.80

Brief Summary of the Rule

64 CSR X Food Establishments

The proposed legislative rule will combine and update two existing rules:

64 CSR 17	Food Service Sanitation Regulations
64 CSR 20	Retail Food Store Sanitation

The proposed rule adopts by reference the majority of the federal 1999 Model Food Code published by the U.S. Public Health Service, Food and Drug Administration, which establishes the minimum requirements for the design, construction, management and operation of food establishments (restaurants, grocery stores, vending machines, mobile food units, temporary food stands, etc.).

Statement of Circumstances Which Require the Proposed Rule

Existing rules governing food establishments are outdated (based on 1976 and 1982 federal model codes) and no longer provide the requirements necessary to protect the public from foodborne disease.

The proposed rule adopts by reference the Food Code, 1999 Recommendations of the U.S. Public Health Service, Food and Drug Administration. The current model code, first issued in 1993 and updated biennially since then, represents the latest and best scientifically-based food safety advice. The WV Division of Health established a committee of local and state public health professionals and representatives from the restaurant, nursing home, and retail food store industries to review the model food code for use in West Virginia. The committee evaluated the model code and recommended its adoption.

Nationally, the following governmental agencies and industry organizations have endorsed the model food code and recommended its adoption: Centers for Disease Control and Prevention; U.S. Department of Agriculture Food Safety Inspection Service; National Restaurant Association; Food Marketing Institute; Association of Food and Drug Officials; National Environmental Health Association; and the Conference for Food Protection. Approximately 30 local, state, tribal, and federal jurisdictions have adopted the model food code to date, with another 30 jurisdictions close to adoption.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Food Establishments, 64CSR17

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Health
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Revenue			0	0	

2. Explanation of above estimates.

This proposed rule will not require additional funds.

3. Objectives of this rule:

The purpose of the proposed rule is to update and consolidate requirements contained in existing rules, 64 CSR 17, Food Service Sanitation, and 64 CSR 20, Retail Food Store Sanitation.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.


None. The facilities covered by the scope of these proposed rules are currently being inspected by health departments.

C. Economic Impact on Citizens/Public at Large.

None.

Date:

Signature of Agency Head or Authorized Representative


Joan E. Ohl, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 30, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Food Establishments, 64CSR17

1. Authorizing statute(s) citation: WV Code Section § 16-1-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 1999

b. What other notice, including advertising, did you give of the hearing?

Press Release, and a copy of the proposed rule will be mailed to organizations including each local health department, the WV Hospitality & Travel Ass'n, WV Retailers Ass'n, WV Department of Agriculture, WV Department of Education, and Mountain State Ass'n of Bed & Breakfasts.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1999

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A

No comments received N/A

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

N/A

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Beth Marquart, Director, Office of Regulatory Development

Department of Health and Human Resources

Building 3, Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-5598 FAX: (304) 558-6051 bethmarquart@wvdhhr.org

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Ron Forren

Public Health Sanitation Division

Office of Environmental Health Services

815 Quarrier Street, Suite 418

Charleston, West Virginia 25301-2616 (304) 558-2981

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general

description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**TITLE 64
DIVISION OF HEALTH
LEGISLATIVE RULES**

**SERIES 17
FOOD ESTABLISHMENTS**

FOR PUBLIC COMMENT

64CSR17

**TITLE 64
DIVISION OF HEALTH
LEGISLATIVE RULES**

**SERIES 17
FOOD ESTABLISHMENTS**

JUN 30 4 07 PM '99

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§64-17-1. General.

1.1. Scope. -- This legislative rule establishes the minimum requirements for the design, construction, management and operation of food establishments.

1.2. Authority. -- W. Va. Code § 16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rules. -- This legislative rule repeals and replaces Division of Health rule, "Food Service Sanitation Rules," 64CSR17, filed June 13, 1980 and effective August 1, 1980, and repeals Division of Health rule "Retail Food Store Sanitation," 64CSR20, filed April 22, 1992 and effective April 22, 1992.

1.6. Applicability. -- This rule applies to the owners and operators of food establishments.

1.7. Enforcement. -- This rule is enforced by the Director of the Division of Health.¹

§64-17-2. Incorporation By Reference of Federal Model Food Code.

2.1. The following portions of the Food Code, 1999 Recommendations of the United States Public Health Service, Food and Drug Administration as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, are incorporated by reference as the Food Code:

2.1.a. Chapter 1, except for the definition of "food employee" in paragraph 1-

¹The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

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201.10(B)(30);

2.1.b. Chapter 2;

2.1.c. Chapter 3;

2.1.d. Chapter 4;

2.1.e. Chapter 5;

2.1.f. Chapter 6;

2.1.g. Chapter 7;

2.1.h. Chapter 8, except for paragraph 8-102.10, "Preventing Health Hazards, Provision for Conditions Not Addressed"; and

2.1.i. Except for part 8-6 and subparts 8-805 through 8-813, Annex 1 with the following addition to paragraph 8-804.10, "Conditions Warranting Action":

2.1.i.1. The Director may also summarily suspend a permit to operate a food establishment if:

2.1.i.1.A. The food establishment has five (5) or more critical items in violation at the time of inspection;

2.1.i.1.B. The food establishment has repeated violations of critical items; or

2.1.i.1.C. The permit holder has been determined by the Director to have obstructed or hindered the Director in the proper discharge of his or her duties.

2.2. The Food Code is available on the internet at:
<http://vm.cfsan.fda.gov/~dms/foodcode.html>.

§64-17-3. Definitions.

3.1. Director. -- Director of the Division of Health or his or her lawful designee.

3.2. Family Day Care Facility. -- A child care center which is used to provide nonresidential child care for seven (7) to twelve (12) children, including children who are living in the household who are less than (6) years of age.

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3.3. Family Day Care Home. -- A facility which is used to provide nonresidential child care for less than seven (7) children, including children who are living in the household who are less than (6) years of age.

3.4. Food Establishment. -- The definition of "food establishment" in 1-201.10(B)(31) of the Food Code, slightly adapted as follows: An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

3.4.a. Such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

3.4.b. That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

3.4.c. Food establishment includes:

3.4.c.1. An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location obtains a permit to operate in accordance with section 3 of this rule; and

3.4.c.2. An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

3.4.d. Food establishment does not include:

3.4.d.1. An establishment that offers only prepackaged foods that are not potentially hazardous and does not provide reusable tableware to the consumer;

3.4.d.2. A produce stand that only offers whole, uncut fresh fruits and vegetables;

3.4.d.3. A food processing plant;

3.4.d.4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Director;

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3.4.d.5. An area where food that is prepared as specified in paragraph 3.4.d.4 of this definition is sold or offered for human consumption;

3.4.d.6. A kitchen in a family day care home; or

3.4.d.7. A private home that receives catered or home-delivered food.

§64-17-4. Exceptions.

4.1. A domestic-type kitchen with residential-style equipment is acceptable in the following types of food establishments:

4.1.a. A family day care facility;

4.1.b. A residential care facility with a maximum capacity of ten (10) occupants, such as a personal care home, a residential board and care facility, a group home, a halfway house, or a work release center; and

4.1.c. A bed and breakfast inn that provides sleeping accommodations of six (6) or fewer rooms, or that provides sleeping accommodations of more than six (6) rooms if the entire inn or those rooms numbering above six (6) are used on an aggregate of two (2) weeks or less per year.

4.2. The food establishments identified above in subdivisions 4.1.a, 4.1.b, and 4.1.c shall provide a sink in the kitchen with at least two (2) compartments. Any mechanical warewashing machine utilized shall be capable of sanitizing. A separate lavatory located in the kitchen for hand washing is not required.

§64-17-5. Hearings and Administrative Due Process.

5.1. A permit applicant, a permit holder, an employee or other person may petition the Director in writing, as prescribed in the Division of Health's rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, for a contested case hearing when the Director has:

5.1.a. Denied their application for a permit to operate;

5.1.b. Suspended or revoked their permit to operate;

5.1.c. Denied their request for a variance;

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5.1.d. Issued a hold order;

5.1.e. Issued an employee restriction or exclusion order; or

5.1.f. Otherwise adversely affected their rights, duties, interests or privileges.

5.2. Within ten (10) days after receipt of the written petition, the Director shall grant or deny a hearing on the matter in accordance with the Division of Health's rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1.

5.3. The filing of a petition for a hearing shall not stay or suspend the execution of the notice or order issued by the Director.

§64-17-6. Penalty for Violating Provisions of Rule.

6.1 Any person who violates any provision of this rule is guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days or both fine and imprisonment.

Food Code

U.S. Public Health Service



1999

U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service • Food and Drug Administration

Washington, DC 20204

Food Code

**1999 Recommendations of the
United States Public Health Service
Food and Drug Administration**



The Food Code consists of model requirements for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer.

This model is offered for adoption by local, state, and federal governmental jurisdictions for administration by the various departments, agencies, bureaus, divisions, and other units within each jurisdiction which have been delegated compliance responsibilities for food service, retail food stores, or food vending operations.

Chapter

1 Purpose and Definitions

Parts

- 1-1 TITLE, INTENT, SCOPE
- 1-2 DEFINITIONS

1-1 TITLE, INTENT, SCOPE

Subparts

- 1-101 Title
- 1-102 Intent
- 1-103 Scope

Title

1-101.10 Food Code.

These provisions shall be known as the Food Code, hereinafter referred to as "this Code."

Intent

1-102.10 Food Safety, Illness Prevention, and Honest Presentation.

The purpose of this Code is to safeguard public health and provide to CONSUMERS FOOD that is safe, UNADULTERATED, and honestly presented.

Scope

1-103.10 Statement.

This Code establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and

provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE restriction, and PERMIT suspension.

1-2 DEFINITIONS

Subpart

1-201 Applicability and Terms Defined

Applicability and Terms Defined **1-201.10 Statement of Application and Listing of Terms.**

(A) The following definitions apply in the interpretation and application of this Code.

(B) Terms Defined.

(1) Accredited program.

(a) **"Accredited program"** means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) **"Accredited program"** refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(c) **"Accredited program"** does not refer to training functions or educational programs.

(2) Additive.

(a) **"Food additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170.

(b) **"Color additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.

(3) "**Adulterated**" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

(4) "**Approved**" means acceptable to the REGULATORY AUTHORITY based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) "**a_w**" means water activity which is a measure of the free moisture in a FOOD, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

(6) "**Beverage**" means a liquid for drinking, including water.

(7) "**Bottled drinking water**" means water that is SEALED in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(8) "**Certification number**" means a unique combination of letters and numbers assigned by a SHELLFISH CONTROL AUTHORITY to a MOLLUSCAN SHELLFISH dealer according to the provisions of the National Shellfish Sanitation Program.

(9) **CIP**.

(a) "**CIP**" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and SANITIZING solution onto or over EQUIPMENT surfaces that require cleaning, such as the method used, in part, to clean and SANITIZE a frozen dessert machine.

(b) "**CIP**" *does not include the cleaning of EQUIPMENT such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.*

(10) "**CFR**" means CODE OF FEDERAL REGULATIONS. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

(11) "**Code of Federal Regulations**" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:

(a) Is published annually by the U.S. Government Printing Office; and

(b) Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

(12) **Comminuted.**

(a) "**Comminuted**" means reduced in size by methods including chopping, flaking, grinding, or mincing.

(b) "**Comminuted**" includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined, such as sausages made from 2 or more MEATS.

(13) "**Confirmed disease outbreak**" means a **FOODBORNE DISEASE OUTBREAK** in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the **FOOD** as the source of the illness.

(14) "**Consumer**" means a **PERSON** who is a member of the public, takes possession of **FOOD**, is not functioning in the capacity of an operator of a **FOOD ESTABLISHMENT** or **FOOD PROCESSING PLANT**, and does not offer the **FOOD** for resale.

(15) "**Corrosion-resistant material**" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the **FOOD** to be contacted, the normal use of cleaning compounds and **SANITIZING** solutions, and other conditions of the use environment.

(16) "**Critical control point**" means a point or procedure in a specific **FOOD** system where loss of control may result in an unacceptable health risk.

(17) **Critical Item.**

(a) "**Critical item**" means a provision of this Code, that, if in noncompliance, is more likely than other violations to contribute to **FOOD** contamination, illness, or environmental health **HAZARD**.

(b) "**Critical item**" is an item that is denoted in this Code with an asterisk *.

(18) "**Critical limit**" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a **CRITICAL CONTROL POINT** to minimize the risk that the identified **FOOD** safety **HAZARD** may occur.

(19) **Drinking Water.**

(a) "**Drinking water**" means water that meets 40 CFR 141 National Primary Drinking Water Regulations.

(b) "**Drinking water**" is traditionally known as "potable water."

(c) **"Drinking water"** includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(20) **"Dry storage area"** means a room or area designated for the storage of PACKAGED or containerized bulk FOOD that is not POTENTIALLY HAZARDOUS and dry goods such as SINGLE-SERVICE items.

(21) **Easily Cleanable.**

(a) **"Easily cleanable"** means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into FOOD based on the surface's APPROVED placement, purpose, and use.

(b) **"Easily cleanable"** includes a tiered application of the criteria that qualify the surface as EASILY CLEANABLE as specified under Subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a FOOD preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for CONSUMER dining; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the CONSUMER dining area.

(22) **"Easily movable"** means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of EQUIPMENT for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the EQUIPMENT to be moved for cleaning of the EQUIPMENT and adjacent area.

(23) **"Employee"** means the PERMIT HOLDER, PERSON IN CHARGE, PERSON having supervisory or management duties, PERSON on the payroll, family member, volunteer,

PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT.

(24) **"EPA"** means the U.S. Environmental Protection Agency.

(25) **Equipment.**

(a) **"Equipment"** means an article that is used in the operation of a FOOD ESTABLISHMENT such as a freezer, grinder, hood, ice maker, MEAT block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, TEMPERATURE MEASURING DEVICE for ambient air, VENDING MACHINE, or WAREWASHING machine.

(b) **"Equipment"** *does not include items used for handling or storing large quantities of PACKAGED FOODS that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.*

(26) **Fish.**

(a) **"Fish"** means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) **"Fish"** includes an edible human FOOD product derived in whole or in part from FISH, including FISH that have been processed in any manner.

(27) **"Food"** means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(28) **"Foodborne disease outbreak"** means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(29) **"Food-contact surface"** means:

(a) A surface of EQUIPMENT or a UTENSIL with which FOOD normally comes into contact; or

(b) A surface of EQUIPMENT or a UTENSIL from which FOOD may drain, drip, or splash:

(i) Into a FOOD, or

(ii) Onto a surface normally in contact with FOOD.

(30) **"Food employee"** means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.

(31) **Food Establishment.**

(a) **"Food establishment"** means an operation that stores, prepares, packages, serves, vends, or otherwise provides FOOD for human consumption:

(i) Such as a restaurant; satellite or catered feeding location; catering operation if the operation provides FOOD directly to a CONSUMER or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or FOOD bank; and

(ii) That relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) **"Food establishment"** includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location *unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY*; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES; and regardless of whether there is a charge for the FOOD.

(c) **"Food establishment"** does not include:

(i) *An establishment that offers only prePACKAGED FOODS that are not POTENTIALLY HAZARDOUS;*

(ii) *A produce stand that only offers whole, uncut fresh fruits and vegetables;*

(iii) *A FOOD PROCESSING PLANT;*

(iv) *A kitchen in a private home if only FOOD that is not POTENTIALLY HAZARDOUS is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;*

(v) *An area where FOOD that is prepared as specified in Subparagraph (c)(iv) of this definition is sold or offered for human consumption;*

(vi) *A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed 18, and the CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the REGULATORY AUTHORITY; or*

(vii) *A private home that receives catered or home-delivered FOOD.*

(32) Food Processing Plant.

(a) **"Food processing plant"** means a commercial operation that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.

(b) **"Food processing plant"** does not include a FOOD ESTABLISHMENT as defined under Subparagraph 1-201.10(B)(31).

(33) Game Animal.

(a) **"Game animal"** means an animal, the products of which are FOOD, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Subchapter A - Mandatory Meat Inspection, Part 301, as Poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, Part 381, or as FISH as defined under Subparagraph 1-201.10(B)(26).

(b) **"Game animal"** includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) **"Game animal"** does not include ratites such as ostrich, emu, and rhea.

(34) **"General use pesticide"** means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

(35) **"Grade A standards"** means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(36) Group Residence.

(a) **"Group residence"** means a private or public housing corporation or institutional facility that provides living quarters and meals.

(b) **"Group residence"** includes a domicile for unrelated PERSONS such as a retirement home or a long-term health care facility.

(37) **"HACCP plan"** means a written document that delineates the formal procedures for following the HAZARD Analysis CRITICAL CONTROL POINT principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(38) **"Hazard"** means a biological, chemical, or physical property that may cause an unacceptable CONSUMER health risk.

(39) **"Hermetically sealed container"** means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned FOODS, to maintain the commercial sterility of its contents after processing.

(40) **"Highly susceptible population"** means a group of PERSONS who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

(41) **"Imminent health hazard"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(i) The number of potential injuries, and

(ii) The nature, severity, and duration of the anticipated injury.

(42) **"Injected"** means manipulating a MEAT so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the MEAT such as by processes which may be referred to as "injecting," "pinning," or "stitch pumping."

(43) **"Juice"**, when used in the context of FOOD safety, means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. This definition does not apply to standards of identity.

(44) **"Kitchenware"** means FOOD preparation and storage UTENSILS.

(45) **"Law"** means applicable local, state, and federal statutes, regulations, and ordinances.

(46) **"Linens"** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(47) **"Meat"** means the flesh of animals used as FOOD including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, *except fish, poultry, and wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4).*

(48) **"mg/L"** means milligrams per liter, which is the metric equivalent of parts per million (ppm).

(49) **"Molluscan shellfish"** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, *except when the scallop product consists only of the shucked adductor muscle.*

(50) **Packaged.**

(a) **"Packaged"** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.

(b) **"Packaged"** *does not include a wrapper, carry-out box, or other nondurable container used to containerize FOOD with the purpose of facilitating FOOD protection during service and receipt of the FOOD by the CONSUMER.*

(51) **"Permit"** means the document issued by the REGULATORY AUTHORITY that authorizes a PERSON to operate a FOOD ESTABLISHMENT.

(52) **"Permit holder"** means the entity that:

(a) Is legally responsible for the operation of the FOOD ESTABLISHMENT such as the owner, the owner's agent, or other PERSON; and

(b) Possesses a valid PERMIT to operate a FOOD ESTABLISHMENT.

(53) **"Person"** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(54) **"Person in charge"** means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time of inspection.

(55) Personal Care Items.

(a) **"Personal care items"** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a PERSON'S health, hygiene, or appearance.

(b) **"Personal care items"** include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(56) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(57) "Physical facilities" means the structure and interior surfaces of a FOOD ESTABLISHMENT including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(58) "Plumbing fixture" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the PREMISES and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or SEWAGE directly or indirectly to the drainage system of the PREMISES.

(59) "Plumbing system" means the water supply and distribution pipes; PLUMBING FIXTURES and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the PREMISES; and water-treating EQUIPMENT.

(60) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

(a) Cleaners and SANITIZERS, which include cleaning and SANITIZING agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, *except* SANITIZERS, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and PERSONAL CARE ITEMS that may be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the PREMISES for retail sale, such as petroleum products and paints.

(61) Potentially Hazardous Food.

(a) **"Potentially hazardous food"** means a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

- (i) The rapid and progressive growth of infectious or toxigenic microorganisms;
- (ii) The growth and toxin production of *Clostridium botulinum*; or
- (iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.

(b) **"Potentially hazardous food"** includes an animal FOOD (a FOOD of animal origin) that is raw or heat-treated; a FOOD of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) **"Potentially hazardous food"** does not include:

- (i) *An air-cooled hard-boiled egg with shell intact;*
- (ii) *A FOOD with an a_w value of 0.85 or less;*
- (iii) *A FOOD with a pH level of 4.6 or below when measured at 24°C (75°F);*
- (iv) *A FOOD, in an unopened HERMETICALLY SEALED CONTAINER, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;*
- (v) *A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of **S. Enteritidis** in eggs or **C. botulinum** can not occur, such as a FOOD that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or*
- (vi) *A FOOD that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the FOOD may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.*

(62) **Poultry.**

(a) **"Poultry"** means:

(i) Any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and

(ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.

(b) **"Poultry"** does not include ratites.

(63) **"Premises"** means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the PERMIT HOLDER; or

(b) The physical facility, its contents, and the land or property not described under Subparagraph (a) of this definition if its facilities and contents are under the control of the PERMIT HOLDER and may impact FOOD ESTABLISHMENT personnel, facilities, or operations, and a FOOD ESTABLISHMENT is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(64) **"Primal cut"** means a basic major cut into which carcasses and sides of MEAT are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(65) **"Public water system"** has the meaning stated in 40 CFR 141 National Primary Drinking Water Regulations.

(66) **Ready-to-Eat Food.**

(a) **"Ready-to-eat food"** means FOOD that is in a form that is edible without washing, cooking, or additional preparation by the FOOD ESTABLISHMENT or the CONSUMER and that is reasonably expected to be consumed in that form.

(b) **"Ready-to-eat food"** includes:

(i) POTENTIALLY HAZARDOUS FOOD that is unpackaged and cooked to the temperature and time required for the specific FOOD under Subpart 3-401;

(ii) Raw, washed, cut fruits and vegetables;

(iii) Whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(iv) Other FOOD presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(67) Reduced Oxygen Packaging.

(a) **"Reduced oxygen packaging"** means:

(1) The reduction of the amount of oxygen in a PACKAGE by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding, 21% oxygen atmosphere, and

(2) A process as specified in Subparagraph (a)(1) of this definition that involves a FOOD for which *Clostridium botulinum* is identified as a microbiological HAZARD in the final PACKAGED form.

(b) **"Reduced oxygen packaging"** includes:

(i) Vacuum PACKAGING, in which air is removed from a PACKAGE of FOOD and the PACKAGE is HERMETICALLY SEALED so that a vacuum remains inside the PACKAGE, such as sous vide;

(ii) Modified atmosphere PACKAGING, in which the atmosphere of a PACKAGE of FOOD is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the PACKAGING material or the respiration of the FOOD. Modified atmosphere PACKAGING includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen; and

(iii) Controlled atmosphere PACKAGING, in which the atmosphere of a PACKAGE of FOOD is modified so that until the PACKAGE is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

(68) "Refuse" means solid waste not carried by water through the SEWAGE system.

(69) "Regulatory authority" means the local, state, or federal enforcement body or

authorized representative having jurisdiction over the FOOD ESTABLISHMENT.

(70) "**Restricted use pesticide**" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(71) "**Safe material**" means:

(a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any FOOD;

(b) An additive that is used as specified in § 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or

(c) Other materials that are not ADDITIVES and that are used in conformity with applicable regulations of the Food and Drug Administration.

(72) "**Sanitization**" means the application of cumulative heat or chemicals on cleaned FOOD-CONTACT SURFACES that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(73) "**Sealed**" means free of cracks or other openings that allow the entry or passage of moisture.

(74) "**Service animal**" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

(75) "**Servicing area**" means an operating base location to which a mobile FOOD ESTABLISHMENT or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding FOOD.

(76) "**Sewage**" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(77) "**Shellfish control authority**" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of MOLLUSCAN SHELLFISH harvesters and dealers for interstate commerce.

(78) "**Shellstock**" means raw, in-shell MOLLUSCAN SHELLFISH.

(79) "**Shucked shellfish**" means MOLLUSCAN SHELLFISH that have one or both shells

removed.

(80) **"Single-service articles"** means TABLEWARE, carry-out UTENSILS, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one PERSON use after which they are intended for discard.

(81) **Single-Use Articles.**

(a) **"Single-use articles"** means UTENSILS and bulk FOOD containers designed and constructed to be used once and discarded.

(b) **"Single-use articles"** includes items such as wax paper, butcher paper, plastic wrap, formed aluminum FOOD containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under §§ 4-101.11, 4-201.11, and 4-202.11 for multiuse UTENSILS.

(82) **"Slacking"** means the process of moderating the temperature of a FOOD such as allowing a FOOD to gradually increase from a temperature of -23°C (-10°F) to -4° C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen FOOD such as spinach.

(83) **"Smooth"** means:

(a) A FOOD-CONTACT SURFACE having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

(b) A nonFOOD-CONTACT SURFACE of EQUIPMENT having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(84) **"Table-mounted equipment"** means EQUIPMENT that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(85) **"Tableware"** means eating, drinking, and serving UTENSILS for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

(86) **"Temperature measuring device"** means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of FOOD, air, or water.

(87) **"Temporary food establishment"** means a FOOD ESTABLISHMENT that operates

for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(88) **"USDA"** means the U.S. Department of Agriculture.

(89) **"Utensil"** means a FOOD-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of FOOD, such as KITCHENWARE or TABLEWARE that is multiuse, SINGLE-SERVICE, or SINGLE-USE; gloves used in contact with FOOD; FOOD TEMPERATURE MEASURING DEVICES; and probe-type price or identification tags used in contact with FOOD.

(90) **"Variance"** means a written document issued by the REGULATORY AUTHORITY that authorizes a modification or waiver of one or more requirements of this Code if, in the opinion of the REGULATORY AUTHORITY, a health HAZARD or nuisance will not result from the modification or waiver.

(91) **"Vending machine"** means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of FOOD in bulk or in packages without the necessity of replenishing the device between each vending operation.

(92) **"Vending machine location"** means the room, enclosure, space, or area where one or more VENDING MACHINES are installed and operated and includes the storage areas and areas on the PREMISES that are used to service and maintain the VENDING MACHINES.

(93) **"Warewashing"** means the cleaning and SANITIZING of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT.

(94) **"Whole-muscle, intact beef"** means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Chapter

2

Management and Personnel

Parts

- 2-1 SUPERVISION
- 2-2 EMPLOYEE HEALTH
- 2-3 PERSONAL CLEANLINESS
- 2-4 HYGIENIC PRACTICES

2-1 SUPERVISION

Subparts

- 2-101 Responsibility
- 2-102 Knowledge
- 2-103 Duties

Responsibility

2-101.11 Assignment.*

The PERMIT HOLDER shall be the PERSON IN CHARGE or shall designate a PERSON IN CHARGE and shall ensure that a PERSON IN CHARGE is present at the FOOD ESTABLISHMENT during all hours of operation.

Knowledge

2-102.11 Demonstration.*

Based on the risks of foodborne illness inherent to the FOOD operation, during inspections and upon request the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD

Analysis CRITICAL CONTROL POINT principles, and the requirements of this Code. The PERSON IN CHARGE shall demonstrate this knowledge by compliance with this Code, by being a certified FOOD protection manager who has shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM, or by responding correctly to the inspector's questions as they relate to the specific FOOD operation. The areas of knowledge include:

- (A) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a FOOD EMPLOYEE;
- (B) Explaining the responsibility of the PERSON IN CHARGE for preventing the transmission of foodborne disease by a FOOD EMPLOYEE who has a disease or medical condition that may cause foodborne disease;
- (C) Describing the symptoms associated with the diseases that are transmissible through FOOD;
- (D) Explaining the significance of the relationship between maintaining the time and temperature of POTENTIALLY HAZARDOUS FOOD and the prevention of foodborne illness;
- (E) Explaining the HAZARDS involved in the consumption of raw or undercooked MEAT, POULTRY, eggs, and FISH.
- (F) Stating the required FOOD temperatures and times for safe cooking of POTENTIALLY HAZARDOUS FOOD including MEAT, POULTRY, eggs, and FISH.
- (G) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of POTENTIALLY HAZARDOUS FOOD;
- (H) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (1) Cross contamination,
 - (2) Hand contact with READY-TO-EAT FOODS,
 - (3) Handwashing, and

- (4) Maintaining the FOOD ESTABLISHMENT in a clean condition and in good repair;
- (I) Explaining the relationship between FOOD safety and providing EQUIPMENT that is:
 - (1) Sufficient in number and capacity, and
 - (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;
- (J) Explaining correct procedures for cleaning and SANITIZING UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT;
- (K) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;
- (L) Identifying POISONOUS OR TOXIC MATERIALS in the FOOD ESTABLISHMENT and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to LAW;
- (M) Identifying CRITICAL CONTROL POINTS in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code;
- (N) Explaining the details of how the PERSON IN CHARGE and FOOD EMPLOYEES comply with the HACCP PLAN if a plan is required by the LAW, this Code, or an agreement between the REGULATORY AUTHORITY and the establishment; and
- (O) Explaining the responsibilities, rights, and authorities assigned by this Code to the:
 - (1) FOOD EMPLOYEE,
 - (2) PERSON IN CHARGE, and
 - (3) REGULATORY AUTHORITY.

Duties**2-103.11 Person in Charge.**

The PERSON IN CHARGE shall ensure that:

(A) FOOD ESTABLISHMENT operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under § 6-202.111;

(B) PERSONS unnecessary to the FOOD ESTABLISHMENT operation are not allowed in the FOOD preparation, FOOD storage, or WAREWASHING areas, except that brief visits and tours may be authorized by the PERSON IN CHARGE if steps are taken to ensure that exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination;

(C) EMPLOYEES and other PERSONS such as delivery and maintenance PERSONS and pesticide applicators entering the FOOD preparation, FOOD storage, and WAREWASHING areas comply with this Code;

(D) EMPLOYEES are effectively cleaning their hands, by routinely monitoring the EMPLOYEES' handwashing;

(E) EMPLOYEES are visibly observing FOODS as they are received to determine that they are from APPROVED sources, delivered at the required temperatures, protected from contamination, UNADULTERATED, and accurately presented, by routinely monitoring the EMPLOYEES' observations and periodically evaluating FOODS upon their receipt;

(F) EMPLOYEES are properly cooking POTENTIALLY HAZARDOUS FOOD, being particularly careful in cooking those FOODS known to cause severe foodborne illness and death, such as eggs and COMMINUTED MEATS, through daily oversight of the EMPLOYEES' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under § 4-203.11 and ¶ 4-502.11(B);

(G) EMPLOYEES are using proper methods to rapidly cool POTENTIALLY HAZARDOUS FOODS that are not held hot or are not for consumption within 4 hours, through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures during cooling;

(H) CONSUMERS who order raw or partially cooked READY-TO-EAT FOODS of animal origin are informed as specified under § 3-603.11 that the FOOD is not cooked sufficiently to ensure its safety;

(I) EMPLOYEES are properly SANITIZING cleaned multiuse EQUIPMENT and UTENSILS before they are reused, through routine monitoring of solution temperature and exposure time for hot water SANITIZING, and chemical concentration, pH, temperature, and exposure time for chemical SANITIZING;

(J) CONSUMERS are notified that clean TABLEWARE is to be used when they return to self-service areas such as salad bars and buffets as specified under § 3-304.16;

(K) EMPLOYEES are preventing cross-contamination of READY-TO-EAT FOOD with bare hands by properly using suitable UTENSILS such as deli tissue, spatulas, tongs, single-use gloves, or dispensing EQUIPMENT; and

(L) EMPLOYEES are properly trained in FOOD safety as it relates to their assigned duties.

2-2

EMPLOYEE HEALTH

Subpart

2-201

Disease or Medical Condition

Disease or Medical Condition

***employer requires
employee
reporting of:***

2-201.11

Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants.*

The PERMIT HOLDER shall require FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and FOOD EMPLOYEES to report to the PERSON IN CHARGE, information about their health and activities as they relate to diseases that are transmissible through FOOD. A FOOD EMPLOYEE or applicant shall report the information in a manner that allows the PERSON IN CHARGE to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness

health status

specified under ¶ (C) of this section, if the FOOD EMPLOYEE or applicant:

employee is ill

(A) Is diagnosed with an illness due to:

- (1) ***Salmonella Typhi***,
- (2) ***Shigella*** spp.,
- (3) ***Escherichia coli*** O157:H7, or
- (4) Hepatitis A virus;

employee has symptom of:

(B) Has a symptom caused by illness, infection, or other source that is:

• *intestinal illness*

(1) Associated with an acute gastrointestinal illness such as:

- (a) Diarrhea,
- (b) Fever,
- (c) Vomiting,
- (d) Jaundice, or
- (e) Sore throat with fever, or

• *Boil or infected wound*

(2) A lesion containing pus such as a boil or infected wound that is open or draining and is:

- (a) On the hands or wrists, *unless an impermeable cover such as a finger cot or stall protects the lesion and a SINGLE-USE glove is worn over the impermeable cover*,
- (b) On exposed portions of the arms, *unless the lesion is protected by an impermeable cover*, or
- (c) On other parts of the body, *unless the lesion is covered by a dry, durable, tight-fitting bandage*;

employee previously ill

(C) Had a past illness from an infectious agent specified under ¶ (A) of this section; or

activities

(D) Meets one or more of the following high-risk conditions:

employee at high risk of becoming ill:

• prepared or consumed food that caused disease

(1) Is suspected of causing, or being exposed to, a CONFIRMED DISEASE OUTBREAK caused by **S. Typhi**, **Shigella** spp., **E. coli** O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the FOOD EMPLOYEE or applicant:

(a) Prepared FOOD implicated in the outbreak,

(b) Consumed FOOD implicated in the outbreak, or

(c) Consumed FOOD at the event prepared by a PERSON who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent,

• lives with ill person

(2) Lives in the same household as a PERSON who is diagnosed with a disease caused by **S. Typhi**, **Shigella** spp., **E. coli** O157:H7, or hepatitis A virus, or

• lives with person involved in disease outbreak

(3) Lives in the same household as a PERSON who attends or works in a setting where there is a confirmed disease outbreak caused by **S. Typhi**, **Shigella** spp., **E. coli** O157:H7, or hepatitis A virus.

2-201.12 Exclusions and Restrictions.*

The PERSON IN CHARGE shall:

excluding ill employees

(A) Exclude a FOOD EMPLOYEE from a FOOD ESTABLISHMENT if the FOOD EMPLOYEE is diagnosed with an infectious agent specified under ¶ 2-201.11(A);

*restricting employees:
(serving general population)*

(B) Except as specified under ¶ (C) or (D) of this section, restrict a FOOD EMPLOYEE from working with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES, in a FOOD ESTABLISHMENT if the FOOD EMPLOYEE is:

• with symptom of illness or

(1) Suffering from a symptom specified under ¶ 2-201.11(B), or

of past illness

(2) Not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for **Salmonella**

Typhi, *Shigella* spp., or *Escherichia coli* O157:H7;

*excluding
employees:
(serving high-risk
population)
• with symptom of
illness or*

(C) If the population served is a HIGHLY SUSCEPTIBLE POPULATION, exclude a FOOD EMPLOYEE who:

(1) Is experiencing a symptom of acute gastrointestinal illness specified under Subparagraph 2-201.11(B)(1) and meets a high-risk condition specified under Subparagraphs 2-201.11(D)(1)-(3),

of past illness

(2) Is not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for **S. Typhi, *Shigella* spp., or *E. coli* O157:H7,**

(3) Had a past illness from **S. Typhi** within the last 3 months, or

(4) Had a past illness from ***Shigella* spp. or *E. coli* O157:H7** within the last month; and

*excluding and
restricting
jaundiced
employees*

(D) For a FOOD EMPLOYEE who is jaundiced:

(1) If the onset of jaundice occurred within the last 7 calendar days, exclude the FOOD EMPLOYEE from the FOOD ESTABLISHMENT, or

(2) If the onset of jaundice occurred more than 7 calendar days before:

(a) Exclude the FOOD EMPLOYEE from a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION, or

(b) Restrict the FOOD EMPLOYEE from activities specified under ¶ 2-201.12(B), if the FOOD ESTABLISHMENT does not serve a HIGHLY SUSCEPTIBLE POPULATION.

2-201.13 Removal of Exclusions and Restrictions.

*reinstating an
excluded
employee who is:*

(A) The PERSON IN CHARGE may remove an exclusion specified under ¶ 2-201.12(A) if:

(1) The PERSON IN CHARGE obtains approval from the REGULATORY AUTHORITY; and

(2) The PERSON excluded as specified under ¶ 2-201.12(A) provides to the PERSON IN CHARGE written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, that specifies that the excluded PERSON may work in an unrestricted capacity in a FOOD ESTABLISHMENT, including an establishment that serves a HIGHLY SUSCEPTIBLE POPULATION, because the PERSON is free of the infectious agent of concern as specified in § 8-501.40.

• *no longer ill*

or

• *free of jaundice*

*reinstating a
restricted
employee who is
• free of
symptoms*

(B) The PERSON IN CHARGE may remove a restriction specified under:

(1) Subparagraph 2-201.12(B)(1) if the restricted PERSON:

(a) Is free of the symptoms specified under ¶ 2-201.11(B) and no foodborne illness occurs that may have been caused by the restricted PERSON,

(b) Is suspected of causing foodborne illness but:

(i) Is free of the symptoms specified under ¶ 2-201.11(B), and

• *free of
suspected
infectious agent*

(ii) Provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, stating that the restricted PERSON is free of the infectious agent that is suspected of causing the PERSON'S symptoms or causing foodborne illness, as specified in § 8-501.40, or

• *has symptoms
that are not
caused by an
infectious agent*

(c) Provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

• *no longer a
shedder*

(2) Subparagraph 2-201.12(B)(2) if the restricted PERSON provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by LAW, a nurse practitioner or physician assistant, according to the criteria

specified in § 8-501.40 that indicates the stools are free of ***Salmonella Typhi***, ***Shigella*** spp., or ***E. coli*** O157:H7, whichever is the infectious agent of concern.

*reinstating an
excluded
employee serving:
high-risk
population*

(C) The PERSON IN CHARGE may remove an exclusion specified under ¶ 2-201.12(C) if the excluded PERSON provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant:

(1) That specifies that the PERSON is free of:

(a) The infectious agent of concern as specified in § 8-501.40, or

(b) Jaundice as specified under ¶ 2-201.13(D) if hepatitis A virus is the infectious agent of concern; or

(2) If the PERSON is excluded under Subparagraph 2-201.12(C)(1), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

*reinstating an
employee who is:*

(D) The PERSON IN CHARGE may remove an exclusion specified under Subparagraph 2-201.12(D)(1) and Subparagraph 2-201.12(D)(2)(a) and a restriction specified under Subparagraph 2-201.12(D)(2)(b) if:

• *not suspect
source of illness*

(1) No foodborne illness occurs that may have been caused by the excluded or restricted PERSON and the PERSON provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, that specifies that the PERSON is free of hepatitis A virus as specified in Subparagraph 8-501.40(D)(1); or

• *suspect source
of illness*

(2) The excluded or restricted PERSON is suspected of causing foodborne illness and complies with the requirements in Subparagraphs 8-501.40(D)(1) and (D)(2).

2-201.14 Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.*

A FOOD EMPLOYEE or a PERSON who applies for a job as a FOOD

EMPLOYEE shall:

(A) In a manner specified under § 2-201.11, report to the PERSON IN CHARGE the information specified under ¶¶ 2-201.11(A)-(D); and

(B) Comply with exclusions and restrictions that are specified under ¶¶ 2-201.12(A)-(D).

2-201.15 Reporting by the Person in Charge.*

The PERSON IN CHARGE shall notify the REGULATORY AUTHORITY that a FOOD EMPLOYEE is diagnosed with an illness due to ***Salmonella Typhi***, ***Shigella*** spp., ***Escherichia coli*** O157:H7, or hepatitis A virus.

2-3 PERSONAL CLEANLINESS

Subparts

- | | |
|--------------|-----------------------|
| 2-301 | Hands and Arms |
| 2-302 | Fingernails |
| 2-303 | Jewelry |
| 2-304 | Outer Clothing |

Hands and Arms

2-301.11 Clean Condition.*

FOOD EMPLOYEES shall keep their hands and exposed portions of their arms clean.

2-301.12 Cleaning Procedure.*

(A) Except as specified in ¶ (B) of this section, FOOD EMPLOYEES shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under ¶ 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. EMPLOYEES shall pay particular

attention to the areas underneath the fingernails and between the fingers.

(B) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

2-301.13 Special Handwash Procedures.*

Reserved.

2-301.14 When to Wash.*

FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified under § 2-301.12 immediately before engaging in FOOD preparation including working with exposed FOOD, clean EQUIPMENT and UTENSILS, and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES and:

(A) After touching bare human body parts other than clean hands and clean, exposed portions of arms;

(B) After using the toilet room;

(C) After caring for or handling SERVICE ANIMALS or aquatic animals as specified in ¶ 2-403.11(B);

(D) Except as specified in ¶ 2-401.11(B), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(E) After handling soiled EQUIPMENT or UTENSILS;

(F) During FOOD preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(G) When switching between working with raw FOOD and working with READY-TO-EAT FOOD; and

(H) After engaging in other activities that contaminate the hands.

2-301.15 Where to Wash.

FOOD EMPLOYEES shall clean their hands in a handwashing lavatory or APPROVED automatic handwashing facility and may not clean their hands in a sink used for FOOD preparation, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

2-301.16 Hand Sanitizers.

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

(1) Comply with one of the following:

(a) Be an APPROVED drug that is listed in the FDA publication **Approved Drug Products with Therapeutic Equivalence Evaluations** as an APPROVED drug based on safety and effectiveness; or

(b) Have active antimicrobial ingredients that are listed in:

(i) The FDA monograph for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash, or

(ii) The USDA **List of Proprietary Substances and Nonfood Compounds**, Miscellaneous Publication No. 1419; and

(2) Comply with one of the following:

(a) Have components that are exempted from the requirement of being listed in federal FOOD ADDITIVE regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles; or

(b) Comply with and be listed in:

(i) 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a FOOD ADDITIVE with conditions of safe use, or

(ii) 21 CFR 182 - Substances Generally Recognized

as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with FOOD; and

(3) Be applied only to hands that are cleaned as specified under § 2-301.12.

(B) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under Subparagraph (A)(2) of this section, use shall be:

(1) Followed by thorough hand rinsing in clean water before hand contact with FOOD or by the use of gloves; or

(2) Limited to situations that involve no direct contact with FOOD by the bare hands.

(C) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

Fingernails

2-302.11 Maintenance.

(A) FOOD EMPLOYEES shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(B) *Unless wearing intact gloves in good repair*, a FOOD EMPLOYEE may not wear fingernail polish or artificial fingernails when working with exposed FOOD.

Jewelry

2-303.11 Prohibition.

While preparing FOOD, FOOD EMPLOYEES may not wear jewelry on their arms and hands. *This section does not apply to a plain ring such as a wedding band.*

Outer Clothing

2-304.11 Clean Condition.

FOOD EMPLOYEES shall wear clean outer clothing to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-

SERVICE and SINGLE-USE ARTICLES.

2-4**HYGIENIC PRACTICES*****Subparts***

2-401	Food Contamination Prevention
2-402	Hair Restraints
2-403	Animals

***Food
Contamination
Prevention*****2-401.11 Eating, Drinking, or Using Tobacco.***

(A) Except as specified in ¶ (B) of this section, an EMPLOYEE shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES; or other items needing protection can not result.

(B) A FOOD EMPLOYEE may drink from a closed BEVERAGE container if the container is handled to prevent contamination of:

(1) The EMPLOYEE's hands;

(2) The container; and

(3) Exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

2-401.12 Discharges from the Eyes, Nose, and Mouth.*

FOOD EMPLOYEES experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

Hair Restraints**2-402.11 Effectiveness.**

(A) Except as provided in ¶ (B) of this section, FOOD EMPLOYEES shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and

worn to effectively keep their hair from contacting exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(B) This section does not apply to FOOD EMPLOYEES such as counter staff who only serve BEVERAGES and wrapped or PACKAGED FOODS, hostesses, and wait staff if they present a minimal risk of contaminating exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

Animals

2-403.11 Handling Prohibition.*

(A) Except as specified in ¶ (B) of this section, FOOD EMPLOYEES may not care for or handle animals that may be present such as patrol dogs, SERVICE ANIMALS, or pets that are allowed as specified in Subparagraphs 6-501.115(B)(2)-(5).

(B) FOOD EMPLOYEES with SERVICE ANIMALS may handle or care for their SERVICE ANIMALS and FOOD EMPLOYEES may handle or care for FISH in aquariums or MOLLUSCAN SHELLFISH or crustacea in display tanks if they wash their hands as specified under § 2-301.12 and ¶ 2-301.14(C).

Chapter

3

Food

Parts

- 3-1 CHARACTERISTICS
- 3-2 SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS AND RECORDS
- 3-3 PROTECTION FROM CONTAMINATION AFTER RECEIVING
- 3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN
- 3-5 LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN
- 3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING
- 3-7 CONTAMINATED FOOD
- 3-8 SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

3-1 CHARACTERISTICS

Subparts

3-101 Condition

Condition

3-101.11 Safe, Unadulterated, and Honestly Presented.*

FOOD shall be safe, unADULTERATED, and, as specified under § 3-601.12, honestly presented.

3-2**SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS
AND RECORDS*****Subparts***

3-201	Sources
3-202	Specifications for Receiving
3-203	Original Containers and Records

Sources**3-201.11 Compliance with Food Law.***

(A) FOOD shall be obtained from sources that comply with LAW.

(B) FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT.

(C) PACKAGED FOOD shall be labeled as specified in LAW, including 21 CFR 101 FOOD Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under §§ 3-202.17 and 3-202.18.

(D) Fish, other than MOLLUSCAN SHELLFISH, that are intended for consumption in their raw form and allowed as specified in Subparagraph 3-401.11(C)(1) may be offered for sale or service if they are obtained from a supplier that freezes the FISH as specified under § 3-402.11; or frozen on the PREMISES as specified under § 3-402.11 and records are retained as specified under § 3-402.12.

(E) WHOLE-MUSCLE, INTACT BEEF steaks that are intended for consumption in an undercooked form without a CONSUMER advisory as specified in ¶ 3-401.11(C) shall be:

(1) Obtained from a FOOD PROCESSING PLANT that packages the steaks and labels them to indicate that they meet the definition of WHOLE-MUSCLE, INTACT BEEF; or

(2) If individually cut in a FOOD ESTABLISHMENT:

(a) Cut from WHOLE-MUSCLE INTACT BEEF that is labeled by a FOOD PROCESSING PLANT to indicate that the beef meets the definition of WHOLE-MUSCLE, INTACT BEEF,

(b) Prepared so they remain intact, and

(c) If PACKAGED for undercooking in a FOOD ESTABLISHMENT, labeled to indicate that they meet the definition of WHOLE-MUSCLE, INTACT BEEF.

(F) MEAT and POULTRY that is not a READY-TO-EAT FOOD and is in a PACKAGED form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in LAW, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

3-201.12 Food in a Hermetically Sealed Container.*

FOOD in a HERMETICALLY SEALED CONTAINER shall be obtained from a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

3-201.13 Fluid Milk and Milk Products.*

Fluid milk and milk products shall be obtained from sources that comply with GRADE A STANDARDS as specified in LAW.

3-201.14 Fish.*

(A) FISH that are received for sale or service shall be:

(1) Commercially and legally caught or harvested; or

(2) APPROVED for sale or service.

(B) MOLLUSCAN SHELLFISH that are recreationally caught may not be received for sale or service.

3-201.15 Molluscan Shellfish.*

(A) MOLLUSCAN SHELLFISH shall be obtained from sources according to LAW and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(B) MOLLUSCAN SHELLFISH received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

3-201.16 Wild Mushrooms.*

(A) Except as specified in ¶ (B) of this section, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an APPROVED mushroom identification expert.

(B) *This section does not apply to:*

(1) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the FOOD regulatory agency that has jurisdiction over the operation; or

(2) Wild mushroom species if they are in PACKAGED form and are the product of a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

3-201.17 Game Animals.*

(A) If GAME ANIMALS are received for sale or service they shall be:

(1) Commercially raised for food and:

(a) Raised slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, or

(b) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, and

(c) Raised, slaughtered, and processed according to:

(i) LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that

conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an APPROVED veterinarian or veterinarian's designee;

(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and APPROVED" in accordance with 9 CFR 352 Voluntary Exotic Animal Program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 Rabbit Inspection Program;

(3) As allowed by LAW, for wild GAME ANIMALS that are live-caught:

(a) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, and

(b) Slaughtered and processed according to:

(i) LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an APPROVED veterinarian or veterinarian's designee; or

(4) As ALLOWED by LAW, for field-dressed wild GAME ANIMALS under a routine inspection program that ensures the animals:

(a) Receive a postmortem examination by an APPROVED veterinarian or veterinarian's designee, or

(b) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(c) Are processed according to LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.

(B) A GAME ANIMAL may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

**Specifications
for Receiving**

3-202.11 Temperature.*

(A) Except as specified in ¶ (B) of this section, refrigerated, POTENTIALLY HAZARDOUS FOOD shall be at a temperature of 5°C (41°F) or below when received.

(B) If a temperature other than 5°C (41°F) for a POTENTIALLY HAZARDOUS FOOD is specified in LAW governing its distribution, such as LAWS governing milk, MOLLUSCAN SHELLFISH, and shell eggs, the FOOD may be received at the specified temperature.

(C) POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under §§ 3-401.11 - 3-401.13 and received hot shall be at a temperature of 60°C (140°F) or above.

(D) A FOOD that is labeled frozen and shipped frozen by a FOOD PROCESSING PLANT shall be received frozen.

(E) Upon receipt, POTENTIALLY HAZARDOUS FOOD shall be free of evidence of previous temperature abuse.

3-202.12 Additives.*

FOOD may not contain UNAPPROVED FOOD ADDITIVES or ADDITIVES that exceed amounts specified in 21 CFR 170-180 relating to FOOD ADDITIVES, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

3-202.13 Shell Eggs.*

Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. CONSUMER Grade B as specified in 7 CFR Part 56 - Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

3-202.14 Eggs and Milk Products, Pasteurized.*

(A) Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

(B) Fluid and dry milk and milk products complying with GRADE A STANDARDS as specified in LAW shall be obtained pasteurized.

(C) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen Desserts.

(D) Cheese shall be obtained pasteurized *unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.*

3-202.15 Package Integrity.*

FOOD packages shall be in good condition and protect the integrity of the contents so that the FOOD is not exposed to ADULTERATION or

potential contaminants.

3-202.16 Ice.*

Ice for use as a FOOD or a cooling medium shall be made from DRINKING WATER.

3-202.17 Shucked Shellfish, Packaging and Identification.

(A) Raw SHUCKED SHELLFISH shall be obtained in nonreturnable packages which bear a legible label that identifies the:

(1) Name, address, and CERTIFICATION NUMBER of the shucker-packer or repacker of the MOLLUSCAN SHELLFISH; and

(2) The "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

(B) A package of raw SHUCKED SHELLFISH that does not bear a label or which bears a label which does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

3-202.18 Shellstock Identification.*

(A) SHELLSTOCK shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the SHELLSTOCK, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list:

(1) Except as specified under ¶ (C) of this section, on the harvester's tag or label, the following information in the following order:

(a) The harvester's identification number that is assigned by the SHELLFISH CONTROL AUTHORITY,

(b) The date of harvesting,

(c) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the SHELLFISH CONTROL AUTHORITY and including the abbreviation of the name of the state or country in which the shellfish are harvested,

(d) The type and quantity of shellfish, and

(e) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days;" and

(2) Except as specified in ¶ (D) of this section, on each dealer's tag or label, the following information in the following order:

(a) The dealer's name and address, and the CERTIFICATION NUMBER assigned by the SHELLFISH CONTROL AUTHORITY,

(b) The original shipper's CERTIFICATION NUMBER including the abbreviation of the name of the state or country in which the shellfish are harvested,

(c) The same information as specified for a harvester's tag under Subparagraphs (A)(1)(b)-(d) of this section, and

(d) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

(B) A container of SHELLSTOCK that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(C) If a place is provided on the harvester's tag or label for a dealer's name, address, and CERTIFICATION NUMBER, the dealer's information shall be listed first.

(D) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subparagraphs (A)(2)(a) and (b) of this section, individual dealer tags or labels need not be provided.

**Original
Containers and
Records**

3-202.19 Shellstock, Condition.

When received by a FOOD ESTABLISHMENT, SHELLSTOCK shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or SHELLSTOCK with badly broken shells shall be discarded.

3-203.11 Molluscan Shellfish, Original Container.

(A) Except as specified in ¶¶ (B) and (C) of this section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(B) SHELLSTOCK may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a CONSUMER may be removed from the display or display container and provided to the CONSUMER if:

(1) The source of the SHELLSTOCK on display is identified as specified under § 3-202.18 and recorded as specified under § 3-203.12; and

(2) The SHELLSTOCK are protected from contamination.

(C) SHUCKED SHELLFISH may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a CONSUMER'S request if:

(1) The labeling information for the shellfish on display as specified under § 3-202.17 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(2) The shellfish are protected from contamination.

3-203.12 Shellstock, Maintaining Identification.*

(A) Except as specified under Subparagraph (B)(2) of this section, SHELLSTOCK tags shall remain attached to the container in which the shellstock are received until the container is empty.

(B) The identity of the source of SHELLSTOCK that are sold or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:

(1) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are sold or served; and

(2) If SHELLSTOCK are removed from their tagged or labeled container:

(a) Using only 1 tagged or labeled container at a time, or

(b) Using more than 1 tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:

(i) Is submitted by the PERMIT HOLDER and APPROVED as specified under § 8-103.11,

(ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this section, and

(iii) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER.

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Clarification of ¶ 3-301.11(B) of the Food Code **with respect to the phrase "*Except...when otherwise APPROVED*"...**

The following information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code. In cases where the Food Code is adopted through incorporation by reference, this page may be removed.

In response to a 1996 Conference for Food Protection (CFP) Recommendation that ¶ 3-301.11(B) be modified to include the phrase "or when otherwise APPROVED," the 1997 Code was amended accordingly. A 1998 CFP Recommendation further suggested clarification of that added language.

This insert page is provided to alert the reader that FDA has issued, with this Code, clarification of that phrase and its application. Included in Annex 3 is a full discussion of both the Public Health Reasons associated with § 3-301.11 and Administrative Guidelines regarding the criteria under which bare hand contact with ready-to-eat food may be deemed acceptable in meeting the intent of § 3-301.11.

A HACCP-based approach is applied in the clarification in order to establish a system to control the principal hazard (i.e., fecal-oral transmission of foodborne pathogens) that is the target of the Code provision.

A second 1998 CFP Recommendation was made to consult the National Advisory Committee for the Microbiological Criteria for Foods (NACMCF) for its scientific recommendations surrounding the transmission of pathogens from food workers to consumers via ready-to-eat foods. FDA is preparing information with the intent that the NACMCF will review the matter and make recommendations that will be presented at the 2000 CFP meeting.

3-3**PROTECTION FROM CONTAMINATION AFTER RECEIVING*****Subparts***

3-301	Preventing Contamination by Employees
3-302	Preventing Food and Ingredient Contamination
3-303	Preventing Contamination from Ice Used as a Coolant
3-304	Preventing Contamination from Equipment, Utensils, and Linens
3-305	Preventing Contamination from the Premises
3-306	Preventing Contamination by Consumers
3-307	Preventing Contamination from Other Sources

Preventing Contamination by Employees**3-301.11 Preventing Contamination from Hands.***

(A) FOOD EMPLOYEES shall wash their hands as specified under § 2-301.12.

(B) *Except when washing fruits and vegetables as specified under § 3-302.15 or when otherwise APPROVED*, FOOD EMPLOYEES may not contact exposed, READY-TO-EAT FOOD with their bare hands and shall use suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves, or dispensing EQUIPMENT.

(C) FOOD EMPLOYEES shall minimize bare hand and arm contact with exposed FOOD that is not in a READY-TO-EAT form.^s

3-301.12 Preventing Contamination when Tasting.*

A FOOD EMPLOYEE may not use a UTENSIL more than once to taste FOOD that is to be sold or served.

**Preventing Food
and Ingredient
Contamination**

**3-302.11 Packaged and Unpackaged Food - Separation,
Packaging, and Segregation.***

(A) FOOD shall be protected from cross contamination by:

(1) Separating raw animal FOODS during storage, preparation, holding, and display from:

(a) Raw READY-TO-EAT FOOD including other raw animal FOOD such as FISH for sushi or MOLLUSCAN SHELLFISH, or other raw READY-TO-EAT FOOD such as vegetables, and

(b) Cooked READY-TO-EAT FOOD;

(2) *Except when combined as ingredients*, separating types of raw animal FOODS from each other such as beef, FISH, lamb, pork, and POULTRY during storage, preparation, holding, and display by:

(a) Using separate EQUIPMENT for each type, or

(b) Arranging each type of FOOD in EQUIPMENT so that cross contamination of one type with another is prevented, and

(c) Preparing each type of FOOD at different times or in separate areas;

(3) Cleaning EQUIPMENT and UTENSILS as specified under ¶ 4-602.11(A) and SANITIZING as specified under § 4-703.11;

(4) Except as specified in ¶ (B) of this section, storing the FOOD in packages, covered containers, or wrappings;

(5) Cleaning HERMETICALLY SEALED CONTAINERS of FOOD of visible soil before opening;

(6) Protecting FOOD containers that are received PACKAGED together in a case or overwrap from cuts when the case or overwrap is opened;

(7) Storing damaged, spoiled, or recalled FOOD being held in the FOOD ESTABLISHMENT as specified under § 6-404.11; and

(8) Separating fruits and vegetables, before they are washed as specified under § 3-302.15 from READY-TO-EAT FOOD.

(B) *Subparagraph (A)(4) of this section does not apply to:*

(1) *Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;*

(2) *PRIMAL CUTS, quarters, or sides of raw MEAT or slab bacon that are hung on clean, SANITIZED hooks or placed on clean, SANITIZED racks;*

(3) *Whole, uncut, processed MEATS such as country hams, and smoked or cured sausages that are placed on clean, SANITIZED racks;*

(4) *FOOD being cooled as specified under Subparagraph 3-501.15(B)(2); or*

(5) *SHELLSTOCK.*

3-302.12 Food Storage Containers, Identified with Common Name of Food.

Working containers holding FOOD or FOOD ingredients that are removed from their original packages for use in the FOOD ESTABLISHMENT, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the FOOD *except that containers holding FOOD that can be readily and unmistakably recognized such as dry pasta need not be identified.*

3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.*

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of FOODS such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified BEVERAGES that are not:

(A) Cooked as specified under Subparagraphs 3-401.11(A)(1) or (2); or

(B) Included in Subparagraph 3-401.11(D).

3-302.14 Protection from Unapproved Additives.*

(A) FOOD shall be protected from contamination that may result from the addition of, as specified in § 3-202.12:

(1) Unsafe or unAPPROVED FOOD or COLOR ADDITIVES; and

(2) Unsafe or unAPPROVED levels of APPROVED FOOD and COLOR ADDITIVES.

(B) A FOOD EMPLOYEE may not:

(1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a FOOD considered to be a good source of vitamin B₁; or

(2) Serve or sell FOOD specified under Subparagraph (B)(1) of this section that is treated with sulfiting agents before receipt by the FOOD ESTABLISHMENT, *except that grapes need not meet this subparagraph.*

3-302.15 Washing Fruits and Vegetables.

(A) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in READY-TO-EAT form except as specified in ¶ (B) of this section and *except that whole, raw fruits and vegetables that are intended for washing by the CONSUMER before consumption need not be washed before they are sold.*

(B) *Fruits and vegetables may be washed by using chemicals as specified under § 7-204.12.*

Preventing Contamination from Ice Used

3-303.11 Ice Used as Exterior Coolant, Prohibited as Ingredient.

as a Coolant

After use as a medium for cooling the exterior surfaces of FOOD such as melons or FISH, PACKAGED FOODS such as canned BEVERAGES, or cooling coils and tubes of EQUIPMENT, ice may not be used as FOOD.

3-303.12 Storage or Display of Food in Contact with Water or Ice.

(A) PACKAGED FOOD may not be stored in direct contact with ice or water if the FOOD is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(B) Except as specified in ¶¶ (C) and (D) of this section, UNPACKAGED FOOD may not be stored in direct contact with undrained ice.

(C) *Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.*

(D) *Raw chicken and raw FISH that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.*

**Preventing
Contamination
from Equipment,
Utensils, and
Linens**

3-304.11 Food Contact with Equipment and Utensils.*

FOOD shall only contact surfaces of EQUIPMENT and UTENSILS that are cleaned as specified under Part 4-6 of this Code and SANITIZED as specified under Part 4-7 of this Code.

3-304.12 In-Use Utensils, Between-Use Storage.

During pauses in FOOD preparation or dispensing, FOOD preparation and dispensing UTENSILS shall be stored:

(A) Except as specified under ¶ (B) of this section, in the FOOD with their handles above the top of the FOOD and the container;

(B) In FOOD that is not POTENTIALLY HAZARDOUS with their handles above the top of the FOOD within containers or

EQUIPMENT that can be closed, such as bins of sugar, flour, or cinnamon;

(C) On a clean portion of the FOOD preparation table or cooking EQUIPMENT only if the in-use UTENSIL and the FOOD-CONTACT surface of the FOOD preparation table or cooking EQUIPMENT are cleaned and SANITIZED at a frequency specified under §§ 4-602.11 and 4-702.11;

(D) In running water of sufficient velocity to flush particulates to the drain, if used with moist FOOD such as ice cream or mashed potatoes;

(E) In a clean, protected location if the UTENSILS, such as ice scoops, are used only with a FOOD that is not POTENTIALLY HAZARDOUS; or

(F) In a container of water if the water is maintained at a temperature of at least 60°C (140°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).

3-304.13 Linens and Napkins, Use Limitation.

LINENS and napkins may not be used in contact with FOOD *unless they are used to line a container for the service of FOODS and the LINENS and napkins are replaced each time the container is refilled for a new CONSUMER.*

3-304.14 Wiping Cloths, Use Limitation.

(A) Cloths that are in use for wiping FOOD spills shall be used for no other purpose.

(B) Cloths used for wiping FOOD spills shall be:

(1) Dry and used for wiping FOOD spills from TABLEWARE and carry-out containers; or

(2) Wet and cleaned as specified under ¶ 4-802.11(D), stored in a chemical sanitizer at a concentration specified in § 4-501.114, and used for wiping spills from FOOD-CONTACT and nonFOOD-CONTACT SURFACES of EQUIPMENT.

(C) Dry or wet cloths that are used with raw animal FOODS shall be kept separate from cloths used for other purposes, and wet cloths used with raw animal FOODS shall be kept in a separate sanitizing solution.

(D) Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of FOOD debris and visible soil.

3-304.15 Gloves, Use Limitation.

(A) If used, SINGLE-USE gloves shall be used for only one task such as working with READY-TO-EAT FOOD or with raw animal FOOD, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(B) Except as specified in ¶ (C) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with FOOD that is subsequently cooked as specified under Part 3-4 such as frozen FOOD or a PRIMAL CUT of MEAT.

(C) Slash-resistant gloves may be used with READY-TO-EAT FOOD that will not be subsequently cooked if the slash-resistant gloves have a SMOOTH, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a SMOOTH, durable, nonabsorbent glove, or a SINGLE-USE glove.

(D) Cloth gloves may not be used in direct contact with FOOD unless the FOOD is subsequently cooked as required under Part 3-4 such as frozen FOOD or a PRIMAL CUT of MEAT.

3-304.16 Using Clean Tableware for Second Portions and Refills.

(A) Except for refilling a CONSUMER'S drinking cup or container without contact between the pouring UTENSIL and the lip-contact area of the drinking cup or container, FOOD EMPLOYEES may not use TABLEWARE, including SINGLE-SERVICE ARTICLES, soiled by the CONSUMER, to provide second portions or refills.

(B) Except as specified in ¶ (C) of this section, self-service CONSUMERS may not be allowed to use soiled TABLEWARE, including

SINGLE-SERVICE ARTICLES, to obtain additional FOOD from the display and serving EQUIPMENT.

(C) Drinking cups and containers may be reused by self-service CONSUMERS if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).

3-304.17 Refilling Returnables.

(A) A take-home FOOD container returned to a FOOD ESTABLISHMENT may not be refilled at a FOOD ESTABLISHMENT with a POTENTIALLY HAZARDOUS FOOD.

(B) Except as specified in ¶ (C), a take-home FOOD container refilled with FOOD that is not POTENTIALLY HAZARDOUS shall be cleaned as specified under ¶ 4-603.17(B).

(C) Personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).

Preventing Contamination from the Premises

3-305.11 Food Storage.

(A) Except as specified in ¶¶ (B) and (C) of this section, FOOD shall be protected from contamination by storing the FOOD:

(1) In a clean, dry location;

(2) Where it is not exposed to splash, dust, or other contamination; and

(3) At least 15 cm (6 inches) above the floor.

(B) FOOD in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling EQUIPMENT as specified under § 4-204.122.

(C) Pressurized BEVERAGE containers, cased FOOD in waterproof

containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

3-305.12 Food Storage, Prohibited Areas.

FOOD may not be stored:

- (A) In locker rooms;
- (B) In toilet rooms;
- (C) In dressing rooms;
- (D) In garbage rooms;
- (E) In mechanical rooms;
- (F) Under sewer lines that are not shielded to intercept potential drips;
- (G) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (H) Under open stairwells; or
- (I) Under other sources of contamination.

3-305.13 Vended Potentially Hazardous Food, Original Container.

POTENTIALLY HAZARDOUS FOOD dispensed through a VENDING MACHINE shall be in the package in which it was placed at the FOOD ESTABLISHMENT or FOOD PROCESSING PLANT at which it was prepared.

3-305.14 Food Preparation.

During preparation, unPACKAGED FOOD shall be protected from environmental sources of contamination.

Preventing

3-306.11 Food Display.

**Contamination
by Consumers**

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the CONSUMER before consumption, FOOD on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar FOOD guards; display cases; or other effective means.

3-306.12 Condiments, Protection.

(A) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected FOOD displays provided with the proper UTENSILS, original containers designed for dispensing, or individual packages or portions.

(B) Condiments at a VENDING MACHINE LOCATION shall be in individual packages or provided in dispensers that are filled at an APPROVED location, such as the FOOD ESTABLISHMENT that provides FOOD to the VENDING MACHINE LOCATION, a FOOD PROCESSING PLANT that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the VENDING MACHINE LOCATION.

3-306.13 Consumer Self-Service Operations.*

(A) Raw, UNPACKAGED animal FOOD, such as beef, lamb, pork, POULTRY, and FISH may not be offered for CONSUMER self-service. *This paragraph does not apply to CONSUMER self-service of READY-TO-EAT FOODS at buffets or salad bars that serve FOODS such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the PREMISES such as CONSUMER-cooked MEATS or CONSUMER-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.*

(B) CONSUMER self-service operations for READY-TO-EAT FOODS shall be provided with suitable UTENSILS or effective dispensing methods that protect the FOOD from contamination.^N

(C) CONSUMER self-service operations such as buffets and salad bars shall be monitored by FOOD EMPLOYEES trained in safe operating procedures.^N

3-306.14 Returned Food and Reservice of Food.*

(A) Except as specified in ¶ (B) of this section, after being served or sold and in the possession of a CONSUMER, FOOD that is unused or returned by the CONSUMER may not be offered as FOOD for human consumption.

(B) Except as specified under ¶ 3-801.11(C), *a container of FOOD that is not POTENTIALLY HAZARDOUS may be transferred from one CONSUMER to another if:*

(1) The FOOD is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(2) The FOOD, such as crackers, salt, or pepper, is in an unopened original PACKAGE and is maintained in sound condition.

Preventing Contamination from Other Sources

3-307.11 Miscellaneous Sources of Contamination.

FOOD shall be protected from contamination that may result from a factor or source not specified under Subparts 3-301 - 3-306.

3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN

Subparts

- | | |
|--------------|------------------|
| 3-401 | Cooking |
| 3-402 | Freezing |
| 3-403 | Reheating |

Cooking

3-401.11 Raw Animal Foods.*

(A) Except as specified under ¶ (B) and in ¶¶ (C) and (D) of this section, raw animal FOODS such as eggs, FISH, MEAT, POULTRY, and FOODS containing these raw animal FOODS, shall be cooked to heat all parts of the FOOD to a temperature and for a time that complies

with one of the following methods based on the FOOD that is being cooked:

(1) 63°C (145°F) or above for 15 seconds for:

(a) Raw shell eggs that are broken and prepared in response to a CONSUMER'S order and for immediate service, and

(b) Except as specified under Subparagraphs (A)(2) and (3) and ¶ (B) of this section, FISH, MEAT, and pork including GAME ANIMALS commercially raised for FOOD as specified under Subparagraph 3-201.17(A)(1) and GAME ANIMALS under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2);

(2) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and INJECTED MEATS; the following if they are COMMINUTED: FISH, MEAT, GAME ANIMALS commercially raised for FOOD as specified under Subparagraph 3-201.17(A)(1), and GAME ANIMALS under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); and raw eggs that are not prepared as specified under Subparagraph (A)(1)(a) of this section:

Minimum	
Temperature °C (°F)	Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

;or

(3) 74°C (165°F) or above for 15 seconds for POULTRY, wild GAME ANIMALS as specified under Subparagraphs 3-201.17(A)(3) and (4), stuffed FISH, stuffed MEAT, stuffed pasta, stuffed POULTRY, stuffed ratites, or stuffing containing FISH, MEAT, POULTRY, or ratites.

(B) Whole beef roasts, corned beef roasts, pork roasts, and cured

pork roasts such as ham, shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity ¹	121°C (250°F) or less	121°C (250°F) or less

¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

;and

(2) As specified in the following chart, to heat all parts of the FOOD to a temperature and for the holding time that corresponds to that temperature:

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Minutes
54 (130)	121	58 (136)	32	61 (142)	8
56 (132)	77	59 (138)	19	62 (144)	5
57 (134)	47	60 (140)	12	63 (145)	3

¹ Holding time may include postoven heat rise.

(C) A raw or undercooked WHOLE-MUSCLE, INTACT BEEF steak may be served or offered for sale in a READY-TO-EAT form if:

(1) The FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION,

- (2) *The steak is labeled to indicate that it meets the definition of "WHOLE-MUSCLE, INTACT BEEF" as specified under ¶ 3-201.11(E), and*
 - (3) *The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.*
- (D) *A raw animal FOOD such as raw egg, raw FISH, raw-marinated FISH, raw MOLLUSCAN SHELLFISH, or steak tartare; or a partially cooked FOOD such as lightly cooked FISH, soft cooked eggs, or rare MEAT other than WHOLE-MUSCLE, INTACT BEEF steaks as specified in ¶ (C) of this section, may be served or offered for sale in a READY-TO-EAT form if:*
- (1) *The FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION, and*
 - (2) *The CONSUMER is informed as specified under § 3-603.11 that to ensure its safety, the FOOD should be cooked as specified under ¶ (A) or (B) of this section; or*
 - (3) *The REGULATORY AUTHORITY grants a VARIANCE from ¶ (A) or (B) of this section as specified in § 8-103.10 based on a HACCP PLAN that:*
 - (a) *Is submitted by the PERMIT HOLDER and APPROVED as specified under § 8-103.11,*
 - (b) *Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe FOOD, and*
 - (c) *Verifies that EQUIPMENT and procedures for FOOD preparation and training of FOOD EMPLOYEES at the FOOD ESTABLISHMENT meet the conditions of the VARIANCE.*

3-401.12 Microwave Cooking.*

Raw animal FOODS cooked in a microwave oven shall be:

- (A) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

- (B) Covered to retain surface moisture;
- (C) Heated to a temperature of at least 74°C (165°F) in all parts of the food; and
- (D) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

3-401.13 Plant Food Cooking for Hot Holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60°C (140°F).

Freezing

3-402.11 Parasite Destruction.*

(A) Except as specified in ¶ (B) of this section, before service or sale in READY-TO-EAT form, raw, raw-marinated, partially cooked, or marinated-partially cooked FISH other than MOLLUSCAN SHELLFISH shall be frozen throughout to a temperature of:

- (1) -20°C (-4°F) or below for 168 hours (7 days) in a freezer; or
- (2) -35°C (-31°F) or below for 15 hours in a blast freezer.

(B) *If the FISH are tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), or Thunnus thynnus (Bluefin tuna, Northern), the FISH may be served or sold in a raw, raw-marinated, or partially cooked READY-TO-EAT form without freezing as specified under ¶ (A) of this section.*

3-402.12 Records, Creation and Retention.

(A) Except as specified in ¶ 3-402.11(B) and ¶ (B) of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked FISH are served or sold in READY-TO-EAT form, the PERSON IN CHARGE shall record the freezing temperature and time to which the FISH are subjected and shall retain the records at the FOOD ESTABLISHMENT for 90 calendar days beyond the time of service or sale of the FISH.

(B) *If the FISH are frozen by a supplier, a written agreement or statement from the supplier stipulating that the FISH supplied are*

frozen to a temperature and for a time specified under § 3-402.11 may substitute for the records specified under ¶ (A) of this section.

Reheating

3-403.10 Preparation for Immediate Service.

Cooked and refrigerated FOOD that is prepared for immediate service in response to an individual CONSUMER order, such as a roast beef sandwich au jus, may be served at any temperature.

3-403.11 Reheating for Hot Holding.*

(A) Except as specified under ¶¶ (B) and (C) and in ¶ (E) of this section, POTENTIALLY HAZARDOUS FOOD that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the FOOD reach a temperature of at least 74°C (165°F) for 15 seconds.

(B) Except as specified under ¶ (C) of this section, POTENTIALLY HAZARDOUS FOOD reheated in a microwave oven for hot holding shall be reheated so that all parts of the FOOD reach a temperature of at least 74°C (165°F) and the FOOD is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.

(C) READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD REGULATORY AUTHORITY that has jurisdiction over the plant, shall be heated to a temperature of at least 60°C (140°F) for hot holding.

(D) Reheating for hot holding shall be done rapidly and the time the FOOD is between the temperature specified under ¶ 3-501.16(B) or (C) and 74°C (165°F) may not exceed 2 hours.

(E) *Remaining unsliced portions of roasts of beef that are cooked as specified under ¶ 3-401.11(B) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under ¶ 3-401.11(B).*

3-5

LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN

Subparts

3-501

Temperature and Time Control

3-502

Specialized Processing Methods

***Temperature
and Time
Control***

3-501.11 Frozen Food.

Stored frozen FOODS shall be maintained frozen.

3-501.12 Potentially Hazardous Food, Slacking.

Frozen POTENTIALLY HAZARDOUS FOOD that is slacked to moderate the temperature shall be held:

(A) Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under ¶ 3-501.16(C); or

(B) At any temperature if the FOOD remains frozen.

3-501.13 Thawing.

Except as specified in ¶ (D) of this section, POTENTIALLY HAZARDOUS FOOD shall be thawed:

(A) Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under ¶ 3-501.16(C); or

(B) Completely submerged under running water:

(1) At a water temperature of 21°C (70°F) or below,

(2) With sufficient water velocity to agitate and float off loose particles in an overflow, and

(3) For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to rise above 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C), or

(4) For a period of time that does not allow thawed portions of a raw animal FOOD requiring cooking as specified under ¶ 3-401.11(A) or (B) to be above 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C), for more than 4 hours including:

(a) The time the FOOD is exposed to the running water and the time needed for preparation for cooking, or

(b) The time it takes under refrigeration to lower the FOOD temperature to 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C);

(C) As part of a cooking process if the FOOD that is frozen is:

(1) Cooked as specified under ¶ 3-401.11(A) or (B) or § 3-401.12, or

(2) Thawed in a microwave oven and immediately transferred to conventional cooking EQUIPMENT, with no interruption in the process; or

(D) *Using any procedure if a portion of frozen READY-TO-EAT FOOD is thawed and prepared for immediate service in response to an individual CONSUMER'S order.*

3-501.14 Cooling.*

(A) Cooked POTENTIALLY HAZARDOUS FOOD shall be cooled:

(1) Within 2 hours, from 60°C (140°F) to 21°C (70°F); and

(2) Within 4 hours, from 21°C (70°F) to 5°C (41°F) or less, or to 7°C (45°F) as specified under ¶ 3-501.16(C).

(B) POTENTIALLY HAZARDOUS FOOD shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) as specified under

¶ 3-501.16(C) if prepared from ingredients at ambient temperature, such as reconstituted FOODS and canned tuna.

(C) Except as specified in ¶ (D) of this section, a POTENTIALLY HAZARDOUS FOOD received in compliance with LAWS allowing a temperature above 5°C (41°F) during shipment from the supplier as specified in ¶ 3-202.11(B), shall be cooled within 4 hours to 5°C (41°F) or less, or 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(D) Shell eggs need not comply with ¶ (C) of this section if the eggs are placed immediately upon their receipt in refrigerated EQUIPMENT that is capable of maintaining FOOD at 5°C (41°F) or less, or 7°C (45°F) or less as specified under ¶ 3-501.16(C).

3-501.15 Cooling Methods.

(A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under § 3-501.14 by using one or more of the following methods based on the type of FOOD being cooled:

- (1) Placing the FOOD in shallow pans;
- (2) Separating the FOOD into smaller or thinner portions;
- (3) Using rapid cooling EQUIPMENT;
- (4) Stirring the FOOD in a container placed in an ice water bath;
- (5) Using containers that facilitate heat transfer;
- (6) Adding ice as an ingredient; or
- (7) Other effective methods.

(B) When placed in cooling or cold holding EQUIPMENT, FOOD containers in which FOOD is being cooled shall be:

- (1) Arranged in the EQUIPMENT to provide maximum heat transfer through the container walls; and
- (2) Loosely covered, or uncovered if protected from overhead contamination as specified under Subparagraph 3-305.11(A)(2),

during the cooling period to facilitate heat transfer from the surface of the FOOD.

3-501.16 Potentially Hazardous Food, Hot and Cold Holding.*

Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under § 3-501.19, POTENTIALLY HAZARDOUS FOOD shall be maintained:

(A) At 60°C (140°F) or above, *except that roasts cooked to a temperature and for a time specified under ¶ 3-401.11(B) or reheated as specified in ¶ 3-403.11(E) may be held at a temperature of 54°C (130°F); or*

(B) At 5°C (41°F) or less, except as specified under ¶ (C) of this section and §§ 3-501.17, 3-501.18, and 4-204.111.

(C) At 7°C (45°F) or between 7°C (45°F) and 5°C (41°F) in existing refrigeration EQUIPMENT that is not capable of maintaining the FOOD at 5°C (41°F) or less if:

(1) The EQUIPMENT is in place and in use in the FOOD ESTABLISHMENT; and

(2) Within 5 years of the REGULATORY AUTHORITY'S adoption of this Code, the EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5°C (41°F) or less.

3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking.*

**on-premises
preparation**
• *prepare and
hold cold*

(A) Except as specified in ¶ (E) of this section, refrigerated, READY-TO-EAT, POTENTIALLY HAZARDOUS FOOD prepared and held refrigerated for more than 24 hours in a FOOD ESTABLISHMENT shall be clearly marked at the time of preparation to indicate the date by which the FOOD shall be consumed which is, including the day of preparation:

(1) 7 calendar days or less from the day that the FOOD is prepared, if the FOOD is maintained at 5°C (41°F) or less; or

(2) 4 calendar days or less from the day the FOOD is prepared, if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(B) Except as specified in ¶ (E) of this section, a READY-TO-EAT, POTENTIALLY HAZARDOUS FOOD prepared in a FOOD ESTABLISHMENT and subsequently frozen, shall be clearly marked:

• *prepare, freeze, thaw, immediate use*

(1) When the FOOD is thawed, to indicate that the FOOD shall be consumed within 24 hours; or

• *prepare, hold cold, freeze, thaw, hold cold*

(2) When the FOOD is placed into the freezer, to indicate the length of time before freezing that the FOOD is held refrigerated and which is, including the day of preparation:

(a) 7 calendar days or less from the day of preparation, if the FOOD is maintained at 5°C (41°F) or less, or

(b) 4 calendar days or less from the day of preparation, if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C); and

(3) When the FOOD is removed from the freezer, to indicate the date by which the FOOD shall be consumed which is:

(a) 7 calendar days or less after the FOOD is removed from the freezer, minus the time before freezing, that the FOOD is held refrigerated if the FOOD is maintained at 5°C (41°F) or less before and after freezing, or

(b) 4 calendar days or less after the FOOD is removed from the freezer, minus the time before freezing, that the FOOD is held refrigerated if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C) before and after freezing.

commercially processed food
• *open and hold cold*

(C) Except as specified in ¶¶ (E) and (F) of this section, a container of refrigerated, READY-TO-EAT POTENTIALLY HAZARDOUS FOOD prepared and PACKAGED by a FOOD PROCESSING PLANT shall be clearly marked, at the time the original container is opened in a FOOD ESTABLISHMENT, to indicate the date by which the FOOD shall be consumed which is, including the day the original container is opened:

(1) 7 calendar days or less after the original container is opened, if the FOOD is maintained at 5°C (41°F) or less; or

(2) 4 calendar days or less from the day the original container is opened, if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(D) Except as specified in ¶¶ (E) and (F) of this section, a container of refrigerated, READY-TO-EAT, POTENTIALLY HAZARDOUS FOOD prepared and PACKAGED by a FOOD PROCESSING PLANT and subsequently opened and frozen in a FOOD ESTABLISHMENT shall be clearly marked:

• *open, freeze, thaw, immediate use*

(1) When the FOOD is thawed, to indicate that the FOOD shall be consumed within 24 hours; or

• *open, hold cold, freeze, thaw, hold cold*

(2) To indicate the time between the opening of the original container and freezing that the FOOD is held refrigerated and which is, including the day of opening the original container:

(a) 7 calendar days or less, after opening the original container if the FOOD is maintained at 5°C (41°F) or less, or

(b) 4 calendar days or less after opening the original container if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C); and

(3) When the FOOD is removed from the freezer, to indicate the date by which the FOOD shall be consumed which is:

(a) 7 calendar days, minus the time before freezing, that the FOOD is held refrigerated if the FOOD is maintained at 5°C (41°F) or less before and after freezing, or

(b) 4 calendar days, minus the time before freezing, that the FOOD is held refrigerated if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C) before and after freezing.

(E) *Paragraphs (A)-(D) of this section do not apply to individual meal portions served or rePACKAGED for sale from a bulk container upon a CONSUMER'S request.*

(F) Paragraphs (C) and (D) of this section do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition.*

(A) A FOOD specified under ¶ 3-501.17(A) shall be discarded if not consumed within:

(1) 7 calendar days from the date of preparation if the FOOD is maintained at 5°C (41°F) or less; or

(2) 4 calendar days from the date of preparation if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(B) A FOOD specified under Subparagraph 3-501.17(B)(1) or (D)(1) shall be discarded if not consumed within 24 hours after thawing.

(C) A FOOD specified under Subparagraphs 3-501.17(B)(2) and (3) or (D)(2) and (3) shall be discarded on or before the most recent

date marked on the FOOD container or PACKAGE if the FOOD is not consumed by that date.

(D) A FOOD specified under ¶ 3-501.17(C) shall be discarded if not consumed within, including the day of opening the original container:

(1) 7 calendar days after the date that the original PACKAGE is opened in a FOOD ESTABLISHMENT if the FOOD is maintained at 5°C (41°F) or less; or

(2) 4 calendar days after the date that the original PACKAGE is opened in a FOOD ESTABLISHMENT if the FOOD is maintained at 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(E) A FOOD specified under ¶ 3-501.17(A), (B), (C), or (D) shall be discarded if the FOOD is:

(1) Marked with the date specified under ¶ 3-501.17(A), (B), (C), or (D) and the FOOD is not consumed before the most recent

date expires;

(2) In a container or PACKAGE which does not bear a date or time; or

(3) Inappropriately marked with a date or time that exceeds the date or time specified under ¶ 3-501.17(A), (B), (C), or (D).

(F) Refrigerated, READY-TO-EAT, POTENTIALLY HAZARDOUS FOOD prepared in a FOOD ESTABLISHMENT and dispensed through a VENDING MACHINE with an automatic shut-off control that is activated at a temperature of:

(1) 5°C (41°F) shall be discarded if not sold within 7 days; or

(2) 7°C (45°F) shall be discarded if not sold within 4 days.

(G) A refrigerated, potentially hazardous, READY-TO-EAT FOOD ingredient or a portion of a refrigerated, potentially hazardous, READY-TO-EAT FOOD that is subsequently combined with additional ingredients or portions of FOOD shall retain the date marking of the earliest or first-prepared ingredient or portion and shall be discarded as specified under ¶¶ 3-501.18(A) - (F).

3-501.19 Time as a Public Health Control.*

(A) Except as specified under ¶ (B) of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of POTENTIALLY HAZARDOUS FOOD before cooking, or for READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is displayed or held for service for immediate consumption:

(1) The FOOD shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the FOOD is removed from temperature control,

(2) The FOOD shall be cooked and served, served if READY-TO-EAT, or discarded, within 4 hours from the point in time when the FOOD is removed from temperature control,

(3) The FOOD in unmarked containers or packages or marked to exceed a 4 hour limit shall be discarded, and

(4) Written procedures shall be maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request, that ensure compliance with:

(a) Subparagraphs (A)(1)-(4) of this section, and

(b) § 3-501.14 for FOOD that is prepared, cooked, and refrigerated before time is used as a public health control.

(B) In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

**Specialized
Processing
Methods**

3-502.11 Variance Requirement.*

A FOOD ESTABLISHMENT shall obtain a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 and under § 8-103.11 before smoking FOOD as a method of FOOD preservation rather than as a method of flavor enhancement; curing FOOD; brewing alcoholic BEVERAGES; using FOOD ADDITIVES or adding components such as vinegar as a method of FOOD preservation rather than as a method of flavor enhancement or to render a FOOD so that it is not POTENTIALLY HAZARDOUS; packaging FOOD using a REDUCED OXYGEN PACKAGING method *except as specified under § 3-502.12 where a barrier to **Clostridium botulinum** in addition to refrigeration exists*; custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT; or preparing FOOD by another method that is determined by the REGULATORY AUTHORITY to require a VARIANCE.

3-502.12 Reduced Oxygen Packaging, Criteria.*

**Clostridium
botulinum
Controls**

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11, a FOOD ESTABLISHMENT that packages FOOD using a REDUCED OXYGEN PACKAGING method and **Clostridium botulinum** is identified as a microbiological HAZARD in the final PACKAGED form shall ensure that there are at least two barriers in place to control the growth and toxin formation of **C. botulinum**.

(B) A FOOD ESTABLISHMENT that packages FOOD using a REDUCED OXYGEN PACKAGING method and **Clostridium botulinum** is identified as a microbiological HAZARD in the final PACKAGED form

shall have a HACCP PLAN that contains the information specified under
¶ 8-201.14(D) and that:

- (1) Identifies the FOOD to be PACKAGED;
- (2) Limits the FOOD PACKAGED to a FOOD that does not support the growth of *Clostridium botulinum* because it complies with one of the following:
 - (a) Has an a_w of 0.91 or less,
 - (b) Has a pH of 4.6 or less,
 - (c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the U.S.D.A. using substances specified in 9 CFR 318.7 Approval of substances for use in the preparation of products and 9 CFR 381.147 Restrictions on the use of substances in poultry products and is received in an intact package, or
 - (d) Is a FOOD with a high level of competing organisms such as raw MEAT or raw POULTRY;
- (3) Specifies methods for maintaining FOOD at 5°C (41°F) or below;
- (4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 - (a) Maintain the FOOD at 5°C (41°F) or below, and
 - (b) Discard the FOOD if within 14 calendar days of its packaging it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;
- (5) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
- (6) Includes operational procedures that:
 - (a) Prohibit contacting FOOD with bare hands,

(b) Identify a designated area and the method by which:

(i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination, and

(ii) Access to the processing EQUIPMENT is restricted to responsible trained personnel familiar with the potential HAZARDS of the operation, and

(c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES; and

(7) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the:

(a) Concepts required for a safe operation,

(b) EQUIPMENT and facilities, and

(c) Procedures specified under Subparagraph (A)(6) of this section and ¶ 8-201.14(D).

(C) *Except for FISH that is frozen before, during, and after packaging*, a FOOD ESTABLISHMENT may not package FISH using a REDUCED OXYGEN PACKAGING method.

3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING

Subparts

3-601	Accurate Representation
3-602	Labeling
3-603	Consumer Advisory

***Accurate
Representation***

3-601.11 Standards of Identity.

PACKAGED FOOD shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR 130 - Food Standards: General and 9 CFR 319 Subpart A - General.

3-601.12 Honestly Presented.

(A) FOOD shall be offered for human consumption in a way that does not mislead or misinform the CONSUMER.

(B) FOOD or COLOR ADDITIVES, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a FOOD.

Labeling

3-602.11 Food Labels.

(A) FOOD PACKAGED in a FOOD ESTABLISHMENT, shall be labeled as specified in LAW, including 21 CFR 101 - Food Labeling, and 9 CFR 317 Labeling, Marking Devices, and Containers.

(B) Label information shall include:

(1) The common name of the FOOD, or absent a common name, an adequately descriptive identity statement:

(2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the FOOD;

(3) An accurate declaration of the quantity of contents;

(4) The name and place of business of the manufacturer, packer, or distributor; and

(5) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

(C) Bulk FOOD that is available for CONSUMER self-dispensing shall be prominently labeled with the following information in plain view of the CONSUMER:

(1) The manufacturer's or processor's label that was provided with the FOOD; or

(2) A card, sign, or other method of notification that includes the information specified under Subparagraphs (B)(1), (2), and (5) of this section.

(D) *Bulk, unpackaged FOODS such as bakery products and unpackaged FOODS that are portioned to CONSUMER specification need not be labeled if:*

(1) *A health, nutrient content, or other claim is not made;*

(2) *There are no state or local LAWS requiring labeling; and*

(3) *The FOOD is manufactured or prepared on the PREMISES of the FOOD ESTABLISHMENT or at another FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT that is owned by the same PERSON and is regulated by the FOOD regulatory agency that has jurisdiction.*

3-602.12 Other Forms of Information.

(A) If required by LAW, CONSUMER warnings shall be provided.

(B) FOOD ESTABLISHMENT or manufacturers' dating information on FOODS may not be concealed or altered.

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Current Status of Consumer Advisory Language

Regarding § 3-603.11

The following information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code. It is inserted here to provide a summary of recent events surrounding the matter of a consumer advisory, addressed in § 3-603.11 of the Code. In cases where the Food Code is adopted through incorporation by reference, this page may be removed.

A consensus as to what constitutes satisfactory compliance with § 3-603.11 was reached at the 1998 Conference for Food Protection (CFP) meeting. A third option for the consumer "reminder" was added later. This insert page is to alert the reader to the options available to food establishments in advising consumers of the increased possibility of foodborne illness when animal-derived foods are eaten raw or undercooked.

Included in Annex 3 is a full discussion of the evolution of the 1998 CFP consensus, satisfactory compliance, applicability of the Code provision, and the meaning and application of the phrase that appears in § 3-603.11, i.e., "or otherwise processed to eliminate pathogens."

There are two components to satisfactory compliance: Disclosure and Reminder.

Disclosure is satisfied when:

- (1) Items are described, such as:
 - (a) Oysters on the half-shell (raw oysters),
 - (b) Raw-egg Caesar salad, and
 - (c) Hamburgers (can be cooked to order); or
- (2) Items are asterisked to a footnote that states that the items:
 - (a) Are served raw or undercooked, or
 - (b) Contain (or may contain) raw or undercooked ingredients.

Reminder is satisfied when the items requiring disclosure are asterisked to a footnote that states:

- (1) Regarding the safety of these items, written information is available upon request;¹
- (2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
- (3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

¹Essential criteria for such written information are being developed and will be made available, with a downloadable model brochure, on the CFSAN Web Page at <http://www.cfsan.fda.gov>. All brochures must meet these essential criteria.

**Consumer
Advisory**

**3-603.11 Consumption of Animal Foods that are Raw,
Undercooked, or Not Otherwise Processed to
Eliminate Pathogens.***

Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(3) and under ¶ 3-801.11(D), if an animal FOOD such as beef, eggs, FISH, lamb, milk, pork, POULTRY, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a READY-TO-EAT form as a deli, menu, vended, or other item; or as a raw ingredient in another READY-TO-EAT FOOD, the PERMIT HOLDER shall inform CONSUMERS by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable CONSUMERS eating such FOODS in raw or undercooked form.

3-7 CONTAMINATED FOOD

Subpart

3-701 Disposition

Disposition

**3-701.11 Discarding or Reconditioning Unsafe,
Adulterated, or Contaminated Food.***

(A) A FOOD that is unsafe, ADULTERATED, or not honestly presented as specified under § 3-101.11 shall be reconditioned according to an APPROVED procedure or discarded.

(B) FOOD that is not from an APPROVED source as specified under §§ 3-201.11 through .17 shall be discarded.

(C) READY-TO-EAT FOOD that may have been contaminated by an EMPLOYEE who has been restricted or excluded as specified under § 2-201.12 shall be discarded.

(D) FOOD that is contaminated by FOOD EMPLOYEES, CONSUMERS, or other PERSONS through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

3-8

SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

Subpart

3-801

Additional Safeguards

Additional Safeguards

3-801.11

Pasteurized Foods, Prohibited Reservice, and Prohibited Food.*

In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION:

(A) PrePACKAGED JUICE or a prePACKAGED beverage containing JUICE, that bears a warning label as specified in 21 CFR, Section 101.17(g) Food Labeling, may not be served or offered for sale;

(B) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(1) FOODS such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified BEVERAGES, and

(2) Except as specified in ¶ (E) of this section, recipes in which more than one egg is broken and the eggs are combined;

(C) FOOD in an unopened original package may not be re-served; and

(D) The following FOODS may not be served or offered for sale in a READY-TO-EAT form:

(1) Raw animal FOODS such as raw FISH, raw-marinated FISH, raw MOLLUSCAN SHELLFISH, and steak tartare,

(2) A partially cooked animal FOOD such as lightly cooked FISH, rare MEAT, soft-cooked eggs that are made from raw shell eggs, and meringue, and

(3) Raw seed sprouts.

(E) *Subparagraph (B)(2) of this section does not apply if:*

(1) The raw eggs are combined immediately before cooking for one CONSUMER'S serving at a single meal, cooked as specified under Subparagraph 3-401.11(A)(1), and served immediately, such as an omelet, soufflé, or scrambled eggs;

(2) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a READY-TO-EAT form, such as a cake, muffin, or bread; or

(3) The preparation of the food is conducted under a HACCP PLAN that:

(a) Identifies the FOOD to be prepared,

(b) Prohibits contacting READY-TO-EAT FOOD with bare hands,

(c) Includes specifications and practices that ensure:

*(i) **Salmonella Enteritidis** growth is controlled before and after cooking, and*

*(ii) **Salmonella Enteritidis** is destroyed by cooking the eggs according to the temperature and time specified in subparagraph 3-401.11(A)(2),*

(d) Contains the information specified under ¶ 8-201.14(D) including procedures that:

(i) Control cross contamination of READY-TO-EAT FOOD with raw eggs, and

(ii) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES, and

(e) Describes the training program that ensures that the FOOD EMPLOYEE responsible for the preparation of the FOOD understands the procedures to be used.

Chapter

4 Equipment, Utensils, and Linens

Parts

- 4-1 MATERIALS FOR CONSTRUCTION AND REPAIR
- 4-2 DESIGN AND CONSTRUCTION
- 4-3 NUMBERS AND CAPACITIES
- 4-4 LOCATION AND INSTALLATION
- 4-5 MAINTENANCE AND OPERATION
- 4-6 CLEANING OF EQUIPMENT AND UTENSILS
- 4-7 SANITIZATION OF EQUIPMENT AND UTENSILS
- 4-8 LAUNDERING
- 4-9 PROTECTION OF CLEAN ITEMS

4-1 MATERIALS FOR CONSTRUCTION AND REPAIR

Subparts

- | | |
|-------|-------------------------------|
| 4-101 | Multiuse |
| 4-102 | Single-Service and Single-Use |

Multiuse

4-101.11 Characteristics.*

Materials that are used in the construction of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT may not allow the migration of deleterious substances or impart colors, odors, or tastes to FOOD and under normal use conditions shall be:

- (A) Safe;
- (B) Durable, CORROSION-RESISTANT, and nonabsorbent;^N

(C) Sufficient in weight and thickness to withstand repeated WAREWASHING;^N

(D) Finished to have a SMOOTH, EASILY CLEANABLE surface;^N and

(E) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^N

4-101.12 Cast Iron, Use Limitation.

(A) Except as specified in ¶¶ (B) and (C) of this section, cast iron may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT.

(B) *Cast iron may be used as a surface for cooking.*

(C) *Cast iron may be used in UTENSILS for serving FOOD if the UTENSILS are used only as part of an uninterrupted process from cooking through service.*

4-101.13 Lead in Ceramic, China, and Crystal Utensils, Use Limitation.

Ceramic, china, crystal UTENSILS, and decorative UTENSILS such as hand painted ceramic or china that are used in contact with FOOD shall be lead-free or contain levels of lead not exceeding the limits of the following UTENSIL categories:

Utensil Category	Description	Maximum Lead mg/L
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls ≥ 1.1 L (1.16 QT)	1
Small Hollowware	Bowls < 1.1 L (1.16 QT)	2.0
Flat Utensils	Plates, Saucers	3.0

4-101.14 Copper, Use Limitation.*

(A) Except as specified in ¶ (B) of this section, copper and copper alloys such as brass may not be used in contact with a FOOD that has a pH below 6 such as vinegar, fruit JUICE, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(B) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

4-101.15 Galvanized Metal, Use Limitation.*

Galvanized metal may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT that are used in contact with acidic FOOD.

4-101.16 Sponges, Use Limitation.

Sponges may not be used in contact with cleaned and SANITIZED or in-use FOOD-CONTACT SURFACES.

4-101.17 Lead in Pewter Alloys, Use Limitation.

Pewter alloys containing lead in excess of 0.05% may not be used as a FOOD-CONTACT SURFACE.

4-101.18 Lead in Solder and Flux, Use Limitation.

Solder and flux containing lead in excess of 0.2% may not be used as a FOOD-CONTACT SURFACE.

4-101.19 Wood, Use Limitation.

(A) Except as specified in ¶¶ (B), (C), and (D) of this section, wood and wood wicker may not be used as a FOOD-CONTACT SURFACE.

(B) Hard maple or an equivalently hard, close-grained wood may be used for:

(1) *Cutting boards; cutting blocks; bakers' tables; and UTENSILS such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and*

(2) *Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.*

(C) *Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.*

(D) *If the nature of the FOOD requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw FOOD may be kept in:*

(1) *Untreated wood containers; or*

(2) *Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.*

4-101.110 Nonstick Coatings, Use Limitation.

Multiuse KITCHENWARE such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching UTENSILS and cleaning aids.

4-101.111 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES of EQUIPMENT that are exposed to splash, spillage, or other FOOD soiling or that require frequent cleaning shall be constructed of a CORROSION-RESISTANT, nonabsorbent, and SMOOTH material.

Single-Service and Single-Use

4-102.11 Characteristics.*

Materials that are used to make SINGLE-SERVICE and SINGLE-USE ARTICLES:

(A) May not:

- (1) Allow the migration of deleterious substances, or
- (2) Impart colors, odors, or tastes to FOOD;^N and

(B) Shall be:

- (1) Safe, and
- (2) Clean.^N

4-2

DESIGN AND CONSTRUCTION

Subparts

4-201	Durability and Strength
4-202	Cleanability
4-203	Accuracy
4-204	Functionality
4-205	Acceptability

Durability and Strength

4-201.11 Equipment and Utensils.

EQUIPMENT and UTENSILS shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

4-201.12 Food Temperature Measuring Devices.*

FOOD TEMPERATURE MEASURING DEVICES may not have sensors or stems constructed of glass, *except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.*

Cleanability

4-202.11 Food-Contact Surfaces.*

(A) Multiuse FOOD-CONTACT SURFACES shall be:

- (1) SMOOTH;
- (2) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
- (3) Free of sharp internal angles, corners, and crevices;
- (4) Finished to have SMOOTH welds and joints; and
- (5) Except as specified in ¶ (B) of this section, accessible for cleaning and inspection by one of the following methods:
 - (a) Without being disassembled,
 - (b) By disassembling without the use of tools, or
 - (c) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

(B) Subparagraph (A)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

4-202.12 CIP Equipment.

(A) CIP EQUIPMENT shall meet the characteristics specified under § 4-202.11 and shall be designed and constructed so that:

- (1) Cleaning and SANITIZING solutions circulate throughout a fixed system and contact all interior FOOD-CONTACT SURFACES, and
- (2) The system is self-draining or capable of being completely drained of cleaning and SANITIZING solutions; and

(B) CIP EQUIPMENT that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior FOOD-CONTACT SURFACES throughout the fixed system are being effectively cleaned.

4-202.13 "V" Threads, Use Limitation.

Except for hot oil cooking or filtering EQUIPMENT, "V" type threads may not be used on FOOD-CONTACT SURFACES.

4-202.14 Hot Oil Filtering Equipment.

Hot oil filtering EQUIPMENT shall meet the characteristics specified under § 4-202.11 or § 4-202.12 and shall be readily accessible for filter replacement and cleaning of the filter.

4-202.15 Can Openers.

Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

4-202.16 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

4-202.17 Kick Plates, Removable.

Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(A) Removable by one of the methods specified under Subparagraphs 4-202.11(E)(1)-(3) or capable of being rotated open; and

(B) Removable or capable of being rotated open without unlocking EQUIPMENT doors.

4-202.18 Ventilation Hood Systems, Filters.

Filters or other grease extracting EQUIPMENT shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

Accuracy

4-203.11 Temperature Measuring Devices, Food.

(A) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in

Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use.

(B) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use.

4-203.12 Temperature Measuring Devices, Ambient Air and Water.

(A) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to $\pm 1.5^{\circ}\text{C}$ in the intended range of use.

(B) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}\text{F}$ in the intended range of use.

4-203.13 Pressure Measuring Devices, Mechanical Warewashing Equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water SANITIZING rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

Functionality

4-204.11 Ventilation Hood Systems, Drip Prevention.

Exhaust ventilation hood systems in FOOD preparation and WAREWASHING areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

4-204.12 Equipment Openings, Closures and Deflectors.

(A) A cover or lid for EQUIPMENT shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of EQUIPMENT that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(C) Except as specified under ¶ (D) of this section, fixed piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending into EQUIPMENT shall be provided with a watertight joint at the point where the item enters the EQUIPMENT.

(D) If a watertight joint is not provided:

(1) The piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the FOOD; and

(2) The opening shall be flanged as specified under ¶ (B) of this section.

4-204.13 Dispensing Equipment, Protection of Equipment and Food.

In EQUIPMENT that dispenses or vends liquid FOOD or ice in unPACKAGED form:

(A) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the FOOD shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the FOOD;

(B) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) The delivery tube or chute and orifice of EQUIPMENT used to vend liquid FOOD or ice in unPACKAGED form to self-service CONSUMERS shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the EQUIPMENT is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or

(2) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE; and

(D) The dispensing EQUIPMENT actuating lever or mechanism and filling device of CONSUMER self-service BEVERAGE dispensing EQUIPMENT shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

4-204.14 Vending Machine, Vending Stage Closure.

The dispensing compartment of a VENDING MACHINE including a machine that is designed to vend prePACKAGED snack FOOD that is not POTENTIALLY HAZARDOUS such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

(A) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE.

4-204.15 Bearings and Gear Boxes, Leakproof.

EQUIPMENT containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant can not leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

4-204.16 Beverage Tubing, Separation.

BEVERAGE tubing and cold-plate BEVERAGE cooling devices may not be installed in contact with stored ice. *This section does not apply to cold plates that are constructed integrally with an ice storage bin.*

4-204.17 Ice Units, Separation of Drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

4-204.18 Condenser Unit, Separation.

If a condenser unit is an integral component of EQUIPMENT, the condenser unit shall be separated from the FOOD and FOOD storage space by a dustproof barrier.

4-204.19 Can Openers on Vending Machines.

Cutting or piercing parts of can openers on VENDING MACHINES shall be protected from manual contact, dust, insects, rodents, and other contamination.

4-204.110 Molluscan Shellfish Tanks.

(A) Except as specified under ¶ (B) of this section, MOLLUSCAN SHELLFISH life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the CONSUMER that the shellfish are for display only.

(B) MOLLUSCAN SHELLFISH life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a VARIANCE granted by the REGULATORY AUTHORITY as specified in § 8-103.10 and a HACCP PLAN that:

(1) Is submitted by the PERMIT HOLDER and APPROVED as specified under § 8-103.11; and

(2) Ensures that:

(a) Water used with FISH other than MOLLUSCAN SHELLFISH does not flow into the molluscan tank,

(b) The safety and quality of the shellfish as they were received are not compromised by the use of the tank, and

(c) The identity of the source of the SHELLSTOCK is retained as specified under § 3-203.12.

4-204.111 Vending Machines, Automatic Shutoff.*

(A) A machine vending POTENTIALLY HAZARDOUS FOOD shall have an automatic control that prevents the machine from vending FOOD:

(1) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain FOOD temperatures as specified under Chapter 3; and

(2) If a condition specified under Subparagraph (A)(1) of this section occurs, until the machine is serviced and restocked with FOOD that has been maintained at temperatures specified under Chapter 3.

(B) When the automatic shutoff within a machine vending POTENTIALLY HAZARDOUS FOOD is activated:

(1) In a refrigerated VENDING MACHINE, the ambient temperature may not exceed 5°C (41°F) or 7°C (45°F) as specified under ¶ 3-501.16(C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(2) In a hot holding VENDING MACHINE, the ambient temperature may not be less than 60°C (140°F) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

4-204.112 Temperature Measuring Devices.

(A) In a mechanically refrigerated or hot FOOD storage unit, the sensor of a TEMPERATURE MEASURING DEVICE shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot FOOD storage unit.

(B) Except as specified in ¶ (C) of this section, cold or hot holding EQUIPMENT used for POTENTIALLY HAZARDOUS FOOD shall be designed to include and shall be equipped with at least one integral or permanently affixed TEMPERATURE MEASURING DEVICE that is located to allow easy viewing of the device's temperature display.

(C) Paragraph (B) of this section does not apply to EQUIPMENT for which the placement of a TEMPERATURE MEASURING DEVICE is not a practical means for measuring the ambient air surrounding the FOOD because of the design, type, and use of the EQUIPMENT, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated FOOD transport containers, and salad bars.

(D) TEMPERATURE MEASURING DEVICES shall be designed to be easily readable.

(E) FOOD TEMPERATURE MEASURING DEVICES and water TEMPERATURE MEASURING DEVICES on WAREWASHING machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F in the intended range of use.

4-204.113 Warewashing Machine, Data Plate Operating Specifications.

A WAREWASHING machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

- (A) Temperatures required for washing, rinsing, and SANITIZING;
- (B) Pressure required for the fresh water SANITIZING rinse *unless the machine is designed to use only a pumped SANITIZING rinse*; and
- (C) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

4-204.114 Warewashing Machines, Internal Baffles.

WAREWASHING machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

4-204.115 Warewashing Machines, Temperature Measuring Devices.

A WAREWASHING machine shall be equipped with a TEMPERATURE MEASURING DEVICE that indicates the temperature of the water:

- (A) In each wash and rinse tank; and
- (B) As the water enters the hot water SANITIZING final rinse manifold or in the chemical SANITIZING solution tank.

4-204.116 Manual Warewashing Equipment, Heaters and Baskets.

If hot water is used for SANITIZATION in manual WAREWASHING operations, the SANITIZING compartment of the sink shall be:

- (A) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F); and
- (B) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

4-204.117 Warewashing Machines, Sanitizer Level Indicator.

A WAREWASHING machine that uses a chemical for SANITIZATION and that is installed after adoption of this Code by the REGULATORY AUTHORITY, shall be equipped with a device that indicates audibly or visually when more chemical SANITIZER needs to be added.

4-204.118 Warewashing Machines, Flow Pressure Device.

(A) WAREWASHING machines that provide a fresh hot water SANITIZING rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the WAREWASHING machine; and

(B) If the flow pressure measuring device is upstream of the fresh hot water SANITIZING rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(C) Paragraphs (A) and (B) of this section do not apply to a machine that uses only a pumped or recirculated SANITIZING rinse.

4-204.119 Warewashing Sinks and Drainboards, Self-Draining.

Sinks and drainboards of WAREWASHING sinks and machines shall be self-draining.

4-204.120 Equipment Compartments, Drainage.

EQUIPMENT compartments that are subject to accumulation of moisture due to conditions such as condensation, FOOD or BEVERAGE drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

4-204.121 Vending Machines, Liquid Waste Products.

(A) VENDING MACHINES designed to store BEVERAGES that are PACKAGED in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) VENDING MACHINES that dispense liquid FOOD in bulk shall be:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified under Subparagraph (B)(2) of this section shall prevent water or liquid FOOD from continuously running if there is a failure of a flow control device in the water or liquid FOOD system or waste accumulation that could lead to overflow of the waste receptacle.

4-204.122 Case Lot Handling Equipment, Moveability.

EQUIPMENT, such as dollies, pallets, racks, and skids used to store and transport large quantities of PACKAGED FOODS received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available EQUIPMENT such as hand trucks and forklifts.

4-204.123 Vending Machine Doors and Openings.

(A) VENDING MACHINE doors and access opening covers to FOOD and container storage spaces shall be tight-fitting so that the space

along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

- (1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;
- (2) Being effectively gasketed;
- (3) Having interface surfaces that are at least 13 millimeters or one-half inch wide; or
- (4) Jambs or surfaces used to form an L-shaped entry path to the interface.

(B) VENDING MACHINE service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

Acceptability

4-205.10 Food Equipment, Certification and Classification.

FOOD EQUIPMENT that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Parts 4-1 and 4-2 of this chapter.

4-3**NUMBERS AND CAPACITIES*****Subparts*****4-301****Equipment****4-302****Utensils, Temperature Measuring Devices,
and Testing Devices*****Equipment*****4-301.11 Cooling, Heating, and Holding Capacities.**

EQUIPMENT for cooling and heating FOOD, and holding cold and hot FOOD, shall be sufficient in number and capacity to provide FOOD temperatures as specified under Chapter 3.

**4-301.12 Manual Warewashing, Sink Compartment
Requirements.**

(A) Except as specified in ¶ (C) of this section, a sink with at least 3 compartments shall be provided for manually washing, rinsing, and SANITIZING EQUIPMENT and UTENSILS.

(B) Sink compartments shall be large enough to accommodate immersion of the largest EQUIPMENT and UTENSILS. If EQUIPMENT or UTENSILS are too large for the WAREWASHING sink, a WAREWASHING machine or alternative EQUIPMENT as specified in ¶ (C) of this section shall be used.

(C) Alternative manual WAREWASHING EQUIPMENT may be used when there are special cleaning needs or constraints and its use is APPROVED. Alternative manual WAREWASHING EQUIPMENT may include:

- (1) High-pressure detergent sprayers;*
- (2) Low- or line-pressure spray detergent foamers;*
- (3) Other task-specific cleaning EQUIPMENT;*
- (4) Brushes or other implements;*

(5) *2-compartment sinks as specified under ¶¶ (D) and (E) of this section; or*

(6) *Receptacles that substitute for the compartments of a multicompartment sink.*

(D) Before a 2-compartment sink is used:

(1) The PERMIT HOLDER shall have its use APPROVED; and

(2) The nature of WAREWASHING shall be limited to batch operations for cleaning KITCHENWARE such as between cutting one type of raw MEAT and another or cleanup at the end of a shift, and:

(a) The number of items to be cleaned shall be limited,

(b) The cleaning and SANITIZING solutions shall be made up immediately before use and drained immediately after use, and

(c) A detergent-SANITIZER shall be used to SANITIZE and shall be applied as specified under § 4-501.115, or

(d) A hot water SANITIZATION immersion step shall be used as specified under ¶ 4-603.16(C).

(E) A 2-compartment sink may not be used for WAREWASHING operations where cleaning and SANITIZING solutions are used for a continuous or intermittent flow of KITCHENWARE or TABLEWARE in an ongoing WAREWASHING process.

4-301.13 Drainboards.

Drainboards, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary UTENSIL holding before cleaning and after SANITIZING.

4-301.14 Ventilation Hood Systems, Adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on

walls and ceilings.

4-301.15 Clothes Washers and Dryers.

(A) Except as specified in ¶ (B) of this section, if work clothes or LINENS are laundered on the PREMISES, a mechanical clothes washer and dryer shall be provided and used.

(B) If on-PREMISES laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under § 4-901.12, a mechanical clothes washer and dryer need not be provided.

**Utensils,
Temperature
Measuring
Devices, and
Testing Devices**

4-302.11 Utensils, Consumer Self-Service.

A FOOD dispensing UTENSIL shall be available for each container displayed at a CONSUMER self-service unit such as a buffet or salad bar.

4-302.12 Food Temperature Measuring Devices.

FOOD TEMPERATURE MEASURING DEVICES shall be provided and readily accessible for use in ensuring attainment and maintenance of FOOD temperatures as specified under Chapter 3.

4-302.13 Temperature Measuring Devices, Manual Warewashing.

In manual WAREWASHING operations, a TEMPERATURE MEASURING DEVICE shall be provided and readily accessible for frequently measuring the washing and SANITIZING temperatures.

4-302.14 Sanitizing Solutions, Testing Devices.

A test kit or other device that accurately measures the concentration in mg/L of SANITIZING solutions shall be provided.

4-4**LOCATION AND INSTALLATION*****Subparts*****4-401****Location****4-402****Installation*****Location*****4-401.11****Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.**

(A) Except as specified in ¶ (B) of this section, EQUIPMENT, a cabinet used for the storage of FOOD, or a cabinet that is used to store cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be located:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) A storage cabinet used for LINENS or SINGLE-SERVICE or SINGLE-USE ARTICLES may be stored in a locker room.

(C) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

Installation

4-402.11 Fixed Equipment, Spacing or Sealing.

(A) EQUIPMENT that is fixed because it is not EASILY MOVABLE shall be installed so that it is:

- (1) Spaced to allow access for cleaning along the sides, behind, and above the EQUIPMENT;
- (2) Spaced from adjoining EQUIPMENT, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or
- (3) SEALED to adjoining EQUIPMENT or walls, if the EQUIPMENT is exposed to spillage or seepage.

(B) TABLE-MOUNTED EQUIPMENT that is not EASILY MOVABLE shall be installed to allow cleaning of the EQUIPMENT and areas underneath and around the EQUIPMENT by being:

- (1) SEALED to the table; or
- (2) Elevated on legs as specified under ¶ 4-402.12(D).

4-402.12 Fixed Equipment, Elevation or Sealing.

(A) Except as specified in ¶¶ (B) and (C) of this section, floor-mounted EQUIPMENT that is not EASILY MOVABLE shall be SEALED to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the EQUIPMENT.

(B) If no part of the floor under the floor-mounted EQUIPMENT is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(C) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the CONSUMER shopping areas of a retail FOOD store, if the floor under the units is maintained clean.

(D) Except as specified in ¶ (E) of this section, TABLE-MOUNTED EQUIPMENT that is not EASILY MOVABLE shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the EQUIPMENT.

(E) *The clearance space between the table and TABLE-MOUNTED EQUIPMENT may be:*

(1) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the EQUIPMENT is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

(2) 5 centimeters (2 inches) if the horizontal distance of the table top under the EQUIPMENT is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

4-5 MAINTENANCE AND OPERATION

Subparts

4-501 Equipment

**4-502 Utensils and Temperature and Pressure
Measuring Devices**

Equipment

4-501.11 Good Repair and Proper Adjustment.

(A) EQUIPMENT shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2.

(B) EQUIPMENT components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate FOOD when the container is opened.

4-501.12 Cutting Surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and SANITIZED, or discarded if they are not capable of being resurfaced.

4-501.13 Microwave Ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4-501.14 Warewashing Equipment, Cleaning Frequency.

A WAREWASHING machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing EQUIPMENT, UTENSILS, or raw FOODS, or laundering wiping cloths; and drainboards or other EQUIPMENT used to substitute for drainboards as specified under § 4-301.13 shall be cleaned:

- (A) Before use;
- (B) Throughout the day at a frequency necessary to prevent recontamination of EQUIPMENT and UTENSILS and to ensure that the EQUIPMENT performs its intended function; and
- (C) If used, at least every 24 hours.

4-501.15 Warewashing Machines, Manufacturers' Operating Instructions.

(A) A WAREWASHING machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(B) A WAREWASHING machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

4-501.16 Warewashing Sinks, Use Limitation.

(A) A WAREWASHING sink may not be used for handwashing.

(B) If a WAREWASHING sink is used to wash wiping cloths, wash produce, or thaw FOOD, the sink shall be cleaned as specified under § 4-501.14 before and after each time it is used to wash wiping cloths or wash produce or thaw FOOD. Sinks used to wash or thaw

FOOD shall be SANITIZED as specified under Part 4-7 before and after using the sink to wash produce or thaw FOOD.

4-501.17 Warewashing Equipment, Cleaning Agents.

When used for WAREWASHING, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual WAREWASHING EQUIPMENT as specified in ¶ 4-301.12(C), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

4-501.18 Warewashing Equipment, Clean Solutions.

The wash, rinse, and SANITIZE solutions shall be maintained clean.

4-501.19 Manual Warewashing Equipment, Wash Solution Temperature.

The temperature of the wash solution in manual WAREWASHING EQUIPMENT shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions.

4-501.110 Mechanical Warewashing Equipment, Wash Solution Temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to SANITIZE may not be less than:

- (1) For a stationary rack, single temperature machine, 74°C (165°F);
- (2) For a stationary rack, dual temperature machine, 66°C (150°F);
- (3) For a single tank, conveyor, dual temperature machine, 71°C (160°F); or
- (4) For a multitank, conveyor, multitemperature machine, 66°C (150°F).

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to SANITIZE may not be less than 49°C (120°F).

4-501.111 Manual Warewashing Equipment, Hot Water Sanitization Temperatures.*

If immersion in hot water is used for SANITIZING in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above.

4-501.112 Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(A) Except as specified in ¶ (B) of this section, in a mechanical operation, the temperature of the fresh hot water SANITIZING rinse as it enters the manifold may not be more than 90°C (194°F), or less than:

(1) For a stationary rack, single temperature machine, 74°C (165°F); or

(2) For all other machines, 82°C (180°F).

(B) The maximum temperature specified under ¶ (A) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and SANITIZING of EQUIPMENT such as meat saws.

4-501.113 Mechanical Warewashing Equipment, Sanitization Pressure.

The flow pressure of the fresh hot water SANITIZING rinse in a WAREWASHING machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water SANITIZING rinse control valve.

4-501.114 Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness.*

A chemical SANITIZER used in a SANITIZING solution for a manual or mechanical operation at exposure times specified under ¶ 4-703.11(C) shall be listed in 21 CFR 178.1010 Sanitizing solutions, shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

(A) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;

Minimum Concentration	Minimum Temperature	
	pH 10 or less °C (°F)	pH 8 or less °C (°F)
25	49 (120)	49 (120)
50	38 (100)	24 (75)
100	13 (55)	13 (55)

(B) An iodine solution shall have a:

- (1) Minimum temperature of 24°C (75°F),
- (2) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and
- (3) Concentration between 12.5 mg/L and 25 mg/L;

(C) A quaternary ammonium compound solution shall:

- (1) Have a minimum temperature of 24°C (75°F),
- (2) Have a concentration as specified under § 7-204.11 and as indicated by the manufacturer's use directions included in the labeling, and
- (3) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

(D) If another solution of a chemical specified under ¶¶ (A)-(C) of

this section is used, the PERMIT HOLDER shall demonstrate to the REGULATORY AUTHORITY that the solution achieves SANITIZATION and the use of the solution shall be APPROVED; or

(E) If a chemical SANITIZER other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

4-501.115 Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers.

If a detergent-SANITIZER is used to SANITIZE in a cleaning and SANITIZING procedure where there is no distinct water rinse between the washing and SANITIZING steps, the agent applied in the SANITIZING step shall be the same detergent-SANITIZER that is used in the washing step.

4-501.116 Warewashing Equipment, Determining Chemical Sanitizer Concentration.

Concentration of the SANITIZING solution shall be accurately determined by using a test kit or other device.

***Utensils and
Temperature
and Pressure
Measuring
Devices***

4-502.11 Good Repair and Calibration.

(A) UTENSILS shall be maintained in a state of repair or condition that complies with the requirements specified under Parts 4-1 and 4-2 or shall be discarded.

(B) FOOD TEMPERATURE MEASURING DEVICES shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(C) Ambient air temperature, water pressure, and water TEMPERATURE MEASURING DEVICES shall be maintained in good repair and be accurate within the intended range of use.

4-502.12 Single-Service and Single-Use Articles, Required Use.*

A FOOD ESTABLISHMENT without facilities specified under Parts 4-6

and 4-7 for cleaning and SANITIZING kitchenware and TABLEWARE shall provide only SINGLE-USE KITCHENWARE, SINGLE-SERVICE ARTICLES, and SINGLE-USE ARTICLES for use by FOOD EMPLOYEES and SINGLE-SERVICE ARTICLES for use by CONSUMERS.

4-502.13 Single-Service and Single-Use Articles, Use Limitation.

(A) SINGLE-SERVICE and SINGLE-USE ARTICLES may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

4-502.14 Shells, Use Limitation.

Mollusk and crustacea shells may not be used more than once as serving containers.

4-6 CLEANING OF EQUIPMENT AND UTENSILS

Subparts

4-601	Objective
4-602	Frequency
4-603	Methods

Objective

4-601.11 Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.*

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be clean to sight and touch.

(B) The FOOD-CONTACT SURFACES of cooking EQUIPMENT and pans shall be kept free of encrusted grease deposits and other soil accumulations.^N

(C) NonFOOD-CONTACT SURFACES of EQUIPMENT shall be kept free of an accumulation of dust, dirt, FOOD residue, and other debris.^N

Frequency

4-602.11 Equipment Food-Contact Surfaces and Utensils.*

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be cleaned:

(1) Except as specified in ¶ (B) of this section, before each use with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY;

(2) Each time there is a change from working with raw FOODS to working with READY-TO-EAT FOODS;

(3) Between uses with raw fruits and vegetables and with POTENTIALLY HAZARDOUS FOOD;

(4) Before using or storing a FOOD TEMPERATURE MEASURING DEVICE; and

(5) At any time during the operation when contamination may have occurred.

(B) Subparagraph (A)(1) of this section does not apply if the FOOD-CONTACT SURFACE or UTENSIL is in contact with a succession of different raw animal FOODS each requiring a higher cooking temperature as specified under § 3-401.11 than the previous FOOD, such as preparing raw FISH followed by cutting raw poultry on the same cutting board.

(C) Except as specified in ¶ (D) of this section, if used with POTENTIALLY HAZARDOUS FOOD, EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be cleaned throughout the day at least every 4 hours.

(D) Surfaces of UTENSILS and EQUIPMENT contacting POTENTIALLY HAZARDOUS FOOD may be cleaned less frequently than every 4 hours if:

(1) In storage, containers of POTENTIALLY HAZARDOUS FOOD and their contents are maintained at temperatures specified under Chapter 3 and the containers are cleaned when they are empty;

(2) *UTENSILS and EQUIPMENT are used to prepare FOOD in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:*

(a) *The UTENSILS and EQUIPMENT are cleaned at the frequency in the following chart that corresponds to the temperature:*

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours
>10.0°C - 12.8°C (>50°F - 55°F)	10 hours

; and

(b) *The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the FOOD ESTABLISHMENT.*

(3) *Containers in serving situations such as salad bars, delis, and cafeteria lines hold READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is maintained at the temperatures specified under Chapter 3, are intermittently combined with additional supplies of the same FOOD that is at the required temperature, and the containers are cleaned at least every 24 hours;*

(4) *TEMPERATURE MEASURING DEVICES are maintained in contact with FOOD, such as when left in a container of deli FOOD or in a roast, held at temperatures specified under Chapter 3;*

(5) *EQUIPMENT is used for storage of PACKAGED or UNPACKAGED FOOD such as a reach-in refrigerator and the EQUIPMENT is*

cleaned at a frequency necessary to preclude accumulation of soil residues;

(6) The cleaning schedule is APPROVED based on consideration of:

- (a) Characteristics of the EQUIPMENT and its use,*
- (b) The type of FOOD involved,*
- (c) The amount of FOOD residue accumulation, and*
- (d) The temperature at which the FOOD is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or*

(7) In-use UTENSILS are intermittently stored in a container of water in which the water is maintained at 60°C (140°F) or more and the UTENSILS and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(E) Except when dry cleaning methods are used as specified under § 4-603.11, surfaces of UTENSILS and EQUIPMENT contacting FOOD that is not POTENTIALLY HAZARDOUS shall be cleaned:^N

- (1) At any time when contamination may have occurred;*
- (2) At least every 24 hours for iced tea dispensers and CONSUMER self-service UTENSILS such as tongs, scoops, or ladles;*
- (3) Before restocking CONSUMER self-service EQUIPMENT and UTENSILS such as condiment dispensers and display containers; and*
- (4) In EQUIPMENT such as ice bins and BEVERAGE dispensing nozzles and enclosed components of EQUIPMENT such as ice makers, cooking oil storage tanks and distribution lines, BEVERAGE and syrup dispensing lines or tubes, coffee bean grinders, and water vending EQUIPMENT:*

- (a) At a frequency specified by the manufacturer, or*

(b) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

4-602.12 Cooking and Baking Equipment.

(A) The FOOD-CONTACT SURFACES of cooking and baking EQUIPMENT shall be cleaned at least every 24 hours. *This section does not apply to hot oil cooking and filtering EQUIPMENT if it is cleaned as specified in Subparagraph 4-602.11(D)(6).*

(B) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

4-602.13 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES of EQUIPMENT shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

Methods

4-603.11 Dry Cleaning.

(A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only SURFACES that are soiled with dry FOOD residues that are not POTENTIALLY HAZARDOUS.

(B) Cleaning EQUIPMENT used in dry cleaning FOOD-CONTACT SURFACES may not be used for any other purpose.

4-603.12 Precleaning.

(A) FOOD debris on EQUIPMENT and UTENSILS shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a WAREWASHING machine with a prewash cycle.

(B) If necessary for effective cleaning, UTENSILS and EQUIPMENT shall be preflushed, presoaked, or scrubbed with abrasives.

4-603.13 Loading of Soiled Items, Warewashing Machines.
Soiled items to be cleaned in a WAREWASHING machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(A) Exposes the items to the unobstructed spray from all cycles;
and

(B) Allows the items to drain.

4-603.14 Wet Cleaning.

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application

of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(B) The washing procedures selected shall be based on the type and purpose of the EQUIPMENT or UTENSIL, and on the type of soil to be removed.

4-603.15 Washing, Procedures for Alternative Manual Warewashing Equipment.

If washing in sink compartments or a WAREWASHING machine is impractical such as when the EQUIPMENT is fixed or the UTENSILS are too large, washing shall be done by using alternative manual WAREWASHING EQUIPMENT as specified in ¶ 4-301.12(C) in accordance with the following procedures:

(A) EQUIPMENT shall be disassembled as necessary to allow access of the detergent solution to all parts;

(B) EQUIPMENT components and UTENSILS shall be scrapped or rough cleaned to remove FOOD particle accumulation; and

(C) EQUIPMENT and UTENSILS shall be washed as specified under ¶ 4-603.14(A).

4-603.16 Rinsing Procedures.

Washed UTENSILS and EQUIPMENT shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-SANITIZER solution by using one of the following procedures:

(A) Use of a distinct, separate water rinse after washing and before SANITIZING if using:

(1) A 3-compartment sink,

(2) Alternative manual WAREWASHING EQUIPMENT equivalent to a 3-compartment sink as specified in ¶ 4-301.12(C), or

(3) A 3-step washing, rinsing, and SANITIZING procedure in a WAREWASHING system for CIP EQUIPMENT;

(B) Use of a detergent-SANITIZER as specified under § 4-501.115 if using:

(1) Alternative WAREWASHING EQUIPMENT as specified in ¶ 4-301.12(C) that is APPROVED for use with a detergent-SANITIZER, or

(2) A WAREWASHING system for CIP EQUIPMENT;

(C) Use of a nondistinct water rinse that is integrated in the hot water SANITIZATION immersion step of a 2-compartment sink operation;

(D) If using a WAREWASHING machine that does not recycle the SANITIZING solution as specified under ¶ (E) of this section, or alternative manual WAREWASHING EQUIPMENT such as sprayers, use of a nondistinct water rinse that is:

(1) Integrated in the application of the SANITIZING solution, and

(2) Wasted immediately after each application; or

(E) If using a WAREWASHING machine that recycles the SANITIZING solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the SANITIZING solution.

4-603.17 Returnables, Cleaning for Refilling.*

(A) Except as specified in ¶¶ (B) and (C) of this section, returned empty containers intended for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.

(B) *A FOOD-specific container for BEVERAGES may be refilled at a FOOD ESTABLISHMENT if:*

- (1) Only a BEVERAGE that is not a POTENTIALLY HAZARDOUS FOOD is used as specified under ¶ 3-304.17(A);*
- (2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;*
- (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;*
- (4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and*
- (5) The container is refilled by:*
 - (a) An EMPLOYEE of the FOOD ESTABLISHMENT, or*
 - (b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process that can not be bypassed by the container owner.*

(C) *CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.*

4-7 SANITIZATION OF EQUIPMENT AND UTENSILS

Subparts

4-701	Objective
4-702	Frequency
4-703	Methods

Objective

4-701.10 Food-Contact Surfaces and Utensils.

EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be SANITIZED.

Frequency

4-702.11 Before Use After Cleaning.*

UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT shall be SANITIZED before use after cleaning.

Methods

4-703.11 Hot Water and Chemical.*

After being cleaned, EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be SANITIZED in:

(A) Hot water manual operations by immersion for at least 30 seconds and as specified under § 4-501.111;

(B) Hot water mechanical operations by being cycled through EQUIPMENT that is set up as specified under §§ 4-501.15, 4-501.112, and 4-501.113 and achieving a UTENSIL surface temperature of 71°C (160°F) as measured by an irreversible registering temperature indicator; or

(C) Chemical manual or mechanical operations, including the application of SANITIZING chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under § 4-501.114 by providing:

(1) Except as specified under Subparagraph (C)(2) of this section, an exposure time of at least 10 seconds for a chlorine solution specified under ¶ 4-501.114(A),

(2) An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38°C (100°F) or a pH of 8 or less and a temperature of at least 24°C (75°F),

(3) An exposure time of at least 30 seconds for other chemical SANITIZING solutions, or

(4) An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields SANITIZATION as defined in Subparagraph 1-201.10(B)(70).

4-8

LAUNDERING

Subparts

4-801

Objective

4-802

Frequency

4-803

Methods

Objective

4-801.11 Clean Linens.

Clean LINENS shall be free from FOOD residues and other soiling matter.

Frequency

4-802.11 Specifications.

(A) LINENS that do not come in direct contact with FOOD shall be laundered between operations if they become wet, sticky, or visibly soiled.

(B) Cloth gloves used as specified in ¶ 3-304.15(D) shall be

laundered before being used with a different type of raw animal FOOD such as beef, lamb, pork, and FISH.

(C) LINENS and napkins that are used as specified under § 3-304.13 and cloth napkins shall be laundered between each use.

(D) Wet wiping cloths shall be laundered daily.

(E) Dry wiping cloths shall be laundered as necessary to prevent contamination of FOOD and clean serving UTENSILS.

Methods

4-803.11 Storage of Soiled Linens.

Soiled LINENS shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of FOOD, clean EQUIPMENT, clean UTENSILS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

4-803.12 Mechanical Washing.

(A) Except as specified in ¶ (B) of this section, LINENS shall be mechanically washed.

(B) In FOOD ESTABLISHMENTS in which only wiping cloths are laundered as specified in ¶ 4-301.15(B), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a WAREWASHING or FOOD preparation sink that is cleaned as specified under § 4-501.14.

4-803.13 Use of Laundry Facilities.

(A) Except as specified in ¶ (B) of this section, laundry facilities on the PREMISES of a FOOD ESTABLISHMENT shall be used only for the washing and drying of items used in the operation of the establishment.

(B) Separate laundry facilities located on the PREMISES for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering FOOD ESTABLISHMENT items.

4-9 PROTECTION OF CLEAN ITEMS

Subparts

4-901	Drying
4-902	Lubricating and Reassembling
4-903	Storing
4-904	Handling

Drying

4-901.11 Equipment and Utensils, Air-Drying Required.

After cleaning and SANITIZING, EQUIPMENT and UTENSILS:

(A) Shall be air-dried or used after adequate draining as specified in ¶ (a) of 21 CFR 178.1010 Sanitizing solutions, before contact with FOOD; and

(B) May not be cloth dried *except that UTENSILS that have been air-dried may be polished with cloths that are maintained clean and dry.*

4-901.12 Wiping Cloths, Air-Drying Locations.

Wiping cloths laundered in a FOOD ESTABLISHMENT that does not have a mechanical clothes dryer as specified in ¶ 4-301.15(B) shall be air-dried in a location and in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and the wiping cloths. *This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under § 4-501.114.*

Lubricating and Reassembling

4-902.11 Food-Contact Surfaces.

Lubricants shall be applied to FOOD-CONTACT SURFACES that require lubrication in a manner that does not contaminate FOOD-CONTACT SURFACES.

4-902.12 Equipment.

EQUIPMENT shall be reassembled so that FOOD-CONTACT SURFACES are not contaminated.

Storing

4-903.11 Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.

(A) Except as specified in ¶ (D) of this section, cleaned EQUIPMENT and UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES shall be stored:

- (1) In a clean, dry location;
- (2) Where they are not exposed to splash, dust, or other contamination; and
- (3) At least 15 cm (6 inches) above the floor.

(B) Clean EQUIPMENT and UTENSILS shall be stored as specified under ¶ (A) of this section and shall be stored:

- (1) In a self-draining position that allows air drying; and
- (2) Covered or inverted.

(C) SINGLE-SERVICE and SINGLE-USE ARTICLES shall be stored as specified under ¶ (A) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) *Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under § 4-204.122.*

4-903.12 Prohibitions.

(A) Except as specified in ¶ (B) of this section, cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be stored:

- (1) In locker rooms;

- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) *Laundered LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES that are PACKAGED or in a facility such as a cabinet may be stored in a locker room.*

Handling

4-904.11 Kitchenware and Tableware.

(A) SINGLE-SERVICE and SINGLE-USE ARTICLES and cleaned and SANITIZED UTENSILS shall be handled, displayed, and dispensed so that contamination of FOOD- and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by EMPLOYEES and by CONSUMERS if CONSUMER self-service is provided.

(C) Except as specified under ¶ (B) of this section, SINGLE-SERVICE ARTICLES that are intended for FOOD- or lip-contact shall be furnished for CONSUMER self-service with the original individual wrapper intact or from an APPROVED dispenser.

4-904.12 Soiled and Clean Tableware.

Soiled TABLEWARE shall be removed from CONSUMER eating and drinking areas and handled so that clean TABLEWARE is not

contaminated.

4-904.13 Preset Tableware.

IF TABLEWARE is preset:

(A) It shall be protected from contamination by being wrapped, covered, or inverted;

(B) Exposed, unused settings shall be removed when a CONSUMER is seated; or

(C) Exposed, unused settings shall be cleaned and SANITIZED before further use if the settings are not removed when a CONSUMER is seated.

Chapter

5

Water, Plumbing, and Waste

Parts

- 5-1 WATER
- 5-2 PLUMBING SYSTEM
- 5-3 MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT WATER TANK
- 5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER
- 5-5 REFUSE, RECYCLABLES, AND RETURNABLES

5-1 WATER

Subparts

- 5-101 Source
- 5-102 Quality
- 5-103 Quantity and Availability
- 5-104 Distribution, Delivery, and Retention

Source

5-101.11 Approved System.*

DRINKING WATER shall be obtained from an APPROVED source that is:

(A) A PUBLIC WATER SYSTEM; or

(B) A nonPUBLIC WATER SYSTEM that is constructed, maintained, and operated according to LAW.

5-101.12 System Flushing and Disinfection.*

A DRINKING WATER system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

5-101.13 Bottled Drinking Water.*

BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled DRINKING WATER.

Quality

5-102.11 Standards.*

Except as specified under § 5-102.12:

(A) Water from a PUBLIC WATER SYSTEM shall meet 40 CFR 141 - National Primary Drinking Water Regulations and state DRINKING WATER quality standards; and

(B) Water from a nonPUBLIC WATER SYSTEM shall meet state DRINKING WATER quality standards.

5-102.12 Nondrinking Water.*

(A) A nonDRINKING WATER supply shall be used only if its use is APPROVED.

(B) NonDRINKING WATER shall be used only for nonculinary purposes such as air conditioning, nonFOOD EQUIPMENT cooling, fire protection, and irrigation.

5-102.13 Sampling.

Except when used as specified under § 5-102.12, water from a nonPUBLIC WATER SYSTEM shall be sampled and tested at least annually and as required by state water quality regulations.

5-102.14 Sample Report.

The most recent sample report for the nonPUBLIC WATER SYSTEM shall be retained on file in the FOOD ESTABLISHMENT or the report shall be maintained as specified by state water quality regulations.

**Quantity and
Availability**

5-103.11 Capacity.*

(A) The water source and system shall be of sufficient capacity to meet the peak water demands of the FOOD ESTABLISHMENT.

(B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the FOOD ESTABLISHMENT.

5-103.12 Pressure.

Water under pressure shall be provided to all fixtures, EQUIPMENT, and nonFOOD EQUIPMENT that are required to use water *except that water supplied as specified under §§ 5-104.12(A) and (B) to a TEMPORARY FOOD ESTABLISHMENT or in response to a temporary interruption of a water supply need not be under pressure.*

**Distribution,
Delivery, and
Retention**

5-104.11 System.

Water shall be received from the source through the use of:

(A) An APPROVED public water main; or

(B) One or more of the following that shall be constructed, maintained, and operated according to LAW:

(1) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,

(2) Water transport vehicles, and

(3) Water containers.

5-104.12 Alternative Water Supply.

Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a TEMPORARY FOOD ESTABLISHMENT without a permanent water supply, and for a FOOD ESTABLISHMENT with a temporary interruption of its water supply through:

- (A) A supply of containers of commercially BOTTLED DRINKING WATER;
- (B) One or more closed portable water containers;
- (C) An enclosed vehicular water tank;
- (D) An on-PREMISES water storage tank; or
- (E) Piping, tubing, or hoses connected to an adjacent APPROVED source.

5-2 PLUMBING SYSTEM

Subparts

5-201	Materials
5-202	Design, Construction, and Installation
5-203	Numbers and Capacities
5-204	Location and Placement
5-205	Operation and Maintenance

Materials

5-201.11 Approved.*

(A) A PLUMBING SYSTEM and hoses conveying water shall be constructed and repaired with APPROVED materials according to LAW.

(B) A water filter shall be made of SAFE MATERIALS.

***Design,
Construction,
and Installation***

5-202.11 Approved System and Cleanable Fixtures.*

(A) A PLUMBING SYSTEM shall be designed, constructed, and installed according to LAW.

(B) A PLUMBING FIXTURE such as a handwashing facility, toilet, or urinal shall be EASILY CLEANABLE.^N

5-202.12 Handwashing Facility, Installation.

(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43°C (110°F) through a mixing valve or combination faucet.

(B) A steam mixing valve may not be used at a handwashing lavatory.

(C) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(D) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

5-202.13 Backflow Prevention, Air Gap.*

An air gap between the water supply inlet and the flood level rim of the PLUMBING FIXTURE, EQUIPMENT, or nonFOOD EQUIPMENT shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

5-202.14 Backflow Prevention Device, Design Standard.

A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

5-202.15 Conditioning Device, Design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

Numbers and Capacities

5-203.11 Handwashing Facilities.*

(A) Except as specified in ¶¶ (B) and (C) of this section, at least 1 handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by EMPLOYEES in areas specified under § 5-204.11, and not fewer than the number of handwashing lavatories required by LAW shall be provided.

(B) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a FOOD ESTABLISHMENT that has at least one handwashing lavatory.

(C) If APPROVED, when FOOD exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or TEMPORARY FOOD ESTABLISHMENTS or at some VENDING MACHINE LOCATIONS, EMPLOYEES may use chemically treated towelettes for handwashing.

5-203.12 Toilets and Urinals.*

At least 1 toilet and not fewer than the toilets required by LAW shall be provided. If authorized by LAW and urinals are substituted for toilets, the substitution shall be done as specified in LAW.

5-203.13 Service Sink.

At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

5-203.14 Backflow Prevention Device, When Required.*

A PLUMBING SYSTEM shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the FOOD ESTABLISHMENT, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by LAW, by:

(A) Providing an air gap as specified under § 5-202.13; or

(B) Installing an APPROVED backflow prevention device as specified under § 5-202.14.

5-203.15 Backflow Prevention Device, Carbonator.*

Reserved.

***Location and
Placement***

5-204.11 Handwashing Facilities.*

A handwashing facility shall be located:

(A) To allow convenient use by EMPLOYEES in FOOD preparation, FOOD dispensing, and WAREWASHING areas; and

(B) In, or immediately adjacent to, toilet rooms.

5-204.12 Backflow Prevention Device, Location.

A backflow prevention device shall be located so that it may be serviced and maintained.

5-204.13 Conditioning Device, Location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

**Operation and
Maintenance**

5-205.11 Using a Handwashing Facility.

(A) A handwashing facility shall be maintained so that it is accessible at all times for EMPLOYEE use.

(B) A handwashing facility may not be used for purposes other than handwashing.

(C) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

5-205.12 Prohibiting a Cross Connection.*

(A) *Except as specified in 9 CFR 308.3(d) for firefighting*, a PERSON may not create a cross connection by connecting a pipe or conduit between the DRINKING WATER system and a nonDRINKING WATER SYSTEM or a water system of unknown quality.

(B) The piping of a nonDRINKING WATER SYSTEM shall be durably identified so that it is readily distinguishable from piping that carries DRINKING WATER.^N

5-205.13 Scheduling Inspection and Service for a Water System Device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the PERSON IN CHARGE.

5-205.14 Water Reservoir of Fogging Devices, Cleaning.*

(A) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(1) Maintained in accordance with manufacturer's specifications; and

(2) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under ¶ (B) of this

section, whichever is more stringent.

(B) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

- (1) Draining and complete disassembly of the water and aerosol contact parts;
- (2) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
- (3) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
- (4) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.

5-205.15 System Maintained in Good Repair.*

A PLUMBING SYSTEM shall be:

- (A) Repaired according to LAW; and
- (B) Maintained in good repair.^s

5-3

**MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT
WATER TANK**

Subparts

5-301	Materials
5-302	Design and Construction
5-303	Numbers and Capacities
5-304	Operation and Maintenance

Materials

5-301.11 Approved.

Materials that are used in the construction of a mobile water tank,

mobile FOOD ESTABLISHMENT water tank, and appurtenances shall be:

- (A) Safe;
- (B) Durable, CORROSION-RESISTANT, and nonabsorbent; and
- (C) Finished to have a SMOOTH, EASILY CLEANABLE surface.

***Design and
Construction***

5-302.11 Enclosed System, Sloped to Drain.

A mobile water tank shall be:

- (A) Enclosed from the filling inlet to the discharge outlet; and
- (B) Sloped to an outlet that allows complete drainage of the tank.

5-302.12 Inspection and Cleaning Port, Protected and Secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

- (A) Flanged upward at least 13 mm (one-half inch); and
- (B) Equipped with a port cover assembly that is:
 - (1) Provided with a gasket and a device for securing the cover in place, and
 - (2) Flanged to overlap the opening and sloped to drain.

5-302.13 "V" Type Threads, Use Limitation.

A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

5-302.14 Tank Vent, Protected.

If provided, a water tank vent shall terminate in a downward

direction and shall be covered with:

(A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(B) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

5-302.15 Inlet and Outlet, Sloped to Drain.

(A) A water tank and its inlet and outlet shall be sloped to drain.

(B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

5-302.16 Hose, Construction and Identification.

A hose used for conveying DRINKING WATER from a water tank shall be:

(A) Safe;

(B) Durable, CORROSION-RESISTANT, and nonabsorbent;

(C) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(D) Finished with a SMOOTH interior surface; and

(E) Clearly and durably identified as to its use if not permanently attached.

***Numbers and
Capacities***

5-303.11 Filter, Compressed Air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and DRINKING WATER system when compressed air is used to pressurize the water tank system.

5-303.12 Protective Cover or Device.

A cap and keeper chain, closed cabinet, closed storage tube, or

other APPROVED protective cover or device shall be provided for a water inlet, outlet, and hose.

5-303.13 Mobile Food Establishment Tank Inlet.

A mobile FOOD ESTABLISHMENT'S water tank inlet shall be:

(A) 19.1 mm (three-fourths inch) in inner diameter or less; and

(B) Provided with a hose connection of a size or type that will prevent its use for any other service.

**Operation and
Maintenance**

5-304.11 System Flushing and Disinfection.*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

5-304.12 Using a Pump and Hoses, Backflow Prevention.

A PERSON shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

5-304.13 Protecting Inlet, Outlet, and Hose Fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under § 5-303.12.

5-304.14 Tank, Pump, and Hoses, Dedication.

(A) Except as specified in ¶ (B) of this section, a water tank, pump, and hoses used for conveying DRINKING WATER shall be used for no other purpose.

(B) *Water tanks, pumps, and hoses APPROVED for liquid FOODS may be used for conveying DRINKING WATER if they are cleaned and SANITIZED before they are used to convey water.*

5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER

Subparts

5-401	Mobile Holding Tank
5-402	Retention, Drainage, and Delivery
5-403	Disposal Facility

Mobile Holding Tank

5-401.11 Capacity and Drainage.

A SEWAGE holding tank in a mobile FOOD ESTABLISHMENT shall be:

(A) Sized 15 percent larger in capacity than the water supply tank; and

(B) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

Retention, Drainage, and Delivery

design, construction, and installation

5-402.10 Establishment Drainage System.

FOOD ESTABLISHMENT drainage systems, including grease traps, that convey SEWAGE shall be designed and installed as specified under ¶ 5-202.11(A).

5-402.11 Backflow Prevention.*

(A) Except as specified in ¶¶ (B) and (C) of this section, a direct connection may not exist between the SEWAGE system and a drain originating from EQUIPMENT in which FOOD, portable EQUIPMENT, or UTENSILS are placed.

(B) If allowed by LAW, a WAREWASHING machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly

vented floor drain trap.

(C) If allowed by LAW, a WAREWASHING or culinary sink may have a direct connection.

*location and
placement*

5-402.12 Grease Trap.

If used, a grease trap shall be located to be easily accessible for cleaning.

*operation and
maintenance*

5-402.13 Conveying Sewage.*

SEWAGE shall be conveyed to the point of disposal through an APPROVED sanitary SEWAGE system or other system, including use of SEWAGE transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to LAW.

5-402.14 Removing Mobile Food Establishment Wastes.

SEWAGE and other liquid wastes shall be removed from a mobile FOOD ESTABLISHMENT at an APPROVED waste SERVICING AREA or by a SEWAGE transport vehicle in such a way that a public health HAZARD or nuisance is not created.

5-402.15 Flushing a Waste Retention Tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

Disposal Facility

5-403.11 Approved Sewage Disposal System.*

*design and
construction*

SEWAGE shall be disposed through an APPROVED facility that is:

(A) A public SEWAGE treatment plant; or

(B) An individual SEWAGE disposal system that is sized, constructed, maintained, and operated according to LAW.

5-403.12 Other Liquid Wastes and Rainwater.

Condensate drainage and other nonSEWAGE liquids and rainwater shall be drained from point of discharge to disposal according to LAW.

5-5 REFUSE, RECYCLABLES, AND RETURNABLES

Subparts

- | | |
|--------------|----------------------------------------------|
| 5-501 | Facilities on the Premises |
| 5-502 | Removal |
| 5-503 | Facilities for Disposal and Recycling |

Facilities on the Premises
materials, design, construction, and installation

5-501.10 Indoor Storage Area.

If located within the FOOD ESTABLISHMENT, a storage area for REFUSE, recyclables, and returnables shall meet the requirements specified under §§ 6-101.11, 6-201.11 - 6-201.18, 6-202.15, and 6-202.16.

5-501.11 Outdoor Storage Surface.

An outdoor storage surface for REFUSE, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be SMOOTH, durable, and sloped to drain.

5-501.12 Outdoor Enclosure.

If used, an outdoor enclosure for REFUSE, recyclables, and returnables shall be constructed of durable and cleanable materials.

5-501.13 Receptacles.

(A) Except as specified in ¶ (B) of this section, receptacles and waste handling units for REFUSE, recyclables, and returnables and for use with materials containing FOOD residue shall be durable,

cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(B) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the FOOD ESTABLISHMENT, or within closed outside receptacles.

5-501.14 Receptacles in Vending Machines.

A REFUSE receptacle may not be located within a VENDING MACHINE, *except that a receptacle for BEVERAGE bottle crown closures may be located within a VENDING MACHINE.*

5-501.15 Outside Receptacles.

(A) Receptacles and waste handling units for REFUSE, recyclables, and returnables used with materials containing FOOD residue and used outside the FOOD ESTABLISHMENT shall be designed and constructed to have tight-fitting lids, doors, or covers.

(B) Receptacles and waste handling units for REFUSE and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

*numbers and
capacities*

5-501.16 Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(A) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold REFUSE, recyclables, and returnables that accumulate.

(B) A receptacle shall be provided in each area of the FOOD ESTABLISHMENT or PREMISES where REFUSE is generated or commonly discarded, or where recyclables or returnables are placed.

(C) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

5-501.17 Toilet Room Receptacle, Covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

5-501.18 Cleaning Implements and Supplies.

(A) Except as specified in ¶ (B) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for REFUSE, recyclables, and returnables.

(B) *If APPROVED, off-PREMISES-based cleaning services may be used if on-PREMISES cleaning implements and supplies are not provided.*

5-501.19 Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location.

(A) An area designated for REFUSE, recyclables, returnables, and, except as specified in ¶ (B) of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and a public health HAZARD or nuisance is not created.

(B) *A redeeming machine may be located in the PACKAGED FOOD storage area or CONSUMER area of a FOOD ESTABLISHMENT if FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are not subject to contamination from the machines and a public health HAZARD or nuisance is not created.*

(C) The location of receptacles and waste handling units for REFUSE, recyclables, and returnables may not create a public health HAZARD or nuisance or interfere with the cleaning of adjacent space.

5-501.110 Storing Refuse, Recyclables, and Returnables.

REFUSE, recyclables, and returnables shall be stored in receptacles

or waste handling units so that they are inaccessible to insects and rodents.

5-501.111 Areas, Enclosures, and Receptacles, Good Repair.

Storage areas, enclosures, and receptacles for REFUSE, recyclables, and returnables shall be maintained in good repair.

5-501.112 Outside Storage Prohibitions.

(A) Except as specified in ¶ (B) of this section, REFUSE receptacles not meeting the requirements specified under ¶ 5-501.13(A) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with FOOD residue may not be stored outside.

(B) Cardboard or other packaging material that does not contain FOOD residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

5-501.113 Covering Receptacles.

Receptacles and waste handling units for REFUSE, recyclables, and returnables shall be kept covered:

(A) Inside the FOOD ESTABLISHMENT if the receptacles and units:

(1) Contain FOOD residue and are not in continuous use; or

(2) After they are filled; and

(B) With tight-fitting lids or doors if kept outside the FOOD ESTABLISHMENT.

5-501.114 Using Drain Plugs.

Drains in receptacles and waste handling units for REFUSE, recyclables, and returnables shall have drain plugs in place.

5-501.115 Maintaining Refuse Areas and Enclosures.

A storage area and enclosure for REFUSE, recyclables, or returnables shall be maintained free of unnecessary items, as specified under § 6-501.114, and clean.

5-501.116 Cleaning Receptacles.

(A) Receptacles and waste handling units for REFUSE, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, or SINGLE-SERVICE and SINGLE-USE ARTICLES, and waste water shall be disposed of as specified under § 5-402.14.

(B) Soiled receptacles and waste handling units for REFUSE, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

Removal

5-502.11 Frequency.

REFUSE, recyclables, and returnables shall be removed from the PREMISES at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

5-502.12 Receptacles or Vehicles.

REFUSE, recyclables, and returnables shall be removed from the PREMISES by way of:

(A) Portable receptacles that are constructed and maintained according to LAW; or

(B) A transport vehicle that is constructed, maintained, and operated according to LAW.

***Facilities for
Disposal and
Recycling***

5-503.11 Community or Individual Facility.

Solid waste not disposed of through the SEWAGE system such as through grinders and pulpers shall be recycled or disposed of in an APPROVED public or private community recycling or REFUSE facility; or solid waste shall be disposed of in an individual REFUSE facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to LAW.

Parts

- 6-1 MATERIALS FOR CONSTRUCTION AND REPAIR
- 6-2 DESIGN, CONSTRUCTION, AND INSTALLATION
- 6-3 NUMBERS AND CAPACITIES
- 6-4 LOCATION AND PLACEMENT
- 6-5 MAINTENANCE AND OPERATION

6-1 MATERIALS FOR CONSTRUCTION AND REPAIR

Subparts

- 6-101 Indoor Areas
- 6-102 Outdoor Areas

Indoor Areas

6-101.11 Surface Characteristics.

(A) Except as specified in ¶ (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

- (1) SMOOTH, durable, and EASILY CLEANABLE for areas where FOOD ESTABLISHMENT operations are conducted;
- (2) Closely woven and EASILY CLEANABLE carpet for carpeted areas; and
- (3) Nonabsorbent for areas subject to moisture such as FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet rooms, mobile FOOD ESTABLISHMENT SERVICING AREAS, and areas subject to flushing or spray cleaning methods.

(B) In a TEMPORARY FOOD ESTABLISHMENT:

(1) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable APPROVED materials that are effectively treated to control dust and mud; and

(2) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

Outdoor Areas

6-102.11 Surface Characteristics.

(A) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(B) Exterior surfaces of buildings and mobile FOOD ESTABLISHMENTS shall be of weather-resistant materials and shall comply with LAW.

(C) Outdoor storage areas for REFUSE, recyclables, or returnables shall be of materials specified under §§ 5-501.11 and 5-501.12.

6-2 DESIGN, CONSTRUCTION, AND INSTALLATION

Subparts

6-201	Cleanability
6-202	Functionality

Cleanability

6-201.11 Floors, Walls, and Ceilings.

Except as specified under § 6-201.14, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are SMOOTH and EASILY CLEANABLE, *except that antislip floor coverings or applications may be used for safety reasons.*

6-201.12 Floors, Walls, and Ceilings, Utility Lines.

(A) Utility service lines and pipes may not be unnecessarily exposed.

(B) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(C) Exposed horizontal utility service lines and pipes may not be installed on the floor.

6-201.13 Floor and Wall Junctures, Coved, and Enclosed or Sealed.

(A) In FOOD ESTABLISHMENTS in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).

(B) The floors in FOOD ESTABLISHMENTS in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and SEALED.

6-201.14 Floor Carpeting, Restrictions and Installation.

(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, REFUSE storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(B) If carpeting is installed as a floor covering in areas other than those specified under ¶ (A) of this section, it shall be:

(1) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(2) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

6-201.15 Floor Covering, Mats and Duckboards.

Mats and duckboards shall be designed to be removable and EASILY CLEANABLE.

6-201.16 Wall and Ceiling Coverings and Coatings.

(A) Wall and ceiling covering materials shall be attached so that they are EASILY CLEANABLE.

(B) *Except in areas used only for dry storage*, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and SEALED to provide a SMOOTH, nonabsorbent, EASILY CLEANABLE surface.

6-201.17 Walls and Ceilings, Attachments.

(A) Except as specified in ¶ (B) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be EASILY CLEANABLE.

(B) *In a CONSUMER area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.*

6-201.18 Walls and Ceilings, Studs, Joists, and Rafters.

Studs, joists, and rafters may not be exposed in areas subject to moisture. *This requirement does not apply to TEMPORARY FOOD ESTABLISHMENTS.*

Functionality

6-202.11 Light Bulbs, Protective Shielding.

(A) Except as specified in ¶ (B) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(B) *Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing FOOD in unopened packages, if:*

(1) The integrity of the packages can not be affected by broken glass falling onto them; and

(2) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(C) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

6-202.12 Heating, Ventilating, Air Conditioning System Vents.

Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of FOOD, FOOD-CONTACT SURFACES, EQUIPMENT, or UTENSILS.

6-202.13 Insect Control Devices, Design and Installation.

(A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(B) Insect control devices shall be installed so that:

(1) The devices are not located over a FOOD preparation area; and

(2) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

6-202.14 Toilet Rooms, Enclosed.

A toilet room located on the PREMISES shall be completely enclosed and provided with a tight-fitting and self-closing door *except that this requirement does not apply to a toilet room that is located*

outside a FOOD ESTABLISHMENT and does not open directly into the FOOD ESTABLISHMENT such as a toilet room that is provided by the management of a shopping mall.

6-202.15 Outer Openings, Protected.

(A) Except as specified in ¶¶ (B), (C), and (E) and under ¶ (D) of this section, outer openings of a FOOD ESTABLISHMENT shall be protected against the entry of insects and rodents by:

- (1) Filling or closing holes and other gaps along floors, walls, and ceilings;
- (2) Closed, tight-fitting windows; and
- (3) Solid, self-closing, tight-fitting doors.

(B) *Paragraph (A) of this section does not apply if a FOOD ESTABLISHMENT opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.*

(C) *Exterior doors used as exits need not be self-closing if they are:*

- (1) *Solid and tight-fitting;*
- (2) *Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the FOOD ESTABLISHMENT; and*
- (3) *Restricted so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.*

(D) Except as specified in ¶¶ (B) and (E) of this section, if the windows or doors of a FOOD ESTABLISHMENT, or of a larger structure within which a FOOD ESTABLISHMENT is located, are kept open for ventilation or other purposes or a TEMPORARY FOOD ESTABLISHMENT is not provided with windows and doors as specified under ¶ (A) of this section, the openings shall be protected against the entry of insects and rodents by:

- (1) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;

(2) Properly designed and installed air curtains; or

(3) Other effective means.

(E) Paragraph (D) of this section does not apply if flying insects and other pests are absent due to the location of the ESTABLISHMENT, the weather, or other limiting condition.

6-202.16 Exterior Walls and Roofs, Protective Barrier.

Perimeter walls and roofs of a FOOD ESTABLISHMENT shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

6-202.17 Outdoor Food Vending Areas, Overhead Protection.

If located outside, a machine used to vend FOOD shall be provided with overhead protection *except that machines vending canned BEVERAGES need not meet this requirement.*

6-202.18 Outdoor Servicing Areas, Overhead Protection.

SERVICING AREAS shall be provided with overhead protection *except that areas used only for the loading of water or the discharge of SEWAGE and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.*

6-202.19 Outdoor Walking and Driving Surfaces, Graded to Drain.

Exterior walking and driving surfaces shall be graded to drain.

6-202.110 Outdoor Refuse Areas, Curbed and Graded to Drain.

Outdoor REFUSE areas shall be constructed in accordance with LAW and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the REFUSE and from cleaning the area and waste receptacles.

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations.

6-202.112 Living or Sleeping Quarters, Separation.

Living or sleeping quarters located on the PREMISES of a FOOD ESTABLISHMENT such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

6-3 NUMBERS AND CAPACITIES

Subparts

6-301	Handwashing Facilities
6-302	Toilets and Urinals
6-303	Lighting
6-304	Ventilation
6-305	Dressing Areas and Lockers
6-306	Service Sinks

Handwashing Facilities

6-301.10 Minimum Number.

Handwashing facilities shall be provided as specified under § 5-203.11.

6-301.11 Handwashing Cleanser, Availability.

Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar

soap.

6-301.12 Hand Drying Provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

- (A) Individual, disposable towels;
- (B) A continuous towel system that supplies the user with a clean towel; or
- (C) A heated-air hand drying device.

6-301.13 Handwashing Aids and Devices, Use Restrictions.

A sink used for FOOD preparation or UTENSIL washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified under §§ 6-301.11 and 6-301.12 and ¶ 5-501.16(C).

6-301.14 Handwashing Signage.

A sign or poster that notifies FOOD EMPLOYEES to wash their hands shall be provided at all handwashing lavatories used by FOOD EMPLOYEES and shall be clearly visible to FOOD EMPLOYEES.

6-301.20 Disposable Towels, Waste Receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under ¶ 5-501.16(C).

***Toilets and
Urinals***

6-302.10 Minimum Number.

Toilets and urinals shall be provided as specified under § 5-203.12.

6-302.11 Toilet Tissue, Availability.

A supply of toilet tissue shall be available at each toilet.

Lighting

6-303.11 Intensity.

The light intensity shall be:

- (A) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry FOOD storage areas and in other areas and rooms during periods of cleaning;
- (B) At least 220 lux (20 foot candles):
 - (1) At a surface where FOOD is provided for CONSUMER self-service such as buffets and salad bars or where fresh produce or PACKAGED FOODS are sold or offered for consumption;
 - (2) Inside EQUIPMENT such as reach-in and under-counter refrigerators;
 - (3) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, WAREWASHING, and EQUIPMENT and UTENSIL storage, and in toilet rooms; and
- (C) At least 540 lux (50 foot candles) at a surface where a FOOD EMPLOYEE is working with FOOD or working with UTENSILS or EQUIPMENT such as knives, slicers, grinders, or saws where EMPLOYEE safety is a factor.

Ventilation

6-304.11 Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

Dressing Areas and Lockers

6-305.11 Designation.

- (A) Dressing rooms or dressing areas shall be designated if EMPLOYEES routinely change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be provided for the orderly storage of EMPLOYEES' clothing and other possessions.

Service Sinks

6-306.10 Availability.

A service sink or curbed cleaning facility shall be provided as specified under § 5-203.13.

6-4 LOCATION AND PLACEMENT

Subparts

- | | |
|--------------|---------------------------------------------|
| 6-401 | Handwashing Facilities |
| 6-402 | Toilet Rooms |
| 6-403 | Employee Accommodations |
| 6-404 | Distressed Merchandise |
| 6-405 | Refuse, Recyclables, and Returnables |

Handwashing Facilities

6-401.10 Conveniently Located.

Handwashing facilities shall be conveniently located as specified under § 5-204.11.

Toilet Rooms

6-402.11 Convenience and Accessibility.

Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation.

Employee Accommodations

6-403.11 Designated Areas.

(A) Areas designated for EMPLOYEES to eat, drink, and use tobacco shall be located so that FOOD, EQUIPMENT, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination.

(B) Lockers or other suitable facilities shall be located in a designated room or area where contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES can not occur.

***Distressed
Merchandise***

6-404.11 Segregation and Location.

Products that are held by the PERMIT HOLDER for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

***Refuse,
Recyclables,
and Returnables***

6-405.10 Receptacles, Waste Handling Units, and Designated Storage Areas.

Units, receptacles, and areas designated for storage of REFUSE and recyclable and returnable containers shall be located as specified under § 5-501.19.

6-5 MAINTENANCE AND OPERATION

Subparts

6-501 Premises, Structures, Attachments, and Fixtures - Methods

***Premises,
Structures,
Attachments,
and Fixtures
- Methods***

6-501.11 Repairing.

The PHYSICAL FACILITIES shall be maintained in good repair.

6-501.12 Cleaning, Frequency and Restrictions.

(A) The PHYSICAL FACILITIES shall be cleaned as often as necessary to keep them clean.

(B) Cleaning shall be done during periods when the least amount of FOOD is exposed such as after closing. *This requirement does not apply to cleaning that is necessary due to a spill or other accident.*

6-501.13 Cleaning Floors, Dustless Methods.

(A) Except as specified in ¶ (B) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(B) *Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:*

(1) Without the use of dust-arresting compounds; and

(2) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

6-501.14 Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(A) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(B) If vented to the outside, ventilation systems may not create a public health HAZARD or nuisance or unlawful discharge.

6-501.15 Cleaning Maintenance Tools, Preventing Contamination.*

FOOD preparation sinks, handwashing lavatories, and WAREWASHING EQUIPMENT may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

6-501.16 Drying Mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, EQUIPMENT, or supplies.

6-501.17 Absorbent Materials on Floors, Use Limitation.

Except as specified in ¶ 6-501.13(B), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

6-501.18 Maintaining and Using Handwashing Facilities.

Handwashing facilities shall be kept clean, and maintained and used as specified under § 5-205.11.

6-501.19 Closing Toilet Room Doors.

Toilet room doors as specified under § 6-202.14 shall be kept closed *except during cleaning and maintenance operations*.

6-501.110 Using Dressing Rooms and Lockers.

(A) Dressing rooms shall be used by EMPLOYEES if the EMPLOYEES regularly change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be used for the orderly storage of EMPLOYEE clothing and other possessions.

6-501.111 Controlling Pests.*

The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the PREMISES by:

(A) Routinely inspecting incoming shipments of FOOD and supplies;^N

- (B) Routinely inspecting the PREMISES for evidence of pests;^N
- (C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under §§ 7-202.12, 7-206.12, and 7-206.13; and
- (D) Eliminating harborage conditions.^N

6-501.112 Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the PREMISES at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

6-501.113 Storing Maintenance Tools.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(A) Stored so they do not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES; and

(B) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

6-501.114 Maintaining Premises, Unnecessary Items and Litter.

The PREMISES shall be free of:

(A) Items that are unnecessary to the operation or maintenance of the establishment such as EQUIPMENT that is nonfunctional or no longer used; and

(B) Litter.

6-501.115 Prohibiting Animals.*

(A) Except as specified in ¶¶ (B) and (C) of this section, live animals may not be allowed on the PREMISES of a FOOD ESTABLISHMENT.

(B) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES can not result:

(1) Edible FISH or decorative FISH in aquariums, SHELLFISH or crustacea on ice or under refrigeration, and SHELLFISH and crustacea in display tank systems;

(2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(3) In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or PERSON, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;

(4) Pets in the common dining areas of GROUP RESIDENCES at times other than during meals if:

(a) Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas,

(b) Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present, and

(c) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(5) In areas that are not used for FOOD preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.

(C) Live or dead FISH bait may be stored if contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-

SERVICE and SINGLE-USE ARTICLES can not result.

Chapter

7 Poisonous or Toxic Materials

Parts

- 7-1 LABELING AND IDENTIFICATION
- 7-2 OPERATIONAL SUPPLIES AND APPLICATIONS
- 7-3 STOCK AND RETAIL SALE

7-1 LABELING AND IDENTIFICATION

Subparts

- 7-101 Original Containers
- 7-102 Working Containers

Original Containers

7-101.11 Identifying Information, Prominence.*

Containers of POISONOUS OR TOXIC MATERIALS and PERSONAL CARE ITEMS shall bear a legible manufacturer's label.

Working Containers

7-102.11 Common Name.*

Working containers used for storing POISONOUS OR TOXIC MATERIALS such as cleaners and SANITIZERS taken from bulk supplies shall be clearly and individually identified with the common name of the material.

7-2**OPERATIONAL SUPPLIES AND APPLICATIONS****Subparts**

7-201	Storage
7-202	Presence and Use
7-203	Container Prohibitions
7-204	Chemicals
7-205	Lubricants
7-206	Pesticides
7-207	Medicines
7-208	First Aid Supplies
7-209	Other Personal Care Items

Storage**7-201.11 Separation.***

POISONOUS OR TOXIC MATERIALS shall be stored so they can not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(A) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning;^s and

(B) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES. *This paragraph does not apply to EQUIPMENT and UTENSIL cleaners and SANITIZERS that are stored in WAREWASHING areas for availability and convenience if the materials are stored to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.*

**Presence and
Use****7-202.11 Restriction.***

(A) Only those POISONOUS OR TOXIC MATERIALS that are required for the operation and maintenance of a FOOD ESTABLISHMENT, such as for the cleaning and SANITIZING of EQUIPMENT and UTENSILS and the control of insects and rodents, shall be allowed in a FOOD ESTABLISHMENT.^s

(B) ¶ (A) of this section does not apply to PACKAGED POISONOUS OR TOXIC MATERIALS that are for retail sale.

7-202.12 Conditions of Use.*

POISONOUS OR TOXIC MATERIALS shall be:

(A) Used according to:

- (1) LAW and this Code,
- (2) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a FOOD ESTABLISHMENT,
- (3) The conditions of certification, if certification is required, for use of the pest control materials, and
- (4) Additional conditions that may be established by the REGULATORY AUTHORITY; and

(B) Applied so that:

- (1) A HAZARD to EMPLOYEES or other PERSONS is not constituted, and
- (2) Contamination including toxic residues due to drip, drain, fog, splash or spray on FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES is prevented, and for a restricted-use pesticide, this is achieved by:
 - (a) Removing the items,
 - (b) Covering the items with impermeable covers, or
 - (c) Taking other appropriate preventive actions, and
 - (d) Cleaning and SANITIZING EQUIPMENT and UTENSILS after the application.

(C) A RESTRICTED USE PESTICIDE shall be applied only by an applicator certified as defined in 7 USC 136(e) Certified Applicator, of the Federal Insecticide, Fungicide and

Rodenticide Act, or a PERSON under the direct supervision of a certified applicator.

**Container
Prohibitions**

7-203.11 Poisonous or Toxic Material Containers.*

A container previously used to store POISONOUS OR TOXIC MATERIALS may not be used to store, transport, or dispense FOOD.

Chemicals

7-204.11 Sanitizers, Criteria.*

Chemical SANITIZERS and other chemical antimicrobials applied to FOOD-CONTACT SURFACES shall meet the requirements specified in 21 CFR 178.1010 sanitizing solutions.

7-204.12 Chemicals for Washing Fruits and Vegetables, Criteria.*

Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315
Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

7-204.13 Boiler Water Additives, Criteria.*

Chemicals used as boiler water ADDITIVES shall meet the requirements specified in 21 CFR 173.310 Boiler Water Additives.

7-204.14 Drying Agents, Criteria.*

Drying agents used in conjunction with SANITIZATION shall:

(A) Contain only components that are listed as one of the following:

(1) Generally recognized as safe for use in FOOD as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe,

(2) Generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe,

(3) APPROVED for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients,

(4) Specifically regulated as an indirect FOOD ADDITIVE for use as a drying agent as specified in 21 CFR Parts 175-178, or

(5) APPROVED for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and

(B) When SANITIZATION is with chemicals, the approval required under Subparagraph (A)(3) or (A)(5) of this section or the regulation as an indirect FOOD ADDITIVE required under Subparagraph (A)(4) of this section, shall be specifically for use with chemical SANITIZING solutions.

Lubricants

7-205.11 Incidental Food Contact, Criteria.*

Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on FOOD-CONTACT SURFACES, on bearings and gears located on or within FOOD-CONTACT SURFACES, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

Pesticides

7-206.11 Restricted Use Pesticides, Criteria.*

RESTRICTED USE PESTICIDES specified under ¶ 7-202.12(C) shall meet the requirements specified in 40 CFR 152 Subpart I - Classification of Pesticides.

7-206.12 Rodent Bait Stations.*

Rodent bait shall be contained in a covered, tamper-resistant bait station.

7-206.13 Tracking Powders, Pest Control and Monitoring.*

(A) A tracking powder pesticide may not be used in a FOOD ESTABLISHMENT.

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.^N

Medicines

7-207.11 Restriction and Storage.*

(A) Only those medicines that are necessary for the health of EMPLOYEES shall be allowed in a FOOD ESTABLISHMENT. *This section does not apply to medicines that are stored or displayed for retail sale.*

(B) Medicines that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use shall be labeled as specified under § 7-101.11 and located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

7-207.12 Refrigerated Medicines, Storage.*

Medicines belonging to EMPLOYEES or to children in a day care center that require refrigeration and are stored in a FOOD refrigerator shall be:

(A) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(B) Located so they are inaccessible to children.

**First Aid
Supplies**

7-208.11 Storage.*

First aid supplies that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use shall be:

(A) Labeled as specified under § 7-101.11,^S and

(B) Stored in a kit or a container that is located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, and LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.^s

***Other Personal
Care Items***

7-209.11 Storage.

Except as specified under §§ 7-207.12 and 7-208.11, EMPLOYEES shall store their PERSONAL CARE ITEMS in facilities as specified under ¶ 6-305.11(B).

7-3 STOCK AND RETAIL SALE

Subpart

7-301 Storage and Display

***Storage and
Display***

7-301.11 Separation.*

POISONOUS OR TOXIC MATERIALS shall be stored and displayed for retail sale so they can not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(A) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning;^s and

(B) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES.

Chapter

8

Compliance and Enforcement

Parts

- 8-1 CODE APPLICABILITY
- 8-2 PLAN SUBMISSION AND APPROVAL
- 8-3 PERMIT TO OPERATE
- 8-4 INSPECTION AND CORRECTION OF VIOLATIONS
- 8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES

8-1 CODE APPLICABILITY

Subparts

- 8-101 Use for Intended Purpose
- 8-102 Additional Requirements
- 8-103 Variances

Use for Intended Purpose

8-101.10 Public Health Protection.

(A) The REGULATORY AUTHORITY shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that FOOD is safe, unADULTERATED, and honestly presented when offered to the CONSUMER.

(B) In enforcing the provisions of this Code, the REGULATORY AUTHORITY shall assess existing facilities or EQUIPMENT that were in use before the effective date of this Code based on the following considerations:

- (1) Whether the facilities or EQUIPMENT are in good repair and capable of being maintained in a sanitary condition;
- (2) Whether FOOD-CONTACT SURFACES comply with Subpart 4-101;
- (3) Whether the capacities of cooling, heating, and holding EQUIPMENT are sufficient to comply with § 4-301.11; and
- (4) The existence of a documented agreement with the PERMIT HOLDER that the facilities or EQUIPMENT will be replaced as specified under ¶ 8-304.11(G) or upgraded or replaced as specified under ¶ 8-304.11(H).

Additional Requirements

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

(A) If necessary to protect against public health HAZARDS or nuisances, the REGULATORY AUTHORITY may impose specific requirements in addition to the requirements contained in this Code that are authorized by LAW.

(B) The REGULATORY AUTHORITY shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the PERMIT applicant or PERMIT HOLDER and a copy shall be maintained in the REGULATORY AUTHORITY'S file for the FOOD ESTABLISHMENT.

Variances

8-103.10 Modifications and Waivers.

The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this Code if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE. If a VARIANCE is granted, the REGULATORY AUTHORITY shall retain the information specified under § 8-103.11 in its records for the FOOD ESTABLISHMENT.

**8-103.11
Documentation
of Proposed
Variance and
Justification.**

Before a VARIANCE from a requirement of this Code is APPROVED, the information that shall be provided by the PERSON requesting the VARIANCE and retained in the REGULATORY AUTHORITY'S file on the FOOD ESTABLISHMENT includes:

- (A) A statement of the proposed VARIANCE of the Code requirement citing relevant Code section numbers;
- (B) An analysis of the rationale for how the potential public health HAZARDS and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; and
- (C) A HACCP PLAN if required as specified under ¶ 8-201.13(A) that includes the information specified under § 8-201.14 as it is relevant to the VARIANCE requested.

**8-103.12
Conformance
with Approved
Procedures.***

If the REGULATORY AUTHORITY grants a VARIANCE as specified in § 8-103.10, or a HACCP PLAN is otherwise required as specified under § 8-201.13, the PERMIT HOLDER shall:

- (A) Comply with the HACCP PLANS and procedures that are submitted as specified under § 8-201.14 and APPROVED as a basis for the modification or waiver; and
- (B) Maintain and provide to the REGULATORY AUTHORITY, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;
 - (1) Procedures for monitoring CRITICAL CONTROL POINTS,
 - (2) Monitoring of the CRITICAL CONTROL POINTS,
 - (3) Verification of the effectiveness of an operation or process, and
 - (4) Necessary corrective actions if there is failure at a CRITICAL CONTROL POINT.

8-2 PLAN SUBMISSION AND APPROVAL

Subparts

8-201	Facility and Operating Plans
8-202	Confidentiality
8-203	Construction Inspection and Approval

Facility and Operating Plans

8-201.11 When Plans Are Required.

A PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:

- (A) The construction of a FOOD ESTABLISHMENT;
- (B) The conversion of an existing structure for use as a FOOD ESTABLISHMENT; or
- (C) The remodeling of a FOOD ESTABLISHMENT or a change of type of FOOD ESTABLISHMENT or FOOD operation as specified under ¶ 8-302.14(C) if the REGULATORY AUTHORITY determines that plans and specifications are necessary to ensure compliance with this Code.

8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a FOOD ESTABLISHMENT, including a FOOD ESTABLISHMENT specified under § 8-201.13, shall include, as required by the REGULATORY AUTHORITY based on the type of operation, type of FOOD preparation, and FOODS prepared, the following information to demonstrate conformance with Code provisions:

- (A) Intended menu;
- (B) Anticipated volume of FOOD to be stored, prepared, and sold or served;
- (C) Proposed layout, mechanical schematics, construction

materials, and finish schedules;

(D) Proposed EQUIPMENT types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and

(F) Other information that may be required by the REGULATORY AUTHORITY for the proper review of the proposed construction, conversion or modification, and procedures for operating a FOOD ESTABLISHMENT.

8-201.13 When a HACCP Plan is Required.

(A) Before engaging in an activity that requires a HACCP PLAN, a PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY for approval a properly prepared HACCP PLAN as specified under § 8-201.14 and the relevant provisions of this Code if:

(1) Submission of a HACCP PLAN is required according to LAW;

(2) A VARIANCE is required as specified under § 3-502.11, ¶ 4-204.110(B), or Subparagraphs 3-203.12(B)(2)(b) or 3-401.11(D)(3); or

(3) The REGULATORY AUTHORITY determines that a FOOD preparation or processing method requires a VARIANCE based on a plan submittal specified under § 8-201.12, an inspectional finding, or a VARIANCE request.

(B) A PERMIT applicant or PERMIT HOLDER shall have a properly prepared HACCP PLAN as specified under § 3-502.12.

8-201.14 Contents of a HACCP Plan.

For a FOOD ESTABLISHMENT that is required under § 8-201.13 to have a HACCP PLAN, the plan and specifications shall indicate:

(A) A categorization of the types of POTENTIALLY HAZARDOUS

FOODS that are specified in the menu such as soups and sauces, salads, and bulk, solid FOODS such as MEAT roasts, or of other FOODS that are specified by the REGULATORY AUTHORITY;

(B) A flow diagram by specific FOOD or category type identifying CRITICAL CONTROL POINTS and providing information on the following:

- (1) Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD, and
- (2) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved;

(C) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

(D) A statement of standard operating procedures for the plan under consideration including clearly identifying:

- (1) Each CRITICAL CONTROL POINT,
- (2) The CRITICAL LIMITS for each CRITICAL CONTROL POINT,
- (3) The method and frequency for monitoring and controlling each CRITICAL CONTROL POINT by the FOOD EMPLOYEE designated by the PERSON IN CHARGE,
- (4) The method and frequency for the PERSON IN CHARGE to routinely verify that the FOOD EMPLOYEE is following standard operating procedures and monitoring CRITICAL CONTROL POINTS,
- (5) Action to be taken by the PERSON IN CHARGE if the CRITICAL LIMITS for each CRITICAL CONTROL POINT are not met, and
- (6) Records to be maintained by the PERSON IN CHARGE to demonstrate that the HACCP PLAN is properly operated and managed; and

(E) Additional scientific data or other information, as required by

the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

Confidentiality

8-202.10 Trade Secrets.

The REGULATORY AUTHORITY shall treat as confidential in accordance with LAW, information that meets the criteria specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

**Construction
Inspection and
Approval**

8-203.10 Preoperational Inspections.

The REGULATORY AUTHORITY shall conduct one or more preoperational inspections to verify that the FOOD ESTABLISHMENT is constructed and equipped in accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with LAW and this Code.

8-3 PERMIT TO OPERATE

Subparts

8-301	Requirement
8-302	Application Procedure
8-303	Issuance
8-304	Conditions of Retention

Requirement

8-301.11 Prerequisite for Operation.

A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY.

**Application
Procedure**

8-302.11 Submission 30 Calendar Days Before Proposed Opening.

An applicant shall submit an application for a PERMIT at least 30 calendar days before the date planned for opening a FOOD ESTABLISHMENT or the expiration date of the current PERMIT for an existing facility.

8-302.12 Form of Submission.

A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the REGULATORY AUTHORITY a written application for a PERMIT on a form provided by the REGULATORY AUTHORITY.

8-302.13 Qualifications and Responsibilities of Applicants.

To qualify for a PERMIT, an applicant shall:

- (A) Be an owner of the FOOD ESTABLISHMENT or an officer of the legal ownership;
- (B) Comply with the requirements of this Code;
- (C) As specified under § 8-402.11, agree to allow access to the FOOD ESTABLISHMENT and to provide required information; and
- (D) Pay the applicable PERMIT fees at the time the application is submitted.

8-302.14 Contents of the Application.

The application shall include:

- (A) The name, birth date, mailing address, telephone number, and signature of the PERSON applying for the PERMIT and the name, mailing address, and location of the FOOD ESTABLISHMENT;
- (B) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity;
- (C) A statement specifying whether the FOOD ESTABLISHMENT:
 - (1) Is mobile or stationary and temporary or permanent, and

(2) Is an operation that includes one or more of the following:

(a) Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD:

(i) Only to order upon a CONSUMER'S request,

(ii) In advance in quantities based on projected CONSUMER demand and discards FOOD that is not sold or served at an APPROVED frequency, or

(iii) Using time as the public health control as specified under § 3-501.19,

(b) Prepares POTENTIALLY HAZARDOUS FOOD in advance using a FOOD preparation method that involves two or more steps which may include combining POTENTIALLY HAZARDOUS ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

(c) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for delivery to and consumption at a location off the PREMISES of the FOOD ESTABLISHMENT where it is prepared,

(d) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for service to a HIGHLY SUSCEPTIBLE POPULATION,

(e) Prepares only FOOD that is not POTENTIALLY HAZARDOUS, or

(f) Does not prepare, but offers for sale only prePACKAGED FOOD that is not POTENTIALLY HAZARDOUS;

(D) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT;

(E) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified under ¶ (D) of this section such as the zone, district, or regional supervisor;

(F) The names, titles, and addresses of:

(1) The PERSONS comprising the legal ownership as specified under ¶ (B) of this section including the owners and officers, and

(2) The local resident agent if one is required based on the type of legal ownership;

(G) A statement signed by the applicant that:

(1) Attests to the accuracy of the information provided in the application, and

(2) Affirms that the applicant will:

(a) Comply with this Code, and

(b) Allow the REGULATORY AUTHORITY access to the establishment as specified under § 8-402.11 and to the records specified under §§ 3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and

(H) Other information required by the REGULATORY AUTHORITY.

Issuance

8-303.10 New, Converted, or Remodeled Establishments.

For FOOD ESTABLISHMENTS that are required to submit plans as specified under § 8-201.11 the REGULATORY AUTHORITY shall issue a PERMIT to the applicant after:

(A) A properly completed application is submitted;

(B) The required fee is submitted;

(C) The required plans, specifications, and information are reviewed and APPROVED; and

(D) A preoperational inspection as specified in § 8-203.10 shows that the establishment is built or remodeled in accordance with the APPROVED plans and specifications and that the establishment is in compliance with this Code.

8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.

The REGULATORY AUTHORITY may renew a PERMIT for an existing FOOD ESTABLISHMENT or may issue a PERMIT to a new owner of an existing FOOD ESTABLISHMENT after a properly completed application is submitted, reviewed, and APPROVED, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

**8-303.30 Denial
of Application
for Permit,
Notice.**

If an application for a PERMIT to operate is denied, the REGULATORY AUTHORITY shall provide the applicant with a notice that includes:

- (A) The specific reasons and Code citations for the PERMIT denial;
- (B) The actions, if any, that the applicant must take to qualify for a PERMIT; and
- (C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in LAW.

**Conditions of
Retention**

8-304.10 Responsibilities of the Regulatory Authority.

(A) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall provide to the PERMIT HOLDER a copy of this Code so that the PERMIT HOLDER is notified of the compliance requirements and the conditions of retention, as specified under § 8-304.11, that are applicable to the PERMIT.

(B) Failure to provide the information specified in ¶ (A) of this section does not prevent the REGULATORY AUTHORITY from taking authorized action or seeking remedies if the PERMIT HOLDER fails to comply with this Code or an order, warning, or directive of the REGULATORY AUTHORITY.

8-304.11 Responsibilities of the Permit Holder.

Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

- (A) Post the PERMIT in a location in the FOOD ESTABLISHMENT that is conspicuous to CONSUMERS;
- (B) Comply with the provisions of this Code including the

conditions of a granted VARIANCE as specified under § 8-103.12, and APPROVED plans as specified under § 8-201.12;

(C) If a FOOD ESTABLISHMENT is required under § 8-201.13 to operate under a HACCP PLAN, comply with the plan as specified under § 8-103.12;

(D) Immediately contact the REGULATORY AUTHORITY to report an illness of an EMPLOYEE as specified under § 2-201.15;

(E) Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist as specified under § 8-404.11;

(F) Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under § 8-402.11;

(G) Except as specified under ¶ (H) of this section, replace existing facilities and EQUIPMENT specified in § 8-101.10 with facilities and EQUIPMENT that comply with this Code if:

(1) The REGULATORY AUTHORITY directs the replacement because the facilities and EQUIPMENT constitute a public health HAZARD or nuisance or no longer comply with the criteria upon which the facilities and EQUIPMENT were accepted,

(2) The REGULATORY AUTHORITY directs the replacement of the facilities and EQUIPMENT because of a change of ownership, or

(3) The facilities and EQUIPMENT are replaced in the normal course of operation;

(H) Upgrade or replace refrigeration EQUIPMENT as specified under ¶ 3-501.16(C), if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, and 5 years pass after the REGULATORY AUTHORITY adopts this Code;

(I) Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the PERMIT HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies;

(J) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW; and

(K) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in LAW for failure to comply with this Code or a directive of the REGULATORY AUTHORITY, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

8-304.20 Permits Not Transferable.

A PERMIT may not be transferred from one PERSON to another PERSON, from one FOOD ESTABLISHMENT to another, or from one type of operation to another if the FOOD operation changes from the type of operation specified in the application as specified under ¶ 8-302.14(C) and the change in operation is not APPROVED.

8-4 INSPECTION AND CORRECTION OF VIOLATIONS

Subparts

8-401	Frequency
8-402	Access
8-403	Report of Findings
8-404	Imminent Health Hazard
8-405	Critical Violation
8-406	Noncritical Violation

Frequency

8-401.10 Establishing Inspection Interval.

(A) Except as specified in ¶¶ (B) and (C) of this section, the REGULATORY AUTHORITY shall inspect a FOOD ESTABLISHMENT at least once every 6 months.

(B) *The REGULATORY AUTHORITY may increase the interval between inspections beyond 6 months if:*

(1) The FOOD ESTABLISHMENT is fully operating under an APPROVED and validated HACCP PLAN as specified under

§ 8-201.14 and §§ 8-103.12(A) and (B);

(2) *The FOOD ESTABLISHMENT is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every 6 months the establishment is contacted by telephone or other means by the REGULATORY AUTHORITY to ensure that the establishment manager and the nature of FOOD operation are not changed; or*

(3) *The establishment's operation involves only coffee service and other UNPACKAGED or prePACKAGED FOOD that is not POTENTIALLY HAZARDOUS such as carbonated BEVERAGES and snack FOOD such as chips, nuts, popcorn, and pretzels.*

(C) The REGULATORY AUTHORITY shall periodically inspect throughout its PERMIT period a TEMPORARY FOOD ESTABLISHMENT that prepares, sells, or serves UNPACKAGED POTENTIALLY HAZARDOUS FOOD and that:

(1) Has improvised rather than permanent facilities or EQUIPMENT for accomplishing functions such as handwashing, FOOD preparation and protection, FOOD temperature control, WAREWASHING, providing DRINKING WATER, waste retention and disposal, and insect and rodent control; or

(2) Has inexperienced FOOD EMPLOYEES.

8-401.20 Performance- and Risk-Based.

Within the parameters specified in § 8-401.10, the REGULATORY AUTHORITY shall prioritize, and conduct more frequent inspections based upon its assessment of a FOOD ESTABLISHMENT'S history of compliance with this Code and the establishment's potential as a vector of foodborne illness by evaluating:

(A) Past performance, for nonconformance with Code or HACCP PLAN requirements that are critical;

(B) Past performance, for numerous or repeat violations of Code or HACCP PLAN requirements that are noncritical;

(C) Past performance, for complaints investigated and found to be valid;

(D) The HAZARDS associated with the particular FOODS that are prepared, stored, or served;

(E) The type of operation including the methods and extent of FOOD storage, preparation, and service;

(F) The number of people served; and

(G) Whether the population served is a HIGHLY SUSCEPTIBLE POPULATION.

Access

8-402.11 Allowed at Reasonable Times after Due Notice.

After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT'S hours of operation and other reasonable times.

8-402.20 Refusal, Notification of Right to Access, and Final Request for Access.

If a PERSON denies access to the REGULATORY AUTHORITY, the REGULATORY AUTHORITY shall:

(A) Inform the PERSON that:

(1) The PERMIT HOLDER is required to allow access to the REGULATORY AUTHORITY as specified under § 8-402.11 of this Code,

(2) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT PERMIT to operate as specified under ¶ 8-304.11(F), and

(3) If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to LAW; and

(B) Make a final request for access.

8-402.30 Refusal, Reporting.

If after the REGULATORY AUTHORITY presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the PERSON IN CHARGE continues to REFUSE access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

8-402.40 Inspection Order to Gain Access.

If denied access to a FOOD ESTABLISHMENT for an authorized purpose and after complying with § 8-402.20, the REGULATORY AUTHORITY may issue, or apply for the issuance of, an inspection order to gain access as provided in LAW.

Report of Findings

8-403.10 Documenting Information and Observations.

The REGULATORY AUTHORITY shall document on an inspection report form:

(A) Administrative information about the FOOD ESTABLISHMENT'S legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and other information such as type of water supply and SEWAGE disposal, status of the PERMIT, and personnel certificates that may be required; and

(B) Specific factual observations of violative conditions or other deviations from this Code that require correction by the PERMIT HOLDER including:

(1) Failure of the PERSON IN CHARGE to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code specified under § 2-102.11,

(2) Failure of FOOD EMPLOYEES and the PERSON IN CHARGE to demonstrate their knowledge of their responsibility to report

a disease or medical condition as specified under §§ 2-201.14 and 2-201.15,

(3) Nonconformance with CRITICAL ITEMS of this Code,

(4) Failure of the appropriate FOOD EMPLOYEES to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the REGULATORY AUTHORITY as specified under § 8-103.12,

(5) Failure of the PERSON IN CHARGE to provide records required by the REGULATORY AUTHORITY for determining conformance with a HACCP PLAN as specified under Subparagraph 8-201.14(D)(6), and

(6) Nonconformance with CRITICAL LIMITS of a HACCP PLAN.

8-403.20 Specifying Time Frame for Corrections.

The REGULATORY AUTHORITY shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, 8-405.11, and 8-406.11.

8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to LAW, the REGULATORY AUTHORITY shall provide a copy of the completed inspection report and the notice to correct violations to the PERMIT HOLDER or to the PERSON IN CHARGE, and request a signed acknowledgment of receipt.

8-403.40 Refusal to Sign Acknowledgment.

The REGULATORY AUTHORITY shall:

(A) Inform a PERSON who declines to sign an acknowledgment of receipt of inspectional findings as specified in § 8-403.30 that:

(1) An acknowledgment of receipt is not an agreement with findings,

(2) Refusal to sign an acknowledgment of receipt will not affect the PERMIT HOLDER'S obligation to correct the violations noted in the inspection report within the time frames specified, and

(3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the REGULATORY AUTHORITY'S historical record for the FOOD ESTABLISHMENT; and

(B) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspectional findings.

8-403.50 Public Information.

Except as specified in § 8-202.10, the REGULATORY AUTHORITY shall treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW.

Imminent Health Hazard

8-404.11 Ceasing Operations and Reporting.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(B) A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.

8-404.12 Resumption of Operations.

If operations are discontinued as specified under § 8-404.11 or otherwise according to LAW, the PERMIT HOLDER shall obtain approval from the REGULATORY AUTHORITY before resuming operations.

**Critical
Violation**

8-405.11 Timely Correction.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall at the time of inspection correct a critical violation of this Code and implement corrective actions for a HACCP PLAN provision that is not in compliance with its CRITICAL LIMIT.

(B) Considering the nature of the potential HAZARD involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the PERMIT HOLDER to correct critical Code violations or HACCP PLAN deviations.

8-405.20 Verification and Documentation of Correction.

(A) After observing at the time of inspection a correction of a critical violation or deviation, the REGULATORY AUTHORITY shall enter the violation and information about the corrective action on the inspection report.

(B) As specified under ¶ 8-405.11(B), after receiving notification that the PERMIT HOLDER has corrected a critical violation or HACCP PLAN deviation, or at the end of the specified period of time, the REGULATORY AUTHORITY shall verify correction of the violation, document the information on an inspection report, and enter the report in the REGULATORY AUTHORITY'S records.

**Noncritical
Violation**

8-406.11 Time Frame for Correction.

(A) Except as specified in ¶ (B) of this section, the PERMIT HOLDER shall correct noncritical violations by a date and time agreed to or specified by the REGULATORY AUTHORITY but no later than 90 calendar days after the inspection.

(B) The REGULATORY AUTHORITY may approve a compliance schedule that extends beyond the time limits specified under ¶ (A) of this section if a written schedule of compliance is submitted by the PERMIT HOLDER and no health HAZARD exists or will result from allowing an extended schedule for compliance.

8-5

**PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY
EMPLOYEES**

Subpart

8-501

Investigation and Control

***Investigation
and Control***

8-501.10

**Obtaining Information: Personal History of Illness,
Medical Examination, and Specimen Analysis.**

The REGULATORY AUTHORITY shall act when it has reasonable cause to believe that a FOOD EMPLOYEE has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through FOOD; may be a carrier of infectious agents that cause a disease that is transmissible through FOOD; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(A) Securing a confidential medical history of the EMPLOYEE suspected of transmitting disease or making other investigations as deemed appropriate; and

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected EMPLOYEE and other EMPLOYEES.

8-501.20

**Restriction or Exclusion of Food Employee, or
Summary Suspension of Permit.**

Based on the findings of an investigation related to a FOOD EMPLOYEE who is suspected of being infected or diseased, the REGULATORY AUTHORITY may issue an order to the suspected FOOD EMPLOYEE or PERMIT HOLDER instituting one or more of the following control measures:

(A) Restricting the FOOD EMPLOYEE'S services to specific areas and tasks in a FOOD ESTABLISHMENT that present no risk of transmitting the disease;

(B) Excluding the FOOD EMPLOYEE from a FOOD ESTABLISHMENT;

(2) At least 48 hours after discontinuance of antibiotics, and

(3) At least 24 hours apart; and

(B) If one of the cultures taken as specified in ¶ (A) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.

(C) A FOOD EMPLOYEE who was infected with ***Shigella*** spp. or ***Escherichia coli*** O157:H7 if the EMPLOYEE'S stools are negative for ***Shigella*** spp. or ***E. coli*** O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:

(1) Not earlier than 48 hours after discontinuance of antibiotics; and

(2) At least 24 hours apart.

(D) A FOOD EMPLOYEE who was infected with hepatitis A virus if:

(1) Symptoms cease; or

(2) At least 2 blood tests show falling liver enzymes.

1

Compliance and Enforcement

- 1. PURPOSE**
- 2. EXPLANATION**
- 3. PRINCIPLE**
- 4. RECOMMENDATION**
- 5. PARTS**
 - 8-6 CONSTITUTIONAL PROTECTION**
 - 8-7 NOTICES**
 - 8-8 REMEDIES**

1. PURPOSE

The purpose of this Annex is to set forth provisions, in codified form, that provide a full array of enforcement mechanisms while recognizing the diverse statutes and regulations that currently govern the operations of the thousands of state and local regulatory agencies.

2. EXPLANATION

State or local statutes, regulations, and ordinances vary in their design, specificity, and degree of comprehensiveness in that they may:

- (A) Contain authorities that provide the basis for certain post-inspection compliance strategies but remain silent with respect to other enforcement mechanisms;
- (B) Include specific requirements that are different from those provided in this Annex; and
- (C) Be structured so that provisions such as administrative procedures are embodied in sections of the law that transcend and are separate from those governing food establishments.

Consequently, in this document a deliberate attempt is made to extract those provisions that could conceptually be adopted as an extension of Chapter 8 if they were compatible with existing, governing state and local statutes. The extracted provisions are numbered to sequentially follow Chapter 8 but are placed in this Annex so that regulatory agencies can revise them to be consistent with their statutes and their needs as discussed in the Recommendation, below.

It is anticipated that adoption of this Code will be facilitated by the fact that:

(A) The compliance provisions of Chapter 8 that should be an integral part of state or local food regulations are part of the text of the Code; and

(B) The administrative and judicial enforcement provisions that are critical to the framework of a food regulatory program, but that may be repetitive or discrepant when compared to state or local statutes, are separated in this Annex.

3. PRINCIPLE

Although the situations necessitating escalated enforcement actions comprise a small percentage of those encountered by the regulator, a full spectrum of enforcement tools must be available where immediate hazards exist, or where compliance is not obtained voluntarily. Thus, a jurisdiction must have in place both the necessary statutory framework that includes a broad-based, well-defined enforcement component and regulations that specify the requirements within those legal authorities. It is imperative that there be clearly stated and legally sound rules that include the criteria for compliance and enforcement, the responsibilities of all parties, sanctions for noncompliance, and due process guarantees.

4. RECOMMENDATION

FDA recommends that agencies assess their statutory provisions that pertain to food establishments in light of this Annex and consider proposing changes to their statutes and regulations where they determine that provisions contained within this Annex will strengthen their programs. Such an assessment may involve reviewing problems encountered in attempts to prosecute under existing state or local provisions; considering comments received by the regulatory authority about its enforcement process; consulting with staff and legal counsel to identify gaps or weaknesses in the provisions; comparing provisions with sister agencies for comprehensiveness, equity, and uniformity; and seeking input from outside sources that have experience in taking, or being the subject of, enforcement actions.

Appropriate wording and cross referencing changes to the provisions in this Annex may be necessary, based on whether they are adopted as statutes or regulations. Modifications to the adoption forms (Forms #4 and #5 in Annex 7) may also be necessary based on that decision.

Parts

- 8-6 CONSTITUTIONAL PROTECTION**
- 8-7 NOTICES**
- 8-8 REMEDIES**

8-6 CONSTITUTIONAL PROTECTION

Subparts

- 8-601 Procedural Safeguards**
- 8-602 Judicial Review**

Procedural Safeguards

8-601.10 Preservation of Rights.

The REGULATORY AUTHORITY shall justly apply the remedies according to LAW and this Code, to preserve the rights to equal protection and due process of a PERSON to whom the remedies are applied.

Judicial Review

8-602.10 Rights of Recipients of Orders or Decisions.

A recipient of a REGULATORY AUTHORITY order or decision may file a petition for judicial review in a court of competent jurisdiction after available administrative appeal remedies are exhausted.

8-7

NOTICES

Subpart

8-701

Service of Notice

***Service of
Notice***

8-701.10 Proper Methods.

(Note: Adoption of this section provides the basis for serving notice of inspectional findings as specified in § 8-403.30 and would be cited there.)

A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:

(A) The notice is personally served by the REGULATORY AUTHORITY, a LAW enforcement officer, or a PERSON authorized to serve a civil process to the PERMIT HOLDER, the PERSON IN CHARGE, or PERSON operating a FOOD ESTABLISHMENT without a PERMIT;

(B) The notice is sent by the REGULATORY AUTHORITY to the last known address of the PERMIT HOLDER or the PERSON operating a FOOD ESTABLISHMENT without a PERMIT, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired; or

(C) The notice is provided by the REGULATORY AUTHORITY in accordance with another manner of service authorized in LAW.

8-701.20 Restriction or Exclusion Order, Hold Order or Summary Suspension.

An EMPLOYEE restriction or exclusion order, an order to hold and not distribute FOOD, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or a summary suspension order shall be:

(A) Served as specified in ¶ 8-701.10(A); or

(B) Clearly posted by the REGULATORY AUTHORITY at a public entrance to the FOOD ESTABLISHMENT and a copy of the notice sent by first class mail to the PERMIT HOLDER or to the owner or custodian of the FOOD, as appropriate.

8-701.30 When Notice is Effective.

Service is effective at the time of the notice's receipt or if service is made as specified in ¶ 8-701.20(B), at the time of the notice's posting.

8-701.40 Proof of Proper Service.

Proof of proper service may be made by affidavit of the PERSON making service or by admission of the receipt signed by the PERMIT HOLDER, the PERSON operating a FOOD ESTABLISHMENT without a PERMIT to operate, or an authorized agent.

Subparts**8-801 Criteria for Seeking Remedies*****Administrative***

- 8-802 Administrative Inspection Orders**
- 8-803 Holding, Examination, and Destruction of Food**
- 8-804 Summary Permit Suspension**
- 8-805 Hearings Administration**
- 8-806 Hearing Officer, Purpose,
Qualifications, Appointment, and Powers**
- 8-807 Rights of Parties and Evidence**
- 8-808 Settlement**

Judicial

- 8-809 Judicial Inspection Orders**
- 8-810 Means of Instituting Judicial Enforcement
Proceedings**
- 8-811 Criminal Proceedings**
- 8-812 Injunctive Proceedings**
- 8-813 Civil Proceedings**

***Criteria for
Seeking
Remedies*****8-801.10 Conditions Warranting Remedy.**

The REGULATORY AUTHORITY may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if a PERSON operating a FOOD ESTABLISHMENT or EMPLOYEE:

- (A) Fails to have a valid PERMIT to operate a FOOD ESTABLISHMENT as specified under § 8-301.11;
- (B) Violates any term or condition of a PERMIT as specified under § 8-304.11;
- (C) Allows serious or repeated code violations to remain uncorrected beyond time frames for correction APPROVED, directed, or ordered by the REGULATORY AUTHORITY under ¶¶ 8-405.11(A) and (B), and ¶¶ 8-406.11(A) and (B);

(D) Fails to comply with a REGULATORY AUTHORITY order issued as specified in § 8-501.20 concerning an EMPLOYEE suspected of having a disease transmissible through FOOD by infected PERSONS;

(E) Fails to comply with a hold order as specified in §§ 8-701.20 and 8-803.10;

(F) Fails to comply with an order issued as a result of a hearing for an administrative remedy as specified in §§ 8-806.30 or 8-806.40; or

(G) Fails to comply with a summary suspension order issued by the REGULATORY AUTHORITY as specified in §§ 8-701.20 and 8-804.10.

Administrative

Inspection Orders

8-802.10 Gaining Access to Premises and Records.

(Note: Adoption of this section provides the basis for Subparagraph 8-402.20(A)(3) and § 8-402.40 and would be cited there.)

The REGULATORY AUTHORITY may order access for one or more of the following purposes, subject to LAW for gaining access:

(A) If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection including taking photographs;

(B) To examine and sample the FOOD; and

(C) To examine the records on the PREMISES relating to FOOD purchased, received, or used by the FOOD ESTABLISHMENT.

8-802.20 Contents of Inspection Order.

The REGULATORY AUTHORITY'S inspection order shall:

(A) Stipulate that access be allowed on or to the described PREMISES, FOOD, or records under the order's provisions;

(B) Provide a description that specifies the PREMISES, FOOD, or records subject to the order; and

(C) Specify areas to be accessed and activities to be performed.

***Holding,
Examination,
and Destruction
of Food***

8-803.10 Hold Order, Justifying Conditions and Removal of Food.

(Note: Adoption of this section provides the basis for ¶ 3-202.18(B) and would be cited there.)

(A) According to time limits imposed by LAW, the REGULATORY AUTHORITY may place a hold order on a FOOD that:

- (1) Originated from an unAPPROVED source;
- (2) May be unsafe, ADULTERATED, or not honestly presented;
- (3) Is not labeled according to LAW, or, if raw MOLLUSCAN SHELLFISH, is not tagged or labeled according to LAW; or
- (4) Is otherwise not in compliance with this Code.

(B) If the REGULATORY AUTHORITY has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the REGULATORY AUTHORITY may remove the FOOD that is subject to the order to a place of safekeeping.

8-803.20 Hold Order, Warning or Hearing Not Required.

The REGULATORY AUTHORITY may issue a hold order to a PERMIT HOLDER or to a PERSON who owns or controls the FOOD, as specified in § 8-701.20, without prior warning, notice of a hearing, or a hearing on the hold order.

8-803.30 Hold Order, Contents.

The hold order notice shall:

- (A) State that FOOD subject to the order may not be used, sold, moved from the FOOD ESTABLISHMENT, or destroyed without a

written release of the order from the REGULATORY AUTHORITY;

(B) State the specific reasons for placing the FOOD under the hold order with reference to the applicable provisions of this Code and the HAZARD or adverse effect created by the observed condition;

(C) Completely identify the FOOD subject to the hold order by the common name, the label information, a container description, the quantity, REGULATORY AUTHORITY'S tag or identification information, and location;

(D) State that the PERMIT HOLDER has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in §§ 8-805.10 and 8-805.20;

(E) State that the REGULATORY AUTHORITY may order the destruction of the FOOD if a timely request for an appeal hearing is not received; and

(F) Provide the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing may be made.

8-803.40 Hold Order, Official Tagging of Food.

(A) The REGULATORY AUTHORITY shall securely place an official tag or label on the FOOD or containers or otherwise conspicuously identify FOOD subject to the hold order.

(B) The tag or other method used to identify a FOOD that is the subject of a hold order shall include a summary of the provisions specified in § 8-803.10 and shall be signed and dated by the REGULATORY AUTHORITY.

8-803.51 Hold Order, Food May Not Be Used or Moved.

(A) Except as specified in ¶ (B) of this section, a FOOD placed under a hold order may not be used, sold, served, or moved from the establishment by any PERSON.

(B) *The REGULATORY AUTHORITY may allow the PERMIT HOLDER the opportunity to store the FOOD in an area of the FOOD ESTABLISHMENT*

if the FOOD is protected from subsequent deterioration and the storage does not restrict operations of the establishment.

8-803.60 Examining, Sampling, and Testing Food.

The REGULATORY AUTHORITY may examine, sample, and test FOOD in order to determine its compliance with this Code.

8-803.70 Hold Order, Removing the Official Tag.

Only the REGULATORY AUTHORITY may remove hold order tags, labels, or other identification from FOOD subject to a hold order.

8-803.80 Destroying or Denaturing Food.

If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the REGULATORY AUTHORITY may order the PERMIT HOLDER or other PERSON who owns or has custody of the FOOD to bring the FOOD into compliance with this Code or to destroy or denature the FOOD under the REGULATORY AUTHORITY'S supervision.

8-803.90 Releasing Food from Hold Order.

The REGULATORY AUTHORITY shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the FOOD if the hold order is vacated.

**Summary
Permit
Suspension**

8-804.10 Conditions Warranting Action.

The REGULATORY AUTHORITY may summarily suspend a PERMIT to operate a FOOD ESTABLISHMENT if it determines through inspection, or examination of EMPLOYEES, FOOD, records, or other means as specified in this Code, that an IMMINENT HEALTH HAZARD exists.

8-804.20 Summary Suspension, Warning or Hearing Not Required.

The REGULATORY AUTHORITY may summarily suspend a PERSON'S PERMIT as specified in § 8-804.10 by providing written notice as specified in § 8-701.20 of the summary suspension to the PERMIT HOLDER or PERSON IN CHARGE, without prior warning, notice of a hearing, or a hearing.

8-804.30 Contents of the Notice.

A summary suspension notice shall state:

(A) That the FOOD ESTABLISHMENT PERMIT is immediately suspended and that all FOOD operations shall immediately cease;

(B) The reasons for summary suspension with reference to the provisions of this Code that are in violation;

(C) The name and address of the REGULATORY AUTHORITY representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and

(D) That the PERMIT HOLDER may request an appeal hearing by submitting a timely request as specified in §§ 8-805.10 and 8-805.20.

8-804.40 Time Frame for Reinspection.

After receiving a written request from the PERMIT HOLDER stating that the conditions cited in the summary suspension order no longer exist, the REGULATORY AUTHORITY shall conduct a reinspection of the FOOD ESTABLISHMENT for which the PERMIT was summarily suspended within 2 business days, which means 2 days during which the REGULATORY AUTHORITY'S office is open to the public.

8-804.50 Term of Suspension, Reinstatement of Permit.

(A) A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the REGULATORY AUTHORITY through reinspection and other means as appropriate.

(B) The suspended PERMIT shall be reinstated immediately if the REGULATORY AUTHORITY determines that the public health HAZARD or nuisance no longer exists. A notice of reinstatement shall be provided to the PERMIT HOLDER or PERSON IN CHARGE.

**Hearings
Administration**

8-805.10 Response to Notice of Hearing or Request for Hearing, Basis and Time Frame.

(Note: Adoption of this section provides the basis for §§ 8-303.30(C) and 8-501.30(C). §§ 8-805.10(C) and (D) would be cited there.)

(A) A PERSON who receives a notice of hearing for an administrative remedy as specified in Part 8-7, § 8-801.10, or § 8-805.30(A) and elects to respond to the notice shall file a response to notice as specified in § 8-805.20 within 7 calendar days after service.

(B) A PERMIT applicant may request a hearing regarding the disposition of an application for a new or revised PERMIT if the REGULATORY AUTHORITY does not issue or deny the PERMIT within the time frame specified in LAW.

(C) A PERMIT HOLDER may request a hearing to address concerns about the REGULATORY AUTHORITY'S denial of application for a PERMIT or request for a VARIANCE, or compliance actions, except that a hearing request does not stay the REGULATORY AUTHORITY'S restriction or exclusion of EMPLOYEES specified in §§ 8-501.10 - 8-501.40, a hold order specified in § 8-803.10, or the imposition of a summary suspension specified in § 8-804.10.

(D) A PERSON desiring a hearing in response to a denial of an application for PERMIT or an adverse administrative determination shall submit a hearing request to the REGULATORY AUTHORITY within 10 calendar days of the date of the denial, inspection, or compliance action, unless the REGULATORY AUTHORITY specifies in certain situations that the request shall be submitted within a shorter period of time.

8-805.20 Response to a Notice of Hearing or Request for Hearing, Required Form and Contents.

A response to a hearing notice or a request for hearing as specified in § 8-805.10 shall be in written form and contain the following:

(A) If a response to notice of hearing,

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing; and may also contain

(3) A statement of defense, mitigation, or explanation concerning any allegation of fact; and

(4) A request to the REGULATORY AUTHORITY for a settlement of the proceeding by consent agreement, if the REGULATORY AUTHORITY will provide this opportunity.

(B) If a request for hearing,

(1) A statement of the issue of fact specified in ¶ 8-805.30(B) for which the hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) If either a response to notice of hearing or a request for a hearing,

(1) A statement indicating whether the presence of witnesses for the REGULATORY AUTHORITY is required; and

(2) The name and address of the respondent's or requester's legal counsel, if any.

8-805.30 Provided Upon Request.

The REGULATORY AUTHORITY shall hold hearings according to LAW and the provisions of this Code:

(A) As determined necessary by LAW or the REGULATORY AUTHORITY to accomplish the purpose and intent of this Code specified in § 8-101.10; and

(B) As requested by a PERMIT applicant or a PERMIT HOLDER if:

(1) Requested as specified in § 8-805.10, and

(2) The request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

8-805.40 Provided in Accordance with Law.

Hearings shall be conducted according to LAW, administrative procedures, and this Code.

8-805.50 Timeliness, Appeal Proceeding Within 5 Business Days, Other Proceeding Within 30 Calendar Days.

(A) The REGULATORY AUTHORITY shall afford a hearing:

(1) Except as provided in ¶ (B) of this section, within 5 business days after receiving a written request for an appeal hearing from:

(a) A PERSON who is excluded by the REGULATORY AUTHORITY from working in a FOOD ESTABLISHMENT as specified in §§ 8-501.10 - 8-501.40,

(b) A PERMIT HOLDER or PERSON whose FOOD is subject to a hold order as specified in Subpart 8-803, or

(c) A PERMIT HOLDER whose PERMIT is summarily suspended as specified in Subpart 8-804; and

(2) Within 30 calendar days but no earlier than 7 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in ¶ 8-805.10(C) or for matters as determined necessary by the REGULATORY AUTHORITY.

(B) A PERMIT HOLDER or PERSON who submits a request for a hearing as specified in Subparagraphs (A)(1)(a)-(c) of this section may waive the prompt hearing in the written request to the REGULATORY AUTHORITY.

8-805.60 Notice, Contents.

A notice of hearing shall contain the following information:

- (A) Time, date, and place of the hearing;
- (B) Purpose of the hearing;
- (C) Facts that constitute the basis or reason for the hearing including specific details of violations or allegations;
- (D) The rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in § 8-807.10;
- (E) At the REGULATORY AUTHORITY'S discretion, the procedure for the respondent to request an offer from the REGULATORY AUTHORITY to settle the matter;
- (F) The consequences of failing to appear at the hearing;
- (G) The maximum sanctions or penalties as specified in §§ 8-806.40(B)-(D) that may result from the hearing if the hearing concerns a proposed administrative remedy and if the facts are found to be as alleged;
- (H) If the hearing concerns a proposed administrative remedy, a statement specifying the form and time frame for response as specified in § 8-805.10;
- (I) Notification that the written response shall include the information specified in § 8-805.20; and
- (J) The name and address of the PERSON to whom such written response shall be addressed.

8-805.70 Proceeding Commences Upon Notification.

A hearing proceeding commences at the time the REGULATORY AUTHORITY notifies the respondent of the hearing proceeding.

8-805.80 Procedure, Expeditious and Impartial.

Hearings shall be conducted in an expeditious and impartial manner.

8-805.90 Confidential.

(A) Hearings or portions of hearings may be closed to the public:

(1) If compelling circumstances, such as the need to discuss in the hearing a PERSON'S medical condition or a FOOD ESTABLISHMENT'S trade secrets, indicate that it would be prudent; and

(2) According to LAW, such as an open meetings LAW.

(B) A party to a hearing shall maintain confidentiality of discussions that warrant closing the hearing to the public.

8-805.100 Record of Proceeding.

A complete record of a hearing shall be prepared under the direction of the PERSON conducting the hearing and maintained as part of the REGULATORY AUTHORITY'S records for the FOOD ESTABLISHMENT. *Except as required by LAW, a verbatim transcript of the hearing need not be prepared.*

**Hearing Officer,
Purpose
Qualifications,
Appointment,
and Powers**

8-806.10 Appointment by Regulatory Authority and Purpose.

The REGULATORY AUTHORITY may appoint a PERSON such as an adjudicator, administrative LAW judge, or examiner, hereinafter referred to as a hearing officer, who presides over a proceeding

initiated by the REGULATORY AUTHORITY or by a PERSON contesting an action of the REGULATORY AUTHORITY, to perform one or more of the following:

(A) Hear the facts presented by an applicant or a PERMIT HOLDER;

(B) Make a decision or recommendation concerning administrative remedies to achieve compliance with this Code; or

(C) Address other concerns or allegations appropriately raised according to LAW, in the matter before the hearing officer.

8-806.20 Qualifications.

A hearing officer shall be knowledgeable of the provisions of this chapter and the LAW as they relate to hearings, and be:

(A) A REGULATORY AUTHORITY representative other than the PERSON who inspects the FOOD ESTABLISHMENT or who has any other role in making the decision that is being contested; or

(B) An individual who is not employed by the REGULATORY AUTHORITY.

8-806.30 Powers, Administration of Hearings.

(A) A hearing officer shall have the following powers in a hearing in which the hearing officer presides:

(1) Setting and conducting the course of a hearing requested in accordance with or authorized by this Code,

(2) Issuing subpoenas in the name of the REGULATORY AUTHORITY at the request of a party to a hearing, administering oaths and affirmations, examining witnesses, receiving evidence,

(3) Approving a consent agreement on the issues involved in the hearing entered into by the REGULATORY AUTHORITY and the respondent after the respondent receives a hearing notice,

(4) Sustaining, modifying, rescinding, or vacating an order or directive of the REGULATORY AUTHORITY in an appeal hearing proceeding, and if the order or directive is sustained, ordering appropriate measures to execute the REGULATORY AUTHORITY'S order or directive; and

(B) *Unless a party appeals to the head of the REGULATORY AUTHORITY within 15 days of the hearing or a lesser number of days specified by the hearing officer:*

(1) Rendering a binding decision and final order in a proceeding

after conducting a hearing, if the respondent has not waived the right to a hearing, and

(2) Then notifying the respondent of the decision and the order which contains the findings and conclusions of LAW.

8-806.40 Powers, Administrative Remedies.

The hearing officer shall have the following powers in a hearing proceeding concerning an administrative remedy specified in §§ 8-801.10 and 8-805.30:

(A) Issuing orders to abate or correct violations of this Code and establishing a schedule for the abatement or correction of violations;

(B) Making a finding of fact regarding the occurrence of each violation and assessing, levying, and ordering a reasonable civil penalty, according to LAW and not to exceed the amount specified in ¶ 8-813.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-813.10(C);

(C) Suspending, revoking, modifying, or imposing reasonable restrictions or conditions on a PERMIT to operate a FOOD ESTABLISHMENT, or ordering the closure of a FOOD ESTABLISHMENT that is operated without a valid PERMIT as required under § 8-301.11 of this Code;

(D) Making a finding of fact regarding the occurrence of each violation of the REGULATORY AUTHORITY'S or hearing officer's LAWful order issued in accordance with this Code and assessing, levying, and ordering a reasonable civil penalty, in accordance with LAW and not to exceed the amount specified in ¶ 8-813.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-813.10(C);

(E) Deferring or suspending the imposition of a decision or execution of an order, and imposing a probationary period, upon the condition that the respondent comply with the hearing officer's reasonable terms and conditions;

(F) Dismissing the appeal if the matter is settled between the

REGULATORY AUTHORITY and the respondent after a hearing notice is served;

(G) Ordering reinspection of a FOOD ESTABLISHMENT to determine compliance with a hearing officer's order;

(H) Suspending or ordering the payment of a fee established by the REGULATORY AUTHORITY for a reinspection that is required to determine compliance and for the reinstatement of a PERMIT after suspension;

(I) Retaining and exercising jurisdiction for a specific period of time not to exceed 90 calendar days after the hearing officer's

decision and final order is issued, over a respondent who receives a hearing notice; and

(J) Modifying or setting aside an order by rehearing upon the hearing officer's own motion, the motion of the REGULATORY AUTHORITY, or the motion of the respondent.

***Rights of
Parties and
Evidence***

8-807.10 Rights of Parties.

Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

8-807.20 Evidence to be Presented by the Regulatory Authority.

The REGULATORY AUTHORITY shall present at the hearing its evidence, orders, directives, and reports related to the proposed or appealed administrative remedy.

8-807.30 Evidence to be Excluded.

Evidence shall be excluded:

(A) If it is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by the state's courts; or

(B) Otherwise according to LAW.

8-807.40 Testimony under Oath.

Testimony of parties and witnesses shall be made under oath or affirmation administered by a duly authorized official.

8-807.50 Written Evidence.

Written evidence may be received if it will expedite the hearing without substantial prejudice to a party's interests.

8-807.60 Documentary Evidence.

Documentary evidence may be received in the form of a copy or excerpt.

Settlement

8-808.10 Authorization.

The REGULATORY AUTHORITY may settle a case after a notice of hearing is served by providing a respondent with an opportunity to request a settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

8-808.20 Respondent Acceptance of Consent Agreement Is Waiver of Right to Appeal.

Respondents accepting a consent agreement waive their right to a hearing on the matter.

Judicial

**Inspection
Orders**

8-809.10 Gaining Access to Premises and Records.

(Note: Adoption of this section provides the basis for Subparagraph 8-402.20(A)(3) and § 8-402.40 and would be cited there.)

The REGULATORY AUTHORITY may seek access for one or more of the following purposes, according to LAW for gaining access:

(A) If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection including taking photographs;

(B) To examine and sample the FOOD; and

(C) To examine the records on the PREMISES relating to FOOD purchased, received, or used by the FOOD ESTABLISHMENT.

8-809.20 Contents of Court Petition.

In the absence of a specific set of requirements established by LAW, in its petition to the court to compel access the REGULATORY AUTHORITY shall:

(A) Describe in detail the PREMISES, FOOD, or records on or to which access was denied;

(B) Detail the legal authority to regulate and to have access for a specific purpose on or to the PREMISES, FOOD, or records where access was denied; and

(C) Provide information that the FOOD ESTABLISHMENT possesses a valid PERMIT from the REGULATORY AUTHORITY and that it applies to the PREMISES where access was denied; or

(D) Provide information that a PERSON is known to be or suspected of operating a FOOD ESTABLISHMENT without possessing a valid PERMIT as specified in LAW and under this Code.

8-809.30 Sworn Statement of Denied Access.

The REGULATORY AUTHORITY shall demonstrate to the court by affidavit, sworn testimony, or both that:

(A) Access on or to the PREMISES, FOOD, or records was denied after the REGULATORY AUTHORITY acted as specified in §§ 8-402.20 and 8-402.30; or

(B) There is reason to believe that a FOOD ESTABLISHMENT is

being operated on the PREMISES and that access was denied or is sought under a REGULATORY AUTHORITY'S reasonable administrative plan to enforce the provisions of this Code.

8-809.40 Contents of an Order.

Upon petition of the REGULATORY AUTHORITY, the court may issue an inspection order that:

- (A) Includes the information specified in ¶¶ 8-802.20(A)-(C); and
- (B) Orders or authorizes any other identified agencies and persons including LAW enforcement agencies to execute, or assist with the execution of, the order.

8-809.50 Optional Contents of an Order.

Upon petition of the REGULATORY AUTHORITY, the court may further issue an inspection order that:

- (A) Provides a maximum time limit for the order's execution;
- (B) Authorizes LAW enforcement officers who assist in the order's execution to use necessary force against PERSONS or property to execute the order; and
- (C) Requires that the agencies or PERSONS ordered or authorized to execute the order shall report to the court the date and time of the order's execution and the findings reached by the inspection, examination, or sampling conducted under the order.

Means of Instituting Judicial Enforcement Proceedings

8-810.10 Institution of Proceedings.

- (A) Proceedings to enforce this Code may be instituted by the REGULATORY AUTHORITY according to LAW by issuing a citation or summons, by filing a misdemeanor complaint affidavit and request for a warrant of arrest with the court of competent jurisdiction, or by referring the complaint to a grand jury for indictment, as appropriate.

(B) The REGULATORY AUTHORITY may designate a representative to issue summons or citations or sign warrants on behalf of the agency.

***Criminal
Proceedings***

8-811.10 Authorities, Methods, Fines, and Sentences.

(A) The REGULATORY AUTHORITY may seek to enforce the provisions of this Code and its orders by instituting criminal proceedings as provided in LAW against the PERMIT HOLDER or other PERSONS who violate its provisions.

(B) A PERSON who violates a provision of this Code shall be guilty of a misdemeanor, punishable by:

(1) A fine of not more than (designate amount) dollars, or by imprisonment not exceeding 1 year, or both the fine and imprisonment; or

(2) If the PERSON has been convicted once of violating this Code or if there is an intent to defraud or mislead, a fine not exceeding (designate amount) or imprisonment not exceeding (designate time) year(s) or both.

(C) Each day on which a violation occurs is a separate violation under this section.

***Injunctive
Proceeding***

8-812.10 Petitions for Injunction.

The REGULATORY AUTHORITY may, according to LAW, petition a court of competent jurisdiction for temporary or permanent injunctive relief to achieve compliance with the provisions of this Code or its orders.

***Civil
Proceedings***

8-813.10 Petitions, Penalties, and Continuing Violations.

(A) The REGULATORY AUTHORITY may petition a court of competent jurisdiction to enforce the provisions of this Code or its administrative orders and according to LAW collect penalties and fees for violations.

(B) In addition to any criminal fines and sentences imposed as specified in § 8-811.10, or to being enjoined as specified in

§ 8-812.10, a PERSON who violates a provision of this Code, any rule or regulation adopted in accordance with LAW related to FOOD ESTABLISHMENTS within the scope of this Code, or to any term, condition, or limitation of a PERMIT issued as specified in §§ 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding (designate amount).

(C) Each day on which a violation occurs is a separate violation under this section.