



The Merged Food Code

2010 edition

Board of Health
Rules and Regulations
for Food Establishments
in Massachusetts

New features:

- *Food allergen awareness requirements*

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(2010 edition)

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Massachusetts Environmental Health Association

The Merged Food Code

This 2010 version of *The Merged Food Code* is provided by the Massachusetts Environmental Health Association. *The Merged Food Code* was first published in 2001, and was revised in 2006. This 2010 edition is a compilation of the following public documents:

(1) Federal Food Code – Applicable portions of the 1999 Food Code adopted by the Food and Drug Administration of the U.S. Dept. of Health and Human Services, Public Health Service. The FDA 1999 Food Code is marked in the following manner:

- Critical items are followed by an asterisk *.
- Non-critical items are followed bold, superscripted ^N.
- Swing items, those that may or may not be critical depending on the circumstances, are followed bold, superscripted ^S.
- Provisions that are not requirements, but are provided to convey relevant information are in *italics*.
- Citations to the federal 1999 Food Code are referenced FC followed by the section number (e.g. FC 1-201.10).

The FDA 1999 Food Code is available on line at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode1999/default.htm>.

(2) State Food Code – Chapter 10 of the State Sanitary Code, 105 CMR 590.000 adopted by the Mass. Dept. of Public Health on 10/13/2000 to amend 1999 Food Code

- State amendments to the Federal Code are marked with a line in the left margin, as in the following example:

 | This section of Food Code is amended by state regulation.

- Sections of the code amended by 105 CMR 590.000 are numbered using both federal and state citations.
- Some paragraphs of the federal 1999 Food Code (FC) are repeated to give context to the supplemental provisions.
- Provisions of the federal 1999 Food Code, which are repeated in their entirety in 105 CMR 590.000, are referenced as ^(FC).

105 CMR 590.000 is available on line at <http://www.mass.gov/Eeohhs2/docs/dph/regs/105cmr590.pdf>

(3) Allergen Awareness Act – Chapter 10 of the State Sanitary Code, 105 CMR 590.000 was amended by the Mass. Dept. of Public Health on 6/9/2010 and 9/8/10 in order to implement requirements of the Allergen Awareness Act, M.G.L. Ch. 140, s. 6B.

- Amendments to 105 CMR 590.000 implement the Allergen Awareness Act are marked with a thick line in the left margin, as in the following example:

 | This section of Food Code was amended for allergen awareness.

M.G.L. Ch. 140, s. 6B is available on line at <http://www.mass.gov/legis/laws/mgl/140-6b.htm>,

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Food Code – Chapter 1

105 CMR 590.002

Purpose and Definitions

1-1 Title, Intent, Scope

1-101 Title

1-101.10 Food Code

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

1-102 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.

1-103 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.

1-1 Purpose [105 CMR 590.002(A)]

The purpose of 105 CMR 590.000 is stated within FC 1-101.10 *Food Code*, FC 1-102.10 *Food Safety, Illness Prevention, and Honest Presentation* and FC 1-103.10 *Statement*.

1-2 Definitions

For the purposes of 105 CMR 590.000, the following terms shall have the meanings hereinafter specified. These definitions shall be in addition to or a substitution for the same definition in federal 1999 *Food Code* section 1-201.10 entitled Definitions.

1-201 Applicability and Terms Defined

1-201.10 Statement of Application and Listing of Terms [revised by 105 CMR 590.002(B)]

(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**" means the definition in M.G.L. c. 94, § 186.

(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.

(5') "**Bed and breakfast establishment**" means a private, owner-occupied house where four or more rooms are let and a breakfast is included in the rent.

(5'') "**Bed and breakfast home**" means a private, owner-occupied house where three or fewer rooms are let and a breakfast is included in the rent.

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

(6') "**Board of Health**" means the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town.

(7) "**Bottled drinking water**.

(a) "**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.

(b) "**Bottled drinking water**" means, in addition to the definition set forth in the 1999 *Food Code*, the definition in 105 CMR 570.000: *The Manufacture, Collection and Bottling of Water and Carbonated Non-alcoholic Beverages*.

(7') "**Business days**" means Monday through Friday excluding legal holidays.

(7'') "**Caterer**" means any person who prepares food intended for individual portion service, transports and serves it at another location, or who prepares and serves food at a food establishment, other than one for which he holds a permit, for service at a single meal, party or similar gathering.

(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.

(12') "**Commissioner**" means the Commissioner of the Massachusetts Department of Public Health.

(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.

(14') "**Continental breakfast**" means a breakfast meal restricted to the following foods:

- (1) Beverages such as coffee, tea and fruit juices;
- (2) Pasteurized Grade A milk;
- (3) Fresh fruits;
- (4) Frozen and commercially processed fruits;
- (5) Baked goods, such as pastries, rolls, breads, and muffins which are non-potentially hazardous food;
- (6) Cereals;
- (7) Homemade or commercial jams, jellies, honey and maple syrup;
- (8) Pasteurized Grade A creams and butters, non-dairy creamers or similar products;
- (9) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt.

(15) "**Corrosion-resistant material**" means a material that maintains acceptable surface cleanliness 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 *.
- (c) "**Critical item**" means, in addition to the definition set forth in the *1999 Food Code*, any other violation of 105 CMR 590.000 so designated by the board of health after written notice to the permit holder that the viola-

tion has the potential to seriously affect the public health.

(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.

(18') "**DEP**" means the Massachusetts Department of Environmental Protection.

(18'') "**Department**" means the Massachusetts Department of Public Health.

(18''') "**Director**" means the Director of the Division of Food and Drugs.

(19) **Drinking Water.**

- (a) "**Drinking water**" means water that meets 310 CMR 22.00: *Drinking Water*.
- (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.

(25') **"FC-regulatory authority"** means for the purpose of 590.000, in addition to the definition set forth in FC 1-201.10, the board of health.

(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.

(27') **"Food code interventions"** means the following set of preventive measures:

- (1) Demonstration of knowledge
- (2) Employee health
- (3) Hands as a vehicle of contamination
- (4) Time-temperature relationships
- (5) Consumer advisory

(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. This could include the owner, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food establishment. In health care facilities, this includes those who set up trays for patients to eat, feed or assist patients in eating, give oral medications or give mouth/denture care. In day care operations, schools and long term care facilities, which are licensed food establishments, this includes those who prepare food for clients to eat, feed or assist clients in eating or give oral medications.

(31) **Food establishment.**

- (1) **"Food establishment"** means an operation that stores, prepares, packages, serves,

vends, or otherwise provides food for human consumption:

- (a) Such as a restaurant; satellite or catered feeding location when these locations are equipped with facilities to prepare, store or serve food; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; retail bakery; vending location; institution; food bank; residential kitchens in bed and breakfast homes and bed and breakfast establishments; residential kitchens for retail sale and,
- (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.^(FC)

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

- (a) 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^(FC); and
- (b) 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) **"Food establishment"** does not include:

- (a) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- (b) A food processing plant;
- (c) 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;
- (d) A kitchen in a private home that prepares food for distribution to a charitable facility in accordance with M.G.L. c. 94, §328;
- (e) An area where food that is prepared as specified in 105 CMR 590.002 Food Establishment (3)(c) is sold or offered for human consumption;
- (f) A kitchen in a private home, such as a family day-care provider; or a bed and

breakfast home that serves only a continental breakfast; or,

- (g) A private home that receives catered or home-delivered food.^(FC)

(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).
- (c) **"Food processing plant"** means, in addition to the definition set forth in FC 1-201.10, the definition of Food Processing Operation in 105 CMR 500.000.

(32') **"Full breakfast"** means a breakfast meal including foods other than those listed in 105 CMR 590.002, definition of "continental breakfast."

(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.

(46') "**Major Food Allergen**" means:

- (1) Milk, eggs, fish (such as bass, flounder, or cod), crustaceans (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; and
- (2) A FOOD ingredient that contains protein derived from a FOOD named in subsection (1).

"**Major Food Allergen**" does not include:

- (a) Any highly refined oil derived from a FOOD specified in subsection (1) or any ingredient derived from such highly refined oil; or
- (b) Any ingredient that is exempt under the petition or notification process specified in the federal Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

(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).

(47') "**Menu**" means a printed list or pictorial display of a food item or items and their price(s) that are available for sale from a food establishment, and includes menus distributed or provided outside of the establishment.

(47'') "**Menu board**" means any list or pictorial display of a food item or items and their price(s) posted within or outside a food establishment.

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

(48') "**Misbranded food**" means the definition in M.G.L. c. 94, § 187.

(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.

(69') **"Residential kitchen"** means a kitchen in a private home.

(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.

(70') **"Risk factors."**

(1) **"Risk Factors"** mean improper practices or procedures, which have been identified by the Centers for Disease Control and Prevention (CDC), through epidemiological data as the most prevalent contributing factors of foodborne illness or injury.

(2) **"Risk Factors"** include:

- (a) Poor personal hygiene;
- (b) Food from unsafe source;
- (c) Inadequate cooking;
- (d) Improper holding temperatures; and
- (e) Contaminated equipment.

(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.

Management and Personnel

2-1 Supervision

2-101 Responsibility

2-101.11 Assignment* [revised by 105 CMR 590.003(A)]

(1) 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. The owner or person(s) in charge shall designate an alternate person to be in charge at all times when they cannot be present. The alternate, when acting as the person in charge, shall be responsible for all duties specified in FC 2-103.11 and must be adequately trained by the person in charge to ensure that the establishment operates in compliance with 105 CMR 590.000.

(2) In addition to the provisions in 105 CMR 590.003(A)(1), effective one year from the date of promulgation of 105 CMR 590.000, each food establishment shall employ at least one full-time equivalent (FTE) person in charge who shall be an on-site manager or supervisor and is at least 18 years of age and who by being a certified food protection manager has shown proficiency of required information through passing a test that is part of an accredited program recognized by the Department.

(3) 105 CMR 590.003(A)(2) shall not apply to:

- (a) Temporary food establishments operated by non-profit organizations such as, but not limited to, school sporting events, firemen's picnics, grange and church suppers and fairs,
- (b) Daycare operations which serve only snacks;
- (c) Food establishments restricted to the sale of pre-packaged food and limited preparation of non-potentially hazardous food and meat and poultry products processed under U.S.D.A supervision with a nitrite level of at least 120 PPM and a minimum brine concen-

tration of 3.5%;

(d) Satellite feeding sites, which receive prepared meals from commissaries for immediate service.

(4) Documentation that at least one full-time equivalent person in charge has demonstrated knowledge of food safety as specified in 105 CMR 590.003(A)(2) shall be prominently posted in the establishment next to the food establishment permit. Such documentation shall be removed when the individual(s) is no longer employed on-site by the establishment.

(5) If a person in charge, after attending a training program, fails to pass the certification examination after two attempts, the permit holder may request a variance for this individual based on:

- (a) Signed documentation from the instructor that the person in charge participated in a food safety training program, provided that the instructor's qualifications and course content meet the standards provided in the Department's *Massachusetts Guideline for Training and Testing*, and
- (b) The facility being in full compliance with 105 CMR 590.000.

(6) If the person(s) in charge with demonstrated knowledge of food safety is transferred, terminated or terminates employment, the owner/permit holder shall notify the board of health in writing and have sixty days to employ a replacement. The local board of health may grant an extension not to exceed an additional sixty days to comply with this requirement if deemed necessary.

2-102 Knowledge

2-102.11 Demonstration* [revised by 105 CMR 590.003(B)]

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demon-

strate to the regulatory FC-authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of the federal *1999 Food Code*. The person in charge shall demonstrate this knowledge by compliance with the federal *1999 Food Code* and, 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 recognized by the Department. The areas of knowledge include:^(FC)

- (1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
- (2) 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;
- (3) Describing the symptoms associated with the diseases that are transmissible through food;
- (4) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;
- (5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
- (6) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;
- (7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;
- (8) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (a) Cross contamination,
 - (b) Hand contact with ready-to-eat foods, and
 - (c) Handwashing;
- (9) Maintaining the food establishment in a clean condition and in good repair;
- (10) Explaining the relationship between food safety and providing equipment that is:

- (a) Sufficient in number and capacity, and
- (b) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

- (11) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;
- (12) 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;
- (13) 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;
- (14) 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 the federal *1999 Food Code*;
- (15) 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, the federal *1999 Food Code*, or an agreement between the FC-regulatory authority and the establishment; and
- (16) Explaining the responsibilities, rights, and authorities assigned by the federal *1999 Food Code* to the:

- (a) Food employee,
- (b) Person in charge, and
- (c) FC-Regulatory authority.

- (17) No later than February 1, 2011:

- (a) Describing foods identified as major food allergens and describing the symptoms that major food allergens could cause in a sensitive individual who has an allergic reaction; and
- (b) Ensuring that employees are properly trained in food allergy awareness as it relates to their assigned duties.

2-103 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

2-201 Disease or Medical Condition

2-201.11 Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants* [revised by 105 CMR 590.003(C)]

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 specified under ¶ (C) of this section, if the food employee or applicant:

- (A) Is diagnosed with an illness due to:
- (1) *Salmonella* Typhi,
 - (2) *Shigella* spp.,
 - (3) *Escherichia coli* O157:H7 and other Enterohemorrhagic *Escherichia coli* (EHEC),
 - (4) Hepatitis A virus,
 - (5) *Entamoeba histolytica*,
 - (6) *Campylobacter* spp.,
 - (7) *Vibrio cholera* spp.,
 - (8) *Cryptosporidium parvum*,
 - (9) *Giardia lamblia*,
 - (10) Hemolytic Uremic Syndrome,
 - (11) *Salmonella* spp. (non-typhi)
 - (12) *Yersinia enterocolitica*,
 - (13) *Cyclospora cayetanensis*, and
 - (14) Any other disease transmissible through food so designated by the Division of Communicable Diseases of the Department in 105 CMR 300.000 : *Reportable Diseases and Isolation and Quarantine Requirements*.

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

- (1) Associated with an acute gastrointestinal illness such as:
 - (a) Diarrhea,
 - (b) Fever,
 - (c) Vomiting,
 - (d) Jaundice, or
 - (e) Sore throat with fever, or
- (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*;

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

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

- (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,
- (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
- (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* [revised by 105 CMR 590.003(D)]

The person in charge shall:

- (1) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified under 105 CMR 590.003(C)(1) through (4);^(FC)
- (2) Except as specified under 105 CMR 590.003 (D) (3) or (4), 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:
 - (a) Suffering from a symptom specified under FC 2-201.11(B),^(FC) or
 - (b) Not experiencing a symptom of acute gastroenteritis specified under FC 2-201.11(B)(1) but is diagnosed with an infectious agent specified under 105 CMR 590.003(C)(5) through (14).
- (3) If the population served is a highly susceptible population, exclude a food employee who:
 - (a) Is experiencing a symptom of acute gastrointestinal illness specified under FC 2-201.11(B)(1) and meets a high-risk condition specified under FC 2-201.11(D)(1) through (3).^(FC)

(b) Is not experiencing a symptom of acute gastroenteritis specified under FC 2-201.11(B)(1) but is diagnosed with an infectious agent specified under 105 CMR 590.003(C).

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

(d) Had a past illness from *Shigella* spp. or *E. Coli* O157:H7 within the last month;^(FC) and

(4) For a food employee who is jaundiced:

(a) If the onset of jaundice occurred within the last 7 calendar days, exclude the food employee from the food establishment,^(FC) or

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

(1) Exclude the food employee from a food establishment that serves a highly susceptible population,^(FC) or

(2) Restrict the food employee from activities specified under 105 CMR 590.003(D)(2).

2-201.13 Removal of Exclusions and Restrictions [revised by 105 CMR 590.003(E)]

(1) The person in charge may remove an exclusion specified under 105 CMR 590.003(D)(1) if:

(a) The person excluded as specified in 105 CMR 590.003(D)(1) provides to the board of health 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 restricted person is free of the infectious agent of concern as specified in 105 CMR 590.017; and

(b) The person in charge obtains approval from the FC-regulatory authority.^(FC)

(2) The person in charge may remove a restriction specified in 105 CMR 590.003(D)(2)(a) if the restricted person:

(a) Is free of the symptoms specified under FC 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:

(1) Is free of these symptoms under FC 2-201.11(B),^(FC) and

(2) Provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant, that specifies 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 105 CMR 590.017; and

(3) The person in charge obtains approval from the FC-regulatory authority.

(c) Provides written medical documentation from a physician licensed to practice medicine, 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.^(FC)

(3) The person in charge may remove a restriction specified in 105 CMR 590.003(D)(2)(b) if:

(a) The restricted person provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant, that specifies 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 105 CMR 590.017; and

(b) The person in charge obtains approval from the FC-regulatory authority.

(4) The person in charge may remove an exclusion specified in 105 CMR 590.003(D)(3) if:

(a) The excluded person provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant that specifies that the person is free of:

(1) The infectious agent of concern as specified in 105 CMR 590.017, or

(2) Jaundice as specified under 105 CMR 590.003(E)(5) if hepatitis A virus is the infectious agent of concern; or

(b) If the person is excluded under 105 CMR 590.003(D)(3)(a), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; and

(c) The person in charge obtains approval

| from the FC-regulatory authority.

(5) The person in charge may remove a restriction or exclusion specified in 105 CMR 590.003(D)(4)(a) or (b) if:

(a) The excluded or restricted person provides written medical documentation from a physician licensed to practice medicine, nurse practitioner, or physician assistant, that specifies that the person is free of hepatitis A virus as specified in 105 CMR 590.017(B)(4); and

(b) The person in charge obtains approval from the FC-regulatory authority.

2-201.14 Responsibility of a Food Employee or an Applicant to Report to the Person in Charge* [revised by 105 CMR 590.003(F)]

| A food employee or a food employee applicant to

whom a conditional offer for employment has been made shall:

(1) In a manner specified under FC 2-201.11, report to the person in charge the information specified under 105 CMR 590.003(C) and FC 2-201.11(B) through (D); and

(2) Comply with exclusions and restrictions that are specified in 105 CMR 590.003(D)(1) thru (4).

2-201.15 Reporting by the Person in Charge* [revised by 105 CMR 590.003(G)]

The person in charge shall notify the FC-regulatory authority that a food employee is diagnosed with an illness due to an infectious agent specified under 105 CMR 590.003(C).

2-3 Personal Cleanliness

2-301 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 ex-

posed 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.

Affirmed as Generally Recognized as Safe for use in contact with food; and

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

- (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.

2-302 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.

2-303 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.*

2-304 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

2-401 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.

2-402 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.*

2-403 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).*

Food

3-1 Characteristics

3-101 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

3-201 Sources

3-201.11 Compliance with Food Law.* [revised by 105 CMR 590.004(A-B)]

- (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 except as provided in 105 CMR 590.000.
- (C) Packaged food shall be labeled in accordance with applicable law and as specified under FC 3-202.17 and FC 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 defini-

- tion 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* [revised by 105 CMR 590.004(C)]

(A) Except as specified in FC 3-201.16(B), mushroom species picked in the wild may not be received for sale or service unless obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert and the mushrooms are packaged and labeled with the name of the harvester, packer and the mushroom species.

(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 ac-

cording 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.

3-202 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* [revised by 105 CMR 590.004(D)]

(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 in accordance with applicable law.

(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,
- (f) 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.*

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 Original Containers and Records

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.

3-3 Protection from Contamination after Receiving

3-301 Preventing Contamination by Employees

3-301.11 Preventing Contamination from Hands* [revised by 105 CMR 590.004(E)]

(A) Food employees shall wash their hands as specified under § 2-301.12.

(B) Except when washing fruits and vegetables as specified under FC 3-302.15 or when in compliance with the Department's policy on alternative procedures for bare hand contact with ready-to-eat food^a, 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. *Single-use natural rubber latex gloves are not recommended in food establishments.*

(C) Food employees shall minimize bare hand and arm contact with exposed food that is not in

^a **Clarification of the Food Code with respect to the phrase "Except . . . when otherwise approved".** (This information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code) 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 add-

ed language. This note 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.

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.

3-302 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(C) 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.*

3-303 Preventing Contamination from Ice Used as a Coolant

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

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.*

3-304 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 spe-

cified 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).*

3-305 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.

3-306 Preventing Contamination by Consumers

3-306.11 Food Display

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.

3-4 Destruction of Organisms of Public Health Concern

3-401 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; or
- (3) 74°C (165°F) or above for 15 seconds for

3-307 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.

poultry, wild game animals as specified under

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

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.

(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.

Temp °C (°F)	Time ¹ in Min	Temp °C (°F)	Time ¹ in Min	Temp °C (°F)	Time ¹ in Min
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 in-

formation 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).

3-402 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.*

3-403 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

3-501 Temperature and Time Control

3-501.11 Frozen Food

Stored frozen foods shall be maintained frozen.

3-501.12 Potentially Hazardous Food, Slack-ing

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, po-

tentially 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* [revised by 105 CMR 590.004(F)]

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) By March 1, 2005, equipment shall be upgraded and replaced to maintain food at a temperature of 41°F (5°C) or less except that in-use food preparation line refrigeration equipment shall be upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less by March 1, 2010.

3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking* [deleted by 105 CMR 590.004(G)]

3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition* [deleted by 105 CMR 590.004(G)]

3-501.19 Time as a Public Health Control* [revised by 105 CMR 590.004(H)]

(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.

(C) In addition to requirements set forth in FC 3-501.19, a variance must be obtained from the board of health.

3-502 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*

(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 (B)(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

3-601 Accurate Representation

3-601.11 Standards of Identity [revised by 105 CMR 590.004(I)]

Packaged food shall comply with standard of identity requirements in accordance with applicable law.

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.

3-602 Labeling

3-602.11 Food Labels [revised by 105 CMR 590.004(J)]

- (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.

FC 3-602.11(B)(2) shall be designated as a critical item if there is one or more undeclared allergenic ingredients in the ingredient statement, which would result in a Class I or II recall.*

(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' dat-

ing information on foods may not be concealed or altered.

3-603 Consumer Advisory

3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens* [revised by 105 CMR 590.004(K)]

Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(3) and under ¶ 3-801.11(D), if 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.²

Enforcement of FC 3-603.11 will be implemented January 1, 2001*

² **Current Status of Consumer Advisory Language.** (This information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code) 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: oysters on the half-shell (raw oysters), raw-egg Caesar salad, and hamburgers (can be cooked to order); or (2) Items are asterisked to a footnote that states that the items are served raw or undercooked, or 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; (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.

3-7 Contaminated Food

3-701 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

3-801 Additional Safeguards

3-801.11 Pasteurized Foods, Prohibited Reserve, 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 merin-gue, 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.*

Equipment, Utensils, and Linens

4-1 Materials for Construction and Repair

4-101 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
Hot Beverage Mugs	Coffee Mugs	0.5 mg/L
Large Hollow-ware	Bowls greater than or equal to 1.1 L (1.16 QT)	1 mg/L
Small Hollow-ware	Bowls < 1.1 L (1.16 QT)	2.0 mg/L
Flat Utensils	Plates, Saucers	3.0 mg/L

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 choppers; 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 makers 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.

4-102 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

4-201 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.*

4-202 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 Subparagraph 4-202.11(A)(5) 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.

4-203 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.

4-204 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, Leak-proof

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) Jams 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.

4-205 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

4-301 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 pro-

vided 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, Adequa-

cy

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.*

4-302 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

4-401 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.

4-402 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

4-501 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	pH 8 or less
25 mg/L	49°C (120°F)	49°C (120°F)
50 mg/L	38°C (100°F)	24°C (75°F)
100 mg/L	13°C (55°F)	13°C (55°F)

(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.

4-502 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 accu-

racy.

(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

4-601 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

4-602 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;*
and
(b) *The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.*

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

(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.

4-603 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

4-701 Objective

4-701.10 Food-Contact Surfaces and Utensils

Equipment food-contact surfaces and utensils shall be sanitized.

4-702 Frequency

4-702.11 Before Use After Cleaning*

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

4-703 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)(72).

4-8 Laundering

4-801 Objective

4-801.11 Clean Linens

Clean linens shall be free from food residues and other soiling matter.

4-802 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.

4-803 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.

bent 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

4-901 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.*

4-902 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.

4-903 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.

4-904 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 pre-wrapped 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

Water, Plumbing and Waste

5-1 Water

5-101 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* [revised by 105 CMR 590.006(A)]

Bottled drinking water used or sold in a food establishment shall be obtained from sources which comply with all applicable laws.

5-102 Quality

5-102.11 Standards* [revised by 105 CMR 590.006(B)]

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.
- (C) In addition to requirements in FC 5-102.11, water from a public water system shall meet requirements set forth in 310 CMR 22.00: *Drinking Water*.

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.

5-103 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*.

5-104 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.

5-2 Plumbing System

5-201 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.

5-202 Design, Construction, 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.

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.

- (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.

5-203 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)

5-204 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.

5-205 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

5-301 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.

5-302 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 nonabrasive;
- (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.

5-303 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.

5-304 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

5-401 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.

5-402 Retention, Drainage, and Delivery

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.*

5-402.12 Grease Trap

If used, a grease trap shall be located to be easily accessible for cleaning.

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 con-

structed, 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.

5-403 Disposal Facility

5-403.11 Approved Sewage Disposal System*

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

5-501 Facilities on the Premises

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.

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 tho-

roughly 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.

5-502 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.

5-503 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.

Physical Facilities

6-1 Materials for Construction and Repair

6-101 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 mate-*

rials 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.*

6-102 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

6-201 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.*

6-202 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

6-301 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).

6-302 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.

6-303 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, wa-

rewashing, 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.

6-304 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.

6-305 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.

6-306 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

6-401 Handwashing Facilities

6-401.10 Conveniently Located

Handwashing facilities shall be conveniently located as specified under § 5-204.11.

6-402 Toilet Rooms

6-402.11 Convenience and Accessibility

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

6-403 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.

6-404 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.

6-405 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

6-501 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 re-*

sult:

- (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.*

Poisonous or Toxic Materials

7-1 Labeling and Identification

7-101 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.

7-102 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

7-201 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.*

7-202 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 pack-

aged 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.

7-203 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.

7-204 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 in-

tended 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.

7-205 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.

7-206 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

7-207 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.

7-208 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

7-209 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

7-301 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.

Special Requirements

Caterers [105 CMR 590.009(A)]

(1) Base of Operations. Each caterer shall have as its base of operations a food establishment that shall comply with the provisions of 105 CMR 590.000, except that a facility holding a permit as a residential kitchen shall not serve as the base of operations for a caterer.

(2) Notification. Each caterer shall:

- (a) Notify the board of health of the city or town in which it plans to serve a meal prior to serving any meal elsewhere than in its own food service establishment and shall give written notice to the board of health on a form provided by the board or the Department either prior to or within 72 hours after serving a meal elsewhere than its own food service establishment; and
- (b) If required by the board of health or its agent, provide the board with a copy of its food establishment permit prior to serving a meal in a city or town other than the one in which its food establishment is located.

Mobile Food Operations [105 CMR 590.009(B)]

(1) Mobile food operations shall comply with the requirements of the federal *1999 Food Code* and other applicable provisions of 105 CMR 590.000 except as otherwise provided in 105 CMR 590.009(B). The board of health may impose additional requirements and restrictions to protect against health hazards related to the conduct of the mobile food operation and may prohibit the sale of some or all potentially hazardous foods.

(2) Mobile food operations not equipped with an adequate water and waste system to facilitate hand-washing and the cleaning and sanitizing of utensils shall be limited to the preparation and service of frankfurters and non-potentially hazardous foods and to the sale of pre-packaged food prepared at a food processing establishment licensed in accordance with 105 CMR 500.000, except that pre-packaged food may be prepared by the mobile food operator at a licensed food establishment for which he or she holds a permit in accordance with

105 CMR 590.000.

(3) Mobile food operations equipped with an adequate water and waste system to facilitate hand-washing and the cleaning and sanitizing of utensils may prepare potentially hazardous foods requiring limited preparation for immediate service, provided that any advanced food preparation, if necessary, is conducted by the mobile operator in a licensed food establishment.

(4) Mobile food operations shall provide only single-service articles for use by the consumer.

(5) Condiments, cream and sugar shall be served only from a sanitary dispenser or in individually wrapped servings.

(6) Mechanical refrigeration or insulated containers with ice or gel packs must be used to maintain product temperature for pre-packaged, ready-to-eat foods which are required to be held at or below 45°F(7°C) or 41°F(5°C). The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped ready-to-eat foods such as sandwiches shall not be stored in direct contact with ice. Effective July 1, 2005, all mobile food operations selling or distributing ready-to-eat PHFs must be equipped with mechanical refrigeration that can maintain PHFs at or below 41°F(5°C).

(7) Bulk food shall not be used unless purchased from an approved source. Bulk PHFs, with the exception of frozen desserts, must be sold or served on the same day as purchased. All hot food shall be discarded if not used or sold by the end of the day.

(8) A convenient hand-washing facility must be available on site for employee hand-washing whenever handling unpackaged foods. This facility shall consist of at least sufficient warm running water, soap and individual paper towels. The board of health may approve the use of chemically treated towelettes in lieu of hand-washing facilities if only frankfurters, non-potentially hazardous foods and non-perishable foods are served and there is no bare-hand contact. Chemically treated towelettes must be made available for use by customers in

self-service operations.

(9) A sign shall be provided at consumer self-service operations, which states that the use of bare hands by consumers for self-service is prohibited by state law.

(10) Equipment.

(a) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the equipment and establishment.

(b) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination. Mobile food operations, which cook or reheat unpackaged food for hot holding shall be fully enclosed unless equipped with air curtains to prevent the contamination of food and food contact surfaces with environmental contaminants.

(c) Ware-washing facilities, when required, shall be available in accordance with the federal *1999 Food Code* for cleaning in-use utensils and food contact surfaces.

(11) Operators of mobile food operations shall obtain the use of adequate and suitable toilet facilities where handwashing facilities are available.

(12) Mobile food operations shall operate from a fixed, licensed food establishment or food processing plant and shall report at least daily to such locations for all food, water and supplies and for all cleaning and servicing operations. Mobile food operators shall retain the list of ingredients and the receipt for all bulk foods, which must indicate the name of the food item, the date purchased and the name of the approved food source licensed in accordance with 105 CMR 500.000.

(13) Servicing areas shall be provided with overhead protection except that areas used only for the loading of water, packaged food 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.

(14) Mobile food operations shall have identification, i.e., person's name and/or business name, city and telephone number in letters not smaller than three inches, on the left and right door panels of the vehicle or on the left and right sides of the trailer or pushcart.

Temporary Food Establishments [105 CMR 590.009(C)]

(1) A temporary food operation shall comply with all applicable requirements of the federal *1999 Food Code*, except as otherwise provided in this 105 CMR 590.009(C). The board of health may impose additional requirements to protect against health hazards related to the conduct of the temporary food operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of 105 CMR 590.000 pursuant to the provisions of 105 CMR 590.010(H).

(2) Whenever a temporary food establishment is permitted to prepare exposed foods without complying with all the requirements of 105 CMR 590.000, the following requirements are applicable. Only those foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation of other potentially hazardous foods including pastries filled with cream or synthetic cream, custards, and similar products and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply to the service of any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of 105 CMR 590.000, is packaged in individual servings, is stored at or below 45°F (7°C) / 41°F (5°C) or at or above 140°F (60°C) in facilities meeting the federal *1999 Food Code* requirements for storage, display and transportation and is served directly in the unopened container in which it was packaged.

(3) Temporary food establishment operators shall comply with the mandatory food protection management certification requirement in accordance with 105 CMR 590.003, except that the board of health may waive the requirement if the sponsor of a temporary event has employed at least one (FTE) person in charge in accordance with 105 CMR 590.003(A), who is:

(a) Not a vendor; and

(b) Responsible for monitoring safe food handling practices and initiating corrective actions to ensure compliance with 105 CMR 590.000.

(4) Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of FC 3-202.16 and FC 3-303. The ice shall be in chipped, crushed, or cubed form and in

single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

(5) A convenient handwashing facility must be available for employee handwashing whenever handling unpackaged foods. This facility shall consist of at least sufficient warm running water, soap and individual paper towels. The board of health may approve the use of chemically treated towelettes in lieu of handwashing facilities if:

- (a) Only frankfurters, non-potentially hazardous foods or non-perishable foods are prepared and served and there is no bare-hand contact, or
- (b) If other foods are served and there is no bare-hand contact.

(6) Equipment.

- (a) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the equipment and establishment.
- (b) Food contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.
- (c) Warewashing facilities, when required, shall be available in accordance with federal *1999 Food Code* Chapter 4 for cleaning in-use utensils and food contact surfaces.

(7) All temporary food establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

(8) Enough potable water shall be available in the operation for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

(9) Mechanical refrigeration or insulated containers with ice or gel packs must be used to maintain product temperature for pre-packaged, ready-to-eat foods, which are required to be held at or below 41°F (5°C) / 45°F (7°C). The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped ready-to-eat foods such as sandwiches shall not be stored in direct contact with ice.

(10) Potentially hazardous food, which is reheated for hot holding, shall be discarded if not used or sold by the end of the day. Temporary food operations designed to dispense hot foods shall be provided with suitable units to rapidly heat foods and to keep such food hot until served.

(11) All sewage, including liquid waste, shall be disposed of according to law.

(12) Floors, Walls and Ceilings of Food Preparation Areas.

(a) Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as sub-flooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings or other suitable materials effectively treated to control dust.

(b) Walls and ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather, dust and debris.

(c) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch.

(d) Counter-service openings shall not be larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

(e) 105 CMR 590.009(3)(12)(c) and (d) of this section do not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting conditions.

Residential Kitchens [105 CMR 590.009(D)]

(1) Residential Kitchens in Bed and Breakfast Homes and Bed and Breakfast Establishments.

(a) All bed and breakfast homes serving full breakfast and bed and breakfast establishments serving full or continental breakfast shall

require a food establishment permit and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement sections (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended menu shall be submitted to the board of health with their application for permit. However, bed and breakfast establishments with ten guestrooms or more shall comply with all provisions of 105 CMR 590.000.

(b) Bed and breakfast homes and bed and breakfast establishments, which require a permit, shall be inspected by the board of health upon application for an original permit and within the six months prior to renewal of a permit, and as often as necessary for the enforcement of 105 CMR 590.000.

(c) Food preparation and protection: Residential kitchens in bed and breakfast homes and bed and breakfast establishments.

(1) Food shall be prepared and protected in accordance with 105 CMR 590.000.

(2) Food, utensils and equipment shall be stored in a manner to avoid contamination.

(3) The following food handling practices for potentially hazardous foods are prohibited: cooling and reheating prior to service, hot holding for more than two hours, and service of leftovers.

(4) All food temperature requirements shall be met as contained in 105 CMR 590.000. Hot and cold holding equipment shall be provided to maintain potentially hazardous foods at temperatures required by 105 CMR 590.000.

(2) Residential Kitchens: Retail Sale.

(a) A food establishment permit shall be required if food is prepared in or distributed from a residential kitchen for retail sale except as exempted under the definition of food establishment in 105 CMR 590.002 and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement sections (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended list of

food to be prepared or distributed shall be submitted to the board of health with their application for permit. In addition, the following requirements shall be met:

(b) Food Preparation and Protection: Residential Kitchen for Retail Sale.

(1) Only non-potentially hazardous foods and foods which do not require refrigeration and a variance in accordance with 105 CMR 590.010(H) shall be prepared in or distributed from a residential kitchen for retail sale to the public except as exempted under the definition of food establishment in 105 CMR 590.002. Ingredients that are potentially hazardous foods, such as milk, cream, and eggs, may be used in food preparation for the public provided that the final product is not a potentially hazardous food.

(2) Wholesale operations requiring a food processor registration by the Department shall not be conducted in an establishment holding a residential kitchen permit.

(3) Only immediate family members residing in the household may prepare food for retail sale in a residential kitchen.

(3) General Requirements for All Residential Kitchens.

(a) Food supplies. Food shall be obtained from approved sources, shall be in sound condition, and be safe for human consumption. Foods, which do not comply with 105 CMR 590.000, shall not be served to the public and shall either be stored separately or labeled for private use. A separate shelf or portion thereof within a refrigerator shall be an acceptable form of separate storage. In addition to requirements set forth in FC 3-201.11(C), packaged food shall also meet requirements set forth in 105 CMR 520.000: *Labeling*.

(b) Personal health and hygiene. Food employees shall conform to employee health and hygiene requirements in 105 CMR 590.000.

(c) Handwashing. A soap dispenser and disposable towels for use in handwashing shall be provided at the kitchen sink. This sink shall not be used for handwashing after toilet use but may be used for food preparation and warewashing provided it is cleaned and sanitized prior to and between use.

(d) Toilet Room. A toilet room shall be available for use by food employees. Toilet rooms opening to the kitchen or dining area shall have adequate ventilation. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposable towels shall be provided for handwashing in toilet rooms used by food employees.

(e) Equipment And Utensil Design And Construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(f) Food-contact surfaces. All food contact surfaces, counters, sinks and work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.

(g) Cleaning and sanitizing.

(1) Food contact surfaces of equipment, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use in accordance with 105 CMR 590.000.

(2) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three compartments shall be provided and used; or a two compartment sink may be used if single service tableware is provided, or when an approved detergent sanitizer is used in accordance with FC 4-501.114 and FC 4-301.12. The board of health may allow the use of compartments other than sinks, such as tubs and basins.

(3) A domestic or home style dishwasher may be used provided the following performance criteria are met:

(a) The dishwasher must effectively remove physical soil from all surfaces of dishes, equipment and utensils.

(b) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150°F after the final rinse and drying cycle. Records of this testing shall be kept on file for 30 days.

(c) The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing res-

idential kitchen facilities' utensils and tableware; a copy of the instructions must be available on the premises at all times.

(4) There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, handwashing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

(h) Insect proof/rodent proof.

(1) Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Pesticides and rodenticides shall be applied according to law.

(i) Premises.

(1) Pets may be present on the premises, but shall be kept out of food preparation and dining areas during food preparation and service to the public.

(2) Laundry facilities may be present in the kitchen, but shall not be used during food preparation and service to the public.

(3) Cooking facilities in the kitchen shall not be available to guests.

(j) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(k) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source.

(l) Sewage. Sewage shall be disposed of through an approved system that is:

(1) A public sewage treatment plant; or

(2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

Anti-Choking Procedures in Food Service Establishments. [105 CMR 590.009(E)]

Pursuant to M.G.L. c. 94, § 305D, each food service establishment having a seating capacity of 25 persons or more shall:

(1) Have on its premises, while food is being served, an employee trained in manual procedures approved by the Department to remove food lodged in a person's throat; and

(2) Make adequate provision for insurance to cover employees trained in rendering such assistance.

Tobacco Products: Notice and Sale [105 CMR 590.009(F)]

(1) In conformance with M.G.L. c. 270, § 6 and §6A, a food establishment shall not sell cigarettes, chewing tobacco, snuff or tobacco in any of its forms or cigarette rolling papers to any person under the age of 18. In conformance with M.G.L. c. 64C, § 10, a food establishment, in which a vending machine for the sale of cigarettes or tobacco is located, shall not permit a person under the age of 18 to use such machine.

(2) In conformance with M.G.L. c. 270, § 7, in any food establishment in which cigarettes are sold by means other than a vending machine, a copy of a notice meeting the requirements shall be conspicuously posted by the owner, operator, manager or other person having control of the establishment.

(a) For the cash register which receives the greatest volume of single cigarette package sales. The Department shall prepare and distribute without charge a notice to be posted by food establishments, which states that the sale of cigarettes and other tobacco products to persons under the age of 18 is prohibited. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. As an alternative to the notice provided by the Department, local boards of health may distribute a notice, which meets the requirements of this section and receives prior approval from the Department. Any notice distributed by a local board of health shall meet the following requirements:

(1) The notice shall be at least 48 square inches;

(2) The notice shall use at least two contrasting colors, drawings or pictures as illustrations;

(3) The notice shall generally state that the sale of cigarettes to persons under 18 years of age is prohibited, and at a minimum shall include the following wording contained in M.G.L. c. 270, § 6: Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of 18 or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of 18 shall be punished by a fine of not less than \$100 for the first offense, and not less than \$200 for a second offense and not less than \$300 for any third or subsequent offense;

(4) The design of the notice and the type of print shall be sufficient to permit the notice to be easily read from a distance of five feet. Print specified in 105 CMR 590.009(E)(2)(a)(3) shall be at least 17-point type.

(b) For all other cash registers that sell cigarettes: The Department shall prepare and distribute without charge a notice to be attached on the cash register which is no larger than nine square inches, and includes at a minimum the statement that the sale of cigarettes or any tobacco product to persons under 18 years of age is prohibited. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view.

(3) In conformance with M.G.L. c. 64C, § 10, every vending machine for the sale of cigarettes or tobacco located in a food establishment shall have attached on the front of the machine a notice furnished by the Commissioner of Revenue reading "Persons under 18 are prohibited from using this machine."

Food Allergy Awareness Requirements [105 CMR 590.009(G)]

Food establishments that cook, prepare, or serve food intended for immediate consumption either on or off the premises shall comply with the following requirements.

(1) Poster. No later than October 1, 2010, such food establishments shall prominently display in the employee work area a poster ap-

proved by the Department, no smaller than 8.5 by 11 inches, relating to major food allergens. The poster shall include the following information:

- (a) Major food allergens;
- (b) Health risks of food allergies;
- (c) Procedure to follow when a customer states that he or she has a food allergy; and
- (d) Emergency procedure to follow if a customer has an allergic reaction to a food.

(2) Notice on printed menus and menu boards.

Such food establishments shall include on all printed menus and menu boards a clear and conspicuous notice requesting a customer to inform the server before placing an order, about the customer's allergy to a major food allergen. The notice shall state: *Before placing your order, please inform your server if a person in your party has a food allergy.*

(a) Effective Date. The notice must be included on printed menus and on indoor and outdoor menu boards, including drive-through menu boards, no later than October 1, 2010.

(b) Menu Boards.

1. All notices on menu boards must be easily readable from the point of service at which food is ordered. On the menu board itself, the font size of the notice must be equal to or greater than the font size of the smallest menu item listed on the menu board.

2. In lieu of placing the notice directly on the indoor or outdoor menu board itself, the food establishment may post the notice adjacent to the menu board or at each point of service where food is ordered. Such notice must be securely posted in a manner so that it may be easily seen and read from a distance of five feet by a person standing at or approaching the point of service, shall directly face the purchaser, and shall not be obstructed from view.

(3) Food Allergen Awareness Training

(a) By February 1, 2011, such food establishments shall have on staff a certified food

protection manager who has been issued a Massachusetts certificate of allergen awareness training by an allergen awareness training verification program recognized by the Department. The certificate will be valid for 5 years.

(b) The certified food protection manager shall:

1. Demonstrate knowledge of major food allergens by posting the Massachusetts food allergen awareness training certificate; and
2. Ensure that employees are properly trained in food allergy awareness as it relates to their assigned duties.

(4) Exemptions

(a) Public and private schools, educational institutions, summer camps, childcare facilities, and other child care programs approved to participate in USDA Child Nutrition Programs are exempt from 105 CMR 590.009(G), with the exception of 105 CMR 590.009(G)(3)(b)2., provided that they have:

1. Written policies and procedures for identifying, documenting, and accommodating students with food allergies, and
2. Documentation verifying participation in food allergen training recognized by the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health.

(b) Food service operations in institutional settings in which food is prepared and/or served to a specific population (for example, hospitals, non-profit organizations, Older American Act Elderly Nutrition programs, and charitable food facilities) that have written procedures for identifying, documenting, and accommodating their clients with food allergies are exempt from 105 CMR 590.009(G)(2).

(c) Temporary food establishments operated by non-profit organizations are exempt from 105 CMR 590.009(G).

Food Code - Chapter 8

Compliance and Enforcement

Scope [105 CMR 590.010(A)]

FC 8-1 through 8-5 and 105 CMR 590.010 through 590.021 shall cover the administration and enforcement of 105 CMR 590.000 in lieu of 105 CMR 400.000: *The State Sanitary Code, Chapter I: General Administrative Procedures.*

Local Enforcement [105 CMR 590.010(B)]

Unless otherwise expressly provided herein, each board of health is responsible for the administration and enforcement of 105 CMR 590.000 and may enforce 105 CMR 590.000 by suspension or revocation of permits in accordance with 105 CMR 590.014 or otherwise at law or in equity in the same manner that local rules and regulations are enforced.

Food Establishments Outside Jurisdiction of Board of Health [105 CMR 590.010(C)]

Food from a food establishment outside the jurisdiction of the board of health of any particular city, town or other legally constituted governmental unit may be sold or served within such municipality if such food establishment complies with the provisions of 105 CMR 590.000. To determine the extent of compliance with such provisions, the board of health may accept reports of the responsible authorities in the other jurisdiction where such food establishment is located or from the Director, or may inspect such establishment accompanied by the responsible authorities in the other jurisdiction.

State Enforcement [105 CMR 590.010(D)]

(1) If as a result of any study, inspection, or survey made by the Department, the Commissioner or his authorized representative determines that compliance with 105 CMR 590.000 has not been effected, he shall, in writing, notify the appropriate board of health of such determination, allotting a reasonable time in which compliance shall be effected, and requesting that the board of health, in writing, notify the Commissioner of what action will be and has been taken,

to effect compliance with 105 CMR 590.000.

(2) If the Commissioner is not so notified, or if after notification he determines that action sufficient to effect compliance with the provisions of 105 CMR 590.000 has not been taken, the board of health shall be deemed to have failed to effect compliance with 105 CMR 590.000.

(3) Whenever any board of health has failed after a reasonable length of time to enforce 105 CMR 590.000, the Department may enforce 105 CMR 590.000 in any way that a local board of health is authorized to act to effect compliance.

(4) Notwithstanding any other provision of 105 CMR 590.000, if the Department determines that an imminent health hazard exists resulting from the operation of a food establishment it may without prior notice to the board of health take whatever action is necessary to effect compliance with 105 CMR 590.000.

Interpretation of 105 CMR 590.000 [105 CMR 590.010(E)]

The Director may from time to time issue written interpretations and guidelines as necessary to promote uniform application of 105 CMR 590.000. Upon the written request of a board of health or permit holder, the Director may investigate and/or advise on particular questions regarding interpretations of 105 CMR 590.000.

Reporting Requirements for Local Boards of Health [105 CMR 590.010(F)]

The board of health shall submit to the Department by July 31 each year, the following information:

- (1) Total number of licensed food establishments by category;
- (2) Number of yearly inspections by category;
- (3) Number of reinspections by category;
- (4) Number of hearings;
- (5) Number of license suspensions;
- (6) Number of license revocations;
- (7) Number of foodborne illness complaints investigated (including the number of cases involv-

ing more than two persons and the total number of persons involved);

(8) Number of general complaints investigated;

(9) A copy of any local ordinances relative to Food Establishment operations;

(10) Number and types of variances issued;

(11) Total number of food sanitarians; and,

(12) Other information as requested.

The Department shall supply a form on which to submit the required information.

Inspector Training [105 CMR 590.010(G)]

(1) Any person conducting food inspections for the board of health shall be knowledgeable in foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of 105 CMR 590.000 as

they relate to food establishments in their city or town.

(2) Effective one year from the date of promulgation of 105 CMR 590.000, any individual conducting food inspections shall demonstrate the knowledge referenced in 590.010(G)(1) by:

(a) Passing a certified food protection manager or certified food safety professional test that is part of an accredited program recognized by the Department and completing food safety inspection training recognized by the Department, or;

(b) Being a registered sanitarian or certified health officer who has completed food safety inspection training recognized by the Department.

8-1 Code Applicability [105 CMR 590.010]

8-101 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).

8-102 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.

8-103 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 au-

thority, 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.

Variances [105 CMR 590.010(H)]

In addition to requirements set forth in FC 8-103:

- (1) Any variance granted by the board of health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health. Copies of all variances shall be provided to the Director upon request.
- (2) Any variance may be subject to such qualification, revocation, suspension, or expiration as the board of health expresses in its grant, except that no variances shall be given after a major remodeling of the premises of a food establishment. A variance may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements for an order and hearing in 105 CMR 590.015

8-2 Plan Submission and Approval [105 CMR 590.011]

8-201 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.

Plan Approval or Disapproval [105 CMR 590.011]

In addition to requirements set forth in FC 8-201 Facility and Operating Plans: Plan approval shall be granted or denied within 30 calendar days after the submission of said plans. If the board of health does not approve or disapprove said plans within such time, the plans shall be deemed to have been approved. Approval shall be denied only if such plans establish that the proposed food establishment will violate the provisions of 105 CMR 590.000 or other applicable laws, ordinances, or regulations. Disapproval of such plans shall be deemed an order to which the procedure provided in 105 CMR 590.015 shall apply.

8-202 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.

8-203 Construction Inspection

8-3 Permit to Operate [105 CMR 590.012]

8-301 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.

Mobile Food Operations. [105 CMR 590.012(A)]

The operator of a mobile food operation shall obtain a permit to operate from each board of health in whose jurisdiction he sells his product.

8-302 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 [revised by 105 CMR 590.012(B)]

A person desiring to operate a food establishment shall submit to the FC-regulatory authority a written application for a permit on a form provided by the board of health and approved by the Department.

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.

8-302.13 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.

Permits Form [105 CMR 590.012(C)]

(1) There shall be one permit form issued to each food establishment. The permit shall indicate:

(a) Whether the permit is annual, seasonal or temporary; and

(b) Each of the following operations permitted:

- (1) Food Service (i.e. handling of un-packaged or exposed food intended for individual service such as sit-down and take-out operations in restaurants, sandwich operations in retail markets and convenience stores, coffee and pastry shops, institutional kitchens);
- (2) Retail Food (i.e. handling of pre-packaged foods or the handling of un-packaged or exposed food not intended for individual service such as retail grocery and convenience stores which sell pre-packaged foods, seafood and meat markets, bakeries and bulk deli operations);
- (3) Residential kitchen for retail sale;
- (4) Residential kitchen for bed and breakfast;
- (5) Mobile / Pushcart;
- (6) Temporary food establishment;
- (7) Caterer; and/or
- (8) Other as described on application.

(2) The permit shall state:

- (a) The name and address of the food establishment;
- (b) The name of the permit holder;
- (c) The date of expiration;
- (d) Any restrictions on the type of operations allowed.

Temporary Food Establishment Permits [105 CMR 590.012(D)]

A permit for a temporary food establishment may be issued for a period of time, which shall not exceed 14 days, and the permit shall state the inclusive dates, location, and any restrictions in the operations allowed.

Mobile Food Operation Permits [105 CMR 590.012(E)]

A permit for a mobile food or pushcart operation may be issued for a period of time which shall be determined by the board of health, and the permit shall state the inclusive dates, location(s), and any restrictions in the operation allowed.

Copies of Permit [105 CMR 590.012(F)]

The permit shall be made out in duplicate. One copy shall be given to the applicant, and one shall be placed on file with the board of health.

Expiration and Renewal of Permit [105 CMR 590.012(G)]

- (1) A permit shall expire no later than one year from the date issued.
- (2) An annual food establishment permit may be renewed by applying at least 30 days prior to the expiration of the permit on a form provided by the FC-regulatory authority.

8-303 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 Conditions for Issuance [revised by 105 CMR 590.012(H)]

- (1) The board of health 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 estab-

lishment is in compliance with 105 CMR 590.000. In the case of a renewal application, the inspection must have been conducted within the time interval established by the board of health pursuant to FC 8-401.10 and 105 CMR 590.013(A).

- (2) Refusal to Issue a License: Grounds and Notice of Refusal. The Board of Health may refuse to issue a permit, initial or renewal, based on one or more of the following grounds. Each of the following grounds shall constitute full and adequate grounds to refuse to issue a permit. The notice of refusal shall provide the grounds upon which the denial is based and shall notify the applicant of the right to a hearing provided in 105 CMR 590.015(B).

- (a) Failure to submit a permit application in accordance with the board of health's procedures;
- (b) Failure to submit the required permit fee;
- (c) Denial of entry of agents of the board of health or the Department or any attempt to impede the work of a duly authorized agent of the board of health or the Department;
- (d) Providing false or misleading statements to the board of health or the Department;
- (e) The applicant operated the facility without a permit;
- (f) The applicant or, if the applicant is a corporation, a corporate officer or the owner of the facility, has been convicted of, plead guilty or *no lo contendere* to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of a crime relating to the processing, storage, distribution or sale of food in connection with the business;
- (g) The applicant or, if the applicant is a corporation, a corporate officer or the owner of the facility has engaged in conduct that endangers the public health;
- (h) Failure to pay any federal, state, or local taxes as required by law, pursuant to M.G.L. c. 62C, §49A;
- (i) Failure to comply with local regulations/ordinances related to the operation of the facility;
- (j) Failure to comply with provisions of 105 CMR 590.000;
- (k) Such other reasons not stated in 105 CMR 590.012(H)(2)(a) through (j), which pose a risk to public health and safety.

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.

8-304 Conditions of Retention

8-304.10 Responsibilities of the FC-Regulatory Authority [revised by 105 CMR 590.012(I)]

(1) At the time a permit is first issued, the FC-regulatory authority shall provide to the permit holder instructions on how to obtain the federal *1999 Food Code* and 105 CMR 590.000 so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under FC 8-304.11, that are applicable to the permit.³

(2) Failure to provide the information specified in 105 CMR 590.012(I)(1) does not prevent the FC-regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with 105 CMR 590.000 or an order, warning, or directive of the FC-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 direc-

³ Permit holders may order copies of *The Merged Food Code* by using the order form in the front cover of this book.

tives.

Notification of Changes [105 CMR 590.012(J)]

In addition to requirements set forth in FC 8-304.11 Responsibilities of the Permit Holder, the permit holder shall:

(1) Notify the board of health within 48 hours after any change in ownership, and at least 30 days prior to any change of the name, location of the food establishment or addition of a new operation and shall promptly submit to the board of health an application for a new or amended permit, together with written documentation reflecting such change.

(2) Submit plans in accordance with 105 CMR 590.011 any time an establishment is being re-modeled or a new operation added and shall promptly submit to the board of health an application if a new or amended permit is required.

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 [105 CMR 590.013]

8-401 Frequency

8-401.10 Establishing Inspection Interval [revised by 105 CMR 590.013(A)]

(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 FC-regulatory authority may increase the interval between inspections beyond 6 months if the food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule approved by the Department 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 FC-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.

Frequency of Inspections: Bed and Breakfasts [105 CMR 590.013(B)]

Bed and breakfast homes and bed and breakfast establishments holding permits shall be inspected at least once a year and as often as necessary for the enforcement of 105 CMR 590.000.

Frequency of Inspections: Vending Machine Operations [105 CMR 590.013(C)]

Vending machine operations shall be inspected by the Department as often as necessary for the enforcement of 105 CMR 590.000.

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 establish-

ment'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.

8-402 Access

8-402.11 Allowed at Reasonable Times after Due Notice [revised by 105 CMR 590.013(D)]

No prior notice of an inspection is required so long as the FC-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 FC-regulatory authority to determine if the food establishment is in compliance with the federal *1999 Food Code* by allowing access to the establishment, allowing inspection, and providing information and records specified in the federal *1999 Food Code* and to which the FC-regulatory authority is entitled according to law, during the food establishments 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.

8-403 Report of Findings

8-403.10-20 Documenting Information and Observations [revised by 105 CMR 590.013(E)]

(1) Whenever an inspection of a food establishment is made, the findings shall be recorded on a printed inspection report form, which shall summarize the requirements of 105 CMR 590.000/federal *1999 Food Code*. A prototype of an inspection form, which meets the requirements of 105 CMR 590.013(E), may be obtained from the Department. A board of health may use this form or, subject to approval by the Department, any form consistent with this prototype. Each board of health shall submit the form it adopts to the Department.

(2) If an inspection reveals that a food establishment does not comply with 105 CMR 590.000, the board of health or its agent shall notify the permit holder or person in charge of the violations and shall order the permit holder to correct the violations. The inspection report may, if so stated, constitute an order to correct, or the board of health or its authorized agent may issue a separate order. If the inspection report left at

the time of the inspection constitutes an order to correct, the agent shall notify the board of health within three days that an order was served. An order to correct shall include, but need not be limited to the following:

(a) Administrative information about the food establishment and the inspection including but not limited to:

- (1) The food establishment's legal identity, street and mailing addresses, permit holder's name and address, type of establishment and operation as specified under 105 CMR 590.012(C), inspection date, type of inspection and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and
- (2) The name of the inspector;
- (3) The date and time of the inspection;
- (4) The time frame for correction of the violations as specified under FC 8-404.11, FC 8-405.11, and FC 8-406.11;
- (5) The signature of a member of the board of health or its agent; and
- (6) The signature of the person in charge of the food establishment at the time of the inspection, or other proof of service of the order.

(b) Specific factual observations of violative conditions or other deviations from the federal *1999 Food Code* that require correction by the permit holder including but not limited to:

- (1) Nonconformance with specific provisions of the federal *1999 Food Code*;
- (2) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of the federal *1999 Food Code* specified under 105 CMR 590.003(A);
- (3) 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 105 CMR 590.003(H) through (I);
- (4) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verifica-

tion, and corrective action practices required by the FC-regulatory authority as specified under FC 8-103.12;

(5) Failure of the person in charge to provide records required by the FC-regulatory authority for determining conformance with a HACCP plan as specified under FC 8-201.14;

(6) Nonconformance with critical limits of a HACCP plan; and

(7) A determination by the inspector whether any of the violations create an imminent health hazard.

(c) A statement that the order when signed constitutes an order of the board of health to correct any violations of 105 CMR 590.000 that are indicated on the order within the time periods designated. It shall be within the discretion of the board of health whether the order shall be signed by the board of health or its agent.

(d) A statement that failure to comply with any time limits for correction may result in suspension or revocation of the food establishment permit and cessation of food establishment operations.

(e) A statement informing the permit holder of his right to a hearing before the board of health, his responsibility to request the hearing in writing within ten days of receipt of the notice, and the address of the board of health.

Food Safety Training [105 CMR 590.013(F)]

The local board of health may issue an order to the permit holder to provide additional food safety training to the person in charge, if after an order for correction has been issued, violations relating to the federal *1999 Food Code* interventions and foodborne illness risk factors are documented during a reinspection.

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 [revised by 105 CMR 590.013(G)]

The completed inspection report form and other related enforcement documents are public records as defined in M.G.L. c. 4, § 7 clause 26th and shall be made available for public disclosure, unless exempted by law, to any person who requests it pursuant to M.G.L. c. 66, § 10.

Record Retention [105 CMR 590.013(H)]

All inspection report forms and other related enforcement documents shall be maintained by the board of health for a minimum of five years or longer if otherwise required by law.

Correction of Violations – Temporary Food Establishments [105 CMR 590.013(I)]

In the case of temporary food establishments, all violations shall be corrected within a maximum of 24 hours. If violations are not corrected within the time specified, the board of health or its agent, as determined by the board of health, shall order the establishment to cease food operations immediately.

8-404 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.

8-405 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 correc-

tion of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

8-406 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.*

Permits: Suspension and Revocation [105 CMR 590.014]

Summary Suspension of Permit/Emergency Closure without a Prior Hearing [105 CMR 590.014(A)]

(1) In accordance with M.G.L. 111, §30, the board of health or its authorized agent, as determined by the board of health, may, without a prior hearing, suspend a permit to operate a food establishment or to operate one or more particular operations if an imminent health hazard is found to exist.

(2) A permit may be summarily suspended without providing prior written notice, notice of a hearing, or a hearing, provided that the right to a hearing is afforded within three business days of the request.

(3) A summary suspension order shall be in writing and shall be posted at a public entrance to the food establishment and a copy provided to the permit holder of the food establishment, pursuant to 105 CMR 590.015 (2). The order summarily suspending the permit or specific operation of the permit holder shall be immediately effective upon posting of the order at the food establishment by an authorized agent of the board of health.

(4) The summary suspension order shall state:

(a) The name and location of the food establishment and the name and address of the permit holder;

(b) That the board of health or its authorized agent, as determined by the board of health, has determined that an imminent health hazard exists, which requires the immediate suspension of the food establishment permit or the operation of one or more particular operations at the food establishment;

(c) The specific violation(s) that lead to the determination that an imminent health hazard exists;

(d) That all operations or one or more particular operations of the food establishment shall immediately cease and desist;

(e) That the emergency closure shall remain in effect until conditions cited in the order of closure are corrected and the corrections are confirmed by the board of health or its authorized agent, as determined by the board of health, through reinspection and other means as appropriate.

(f) That a written request for a hearing shall be filed with the board of health by the permit holder within ten days of receipt of the summary suspension order.

(g) That the person has the right to inspect and obtain copies of all relevant inspection reports, orders, notices, and other documentary evidence in the possession of the board of health and has the right to be represented at any hearing.

(h) The name and address of the board of health to where the written request for a hearing shall be sent.

(i) The signature of a member of the board of health or its authorized agent, as determined by the board of health.

(5) The board of health shall hold a hearing within three business days after receipt of a written request for a hearing.

(6) If no hearing is requested, the summary suspension shall remain in effect until the board of health or its authorized agent, as determined by the board of health, determines that all conditions cited in the summary suspension order are corrected.

(7) The board of health or its authorized agent, as determined by the board of health, may end

the summary suspension at any time if reasons for the suspension no longer exist.

Suspension of a Permit with Notice [105 CMR 590.014(B)]

(1) The board of health or its authorized agent, as determined by the board of health, may issue a notice to suspend a permit to operate a facility licensed under 105 CMR 590.000 or one or more particular operations of the facility. Each of the following grounds shall constitute full and adequate grounds to suspend a permit.

- (a) Failure to comply with the requirements of 105 CMR 590.000;
- (b) Denial of entry to agents of the board of health or the Department or attempts to impede the work of a duly authorized agent of the board of health or the Department;
- (c) Providing false or misleading statements or documents to the board of health or the Department or agents thereof, or keeping any misleading or false records or documents intended to satisfy the requirements of 105 CMR 590.000;
- (d) The permit holder or, if the permit holder is a corporation, a corporate officer or the owner of the facility, has been convicted of, plead guilty or *no lo contendere* to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of a crime relating to the operation of a food establishment;
- (e) The permit holder, or if the permit holder is a corporation, a corporate officer or the owner of the facility has engaged in conduct that endangers the public health;
- (f) Failure to pay any federal, state, or local taxes as required by law, pursuant to M.G.L. c. 62C, §49A;
- (g) Failure to comply with local regulations/ordinances related to the operation of the facility; or
- (h) Such other reasons not stated in 105 CMR 590.014(B)(1)(a) through (g), which pose a risk to public health and safety.

(2) The order to suspend the permit shall be given by the board of health or its authorized agent, as determined by the local board of health, to the permit holder in writing and shall specify:

- (a) The name and location of the permit holder;

- (b) The specific violation(s) for which the permit or operation is to be suspended;
- (c) The date the suspension will become effective;
- (d) That the suspension shall remain in effect until the conditions cited in the order to suspend are corrected and their correction is confirmed by the board of health or its authorized agent, as determined by the local board of health, through reinspection and any other means as appropriate;
- (e) Notice of a right to a hearing before the board of health if a written request for hearing is filed with the board of health by the permit holder within ten days of receipt of the order to suspend, the right to inspect and obtain copies of all relevant inspection reports, orders, notices and other documentary information in the possession of the board of health, and the right to be represented at the hearing. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies this notice requirement provided that there is adequate notice of the hearing date, and the notice fully informs the permit holder of the rights listed above;
- (f) The name and address of the board of health where the written request for a hearing shall be sent;
- (g) If no request for a hearing is filed within the ten-day period, the board of health may impose the suspension order; and
- (h) The signature of a member of the board of health or its agent, as determined by the board of health.

Revocation of a Permit with Notice [105 CMR 590.014(C)]

(1) The board of health or its authorized agent, as determined by the board of health, may issue an order to revoke a permit or refuse to renew a permit to operate a food establishment or terminate one or more particular operations of the establishment for:

- (a) Serious or repeated violations of any of the requirements of 105 CMR 590.000;
- (b) Any grounds cited in 105 CMR 590.014(B)(1) (b) through (h), which in the discretion of the board of health or the Department are sufficiently serious to require revocation.

(2) The order to revoke the permit shall be given by the board of health or its authorized agent, as determined by the board of health, to the permit holder in writing and shall specify:

- (a) The name and location of the food establishment and the name and address of the permit holder;
- (b) The specific violation(s) for which the permit or operation is to be suspended;
- (c) The date the revocation will become effective. The revocation of a permit shall be effective for a period of one year from the date of the final order, unless the board of health orders otherwise;
- (d) Notice of a right to a hearing before the board of health if a written request for hearing is filed with the board of health by the permit holder within ten days of receipt of the order to revoke, the right to inspect and obtain copies of all relevant inspection reports, orders, notices and other documentary information in the possession of the board of health, and the right to be represented at the hearing. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies this notice requirement provided that there is adequate notice of the hearing date, and the notice fully informs the permit holder of the rights listed above;
- (e) The name and address of the board of health to where the written request for a hearing shall be sent;
- (f) If no request for a hearing is filed within the ten-day period, the board of health may impose the revocation order; and
- (g) The signature of a member of the board of health or its agent, as determined by the board of health.

Service of Orders/Hearings [105 CMR 590.015]

Service of Orders [105 CMR 590.015(A)]

(1) Each applicant/permit holder shall provide the board of health with his complete and correct mailing address on its application for a permit. Each permit holder shall notify the board of health within seven calendar days of any change in the mailing address. The address provided to the board of health shall be deemed the appro-

priate address for the service of all orders and notices from the board of health.

(2) Orders for summary suspension shall be served on the permit holder or his authorized agent by:

- (a) Posting the order on a public entrance to the food establishment; and,
- (b) In hand service to the permit holder or by sending a copy of the order or notice by registered or certified mail, return receipt requested to the address indicated in 105 CMR 590.015 (A)(1).

(3) All orders, other than orders for summary suspension, shall be served on the applicant or permit holder or his authorized agent as follows:

- (a) By sending a copy of the order by registered or certified mail, return receipt requested, at the address indicated in 105 CMR 590.015 (A)(1), or
- (b) Personally, by any person authorized to serve civil process.
- (c) Only if the aforementioned methods are unsuccessful, service may be made as follows:
 - (1) By any person authorized to serve civil process by leaving a copy of the order at his last and usual place of abode.
 - (2) If the last and usual place of abode is unknown, service may be made by posting a copy of the order in a conspicuous place on or about the premises.

(4) 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 of the permit holder.

Hearings [105 CMR 590.015(B)]

(1) The person or persons to whom any order or denial of approval pursuant to 105 CMR 590.000 has been directed, may request a hearing before the board of health. Such request shall be in writing and shall be filed in the office of the board of health within ten days after receipt of the order or notice. Upon receipt of such request the board of health shall set a time and a place for such hearing and shall inform the peti-

tioner thereof in writing. Except in the case of a summary suspension under 105 CMR 590.014(A), the hearing shall be commenced not later than ten days after the day on which the request was filed. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies the hearing requirement provided that it gives adequate notice of the hearing date. However, upon application of the petitioner the board of health may postpone the date of the hearing beyond the ten-day period or the set date, for a reasonable time if in the judgment of the board of health the petitioner has submitted a good and sufficient reason for such postponement.

(2) At the hearing the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn. Any oral testimony given at a hearing shall be recorded verbatim (tape recording shall suffice).

(3) After the hearing, the board of health shall make a final decision based upon the complete hearing record, and shall inform the petitioner in writing of the decision. If the board of health sustains or modifies an order, it shall be carried out within the time period allotted in the original order or in the modification.

(4) Every notice, order, decision and other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the board of health.

(5) A copy of the transcript or tape recording shall be provided upon request and a reasonable fee may be charged for the cost of providing such copy.

(6) Any person aggrieved by the final decision of the board of health may seek relief in a court of competent jurisdiction in the Commonwealth.

Examination and Embargo of Food **[105 CMR 590.016]**

Examination and Sampling [105 CMR 590.016(A)]

Food may be examined or sampled by the board

of health pursuant to M.G.L. c. 94, §§ 146 and 189 for the purpose of determining compliance with 105 CMR 590.000

Embargo Notice [105 CMR 590.016(B)]

The board of health may place an embargo on any food, which it knows, or has probable cause to believe is adulterated or misbranded provided that:

- (1) A written notice is issued to the holder of the permit to operate the food establishment or to the person in charge; and
- (2) The notice specifies in detail the reason(s) for the embargo order.

Embargo Tag [105 CMR 590.016(C)]

The board of health shall tag, label, or otherwise identify any food subject to the embargo order.

The tag or label shall state that the food:

- (1) Is believed to be adulterated or misbranded;
- (2) Has been embargoed for ten days; and
- (3) Cannot be removed, used, sold or disposed of without permission of the board of health.

Storage or Destruction of Embargoed Food [105 CMR 590.016(D)]

The board of health shall permit storage of food under conditions specified in the embargo order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

Condemnation, Disposal or Reconditioning [105 CMR 590.016(E)]

If the food subject to embargo is found to be adulterated or misbranded, the board of health shall take such steps as are necessary, pursuant to M.G.L. c. 94, §§ 146 or 189A, to effect the condemnation and disposal or reconditioning of the food.

Embargo Release [105 CMR 590.016(F)]

If the food subject to embargo is not found to be adulterated or misbranded it shall be released.

8-5 Prevention of Foodborne Disease Transmission by Employees [105 CMR 590.017]

8-501 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; or
- (C) Closing the food establishment by summarily suspending a permit to operate in accordance with law.

Department Notification/Investigation and Control [105 CMR 590.017(A)]

In addition to requirements in FC 8-501.10 and FC 8-501.20, the local Board of Health shall:

(1) Immediately notify the Department of all confirmed and suspected foodborne illness outbreaks within 24 hours on a form provided by the Department and shall keep the Department informed until the investigation has been completed; and

(2) Take any other action required by 105 CMR 300.000: *Reportable Diseases and Isolation and Quarantine Requirements*, except that 105 CMR 590.017(B) shall supercede the Minimum Period of Isolation of Patient established for *E.coli* O157:H7 and *Shigella* in 105 CMR 300.200 *Isolation and Quarantine Requirements*.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order

Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

- (A) States the reasons for the restriction or exclusion that is ordered;
- (B) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
- (D) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

8-501.40 Release of Food Employee from Restriction or Exclusion [revised by 105 CMR 590.017(B)]

The FC-regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:

(1) A food employee who was infected with *Salmonella* Typhi if the food employee's stools are negative for *S. Typhi* based on testing of at least 3 consecutive stool specimen cultures that are taken:

- (a) Not earlier than 1 month after onset,
- (b) At least 48 hours after discontinuance of antibiotics, and
- (c) At least 48 hours apart; and

(2) If one of the cultures taken as specified in 105 CMR 590.017(B) (1) 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.

(3) 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:

- (a) Not earlier than 48 hours after discontinuance of antibiotics; and
- (b) At least 48 hours apart.

(4) A food employee who was infected with hepatitis A virus if:

- (a) The food employee is no longer febrile; or
- (b) It has been at least 1 week since the onset of symptoms.

Vending Machines [105 CMR 590.018]

License [105 CMR 590.018(A)]

(1) No person shall conduct a vending machine operation without a license issued by the Commissioner.

(2) A license shall expire no later than one (1) year from the date issued.

(3) A license may be renewed by applying at least thirty (30) days prior to the expiration of the license.

License: Application [105 CMR 590.018(B)]

(1) Any person desiring to conduct a vending machine operation shall make written application for a license to the Commissioner on a form provided by him. The application shall state whether the applicant is an individual, partnership, corporation or other entity; the name and address of the applicant, and if the applicant is a partnership, the name and address of each partner. The application shall also state the address of the applicant's principal place of business; of each preparation area servicing more than one building in which vending machines are located; and of each food storage area where food is stored for use in more than one building in which vending machines are located. The application shall also state the total number of vending machines owned by the applicant and in use at all machine locations. The application shall be signed by the applicant under the pains and penalties of perjury.

(2) The applicant shall forward to the Division a list of the names and addresses of suppliers from

whom he purchases potentially hazardous food for direct use in vending machines.

License: Issuance, Inspection, Fees [105 CMR 590.018(C)]

Upon receipt of an application for a new license, the Commissioner or his agent shall make an inspection of the preparation area; of supply storage, servicing, cleaning and sanitizing facilities; of transport facilities; and of representative equipment and machine locations to determine compliance with the provisions of 105 CMR 590.000 and with the applicable provisions of M.G.L. c.94. The Commissioner, after determining compliance by the operator and upon receipt of the appropriate fee, shall issue a license to conduct a vending machine operation. Such license shall not be transferable.

License: Display of Operator's License Number [105 CMR 590.018(D)]

An easily readable label or sign bearing the operator's license number, company name, and service telephone number shall be conspicuously displayed at each machine location.

Operator's List of Vending Machine Locations and Preparation Areas [105 CMR 590.018(E)]

Each licensee shall keep a list of all locations within the Commonwealth wherein vending machines are operated by him and of all preparation areas servicing such vending machines. Such information shall be available to the Commissioner or his agent upon his request.

Inspection of Vending Machines, Premises and Preparation Areas [105 CMR 590.018(F)]

The Commissioner or his agent may, after presenting proper identification, enter, at any reasonable time, any premises wherein vending machines are operated, or any preparation area servicing such machines for the purpose of inspecting the same. The licensee shall make provision for the Commissioner or his agent to have access, either in company with an employee of the operator or otherwise, to the interior of any vending machine operated by him.

Food Establishments Outside the Commonwealth Servicing Vending Machines Within the Commonwealth [105 CMR 590.018(G)]

Food, beverages and ingredients processed and prepared in food establishments or food

processing plants outside the Commonwealth may be sold in vending machines within the Commonwealth if such establishments conform to the provisions of the law governing such establishments within the Commonwealth, and if the operator of said vending machines is licensed under 105 CMR 590.000. To determine the extent of compliance with such provisions, the Commissioner or his agent may accept reports from the responsible authority in such jurisdictions outside the Commonwealth where such food service, retail food or food processing plants are located.

Enforcement [105 CMR 590.018(H)]

105 CMR 590.013 through 590.021 are applicable to vending machines except to the extent that the regulatory authority shall be the Department.

Criminal Penalties [105 CMR 590.019]

Violation of 105 CMR 590.000 Provisions [105 CMR 590.019(A)]

Any person who violates any provision of 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense unless a different penalty is set by statute.

Failure to Comply with Orders [105 CMR 590.019(B)]

Any person who fails to comply with any order issued pursuant to 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense. Each day's failure to comply with an order shall constitute a separate offense.

Advisory Committee [105 CMR 590.020]

The Director may appoint an advisory committee for food establishments, which may consist of 12 members. At least two members should be health officers and two members should be board of health members who have been nominated by existing professional organizations comprised of health officers and/or board of health members and at least three members

should be persons active in the food service and retail food industry who have been nominated by existing trade organizations. The committee may advise the Director on matters of policy; may be consulted by the Director prior to the issuance of rules and regulations; and may perform such other duties as the Director may request.

Severability [105 CMR 590.021]

If any provision of 105 CMR 590.000 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 105 CMR 590.000, which shall remain in full force and effect; and to this end the provisions of 105 CMR 590.000 are hereby declared severable.

Regulatory Authority

105 CMR 590.000 M.G.L. c. 94 §§ 305A, 305B, 146, 189 and 189A; c. 111. §§ 5 and 127A; c. 140 § 6B.

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