EXHIBIT D

DEPARTMENT OF HEALTH

SUBJECT: Rules for Food Establishments (Concerning 20 CAR pts. 190, 191, 192, 193, 194, 195, 196, 197)

DESCRIPTION: The proposed amendments are to comply with Acts 2025, Nos. 125 and 698, regarding sale of raw milk, changes to the Federal Food, Drug, and Cosmetic Act, and recommended changes to comply with the Code of Arkansas Rules.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 30, 2026. The agency provided the following comment summary:

Commenter's Name: Renee Smith, Arkansas Hospitality Association
COMMENT: Believe it or not, I have read the Arkansas Food Code draft you sent and it looks great! I'm happy it follows so closely to the FDA food code. This will surely help me teach the ServSafe classes. When do you expect it to be live? **RESPONSE:** Proceed to adoption.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

Q. The questionnaire says that these rules are promulgated in response to two acts regarding raw milk, but I don't see anything in the changes related to raw milk. Were there changes made related to raw milk that the Department decided not to go forward with, or are the wrong act numbers listed, or am I missing something?
A. The changes didn't speak directly to raw milk, but the changes below were directed at that legislation and to apply to any food that did not require a license, as similarly done under the Food Freedom Act to keep the food types separate.

Here are all changes made that were due to raw milk legislation:

20 CAR 192-302

Amended paragraph (A)(i) to add subparagraph (c):"Fruits and vegetables before they are washed" to the list of foods that need to be separated from raw meats.

Renumbered former paragraph (A)(ii) to new paragraph (A)(i)(d).

Added paragraph (1)(I) to require separation of lawfully manufactured foods without regulatory inspection from foods that have been produced, prepared, or distributed under regulatory inspection.

Amended paragraph (e)(2) and (3) to include reference for the use of Produce Wash testing devices.

20 CAR 192-601

Added paragraph (b)(3) to require honest presentation by separating lawfully manufactured foods without regulatory inspection from foods that have been produced, prepared, or distributed under regulatory inspection.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that these rules have no financial impact.

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate rules regarding the enforcement of the Arkansas Food, Drug, and Cosmetic Act and to make such rules "conform, insofar as practicable, with those promulgated under the Federal Food, Drug, and Cosmetic Act." Ark. Code Ann. § 20-56-219(a). The Board also has authority to promulgate reasonable rules and define and establish standards for dairy products included in Arkansas Code Title 20, Chapter 59, Subchapter 2, regarding the regulation of manufacture and sale of dairy products. Ark. Code Ann. § 20-59-204(b).

This rule is promulgated in response to Acts 125 and 698 of 2025. Act 125, sponsored by Representative Cameron Cooper, amended the law concerning the incidental sale of goat milk, sheep milk, and whole milk that has not been pasteurized and clarified that the incidental sale of raw milk is not limited to a sale on the farm. Act 698, sponsored by Senator Alan Clark, amended the laws concerning sales of raw milk and allowed sales of raw milk and raw milk products at locations other than the farm where the raw milk or raw milk product is produced.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Arkansas Department of Health
BOARD/COMMISSION Division for Local Public Health, Public Health Section
BOARD/COMMISSION DIRECTOR Jeff Jackson, Section Chief III
CONTACT PERSON S. Craig Smith, Attorney
ADDRESS 4815 West Markham Street, Slot 31, Little Rock, AR 72205
PHONE NO. (501) 534-6293 **EMAIL** Stephan.Smith@arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
S. Craig Smith; Jeff Jackson
PRESENTER EMAIL(S) Stephan.Smith@arkansas.gov; Jeff.Jackson@arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

****

1. What is the official title of this rule?
Rules for Food Establishments

2. What is the subject of the proposed rule? Provides rules for food preparation and service to the public.

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire?_____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☑ No ☐

If yes, please provide the state statute and/or rule citation.

Ark. Code §§ 20-56-201 to 20-56-223; §§ 20-57-201 to 20-57-208

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☑

If yes, please list the rules being repealed.
If no, please explain.

The proposed amendments are to comply with Acts 2025, Nos. 125 and 698, regarding sale of raw milk, changes to the Federal Food, Drug, and Cosmetic Act, and recommended changes to comply with the Code of Arkansas Rules.

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☐ No ☑
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☑ No ☐
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code §§ 20-56-201 to 20-56-223; §§ 20-57-201 to 20-57-208

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☑ No ☐

If yes, please provide the year of the act(s) and act number(s).

Acts 2025, Nos. 125 and 698

11. What is the reason for this proposed rule? Why is it necessary?

The proposed amendments are to comply with Acts 2025, Nos. 125 and 698, regarding sale of raw milk, changes to the Federal Food, Drug, and Cosmetic Act, and recommended changes to comply with the Code of Arkansas Rules.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules

13. Will a public hearing be held on this proposed rule? Yes ☐ No ☑

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 09/30/2026

15. What is the proposed effective date for this rule? 11/1/2026

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Health
BOARD/COMMISSION Division for Local Public Health, Public Health Section
PERSON COMPLETING THIS STATEMENT S. Craig Smith, Attorney
TELEPHONE NO. (501) 534-9293 **EMAIL** Stephan.Smith@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rules for Food Establishments

1. Does this proposed, amended, or repealed rule have a financial impact?
   Yes ☐ No ☑

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
   Yes ☑ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☑ No ☐

   If no, please explain:

   (a) how the additional benefits of the more costly rule justify its additional cost;

   (b) the reason for adoption of the more costly rule;

   (c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

   (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	$0.00	Total	$0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	$0.00	Total	$0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year	**Next Fiscal Year**
$ 0.00	$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year	**Next Fiscal Year**
$ 0.00	$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☑

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Rules Pertaining to Retail Food Establishments

Summary of Changes

August 2026

In addition to necessary changes to the effective date and Secretary of Health name as well as simple grammatical and technical corrections, the following changes are recommended for the Rules Pertaining to Retail Food Establishments:

Title

- Changed title of the rule from *Rules Pertaining to Retail Food Establishments* to *Rules Pertaining to Food Establishments* to better align with the language in Arkansas Code Annotated.

Comprehensive Changes

- Removed asterisks from subparagraph titles. Asterisks once indicated that the subchapter was a "critical" food safety practice. This denotation was changed in a previous update to superscript "P" and "Pf" and the asterisks are no longer necessary.

Part 190

20 CAR 190-201

- Amended the definition of "Certification Number" to align with the National Shellfish Sanitation Program (NSSP) Model Ordinance and include all the certification and permit codes that may be found on a shellfish tag or label.
- Amended the definition of the term "Commingle" to align with the NSSP Model Ordinance.
- Added a new definition of "In-shell product" to mean non living, processed shellfish with one or both shells present.
- Added the definition of the term "Intact Meat" to clarify that beef products that are vacuum tumbled with solutions are not considered intact meats.
- Amended the term "Major Food Allergen" to add Sesame as the 9th major food allergen that became effective nationally on January 1, 2023.
- Amended the definition of the term "Mechanically Tenderized" to be consistent with the United States Department of Agriculture Food Safety Inspection Service (USDA FSIS) description of "Mechanically Tenderized" in the 2015 Final Rule titled Descriptive Designation of Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Product (80 CFR 28153). The rule established labeling requirement for raw or partially cooked mechanically tenderized beef products and clarified that products injected with marinade or solution are considered mechanically tenderized.
- Amended the definition of the term "Molluscan Shellfish" to clarify that the term is inclusive of shellstock, in-shell product, and shucked shellfish.
- Amended the definition of "Poisonous or toxic material" to include a new fifth category "Restricted Use Pesticide".

- Amended the definition of the term “Ready-to-Eat” to replace “Fruits and Vegetables” with “Plant foods” in paragraph (B)(iii).
- Amended to revise the definition of the term “Ready-to-Eat Food” to indicate what Ready-to-Eat Food does not include.
- Amended the definition of the term “Reduced oxygen packaging” to delete the phrase “which have the air expelled” from the paragraph on cook-chill packaging.
- Amended the definition of “Shellstock” to clarify that it is live molluscan shellfish in the shell.
- Amended the term “Shucked Shellfish” to clarify that both shells of this product are removed.
- Removed the definition of “Table-mounted equipment” as that phrase was no longer necessary due to defining “Counter-mounted equipment” in a previous revision.
- Added a new definition for “Tobacco Product” to have the meaning stated in the Federal Food, Drug and Cosmetic Act clarifying that along with smokeless tobacco and cigarettes; vapes, e-cigarettes, and similar devices are not allowed in a food preparation area.

Part 191

20 CAR 191-101

- Added new paragraph (c) to exempt certain retail food establishments from having a designated Person-In-Charge in situations where the Department has deemed a food establishment to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of their operation and extent of food preparation.

20 CAR 191-102

- Technical correction to capitalize letters indicating what “HACCP” stands for.
- Modified the language for the 12-month grace period for complying with the Certified Food Protection Manager requirement for clarity.
- Added clarification to (c)(2) to align with the requirement found in (b)(1)(A) that the holder of a Certified Food Protection Manager certification must have supervisory authority over the food safety operations to be deemed to comply with this subpart.

20 CAR 191-103

- Amended to add new paragraphs (9) & (10) to address additional duty requirements for the Person-In-Charge to ensure food employees are properly maintaining the temperatures of time/temperature control for safety foods during hot holding, cold holding and thawing and redesignated paragraphs (9)-(15) as (11)-(17).
- Amended paragraph (13) (Now paragraph (15)) to indicate what food allergy awareness includes.

20 CAR 191-201

- Replaced the term “Salmonella Typhi” with “Typhoid fever” and replaced the term nontyphoidal Salmonella with “Salmonella (nontyphoidal)” to align more accurately with the FDA Model Code and accepted methods of referencing these diseases.
- Changed the term “prevent” to “reduce” to reflect the goal of the rule more accurately.

20 CAR 191-301

- Amended to combine existing requirements and replaced the term “after using ‘tobacco’” with “tobacco products” for when hands are required to be washed.

20 CAR 191-401

- Amended to replace the term “tobacco” with “tobacco products”.
- Added a new paragraph clarifying that, if used, bandages and finger cots shall be covered with a single use glove.

20 CAR 191-501

- Added the term “written” to clarify that the requirement for procedures related to the cleaning of vomit/diarrheal events need to be written.

Part 192

20 CAR 192-101

- Corrected cross reference to 20 CAR 192-601 (b) from 20 CAR 192-602 (b).

20 CAR 192-201

- Amended paragraph (3) to remove the cross reference to 20 CAR 192-202 (g).
- Amended paragraph (5)(A) to indicate the type of steak to obtain from a food processing plant if the firm intends to purchase “Whole Muscle Intact Beef”.
- Amended paragraph (5)(C)(i) to remove “labeled by” and replace with “received from a” to clarify what is received from a food processing plant.
- Deleted paragraph (5)(C)(iii) as it is no longer applicable to this paragraph.
- Made technical corrections to remove the word “Shell” from (A)(7) and removed the words “and horses” from (g)(1)(b)to be consistent with other areas of the rule and added new paragraph (B) to clarify when this section does not apply.

20 CAR 192-202

- Amended to re-number and merge paragraph (i) with paragraph (h) as the new paragraph (h) and renumbered existing paragraphs to clarify the identification provisions under one section and remove redundant listing of terms/forms/conditions of labeling/tagging and replaces the cross-reference to the model shellfish ordinance.

- Re-numbered paragraph (i) as the as the new paragraph (g) to clarify flow of product from receipt through service and record keeping. Removed the term “Shellfish” and replaced with “Shellstock”.

20 CAR 192-203

- Amended to replace the term “Shellstock with “Molluscan Shellfish” throughout this section.
- Added paragraph (a)(2) to include language from previous rule to clarify the prohibition on commingling in original containers.
- Amended new paragraph (a)(3) to include In-Shell Product and change the term “lot” to “container” throughout this section.
- Deleted paragraphs (b)(3)(B) (i) and (ii) and added new cross reference to (b)(3)(A)

20 CAR 192-204

- Added new subpart 20-CAR 192-204-Food Donation to allow food donation under Act 942.

20 CAR 192-302

- Amended paragraph (A)(i) to add subparagraph (c):“Fruits and vegetables before they are washed” to the list of foods that need to be separated from raw meats.
- Renumbered former paragraph (A)(ii) to new paragraph (A)(i)(d).
- Added paragraph (1)(I) to require separation of lawfully manufactured foods without regulatory inspection from foods that have been produced, prepared, or distributed under regulatory inspection.
- Amended paragraph (e)(2) and (3) to include reference for the use of Produce Wash testing devices.

20 CAR 192-305

- Amended (b)(2) to revise risk designation from Core to Priority Foundation.

20 CAR 192-401

- Revised (a)(1)(B) to increase the time required from 15 seconds to 17 seconds and deleted the terms “mechanically tenderized” and “injected” and replace with the term “non-intact meat”. Also removed the term “meats” from the listing of comminuted meats as it is already included in the definition under the term “non-intact meat”.
- Revised (a)(1)(C) to remove the time required from 15 seconds to less than one second (instantaneous).
- Revised (C)(2)(a) and (b) to align with the Food Safety and Inspection (FSIS) Appendix A and B Guidance Documents.
- Amended (C)(3)(B) to align with the Food Safety and Inspection Service (FSIS) labeling requirements for mechanically tenderized beef products. \
- Amended to add a new paragraph (e) addressing manufactured food cooking instructions.

20 CAR 192-501

- Amended (c)(1)(C)(i) to add a new cross reference under Thawing to the new paragraph (e).
- Amended (c)(1)(A)-(C) to re-designate from a Core item to a Priority Foundation (Pf) item.
- Amended paragraph (g)(7)(A) to update the existing cross reference of “21 CFR 110” to “21 CFR 117”.
- Added new subparagraph (1)(B)(I,ii,iii,iv) to address Ready-to-Eat produce or hermetically sealed food that is rendered Time/Temperature Control for Safety Food upon cutting, chopping, or opening of a hermetically sealed container to begin at 70F or less and remain at 70°F or less within a maximum of 4 hours.
- Re-designated existing paragraphs (1)(B,C,D) as (C,D,E).
- Amended (d)(2)(E)(iii) to address cook-chill/sous vide products cooled to 5°C(41°F) in the sealed package or bag as specified under 3-501.14 and subsequently cooled to 1°C(34°F) and moved to 5°C(41°F) holding temperature and held for a max of 7 days. Renumerated paragraph (iii) to (iv).
- Amended (c)(3)(B) to add a cross reference to (a)(2)(A)(v) to address major food allergen labeling in bulk food available for consumer dispensing.
- Added new paragraph (b)(3) to inform consumers of major food allergens in unpackaged foods via written means.
- Amended paragraph (3) to add a new sub paragraph (D) with cross reference to the new 20 CAR 192-401 (e) Manufacturer Cooking Instructions. Additionally added “meringue” to this section as foods that should be made with pasteurized eggs when served to highly susceptible populations and removed the term “shell” to align with other references to raw eggs throughout the rule.

20 CAR 192-601

- Added paragraph (b)(3) to require honest presentation by separating lawfully manufactured foods without regulatory inspection from foods that have been produced, prepared, or distributed under regulatory inspection.

Part 193

20 CAR 193-205

- Amended to clarify that equipment that has been certified for conformance to an appropriate American National Standard is deemed to comply with the equipment sanitation requirements of this rule.

20 CAR 193-303

- Added to address cleaning agents and sanitizers availability during all hours of operation.

20 CAR 193-401

- Amended to add the risk designation of Priority Foundation (Pf) that was inadvertently left out of the previous code.

20 CAR 193-903

- Amended (A)(2) to revise risk designation from Core to Priority Foundation (Pf).

Part 194

20 CAR 194-202

- Amended (b)(1) to revise hot water temperature at the hand sink from at least 38°C (100°F) to at least 29.4°C(85°F).

Part 195

20 CAR 195-402

- Amended (a) to include the new term “tobacco products”.

20 CAR 195-501

- Amended to add new exception paragraph (o) to allow for pet dogs in outdoor dining areas, where approved.

Part 196

20 CAR 196-202

- Amended paragraph (b)(2) to remove “Restricted Use Pesticide” (RUP) as the definition of Poisonous or Toxic Materials has been revised to include RUP as the fifth category.

20 CAR 196-203

- Amended to include the prohibition of storage of equipment, utensils, linens, single-use, or single-service articles in containers previously used for storing toxic chemicals. The section previously only mentioned the prohibition of storing food in these containers.

20 CAR 196-204

- Removed specific reference to ozone as an anti-microbial agent used in the treatment storage and processing of fruits and vegetables to be inclusive of all washing chemicals and antimicrobial agents.
- Amended to replace the reference to 21 CFR 181 with the Federal Food Drug and Cosmetic Act 201 (s)(4).

20 CAR 196-207

- Amended language to be consistent with other areas of the code. Rule did not change.

Part 197

20 CAR 197-101

- Amended (a) to include “or donated” in the application of these Rules in public health protection.

20 Car 197-103

- Amended subparagraph (c)(1) requiring facilities that have been issued a variance from these Rules to maintain a copy of the approval at the retail food establishment and re-numbered pre-existing subparagraphs.

20 CAR 197-201

- Amended (b)(4) as part of the sentence requiring “manufacturers, model numbers” be included in plan submission that was inadvertently left of in the previous Rule.
- Amended to revise and clarify the language regarding what a HACCP plan is required to include.

20 CAR 197-401

- Amended to cross-reference new language in 20 CAR 197-103 (c)(2) and (3)

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health (ADH) is accepting public comments on the Rules Pertaining to Retail Food Establishments from August 28, 2026 to September 30, 2026. The comment period is provided to allow interested parties and the public to provide any comments. The proposed changes align with the most recent edition of the FDA Model Food Code (2022), ensuring our rules reflect current industry best practices and the latest science-based knowledge related to public health and food safety. The proposed rule revision with a summary of changes can be viewed online at https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules or you may request a copy from our office at 501-661-2171.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Comments/Slot 46, 4815 West Markham, Little Rock Arkansas, 72205, or emailed to ADH.EHPrulecomments@Arkansas.gov.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments

Part 190. Purpose and Definitions

Subpart 1. Title, Intent, Scope

20 CAR § 190-101. Title.

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

20 CAR § 190-102. Intent.

Food safety, illness prevention, and honest presentation. The purpose of this subchapter is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

20 CAR § 190-103. Scope.

Statement. This subchapter establishes definitions, sets standards for management and personnel, food operations, and equipment and facilities, and provides for retail food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.

Subpart 2. Definitions

20 CAR § 190-201. Applicability and terms defined — Statement of application of listing of terms.

(a) The following definitions apply in the interpretation and application of this subchapter.

(b) As used in this subchapter, each of the terms listed this subsection shall have the meaning stated below:

(1)(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, recertification, 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 Section 201(t) of the Federal Food, Drug, and Cosmetic Act, and 21 C.F.R. § 170.3(e)(1).

(B) "Color additive" has the meaning stated in Section 201(t) of the Federal Food, Drug, and Cosmetic Act, and 21 C.F.R. § ~~1~~70.3(~~e)(4);~~f)

(3) "Adulterated" has the meaning stated in Section 402 of the Federal Food, Drug, and Cosmetic Act;

(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) "Asymptomatic" means without obvious symptoms, not showing or producing indications of a disease or other medical condition, such as an individual

infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(B) "Asymptomatic" includes not showing symptoms because symptoms have resolved or subsided or because symptoms never manifested;

(6) "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;

(7) "Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development, after which it is removed from incubation before hatching;

(8) "Bed and breakfast" means an establishment offering lodging and breakfast which must comply with this subchapter if its retail food establishment is operated in connection with six (6) or more sleeping rooms and/or more than ten (10) people;

(9) "Beverage" means a liquid for drinking, including water;

(10) "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;

(11) "Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material;

(12) "Certification number" means a unique ~~combination of letters and~~ number~~s~~ assigned by the~~a~~ shellfish control authority to ~~a molluscan shellfish~~each dealer for each location. Each certification number shall consist of a one-to-five digit Arabic number preceded by the two letter State abbreviation and followed by a two-letter abbreviation for the type of activity or activities the dealer is qualified to perform in accordance with the provisions of the ~~according to the provisions of the~~ National Shellfish Sanitation Program using the terms:

(A) Certifications:

(i) Shucker Packeer (SP);

(ii) Repacker (RP);

(iii) Shellstock Shipper (SS);

(iv) Reshipper (RS); and

(v) Depuration (DP);

(B) Permits:

(i) Post-Harvest Processing (PHP);

(ii) Aquaculture (AQ);

(iii) Wet Storage (WS);

(13)(A) "C.F.R." means the Code of Federal Regulations.

(B) Citations in this subchapter to the Code of Federal Regulations refer sequentially to the title, part, and section numbers, such as 40 C.F.R. § 180.194 refers to Title 40, Part 180, Section 194;

(14)(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;

(15) "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 Government Publishing Office; and

(B) Contains Food and Drug Administration rules in Title 21 of the Code of Federal Regulations, United States Department of Agriculture rules in Title 7 and Title 9 of the Code of Federal Regulations, Environmental Protection Agency rules in Title 40 of the Code of Federal Regulations, and Fish and Wildlife Service rules in Title 50 of the Code of Federal Regulations;

(16)(A) "Coffee kiosk" means a retail food establishment limited to the preparation and service of coffee-based beverages.

(B) Items that are offered for sale that are not coffee-based beverages must be offered in prepackaged form and not require refrigeration;

(17) "Commingle" means ~~to combine:~~

~~(A) Shellstock harvested on different days or from different growing areas as identified on the tag or label; or~~

~~(B) Shucked shellfish from containers with different container codes or different shucking dates;~~the act of combining different lots of shellfish.

(18)(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 ~~G~~gefilte fish, gyros, ground beef, and sausage, and a mixture of two (2) or more types of meat that have been reduced in size and combined, such as sausages made from two (2) or more meats;

(19) "Commissary" means a catering operation, restaurant, central preparation facility, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored;

(20) "Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title I of the Americans with Disabilities Act of 1990;

(21) "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;

(22) "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 retail food establishment or food processing plant, and does not offer the food for resale;

(23)(A) "Core item" means a provision in this subchapter that is not designated as a priority item or a priority foundation item.

(B) "Core item" includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures-, facilities or structures, equipment design, or general maintenance;

(24) "Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning and sanitizing solutions, and other conditions of the use environment;

(25) "Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf;

(26) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk;

(27) "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;

(28)(A) "Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn.

(B) The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard.

(C) The term "leafy greens" does not include herbs such as cilantro or parsley;

(29) "Day care family home" means a facility where children are cared for in a caregiver's own family residence which routinely serves more than ten (10) children with a maximum of sixteen (16) under the purview of the Childcare Facility Licensing Act, Acts 1969, No. 434, which must meet the requirements of this subchapter;

(30) "Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program;

(31) "Disclosure" means a written statement that clearly identifies the animal-derived foods which are or can be ordered raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens;

(32)(A) "Drinking water" means water that meets 40 C.F.R. pt. 141, National Primary Drinking Water Regulations.

(B) "Drinking water" is traditionally known as "potable water."

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

(33) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not time/temperature control for safety food and dry goods such as single-service items;

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

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

(ii) Is ~~in~~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 in subdivision (b)(34)(C) of this section to different situations in which varying degrees of cleanability are required such as the:

(i) Appropriateness of stainless steel for food preparation surfaces as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; and

(ii) 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;

(35) "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;

(36)(A) "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey.

(B) "Egg" does not include:

(i) A balut;

(ii) The egg of a reptile species such as alligator; or

(iii) An egg product;

(37)(A) "Egg product" means all or a portion of the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs.

(B) "Egg product" does not include food which contains eggs only in a relatively small proportion such as cake mixes;

(38) "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 retail food establishment;

(39) "EPA" means the United States Environmental Protection Agency;

(40)(A) "Equipment" means an article that is used in the operation of a retail 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 apparatuses 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;

(41) "Exclude" means to prevent a person from working as an employee in a retail food establishment or entering a retail food establishment as an employee;

(42) "FDA" means the United States Food and Drug Administration;

(43)(A) "Fish" means the fresh or saltwater finfish, crustaceans, and other forms of aquatic life, including alligator, frog, aquatic turtle, jellyfish, sea cucumber, 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;

(44) "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;

(45) "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;

(46) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces;

(47)(A) "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or retail food establishments.

(B) "Food processing plant" does not include a retail food establishment;

(48) "Food product" means any substance in liquid, concentrated, solid, frozen, dried, dehydrated, or other form that is sold for ingestion or chewing by humans and is consumed for its taste, nutritional value, or both;

(~~48~~49) "Foodborne disease outbreak" means the occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food;

(~~49~~50)(A) "Game animal" means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 C.F.R. pt. 301, Definitions, or as poultry or fish.

(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;

(~~50~~51) "General-use pesticide" means a pesticide that is not classified by the Environmental Protection Agency for restricted use as specified in 40 C.F.R. § 152.175, Pesticides Classified for Restricted Use;

(52) "Gleaner" means a person who harvests an agriculture crop that has been donated by the owner for: (A) Free distribution to people; or (B) Donation to a church, religious organization, or other nonprofit organization for ultimate distribution to people;

(~~51~~53) "Grade "A" standards" means the requirements of the United States Public Health Service/Food and Drug Administration's Grade "A" Pasteurized Milk Ordinance and Grade "A" Condensed and Dry Milk Ordinance — Supplement I to the Grade "A" Pasteurized Milk Ordinance, with which certain fluid and dry milk and milk products comply;

(~~52~~54) "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods;

(~~53~~55)(A) "Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands.

(B) "Handwashing sink" includes an automatic handwashing facility;

(~~54~~56) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk;

(~~55~~57) "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional;

(~~56~~58) "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;

(~~57~~59) "Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(A) Immunocompromised, preschool-age children, or older adults; and

(B) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult daycare center, kidney dialysis center, hospital or nursing home, or a nutritional or socialization services such as a senior center;

(~~58~~60) "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 the:

(A) Number of potential injuries; and

(B) Nature, severity, and duration of the anticipated injury;

(~~59~~61) "Injected" means manipulating a meat to which a solution has been introduced into its interior by processes referred to as "~~injection~~injecting", "pump marinating", or "stitch pumping".

(~~60~~62) "In-shell product" means non-living, processed shellfish with one or both shells present.

(~~61~~63) "Intact meat" means a cut of whole muscle(s) meat that has not undergone comminution, mechanical tenderization, vacuum tumbling with solutions, reconstruction, cubing, or pounding.

(~~60~~62~~64~~)(A) "Juice" 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 concentrates of such liquid or purée.

(B) "Juice" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages;

(~~61~~63~~65~~) "Kitchenware" means food preparation and storage utensils;

(~~62~~64~~66~~) "Law" means applicable local, state, and federal statutes, regulations, rules, and ordinances;

(~~63~~65~~67~~) "Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments, including cloth gloves;

(~~64~~66~~68~~)(A) "Major food allergen" means:

(i) Milk, egg, fish (such as bass, flounder, and cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, ~~and~~ soybeans, and sesame; or

(ii) A food ingredient that contains protein derived from a food, as specified in subdivision (b)(6~~4~~5)(A) of this section.

(B) "Major food allergen" does not include any:

(i) Highly refined oil derived from a food specified in subdivision (b)(6~~4~~5)(A)(i) of this section and any ingredient derived from such highly refined oil; or

(ii) Ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004, Pub. L. No. 108-282;

(~~65~~67~~69~~) "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 19 CAR § 192-201(g)(1)(C) and (D);

(~~66~~68~~70~~)(A) "Mechanically tenderized" means manipulating meat ~~with deep penetration by processes which may be referred to as~~ by piercing with a set of needles, pins, blades or any mechanical device, which breaks up muscle fiber and tough connective tissue, to increase tenderness.

(B) This includes injection, scoring, and processes which may be referred to as "blade tenderizing", "jaccarding", "pinning", "needling", or using blades, pins, or any mechanical device.

(~~B~~C) "Mechanically tenderized" does not include processes by which solutions are injected into meat;

(~~67~~69~~6~~71) "mg/l" means milligrams per liter, which is the metric equivalent of parts per million (ppm);

(~~687~~072) "Mobile retail food establishment" means a vehicle-mounted retail food establishment designed to be readily movable and approved by law to travel highways, roadways, and/or waterways in the State of Arkansas that is a self-contained retail food establishment equipped with permanently mounted freshwater holding tanks and wastewater holding tanks;

(~~697~~1~~7~~73) "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;

(A) Molluscan shellfish includes shellstock, shucked shellfish, and in-shell products.

(~~707~~274)(A) "Noncontinuous cooking" means the cooking of food in a retail food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(B) "Noncontinuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process;

(~~717~~375)(A) "Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a retail food establishment or a food processing plant.

(B) "Packaged" does not include a wrapper or carryout container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request;

(~~72~~74~~7~~6) "Permit" means the document issued by the regulatory authority that authorizes a person to operate a retail food establishment;

(~~737~~5~~7~~7) "Permit holder" means the entity that:

(A) Is legally responsible for the operation of the retail food establishment such as the owner, the owner's agent, or other person; and

(B) Possesses a valid permit to operate a retail food establishment;

(~~74~~7~~6~~78) "Person" means an association, a corporation, an individual, a partnership, or other legal entity, government, or governmental subdivision or agency;

(~~757~~7~~7~~9) "Person in charge" means the individual present at a retail food establishment who is responsible for the operation at the time of inspection;

(~~767~~8~~8~~0)(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;

(~~777~~9~~8~~1)(A) "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.

(B)(i) Values between zero (0) and seven (7) indicate acidity and values between seven (7) and fourteen (14) indicate alkalinity.

(ii) The value for pure distilled water is seven (7), which is considered neutral;

(~~78~~8~~8~~0~~8~~2) "Physical facilities" means the structure and interior surfaces of a retail food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents;

(~~79~~8~~8~~1~~8~~3) "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;

(~~808~~284) "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;

(~~818~~385) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in ~~four~~five (~~4~~5) 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;

(E) Pesticides classified for restricted use, and that are limited to use by or under the direct supervision of a certified applicator.

(~~828~~486) "Poultry" means any:

(A) Domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs) whether live or dead, as defined in 9 C.F.R. § 381.1, Poultry Products Inspection Regulations Definition, Poultry; and

(B) Migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 C.F.R. § 362.1, Voluntary Poultry Inspection Regulations, Definitions;

(~~838~~587) "Premises" means the physical facility, its contents, and the:

(A) Contiguous land or property under the control of the permit holder; or

(B) Land or property not described under subdivision (b)(834)(A) of this section if its facilities and contents are under the control of the permit holder and may impact retail food establishment personnel, facilities, or operations, and a retail food establishment is only one (1) component of a larger operation such as a healthcare facility, hotel, motel, school, recreational camp, or prison;

(848688) "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;

(858789)(A) "Priority foundation item" means a provision in this subchapter whose application supports, facilitates, or enables one (1) or more priority items.

(B) "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or recordkeeping, and labeling; and.

(C) "Priority foundation item" is an item that is denoted in this subchapter with a superscript Pf, (i.e., "Pf");

(868890)(A) "Priority item" means a provision in this subchapter whose application contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

(B) "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing.

(C) "Priority item" is an item that is denoted in this subchapter with a superscript "P", (i.e., "P");

(878991) "Public water system" has the meaning stated in 40 C.F.R. pt. 141, National Primary Drinking Water Regulations;

(889092)(A) "Pushcart" means a non-self-propelled vehicle equipped with permanently mounted freshwater holding tanks and wastewater holding tanks, limited to serving food requiring minimal handling or commissary-wrapped food maintained at temperatures specified in this subchapter.

(B)(i) Food products prepared on and served from such units are limited to:

(a) Non-time/temperature control for safety food; or

(b) The preparation and service of frankfurters.

(ii) Time/temperature control for safety food may be prepared on and served from such units if the unit is operated only within a fully enclosed facility such as a mall, coliseum, arena, stadium, etc.

(C) Must operate from an approved, permitted commissary and must report back to the commissary daily for cleaning and resupply;

(~~899~~91193) "Ratite" means a flightless bird such as an emu, an ostrich, or a rhea;

(~~909~~2294)(A) "Ready-to-eat food" means food that:

(i) Is in a form that is edible without additional preparation to achieve food safety, as specified under 20 CAR § 192-401(a)(1) or (a)(2) or 20 CAR § 192-401(b) or 192-402(a), or as specified in 20 CAR § 192-401(a)(3); or

(ii) is a raw or partially cooked animal food and the consumer is advised as specified under 20 CAR § 192-401(a)(4)(A) and (C); or

(iii) is prepared in accordance with a variance that is granted as specified under 20 CAR § 192-401(a)(4)(D); and

(iv) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(B) "Ready-to-eat food" includes:

(i) Raw animal food that is cooked as specified under 20 CAR § 192-401(a) or 192-401(b), or frozen as specified under 20 CAR § 192-402(a);

(ii) Raw fruits and vegetables that are washed as specified under 20 CAR § 192-302(e);

(iii) ~~Fruits and vegetables~~Plant foods that are cooked for hot holding, as specified under 20 CAR § 192-401(c);

(iv) All time/temperature control for safety food that is cooked to the temperature and time required for the specific food under 20 CAR § 192-401 et seq., and cooled as specified in 20 CAR § 192-501(d);

(v) Plant food for which further washing, cooking, or other processing is not required for food safety and from which rinds, peels, husks, or shells, if naturally present, are removed;

(vi) Substances derived from plants such as spices, seasonings, and sugar;

(vii) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

(viii) The following products that are produced in accordance with United States Department of Agriculture guidelines and have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni, salt-cured meat and poultry products, such as prosciutto ham, country-cured ham, and Parma ham, and dried meat and poultry products, such as jerky or beef sticks; and

(ix) Foods manufactured according to 21 C.F.R. pt. 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers;

(C) Ready-to-eat food does not include:

(i) Commercially packaged food that bears a manufacturer's cooking instructions, and

(ii) Food for which the manufacturer has provided information that it has not been processed to control pathogens.

(~~919~~395)(A) "Reduced oxygen packaging" means:

(i) 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 atmosphere (approximately twenty-one percent (21%) at sea level); and

(ii) A process as specified in subdivision (b)(9~~1~~2)(A)(i) of this section that involves a food for which the hazards Clostridium botulinum or Listeria monocytogenes require control 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;

(ii)*(a)* 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.

(b) 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;

(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;

(iv)*(a)* Cook chill packaging, in which cooked food is hot-filled into impermeable bags ~~which have the air expelled and~~that are then sealed or crimped closed.

(b) The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychotropic pathogens; or

(v) Sous vide packaging, in which raw or partially cooked food is vacuum-packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic pathogens;

(~~92~~9496) "Refuse" means solid waste not carried by water through the sewage system;

(~~93~~9597) "Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the retail food establishment;

(9496698) "Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens;

(9597799) "Reservice" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer to another person;

(9698100) "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles;

(9799101) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 C.F.R. pt. 590, Inspection of Eggs and Egg Products (Egg Products Inspection Act);

(98100102) "Restricted-use pesticide" means a pesticide product that contains the active ingredients specified in 40 C.F.R. § 152.175, Pesticides Classified for Restricted Use, and that is limited to use by or under the direct supervision of a certified applicator;

(99101103)(A) "Retail food establishment" means an operation that:

(i) Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption such as a restaurant, a satellite or catered feeding location, a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, a market, a vending location, an institution, or a food bank; and

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

(B) "Retail food establishment" includes:

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

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

(C) "Retail food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not time/temperature control for safety foods;

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

(iii) A food processing plant, including those that are located on the premises of a retail food establishment;

(iv) A kitchen in a private home if only food that is not time/temperature control for safety food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by Arkansas Code §§ 20-57-201 and 20-57-506;

(v) A kitchen in a private home if only food that is not time/temperature control for safety food is prepared for sale or service in accordance with the Food Freedom Act, Arkansas Code § 20-57-501 et seq. (Arkansas Code § 20-57-504);

(vi) An area where food that is prepared as specified in subdivision (b)(~~99~~~~101~~103)(C)(iv) of this section is sold or offered for human consumption;

(vii) A kitchen in a private home, such as a small family daycare provider, or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner-occupied, the number of available guest bedrooms does not exceed six (6), breakfast is the only meal offered, the number of guests served does not exceed ten (10), and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority; or

(viii) A private home that receives catered or home-delivered food;

(~~100~~102104) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food;

(~~101~~103105) "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 Section 409 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;

(~~102~~104106) "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 five (5) logs, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction of representative disease microorganisms of public health importance;

(~~103~~105107) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture;

(~~104~~106108) "Seasonal operation" means an establishment operating on a seasonal basis not to exceed a one-hundred-day period of time per calendar year, limited to the serving of dispensed beverages, coffee, snow cones, shaved ice, and other similar ice-based products;

(~~105~~107109)(A) "Semipublic water system" means any water supply used or made available to the public for drinking or in connection with the manufacturing, processing, or handling of ice, food, or beverages.

(B) This definition does not include single-family residences, water vending machines, bottle water dispensers, or distribution systems that distribute regulated, tested, and approved water purchased from a regulated system.

(C) **Note.**

(i) Owners of water systems serving a population equal to or exceeding twenty-five (25) people or fifteen (15) connections, sixty (60) days a year,

are considered a public water supply and must comply with the Department of Health Rules Pertaining to Public Water Systems, 20 CAR pt. 140.

(ii) Semipublic water supply owners anticipating substantial growth should be aware of the Department of Health public water rules;

(~~106~~~~108~~110) "Service animal" means a dog that is individually trained to do work or perform tasks for people with disabilities;

(~~107~~~~109~~111) "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;

(~~108~~~~110~~112) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution;

(~~109~~~~111~~113) "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;

(~~110~~~~112~~114) "Shellstock" means ~~raw, in-shell~~live molluscan shellfish in the shell;

(~~111~~~~113~~115)(A) "Shiga toxin-producing Escherichia coli" (STEC) means any E. coli capable of producing Shiga toxins (also called verocytotoxins).

(B) STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea to hemorrhagic colitis (i.e., bloody diarrhea) to hemolytic uremic syndrome (HUS, a type of kidney failure).

(C) Examples of serotypes of STEC include: E. coli O157:H7, E. coli O157:NM, E. coli O26:H11, E. coli O145:NM, E. coli O103:H2, and E. coli O111:NM.

(D) STEC are sometimes referred to as VTEC (verocytotoxigenic E. coli) or as EHEC (enterohemorrhagic E. coli).

(E) EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS;

(~~112~~114116) "Shucked shellfish" means molluscan shellfish that have ~~one (1) or~~ both shells removed;

(~~113~~115117) "Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, lids, closures, plates, knives, forks, spoons, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use after which they are intended for discard;

(~~114~~116118)(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 20 CAR §§ 193-101(a), 193-201(a), and 193-202(a) for multiuse utensils;

(~~115~~117119) "Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of negative twenty-three degrees Celsius (-23° C) or negative ten degrees Fahrenheit (-10° F) to negative four degrees Celsius (-4° C) or twenty-five degrees Fahrenheit (25° F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp;

(~~116~~118120) "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) 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;

~~(117) "Table-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf;~~

(~~118~~~~119~~121) "Tableware" means eating and 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;

(~~119~~~~120~~122) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water;

(~~120~~~~121~~123) "Temporary food establishment" means a retail food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration;

(~~121~~~~122~~124)(A) "Time/temperature control for safety food" (formerly "potentially hazardous food") means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(B) "Time/temperature control for safety food" includes:

(i) An animal food that is raw or heat-treated, plant food origin that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that are unable to support microorganism growth or toxin formation; and

(ii) Except as specified in subdivision (b)(121)(C)(iv) of this section, a food that because of the interaction of its a_w and pH values is designated as Product Assessment Required (PA) in Table A or Table B of this definition:

Table A. Interaction of PH and a_w for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently PACKAGED			
A_w values	PH: 4.6 or less	pH: > 4.6 - 5.6	pH: > 5.6
<0.92	non-TCS FOOD*	non- TCS FOOD*	non- TCS FOOD*
> 0.92 - 0.95	non-TCS FOOD*	non- TCS FOOD*	PA **

> 0.95	non-TCS FOOD*	PA**	PA**
* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ** PA means Product Assessment required			

Table B. Interaction of pH and a_w for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED				
a_w values	pH: 4.2 or less	pH 4.2-4.6	pH: > 4.6 - 5.0	pH: > 5.0
<0.88	non-TCS FOOD*	non-TCS FOOD*	non- TCS FOOD*	non- TCS FOOD*
> 0.88 - 0.90	non-TCS FOOD*	non-TCS FOOD*	non- TCS FOOD*	PA **
> 0.90-.0.92	non-TCS FOOD*	non-TCS FOOD*	PA**	PA**
>0.92	non-TCS FOOD*	PA**	PA**	
* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ** PA means Product Assessment required				

(C) "Time/temperature control for safety food" does not include:

(i) An air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled but has been treated to destroy all viable salmonellae;

(ii) 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;

(iii) A food that because of its pH or a_w value, or interaction of a_w and pH values, is designated as a non-TCS food in Table A or Table B of this definition;

(iv) A food that is designated as Product Assessment Required (PA) in Table A or Table B of this definition and has undergone a Product Assessment showing

the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(a) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(b) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or

(c) A combination of intrinsic and extrinsic factors; or

(v) Food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one (1) of the items in subdivisions (b)(121)(C)(i) – (iv) of this section even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury;

(~~123~~125) Tobacco product" has the meaning stated in the Federal Food, Drug and Cosmetic Act § 201(rr) (21 U.S.C. 321(rr)).

(~~122~~~~124~~126) "USDA" means the United States Department of Agriculture;

(~~123~~~~125~~127) "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; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food;

(~~124~~~~126~~128) "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one (1) or more requirements of this subchapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver;

(~~125~~~~127~~129) "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;

(~~126~~~~128~~130) "Vending machine location" means the room, enclosure, space, or area where one (1) 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;

(~~127~~~~129~~131) "Warewashing" means the cleaning and sanitizing of utensils and food contact surfaces of equipment; and

(~~128~~~~130~~132) "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.

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare
Chapter I. Generally, Department of Health
Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments
Part 191. Management and Personnel
Subpart 1. Supervision

20 CAR § 191-101. Responsibility — Assignment.~~*~~

(a) Except as specified in subdivision (a)(2)(B) of this section, 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 retail food establishment during all hours of operation. Pf

(b) In a retail food establishment with two (2) or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation and who is responsible for each separately permitted retail food establishment on the premises. Pf

(c) This section does not apply to certain types of retail food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and the extent of the food preparation. Pf

20 CAR § 191-102. Knowledge.

(a) **Demonstration.**~~*~~

(1) Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the ~~hazard~~ Hazard A~~a~~nalysis ~~critical~~ Critical ~~control~~ Control ~~point~~ Point (HACCP) principles, and the requirements of this subchapter.

(2) The person in charge shall demonstrate this knowledge by:

(A) Complying with this subchapter by having no violations of priority items during the current inspection; Pf

(B) Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; Pf or

(C)(i) Responding correctly to the inspector's questions as they relate to the specific food operation.

(ii) The areas of knowledge include:

(a) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee; Pf

(b) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease; Pf

(c) Describing the symptoms associated with the diseases that are transmissible through food; Pf

(d) Explaining the significance of the relationship between maintaining the time and temperature of time/temperature control for safety food and the prevention of foodborne illness; Pf

(e) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish; Pf

(f) Stating the required food temperatures and times for safe cooking of time/temperature control for safety food including meat, poultry, eggs, and fish; [Pf]

(g) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature control for safety food; [Pf]

(h) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(1) Cross-contamination; [Pf]

(2) Hand contact with ready-to-eat foods; [Pf]

(3) Handwashing; [Pf] and

(4) Maintaining the retail food establishment in a clean condition and in good repair; [Pf]

(i) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction; [Pf]

(j) Explaining the relationship between food safety and providing equipment that is:

(1) Sufficient in number and capacity; [Pf] and

(2) Properly designed, constructed, located, installed, operated, maintained, and cleaned; [Pf]

(k) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment; [Pf]

(l) 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; [Pf]

(m) Identifying poisonous or toxic materials in the retail food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to this subchapter; [Pf]

(n) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this subchapter; [Pf]

(o) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this subchapter, or an agreement between the regulatory authority and the retail food establishment; [Pf]

(p) Explaining the responsibilities, rights, and authorities assigned by this subchapter to the:

(1) Food employee; [Pf]

(2) Conditional employee; [Pf]

(3) Person in charge; [Pf] and

(4) Regulatory authority; [Pf] and

(q) Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees. [Pf]

(b) **Certified food protection manager.**

(1)(A) At least one (1) employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

(B) **Note.** ~~Establishments permitted after the effective date of this subchapter~~Newly permitted retail food establishments have twelve (12) months from the date the permit is issued to comply with this section.

(2) This section does not apply to certain types of retail food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation, including:

(A) Retail food establishments that only provide commercially prepackaged foods; or

(B) Retail food establishments providing only low-risk non-time/temperature control for safety foods that are approved by the regulatory authority.

(c) **Food protection manager certification.**

(1) A person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with subdivision (a)(2)(B) of this section.

(2) A retail food establishment that has an employee that has supervisory and management responsibility and the authority to direct and control food preparation and service and ~~that~~ is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with subsection (b) of this section.

20 CAR § 191-103. Duties.

Person in charge. The person in charge shall ensure that:

(1) Retail food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 20 CAR § 195-202(a); Pf

(2) Persons unnecessary to the retail food establishment operation are not allowed in the food preparation, food storage, or ware washing 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; Pf

(3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and ware washing areas comply with this subchapter; Pf

(4) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing; Pf

(5) 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; Pf

(6) Employees are verifying that foods delivered to the retail food establishment during nonoperating hours are from approved sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented; Pf

(7) Employees are properly cooking time/temperature control for safety 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 20 CAR §§ 193-203(a) and 193-502(a)(2); Pf

(8) Employees are using proper methods to rapidly cool time/temperature control for safety foods that are not held hot or are not for consumption within four (4) hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling; Pf

(9) Employees are properly maintaining the temperatures of time/temperature control for safety foods during hot and cold holding through daily oversight of the employees' routine monitoring of food temperatures; Pf

(10) Food employees are properly maintaining the temperature of time/temperature control for safety foods during thawing through daily oversight of the food employee's routine monitoring of food temperatures; Pf

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(~~9~~11) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 20 CAR § 192-603 that the food is not cooked sufficiently to ensure its safety; Pf

(~~10~~12) 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; Pf

(~~11~~13) 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 20 CAR § 192-304(f); Pf

(~~12~~14) Except when approval is obtained from the regulatory authority as specified in 20 CAR § 192-301(a)(4), 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; Pf

(~~13~~15) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties~~;~~. Pf

(A) Food allergy awareness includes describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction; Pf

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(~~14~~16) Food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under 20 CAR § 191-201(a); Pf and

(~~15~~17) Written procedures and plans, where specified by this subchapter and as developed by the retail food establishment, are maintained and implemented as required. Pf

Subpart 2. Employee Health

20 CAR § 191-201. Disease or medical condition.

(a) **Responsibility of the permit holder, person in charge, and conditional employees.** ~~*~~

(1)(A) The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food.

(B) A food employee or conditional employee shall report the information in a manner that allows the person in charge to ~~prevent~~ reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness or of a diagnosis without symptoms, if the food employee or conditional employee:

(i) Has any of the following symptoms:

(a) Vomiting; P

(b) Diarrhea; P

(c) Jaundice; P

(d) Sore throat with fever; P or

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

(1) 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; P

(2) Exposed portions of the arms, unless the lesion is protected by an impermeable cover; P or

(3) Other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; P

(ii) Has an illness diagnosed by a health practitioner due to:

(a) Norovirus; P

(b) Hepatitis A virus; P

(c) Shigella spp.; P

(d) Shiga toxin-producing Escherichia coli; P

(e) Typhoid fever (caused by Salmonella Typhi); P or

(f) ~~Nontyphoidal~~ Salmonella (nontyphoidal); P

(iii) Had ~~a previous illness~~Typhoid fever diagnosed by a health practitioner within the past three (3) months~~ due to Salmonella Typhi~~, without having received antibiotic therapy, as determined by a health practitioner; P

(iv) Has been exposed to, or is the suspected source of, a confirmed disease outbreak because the food employee or conditional employee consumed or prepared food implicated in the outbreak or consumed food at an event prepared by a person who is infected or ill with:

(a) Norovirus within the past forty-eight (48) hours of the last exposure; P

(b) Shiga toxin-producing Escherichia coli or Shigella spp. within the past three (3) days of the last exposure; P

(c) ~~Salmonella Typhi~~Typhoid fever (caused by Salmonella Typhi) within the past fourteen (14) days of the last exposure; P or

(d) Hepatitis A virus within the past thirty (30) days of the last exposure; P or

(v) Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as and having knowledge about an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as and having knowledge about an individual diagnosed with an illness caused by:

(a) Norovirus within the past forty-eight (48) hours of the last exposure; P

(b) Shiga toxin-producing Escherichia coli or Shigella spp. within the past three (3) days of the last exposure; P

(c) ~~Salmonella Typhi~~Typhoid fever (caused by Salmonella Typhi) within the past fourteen (14) days of the last exposure; P or

(d) Hepatitis A virus within the past thirty (30) days of the last exposure. P

(2) The person in charge shall notify the regulatory authority when a food employee is:

(A) Jaundiced; [Pf] or

(B) Diagnosed with an illness due to a pathogen as specified under subdivision (a)(1)(B)(ii) of this section. [Pf]

(3) The person in charge shall ensure that a conditional employee who:

(A) Exhibits or reports a symptom, or who reports a diagnosed illness as specified under subdivision (a)(1)(B)(i) – (iii) of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under subdivision (c) of this section; [P] and

(B) Will work as a food employee in a retail food establishment that serves as a highly susceptible population and reports a history of exposure as specified under subdivision (a)(1)(B)(iv) – (v) of this section is prohibited from becoming a food employee until the conditional employee meets the criteria as specified under subdivision (c)(9) of this section. [P]

(4) The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subdivision (a)(1)(B) of this section, is:

(A) Excluded as specified under subdivisions (b)(1) – (3) of this section and subdivisions (b)(4)(A), (b)(5)(A), (b)(6)(A), (b)(7), or (b)(8)(A) of this section and in compliance with the provisions specified under subdivisions (c)(1) – (8) of this section; [P] or

(B) Restricted as specified under subdivisions (b)(4)(B), (b)(5)(B), (b)(6)(B), (b)(8)(B), (b)(9), or (b)(10) of this section and in compliance with the provisions specified under subdivisions (c)(4) – (10) of this section. [P]

(5) A food employee or conditional employee shall report to the person in charge the information as specified under subdivision (a)(1) of this section. [Pf]

(6) A food employee shall comply with:

(A) An exclusion as specified under subdivisions (b)(1) – (3) and (b)(4)(A), (5)(A), (6)(A), (7) of this section or subdivision (b)(1)(8)(A) of this section and with the provisions specified under subdivisions (c)(1) – (8) of this section; [P] or

(B) A restriction as specified under subdivisions (c)(4)(B), (b)(5)(B), (b)(6)(B), (b)(7), (b)(8)(2) of this section or subdivisions (b)(8), (b)(9), or (b)(10) of this section and comply with the provisions specified under subdivisions (c)(4) – (10) of this section. P

(b) **Exclusions and restrictions.** The person in charge shall exclude or restrict a food employee from a retail food establishment in accordance with the following:

(1) Except ~~W~~when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

(A) Symptomatic with vomiting or diarrhea; P or

(B) Symptomatic with vomiting or diarrhea and diagnosed with an infection from norovirus, Shigella spp., ~~nontyphoidal~~ Salmonella (nontyphoidal), or Shiga toxin-producing Escherichia coli; P

(2) Exclude a food employee who is:

(A) Jaundiced and the onset of jaundice occurred within the last seven (7) calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection; P

(B) Diagnosed with an infection from hepatitis A virus within fourteen (14) calendar days from the onset of any illness symptoms or within seven (7) calendar days of the onset of jaundice; P or

(C) Diagnosed with an infection from hepatitis A virus without developing symptoms; P

(3) Exclude a food employee who is diagnosed with ~~an infection from Salmonella Typhi~~Typhoid fever, or reports ~~a previous infection with Salmonella Typ~~having had Typhoid fever~~hi~~ within the past three (3) months as specified under subdivision (a)(1)(B)(iii) of this section; P

(4) If a food employee is diagnosed with an infection from norovirus and is asymptomatic:

(A) Exclude the food employee who works in a retail food establishment serving a highly susceptible population; P or

(B) Restrict the food employee who works in a retail food establishment not serving a highly susceptible population; P

(5) If a food employee is diagnosed with an infection from Shigella spp. and is asymptomatic:

(A) Exclude the food employee who works in a retail food establishment serving a highly susceptible population; P or

(B) Restrict the food employee who works in a retail food establishment not serving a highly susceptible population; P

(6) If a food employee is diagnosed with an infection from Shiga toxin-producing Escherichia coli and is asymptomatic:

(A) Exclude the food employee who works in a retail food establishment serving a highly susceptible population; P or

(B) Restrict the food employee who works in a retail food establishment not serving a highly susceptible population; P

(7) If a food employee is diagnosed with an infection from ~~nontyphoidal~~ Salmonella (nontyphoidal) and is asymptomatic, restrict the food employee who works in a retail food establishment serving a highly susceptible population or in a retail food establishment not serving a highly susceptible population; P

(8) If a food employee is ill with symptoms of acute onset of sore throat with fever:

(A) Exclude the food employee who works in a retail food establishment serving a highly susceptible population; P or

(B) Restrict the food employee who works in a retail food establishment not serving a highly susceptible population; P

(9) If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under subdivision (a)(1)(B)(ii)*(e)* of this section, restrict the food employee; P and

(10) If a food employee is exposed to a foodborne pathogen as specified under subdivisions (a)(1)(B)(iv) or (a)(1)(B)(v) of this section, restrict the food

employee who works in a retail food establishment serving a highly susceptible population. P

(c) **Removal, adjustment, or retention of exclusions and restrictions**. The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

(1) Except when a food employee is diagnosed with Typhoid fever or an infection from hepatitis A virus ~~or Salmonella Typhi~~:

(A) Reinstate a food employee who was excluded as specified under subdivision (b)(1)(A) of this section if the food employee:

(i) Is asymptomatic for at least twenty-four (24) hours; P or

(ii) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition; P

(B) If a food employee was diagnosed with an infection from norovirus and excluded as specified under subdivision (b)(1)(B) of this section:

(i) Restrict the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(4)(A) or (c)(4)(B) of this section are met; P or

(ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(4)(A) or (c)(4)(B) of this section are met; P

(C) If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision (b)(1)(B) of this section:

(i) Restrict the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(5)(A) or (c)(5)(B) of this section are met; P or

(ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment that serves

a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(5)(A) or (c)(5)(B) of this section and subdivision (c)(1)(C)(i) of this section are met; P

(D) If a food employee was diagnosed with an infection from Shiga toxin-producing Escherichia coli and excluded as specified under subdivision (b)(1)(B) of this section:

(i) Restrict the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(6)(A) or (c)(6)(B) of this section are met; P or

(ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four (24) hours and works in a retail food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subdivisions (c)(6)(A) or (c)(6)(B) of this section are met; P and

(E) If a food employee was diagnosed with an infection from ~~nontyphoidal~~ Salmonella (nontyphoidal) and excluded as specified under subdivision (b)(1)(B) of this section:

(i) Restrict the food employee who is asymptomatic for at least thirty (30) days until conditions for reinstatement as specified under subdivisions (c)(7)(A) or (c)(7)(B) of this section are met; P or

(ii) Retain the exclusion for the food employee who is symptomatic until conditions for reinstatement as specified under subdivisions (c)(7)(A) or (c)(7)(B) of this section are met; P

(2) Reinstate a food employee who was excluded as specified under subdivision (b)(2) of this section if the person in charge obtains approval from the regulatory authority and one (1) of the following conditions is met:

(A) The food employee has been jaundiced for more than seven (7) calendar days; P

(B) The anicteric food employee has been symptomatic with symptoms other than jaundice for more than fourteen (14) calendar days; P or

(C) The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection; P

(3) Reinstate a food employee who was excluded as specified under subdivision (b)(3) of this section if:

(A) The person in charge obtains approval from the regulatory authority; P and

(B) The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from ~~Salmonella Typhi infection~~Typhoid fever; P

(4) Reinstate a food employee who was excluded as specified under subdivisions (b)(1)(B) or (b)(4)(A) of this section who was restricted under subdivision (b)(4)(B) of this section if the person in charge obtains approval from the regulatory authority and one (1) of the following conditions is met:

(A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a norovirus infection; P

(B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than forty-eight (48) hours have passed since the food employee became asymptomatic; P or

(C) The food employee was excluded or restricted and did not develop symptoms and more than forty-eight (48) hours have passed since the food employee was diagnosed; P

(5) Reinstate a food employee who was excluded as specified under subdivisions (b)(2) or (b)(5)(A) of this section or who was restricted under subdivision (b)(5)(B) of this section if the person in charge obtains approval from the regulatory authority and one (1) of the following conditions is met:

(A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food

employee is free of a Shigella spp. infection based on test results showing two (2) consecutive negative stool specimen cultures that are taken:

(i) Not earlier than forty-eight (48) hours after discontinuance of antibiotics; [P] and

(ii) At least twenty-four (24) hours apart; [P]

(B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven (7) calendar days have passed since the food employee became asymptomatic; [P] or

(C) The food employee was excluded or restricted and did not develop symptoms and more than seven (7) calendar days have passed since the food employee was diagnosed; [P]

(6) Reinstate a food employee who was excluded or restricted as specified under subdivisions (b)(1)(B) or (b)(6)(A) of this section or who was restricted under subdivision (b)(6)(B) of this section if the person in charge obtains approval from the regulatory authority and one (1) of the following conditions is met:

(A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Shiga toxin-producing Escherichia coli based on test results that show two (2) consecutive negative stool specimen cultures that are taken:

(i) Not earlier than forty-eight (48) hours after discontinuance of antibiotics; [P] and

(ii) At least twenty-four (24) hours apart; [P]

(B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven (7) calendar days have passed since the food employee became asymptomatic; [P] or

(C) The food employee was excluded or restricted and did not develop symptoms and more than seven (7) days have passed since the food employee was diagnosed; [P]

(7) Reinstate a food employee who was excluded as specified under subdivision (b)(1)(B) of this section or who was restricted as specified under subdivision (b)(7) of this section if the person in charge obtains approval from the regulatory authority [P] and one (1) of the following conditions is met:

(A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a ~~nontyphoidal~~ Salmonella (nontyphoidal) infection based on test results showing two (2) consecutive negative stool specimen cultures that are taken:

(i) Not earlier than forty-eight (48) hours after discontinuance of antibiotics; [P] and

(ii) At least twenty-four (24) hours apart; [P]

(B) The food employee was restricted after symptoms of vomiting or diarrhea resolved, and more than thirty (30) days have passed since the food employee became asymptomatic; [P] or

(C) The food employee was excluded or restricted and did not develop symptoms and more than thirty (30) days have passed since the food employee was diagnosed; [P]

(8) Reinstate a food employee who was excluded or restricted as specified under subdivisions (b)(8)(A) or (b)(8)(B) of this section if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one (1) of the following conditions:

(A) Has received antibiotic therapy for Streptococcus pyogenes infection for more than twenty-four (24) hours; [P]

(B) Has at least one (1) negative throat specimen culture for Streptococcus pyogenes infection; [P] or

(C) Otherwise determined by a health practitioner to be free of a Streptococcus pyogenes infection; [P]

(9) Reinstate a food employee who was restricted as specified under subdivision (b)(9) of this section if the skin, infected wound, cut, or pustular boil is properly covered with one (1) of the following:

(A) Impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist; P

(B) Impermeable cover on the arm if the infected wound or pustular boil is on the arm; P or

(C) A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body; P and

(10) Reinstate a food employee who was restricted as specified under subdivision (b)(10) of this section and was exposed to one (1) of the following pathogens as specified under subdivision (a)(1)(B)(iv) or (a)(1)(B)(v) of this section:

(A) Norovirus and one (1) of the following conditions is met:

(i) More than forty-eight (48) hours have passed since the last day the food employee was potentially exposed; P or

(ii) More than forty-eight (48) hours have passed since the food employee's household contact became asymptomatic; P

(B) Shigella spp. or Shiga toxin-producing Escherichia coli and one (1) of the following conditions is met:

(i) More than three (3) calendar days have passed since the last day the food employee was potentially exposed; P or

(ii) More than three (3) calendar days have passed since the food employee's household contact became asymptomatic; P

(C) ~~Salmonella Typhi~~Typhoid fever and one (1) of the following conditions is met:

(i) More than fourteen (14) calendar days have passed since the last day the food employee was potentially exposed; P or

(ii) More than fourteen (14) calendar days have passed since the food employee's household contact became asymptomatic; P and

(D) Hepatitis A virus and one (1) of the following conditions is met:

(i) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A; P

(ii) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A; P

(iii) The food employee is immune to hepatitis A virus infection because of IgG administration; P

(iv) More than thirty (30) calendar days have passed since the last day the food employee was potentially exposed; P

(v) More than thirty (30) calendar days have passed since the food employee's household contact became jaundiced; P or

(vi) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least thirty (30) days after the potential exposure, as specified in subdivision (c)(10)(D)(iv) and (v) of this section, and the food employee receives additional training about:

(a) Hepatitis A symptoms and preventing the transmission of infection; P

(b) Proper handwashing procedures; P and

(c) Protecting ready-to-eat food from contamination introduced by bare-hand contact. P

Subpart 3. Personal Cleanliness

20 CAR § 191-301. Hands and arms.

(a) **Clean condition.** Food employees shall keep their hands and exposed portions of their arms clean. P

(b) **Cleaning procedure.**

(1) Except as specified in subdivision (b)(4) of this section, food employees shall clean their hands and exposed portions of their arms including surrogate prosthetic devices for hands or arms for at least twenty (20) seconds using a cleaning compound in a handwashing sink that is equipped as specified under 20 CAR §§ 194-202(b) and 195-301. P

(2) Food employees shall use the following cleaning procedure, in the order stated, to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(A) Rinse under clean, running warm water; P

(B) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer; P

(C) Rub together vigorously for at least ten to fifteen (10 – 15) seconds while:

(i) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; P and

(ii) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, fingertips, and areas between the fingers; P

(D) Thoroughly rinse under clean, running warm water; P and

(E) Immediately follow the cleaning procedure with thorough drying using a method as specified under 20 CAR § 195-301(c). P

(3) To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.

(4)(A) 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 or surrogate prosthetic devices.

(B) This equipment must be installed and operated per the manufacturer's instructions.

(c) **Reserved for future use.**

(d) **When to wash.** Food employees shall clean their hands and exposed portions of their arms as specified under subsection (b) of this section immediately before engaging in food preparations, including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles, P and:

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

~~(2) After touching lacerations/cuts, sores, or infected areas of the skin; P~~

(2~~3~~) After using the toilet room; P

(4~~3~~) After caring for or handling service animals or aquatic animals as specified in 20 CAR § 191-403(b); P

(5~~4~~) Except as specified under 20 CAR § 191-401(a)(2), after coughing, sneezing, or using a handkerchief or disposable tissue, using tobacco products, eating, or drinking; P

~~(6) After using tobacco; P~~

~~(7) After eating or drinking; P~~

(5~~8~~) After handling soiled equipment or utensils; P

(9~~6~~) Before donning gloves to initiate a task that involves working with food; P

(10~~7~~) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks; P

(11~~8~~) When switching between working with raw food and working with ready-to-eat food; P

(12~~9~~) After engaging in other activities that contaminate the hands; P and

~~(13) When hands are visibly soiled. P~~

(e) **Where to wash.** Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility, and may not clean their hands in a sink used for food preparation or ware washing or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste. Pf

(f) **Hand antiseptics.**

(1) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(A) Comply with one (1) of the following:

(i) Be an approved drug that is listed in the Food and Drug Administration publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness; Pf or

(ii) Have active antimicrobial ingredients that are listed in the Food and Drug Administration monograph for over-the-counter (OTC) Consumer and Health Care Antiseptic Products as an antiseptic handwash, and; Pf

(B) Consist only of components the intended use of each of which complies with one (1) of the following:

(i) A threshold of regulation exemption under 21 C.F.R. § 170.39, Threshold of regulation for substances used in food-contact articles; Pf

(ii) 21 C.F.R. pt. 178, Indirect food additives: Adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use; Pf

(iii)*(a)* A determination of generally recognized as safe (GRAS).

(b) Partial listings of substances with food uses that are GRAS may be found in 21 C.F.R. pt. 182, Substances generally recognized as safe, 21 C.F.R. pt. 184, Direct food substances affirmed as generally recognized as safe, or 21 C.F.R. pt. 186, Indirect food substances affirmed as generally recognized as safe for use in contact with food, and in the Food and Drug Administration's GRAS Notice Inventory; Pf

(iv) A prior sanction listed under 21 C.F.R. pt. 181, Prior-sanctioned food ingredients; Pf or

(v) A Food Contact Notification that is effective; Pf and

(C) Be applied only to hands that are cleaned as specified under subsection (b) of this section. Pf

(2) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under subdivision (f)(1)(B) of this section, use shall be:

(A) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; Pf or

(B) Limited to situations that involve no direct contact with food by the bare hands. Pf

(3) A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred milligrams per liter (100 mg/L) chlorine. Pf

20 CAR § 191-302. Fingernails — Maintenance.

(a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Pf

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food. Pf

20 CAR § 191-303. Jewelry.

Prohibition. Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry, including medical information jewelry, on their arms and hands.

20 CAR § 191-304. Outer clothing.

Clean condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

Subpart 4. Hygienic Practices

20 CAR § 191-401. Food contamination prevention.

(a) **Eating, drinking, or using tobacco products.**

(1) Except as specified in subdivision (a)(2) of this section, an employee shall eat, drink, or use any form of tobacco products 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 result.

(2) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

(A) The employee's hands;

(B) The container; and

(C) Exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

(b) **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.

(c) **Use of bandages, finger cots, or finger stalls.** If used, an impermeable cover such as a bandage, finger cot or finger stall located on the wrist, hand or finger of a food employee working with exposed food shall be covered with a single-use glove.

20 CAR § 191-402. Hair restraints — Effectiveness.

(a) Except as provided in subsection (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.

20 CAR § 191-403. Animals — Handling prohibition.

(a) Except as specified in subsection (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 20 CAR § 195-601(o)(2)(B) – (E). Pf

(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 20 CAR § 191-301(b) and (d)(3).

Subpart 5. Responding to Contamination Events

20 CAR § 191-501. Clean-up of vomiting and diarrheal events.

(a) A retail food establishment shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the retail food establishment.

(b) The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter. Pf

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments

Part 192. Food

Subpart 1. Characteristics

20 CAR § 192-101. Condition.

Safe, unadulterated, and honestly presented.~~*~~ Food shall be safe, unadulterated, and, as specified under 20 CAR § 192-60~~2~~1(b), honestly presented. P

Subpart 2. Sources, Specifications, and Original Containers and Records

20 CAR § 192-201. Sources.

(a) **Compliance with food law.~~*~~**

(1) Food shall be obtained from sources that comply with law. P

(2) Except for non-time/temperature control for safety food sold in accordance with the Food Freedom Act, Arkansas Code § 20-57-501 et seq. (Arkansas Code § 20-57-504), food prepared in a private home may not be used or offered for human consumption in a retail food establishment.

(3) Packaged food shall be labeled as specified in law, including 21 C.F.R. pt. 101, Food labeling, 9 C.F.R. pt. 317, Labeling, marking devices, and containers, and 9

C.F.R. pt. 381, Subpart N — Labeling and containers, and as specified under 20 CAR § 192-202~~(g) and~~ (h). Pf

(4) Fish, other than those specified in 20 CAR § 192-402(a)(2), that are intended for consumption in raw or undercooked form and allowed as specified in 20 CAR § 192-401(a)(4), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 20 CAR § 192-402(a), or if they are frozen on the premises as specified under 20 CAR § 192-402(a) and records are retained as specified under 20 CAR § 192-402(b).

(5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 20 CAR § 192-401(a)(3) shall be:

(A) Obtained from a food processing plant that~~, upon request by the purchaser, packages the steaks and labels them to indicate that the steaks meet the definition of~~ does not mechanically tenderize, vacuum tumble with solutions, reconstruct, cube or pound these whole-muscle, intact beef steaks; Pf or

(B) Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; Pf and

(C) If individually cut in a retail food establishment:

(i) Cut from whole-muscle, intact beef that is ~~labeled by~~received from a food processing plant as specified in subdivision (a)(5)(A) of this section or identified as specified in subdivision (a)(5)(B) of this section; Pf

(ii) Prepared so they remain intact; Pf and

~~(iii) If packaged for undercooking in a retail food establishment, labeled as specified in subdivision (a)(4)(A) of this section or identified as specified in subdivision (a)(4)(B) of this section.~~ Pf

(6) 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 C.F.R. § 317.2(l) and 9 C.F.R. § 381.125(b).

(7) ~~Shell e~~Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 C.F.R. § 101.17(h).

(b) **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. P

(c) **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. P

(d) **Fish.**

(1) Fish that are received for sale or service shall be:

(A) Commercially and legally caught or harvested; P or

(B) Approved for sale or service. P

(2) Molluscan shellfish that are recreationally caught may not be received for sale or service. P

(e) **Molluscan shellfish.**

(1) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. P

(2) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List. P

(f) **Wild mushrooms.** If wild mushrooms are to be sold, they must be:

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

(2) Wild mushroom species in packaged form and are the product of a food processing plant that is regulated by the regulatory authority that has jurisdiction over the plant. P

(g) **Game animals.**

(1) If game animals are received for sale or service they shall be:

(A) Commercially raised for food [P] and:

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

(ii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; [P] and

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

(a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; [P] and

(b) 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; [P]

(B) Under a voluntary inspection program administered by the United States Department of Agriculture for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 C.F.R. pt. 352, Exotic animals ~~and horses~~, voluntary inspection, or rabbits that are "inspected and certified" in accordance with 9 C.F.R. pt. 354, Voluntary inspection of rabbits and edible products thereof; [P]

(C) As allowed by law, for wild game animals that are live-caught:

(i) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction; [P] and

(ii) Slaughtered and processed according to:

(a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; [P] and

(b) 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; [P] or

(D) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:

(i) Receive a postmortem examination by an approved veterinarian or veterinarian's designee; P or

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

(iii) 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. P

(2) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 C.F.R. pt. 17, Endangered and threatened wildlife and plants.

20 CAR § 192-202. Specifications for receiving.

(a) **Temperature.**

(1) Except as specified in subdivision (a)(2) of this section, refrigerated, time/temperature control for safety food shall be at a temperature of five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or below when received. P

(2) If a temperature other than five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) for time/temperature control for safety food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.

(3) Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius (7°C) (forty-five degrees Fahrenheit (45°F)) or less. P

(4) Time/temperature control for safety food that is cooked to a temperature and for a time specified under 20 CAR § 192-401(a) – (c) and received hot shall be at a temperature of fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) or above. P

(5) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. Pf

(6) Upon receipt, time/temperature control for safety food shall be free of evidence of previous temperature abuse. Pf

(b) **Additives.** Food may not contain unapproved food additives or additives that exceed amounts specified in 21 C.F.R. pts. 170 – 180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. pts. 181 – 186, substances that exceed amounts specified in 9 C.F.R. pt. 424, Subpart C, § 424.21(b), Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 C.F.R. pt. 180, Tolerances and exemptions for pesticide chemical residues in food, and exceptions. P

(c) **Eggs.** Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of the United States Department of Agriculture. P

(d) **Eggs and milk products — Pasteurized.**

(1) Egg products shall be obtained pasteurized. P

(2) Fluid and dry milk and milk products shall:

(A) Be obtained pasteurized; P and

(B) Comply with Grade "A" standards as specified in law. P

(3) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 C.F.R. pt. 135, Frozen desserts. P

(4) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the Code of Federal Regulations, such as 21 C.F.R. pt. 133, Cheeses and related cheese products, for curing certain cheese varieties. P

(e) **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. Pf

(f) **Ice.** ~~*~~ Ice for use as a food or a cooling medium shall be made from drinking water. P

(g) ~~**Shucked shellfish, packaging, and identification**~~**Shellstock, condition**

(1) When received by a retail food establishment, shellstock shall be reasonably free of mud, dead shellstock, and shellstock with broken shells. Dead shellstock with badly broken shells shall be discarded**.**

~~(1) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the: Pf~~

~~(A) Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; Pf and~~

~~(B) The sell-by or best-used-by date for packages with a capacity of less than one and eighty-nine hundredths liters (1.89 L) or one-half gallon (1/2 gal.) or the date shucked for packages with a capacity of one and eighty-nine hundredths liters (1.89 L) or one-half gallon (1/2 gal.) or more. Pf~~

~~(2) 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 subdivision (g)(1) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 C.F.R. pt. 1240, Subpart D — Specific administrative decisions regarding interstate shipments, § 1240.60(d), Molluscan shellfish.~~

(h) ~~**Shellstock**~~ **Molluscan shellfish, packaging and identification.** ~~*~~

(1) Except as specified under subdivision (2)(A) of this section, molluscan shellfish shall be obtained in nonreturnable packages or containers which bear a legible tag or label that identifies the:

(A) Source, and are affixed by a dealer that depurates, packs, ships or reships the molluscan shellfish, as specified in the National Shellfish Sanitation Program (NSSP) Guide for the Control of molluscan shellfish (Model Ordinance); Pf and

(B) "Sell by" or "best if used by" date for shucked shellfish packages with a capacity of less than one and eighty-nine hundredths liters (1.89 L) or one-half gallon

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(1/2 gal.) or the date shucked for packages with a capacity of one and eighty-nine hundredths liters (1.89 L) or one-half gallon (1/2 gal.) or more. Pf

(C) When a two-tag harvester or dealer system is used, the dealer tag shall meet the requirements identified in (1)(A) of this section.

(i) When both the dealer and harvester tags appear on the container, the dealer's tag is not required to duplicate the information on the harvester's tag.

(D) A container of raw molluscan shellfish that does not bear a tag or label or which bears a tag or label which does not contain all the information as specified under the Model Ordinance shall be subject to embargo, 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)~~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:~~ Pf

~~(A) Except as specified under subdivision (h)(3) of this section, on the harvester's tag or label, the following information in the following order:~~ Pf

~~(i) The harvester's identification number that is assigned by the shellfish control authority;~~ Pf

~~(ii) The date of harvesting;~~ Pf

~~(iii) 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;~~ Pf

~~(iv) The type and quantity of shellfish;~~ Pf ~~and~~

~~(v) The following statement in bold, capitalized type, "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.";~~ Pf ~~and~~

~~(B) Except as specified in subdivision (h)(4) of this section, on each dealer's tag or label, the following information in the following order:~~ Pf

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~~(i) The dealer's name and address, and the certification number assigned by the shellfish control authority;~~ [Pf]

~~(ii) The original shipper's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested;~~ [Pf]

~~(iii) The same information as specified for a harvester's tag under subdivision (h)(1)(A)(ii) – (iv) of this section;~~ [Pf] ~~and~~

~~(iv) The following statement in bold, capitalized type, "THIS TAG IS ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."~~ [Pf]

~~(2) 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 subdivision (h)(1) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 C.F.R. pt. 1240, Subpart D — Specific administrative decisions regarding interstate shipments, § 1240.60(d).~~

~~(3) 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.~~

~~(4) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subdivision (h)(1)(B)(i) and (ii) of this section, individual dealer tags or labels need not be provided.~~

~~(i) **Shellstock — Condition.**~~

~~(1) When received by a retail food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells.~~

~~(2) Dead shellfish or shellstock with badly broken shells shall be discarded.~~.

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(j) **Juice treated.** Prepackaged juice shall be obtained:

(1) From a processor with an HACCP system as specified in 21 C.F.R. pt. 120, Hazard analysis and critical control point (HACCP) systems; [Pf] and

(2) Pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. § 120.24, Process controls. [P]

20 CAR § 192-203. Original containers and records.

(a) **Molluscan shellfish — Original container.**

(1) Except as specified in subdivision (a)(2) of this section, molluscan shellfish may not be removed from the lot in which they are received other than immediately before sale or preparation for service.

(2) Molluscan shellfish from one tagged or labeled container shall not be commingled with molluscan shellfish from another container with different certification numbers, different harvest dates, or different growing areas identified on the tag or label before being ordered by the consumer. Pf

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(3) For display purposes, shellstock or in-shell product may be removed from the lot in which they are received, displayed on drained ice, or held in a display ~~lot~~container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(A) The source of the shellstock on display is identified as specified under 20 CAR § 192-202(h) and recorded as specified under subsection (b) of this section; and

(B) The shellstock are protected from contamination.

(3) Shucked shellfish may be removed from the ~~lot~~ container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if the:

(A) Labeling information for the shellfish on display as specified under 20 CAR § 192-202(g) is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(B) Shellfish are protected from contamination.

(b) **~~Shellstock~~Molluscan shellfish, maintaining identification.~~*~~**

(1) Except as specified under subdivision (b)(3)(B) of this section, ~~shellstock~~ molluscan shellfish tags or labels shall remain attached to the ~~lot~~ container in which the shellstock are received until the container is empty. Pf and

(2) The date when the last ~~shellstock~~ molluscan shellfish from the container is sold or served shall be recorded on the tag or label. [Pf] and

(3) The identity of the source of ~~shellstock~~ molluscan shellfish that are sold or served shall be maintained by retaining ~~shellstock~~ product tags ~~or,~~ labels, or invoices for ninety (90) calendar days from the date that is recorded on the tag ~~or,~~ label, or invoice as specified under subdivision (b)(2) of this section, by: [Pf]

(A) Using an approved recordkeeping system that keeps the tags ~~or,~~ labels, or invoices in chronological order correlated to the date that is recorded on the tag ~~or,~~ label, or invoice, ~~-~~as specified under subdivision (b)(2) of this section; [Pf] and

(B) If shellstock, shucked shellfish, or in-shell product are removed from ~~their~~ its tagged or labeled container the source identification will be preserved by using a record keeping system as specified under (b)(3)(A) of this section. [Pf] :

~~(i) Preserving source identification by using a recordkeeping system as specified under subdivision (b)(3)(A) of this section; [Pf] and~~

~~(ii) Ensuring that shellstock from one (1) tagged or labeled container are not commingled with shellstock from another container with different certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer. [Pf]~~

20 CAR § 192-204 Food Donation

(a) Food or food products stored, prepared, packaged, displayed, and labeled in accordance to law and this subchapter may be offered for donation.

(b) Liability or immunity for food or food products donated by a person or gleaner that does not meet federal, state, or local food safety standards is governed by Ark. Code § 20-57-105.

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Subpart 3. Protection from Contamination after Receiving

20 CAR § 192-301. Preventing contamination by employees.

(a) **Preventing contamination from hands.** ~~*~~

(1) Food employees shall wash their hands as specified under 20 CAR § 191-301(b).

(2) Except when washing fruits and vegetables as specified under 20 CAR § 192-302(d), or as specified in subdivisions (a)(4) and (5) of this section, 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. P

(3) Food employees shall minimize bare-hand and arm contact with exposed food that is not in a ready-to-eat form. Pf

(4) Subdivision (a)(2) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

(A) Contains a raw animal food and is to be cooked in the retail food establishment to heat all parts of the food to the minimum temperatures specified in 20 CAR § 192-401(a)(1) and (2) or 20 CAR § 192-401(b); or

(B) Does not contain a raw animal food but is to be cooked in the retail food establishment to heat all parts of the food to a temperature of at least sixty-three degrees Celsius (63ºC) (one hundred forty-five degrees Fahrenheit (145ºF)).

(5) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(A) The permit holder obtains prior approval from the regulatory authority;

(B) Written procedures are maintained in the retail food establishment and made available to the regulatory authority upon request that include:

(i) For each bare-hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands; and

(ii) Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 20 CAR § 194-203(a), 20 CAR § 194-204(a), 20 CAR § 194-205(a), 20 CAR § 195-301(a), 20 CAR §

195-301(b), and 20 CAR § 195-301(d), are in an easily accessible location and in close proximity to the workstation where the bare-hand contact procedure is conducted;

(C) A written employee health policy that details how the retail food establishment complies with 20 CAR § 191-201(a), (b), and (c), including:

(i) Documentation that food employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 20 CAR § 191-201(a)(1);

(ii) Documentation that food employees acknowledge their responsibilities as specified under 20 CAR § 191-201(a)(5) and (6); and

(iii) Documentation that the person in charge acknowledges the responsibilities as specified under 20 CAR § 191-201(a)(2), (3), (4), (b), and (c);

(D) Documentation that food employees acknowledge that they have received training in:

(i) The risks of contacting the specific ready-to-eat foods with bare hands;

(ii) Proper hand washing as specified under 20 CAR § 191-301(b);

(iii) When to wash their hands as specified under 20 CAR § 191-301(d);

(iv) Where to wash their hands as specified under 20 CAR § 191-301(e);

(v) Proper fingernail maintenance as specified under 20 CAR § 191-302;

(vi) Prohibition of jewelry as specified under 20 CAR § 191-303; and

(vii) Good hygienic practices as specified under 20 CAR § 191-401(a) and (b);

(E) Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 20 CAR § 191-301(a), (b), (c), and (d) during all hours of operation when the specific ready-to-eat foods are prepared;

(F) Documentation that food employees contacting ready-to-eat food with bare hands use two (2) or more of the following control measures to provide additional safeguards to hazards associated with bare-hand contact:

(i) Double hand washing;

(ii) Nail brushes;

(iii) A hand antiseptic after hand washing as specified under 20 CAR § 191-301(f);

(iv) Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill; or

(v) Other control measures approved by the regulatory authority; and

(G) Documentation that corrective action is taken when subdivisions (a)(5)(A) – (F) of this section are not followed.

(b) **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. P

20 CAR § 192-302. Preventing food and ingredient contamination.

(a) **Packaged and unpackaged food — Separation, packaging, and segregation.**

(1) Food shall be protected from cross-contamination by:

(A)(i) Except as specified by subdivision (a)(1)(A)(ii) of this section, 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; P and

(b) Cooked ready-to-eat food; and P

(c) Fruits and vegetables before they are washed; P

(ii*d*) Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.;

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(B) 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:

(i) Using separate equipment for each type; [P] or

(ii) Arranging each type of food in equipment so that cross-contamination of one (1) type with another is prevented; [P] and

(iii) Preparing each type of food at different times or in separate areas; [P]

(C) Cleaning equipment and utensils as specified under 20 CAR § 193-602(a)(1)(A) and sanitizing as specified under 20 CAR § 193-703;

(D) Except as specified in 20 CAR § 192-501(f)(2) and in subdivision (a)(2) of this section, storing the food in packages, covered containers, or wrappings;

(E) Cleaning hermetically sealed containers of food or visible soil before opening;

(F) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(G) Storing damaged, spoiled, or recalled food being held in the retail food establishment as specified under 20 CAR § 195-404; and

(H) Separating fruits and vegetables before they are washed as specified under subsection (e) of this section from ready-to-eat food; and.

(I) Separating foods that have been lawfully manufactured without regulatory inspection from foods that have been produced, prepared, or distributed under the jurisdiction of a regulatory agency.[P]

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(2) Subdivision (a)(1)(D) of this section does not apply to:

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

(B) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(C) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(D) Food being cooled as specified under 20 CAR § 192-501(e)(2)(B); or

(E) Shellstock.

(b) **Food storage containers — Identified with common name of food.** Except for containers holding food that can be readily and unmistakably recognized, such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the retail food establishment such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(c) **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:

(1) Cooked as specified under 20 CAR § 192-401(a)(1)(A) or 20 CAR § 192-401(a)(1)(B); P or

(2) Included in 20 CAR § 192-401(a)(4). P

(d) **Protection from unapproved additives.***

(1) Food shall be protected from contamination that may result from the addition of, as specified in 20 CAR § 192-202(b):

(A) Unsafe or unapproved food or color additives; P and

(B) Unsafe or unapproved levels of approved food and color additives. P

(2) A food employee may not:

(A) 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; P or

(B) Except for grapes, serve or sell food specified under subdivision (d)(2)(A) of this section that is treated with sulfiting agents before receipt by the retail food establishment. P

(e) **Washing fruits and vegetables.**

(1) Except as specified in subdivision (e)(2) of this section and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, 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.

(2) Fruits and vegetables may be washed by using chemicals as specified under 20 CAR § 196-204(b) and a test kit or other device that accurately measures the active ingredient concentration of the fruit and vegetable wash solution may be provided.

(3) Devices used for on-site generation of chemicals meeting the requirements specified in 21 C.F.R. § 173.315, Chemicals used in washing or to assist in the peeling of fruits and vegetables, for the washing of raw, whole fruits and vegetables shall be used in accordance with the manufacturer's instructions.Pf

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20 CAR § 192-303. Preventing contamination from ice used as a coolant.

(a) **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. P

(b) **Storage or display of food in contact with water or ice.** 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.

(1) Except as specified in subdivisions (b)(2) and (3) of this section, unpackaged food may not be stored in direct contact with undrained ice.

(2) 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.

(3) Raw poultry 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.

20 CAR § 192-304. Preventing contamination from equipment, utensils, and linens.

(a) **Food contact with equipment and utensils.**

(1) Food shall only contact surfaces of:

(A) Equipment and utensils that are cleaned as specified under 20 CAR § 193-601 et seq., and sanitized as specified under 20 CAR § 193-701 et seq.; P or

(B) Single-service and single-use articles. P

(2) Linens, such as cloth napkins, as specified under subsection (c) of this section that are laundered as specified under 20 CAR § 193-801 et seq.

(b) **In-use utensils — Between-use storage.** During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(1) Except as specified under subdivision (b)(2) of this section, in the food with their handles above the top of the food and the container;

(2) In food that is not time/temperature control for safety food 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;

(3) 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 20 CAR § 193-602(a) and 20 CAR § 193-702;

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

(5) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not time/temperature control for safety food; or

(6) In a container of water if the water is maintained at a temperature of at least fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) and the container is cleaned at a frequency specified under 20 CAR § 193-602(a)(4)(G).

(c) **Linens and napkins — Use limitation.** Linens, such as cloth 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.

(d) **Wiping cloths — Use limitation.**

(1) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(A) Maintained dry; and

(B) Used for no other purpose.

(2) Cloths in-use for wiping counters and other equipment surfaces shall be:

(A) Held between uses in a chemical sanitizer solution at a concentration specified under 20 CAR § 193-501(n); and

(B) Laundered daily as specified under 20 CAR § 193-802(d).

(3) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(4) Dry wiping cloths and the chemical sanitizing solutions specified in subdivision (d)(2)(A) of this section in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(5) Containers of chemical sanitizing solutions specified in subdivision (d)(2)(A) of this section in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service articles, or single-use articles.

(6) Single-use disposable sanitizer wipes shall be used in accordance with Environmental Protection Agency-approved manufacturer's label use instructions.

(e) **Gloves — Use limitation.**

(1) If used, single-use gloves shall be used for only one (1) 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. [P]

(2) Except as specified in subdivision (e)(3) 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 20 CAR § 192-401 et seq., such as frozen food or a primal cut of meat.

(3) 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.

(4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under 20 CAR § 192-401 et seq., such as frozen food or a primal cut of meat.

(f) **Using clean tableware for second portions and refills.**

(1) 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.

(2) Except as specified in subdivision (f)(3) 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.

(3) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under 20 CAR § 193-204(c)(1), (2), and (3).

(g) **Refilling returnables.**

(1) Except as specified in subdivisions (g)(2) – (5) of this section, empty containers returned to a retail food establishment for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant. P

(2) A take-home food container returned to a retail food establishment may be refilled at a food establishment with food if the food container is:

(A) Designed and constructed for reuse and in accordance with the requirements specified under 20 CAR § 193-101 et seq., and 20 CAR § 193-201 et seq.; P

(B) One that was initially provided by the retail food establishment to the consumer, either empty or filled with food by the retail food establishment, for the purpose of being returned for reuse;

(C) Returned to the retail food establishment by the consumer after use; and

(D) Subject to the following steps before being refilled with food:

(i) Cleaned as specified under 20 CAR § 193-601 et seq.;

(ii) Sanitized as specified under 20 CAR § 193-701 et seq.; [P] and

(iii) Visually inspected by a food employee to verify that the container, as returned, meets the requirements specified under 20 CAR § 193-101 et seq., and 20 CAR § 193-201 et seq. [P]

(3) A take-home food container returned to a retail food establishment may be refilled at a retail food establishment with beverage if:

(A) The beverage is not a time/temperature control for safety food;

(B) 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 retail food establishment;

(C) 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;

(D) The consumer-owned container returned to the retail food establishment for refilling is refilled for sale or service only to the same consumer; and

(E) The container is refilled by:

(i) An employee of the retail food establishment; or

(ii) The owner of the container if the beverage system includes a contamination-free transfer process as specified under 20 CAR § 193-204(c)(1), (2), and (4), that cannot be bypassed by the container owner.

(4) Consumer-owned, 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 20 CAR § 193-204(c)(1), (2), and (4).

(5) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

20 CAR § 192-305. Preventing contamination from the premises.

(a) **Food storage.**

(1) Except as specified in subdivision (a)(2) and (3) of this section, food shall be protected from contamination by storing the food:

(A) In a clean, dry location;

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

(C) At least fifteen centimeters (15 cm) or six inches (6") above the floor.

(2) Food in packages and working containers may be stored fewer than fifteen centimeters (15 cm) or six inches (6") above the floor on case lot handling equipment as specified under 20 CAR § 193-204(l).

(3) 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.

(b) **Food storage — Prohibited areas.** Food may not be stored:

(1) In locker rooms;

(2) In toilet rooms;Pf

(3) In dressing rooms;

(4) In garbage rooms;

(5) In mechanical rooms;

(6) Under sewer lines that are not shielded to intercept potential drips;

(7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(8) Under open stairwells; or

(9) Under other sources of contamination.

(c) **Vended potentially hazardous food (time/temperature control for safety food) — Original container.** Time/temperature control for safety food dispensed through a vending machine shall be in the package in which it was placed at the retail food establishment or food processing plant at which it was prepared.

(d) **Food preparation.** During preparation, unpackaged food shall be protected from environmental sources of contamination.

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20 CAR § 192-306. Preventing contamination by consumers.

(a) **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. P

(b) **Condiments — Protection.**

(1) 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.

(2) 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 retail 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.

(c) **Consumer self-service operations.**

(1)(A) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. P

(B) This paragraph does not apply to:

(i) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

(ii) 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

(iii) Raw, frozen, shell-on shrimp or lobster.

(2) 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. Pf

(3) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures. Pf

(d) **Returned food and reservice of food.**

(1) Except as specified in subdivision (d)(2) 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. P

(2) Except as specified under 20 CAR § 192-801(7), a container of food that is not time/temperature control for safety food may be re-served from one (1) consumer to another if:

(A) 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

(B) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

20 CAR § 192-307. Preventing contamination from other sources — Miscellaneous sources of contamination.

(a) Food shall be protected from contamination that may result from a factor or source not specified under 20 CAR §§ 192-301 – 192-306.

(b)(1) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, that might prevent time/temperature control for safety food from being held at required temperatures, the person in charge shall contact the regulatory authority prior to reopening.

(2) Upon receiving notice of this occurrence, the regulatory authority shall take whatever action it deems necessary to protect the public health.

Subpart 4. Destruction of Organisms of Public Health Concern

20 CAR § 192-401. Cooking.

(a) **Raw animal foods.**

(1) Except as specified under subdivisions (a)(2) – (4) 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 (1) of the following methods based on the food that is being cooked:

(A) Sixty-three degrees Celsius (63°C) (one hundred forty-five degrees Fahrenheit (145°F)) or above for fifteen (15) seconds for: P

(i) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service; P and

(ii) Except as specified under subdivisions (a)(1)(B), (C), and (a)(2) of this section, fish and meat including game animals commercially raised for food as specified under 20 CAR § 192-201(g)(1)(A) and game animals under a voluntary inspection program as specified under 20 CAR § 192-201(g)(1)(B); P

(B) Sixty-eight degrees Celsius (68°C) (one hundred fifty-five degrees Fahrenheit (155°F)) for ~~fifteen~~ seventeen (15~~7~~) seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, ~~mechanically tenderized and injected~~ non-intact meats, the following if they are comminuted:~~,~~ fish and~~, meat~~, game animals commercially raised for food as specified under 20 CAR § 192-201(g)(1)(A), and game animals under a voluntary inspection program as specified under 20 CAR § 192-201(g)(1)(B)~~;~~ and raw eggs that are not prepared as specified under 20 CAR § 192-201(g)(1)(A)(i): P

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

; or

(C) Seventy-four degrees Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)) or above for ~~fifteen (15) seconds~~ less than 1 second ~~(instantaneous)~~ for poultry, baluts, wild game animals as specified under 20 CAR § 192-201(g)(1)(C) and (D), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. P

(2) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:

(A) ~~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:~~ Pf

~~Oven Type~~	~~Oven Temperature Based on Roast Weight~~	
	~~Less than 4.5 kg (10 lbs.)~~	~~4.5 kg (10 lbs.) or More~~
~~Still Dry~~	~~177ºC (350ºF) or more~~	~~121ºC (250ºF) or more~~
~~Convection~~	~~163ºC (325ºF) or more~~	~~121ºC (250ºF) or more~~
~~High Humidity[1]~~	~~121ºC (250ºF) or less~~	~~121ºC (250ºF) or less~~

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

~~; and~~

~~(B)~~ 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: P

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Temperature °C (°F)	Time[1] in Minutes	Temperature °C (°F)	Time[1] in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		

[1] *Holding time may include post oven heat rise.*

(B) If cooked ~~I~~in an oven, use 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: [Pf]

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.

(3) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(A) The retail food establishment serves a population that is not a highly susceptible population;

(B) The steak is prepared so that it remains intact, ~~labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified under 20 CAR § 192-201(a)(4);~~ and

(C) The steak is cooked on both the top and bottom to a surface temperature of sixty-three degrees Celsius (63°C) (one hundred forty-five degrees Fahrenheit (145°F)) or above and a cooked color change is achieved on all external surfaces.

(4) 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 subdivision (a)(2)(C) of this section, may be served or offered for sale in a ready-to-eat form if:

(A) As specified under 20 CAR § 192-801(3)(A) and (B), the retail food establishment serves a population that is not a highly susceptible population; and

(B) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; [Pf] and

(C) The consumer is informed as specified under 20 CAR § 192-603 that to ensure its safety, the food should be cooked as specified under subdivisions (a)(1) or (a)(2) of this section; or

(D) The regulatory authority grants a variance from subdivisions (a)(1) or (a)(2) of this section as specified in 20 CAR § 197-103(a) based on an HACCP plan that:

(i) Is submitted by the permit holder and approved as specified under 20 CAR § 197-103(a);

(ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and

(iii) Verifies that equipment and procedures for food preparation and training of food employees at the retail food establishment meet the conditions of the variance.

(b) **Microwave cooking.** Raw animal foods cooked in a microwave oven shall be:

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

(2) Covered to retain surface moisture;

(3) Heated to a temperature of at least seventy-four degrees Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)) in all parts of the food; P and

(4) Allowed to stand covered for two (2) minutes after cooking to obtain temperature equilibrium.

(c) **Plant food cooking for hot holding.** Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)). Pf

(d) **Noncontinuous cooking of raw animal foods.** Raw animal foods that are cooked using a noncontinuous cooking process shall be:

(1) Subject to an initial heating process that is no longer than sixty (60) minutes in duration; P

(2) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 20 CAR § 192-501(d)(1); P

(3) After cooling, held frozen or cold, as specified for time/temperature control for safety food under 20 CAR § 192-501(f)(1)(B); P

(4) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature and for a time as specified under subdivisions (a)(1) – (3); P

(5) Cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 20 CAR § 192-501(d)(1) if not either hot held as specified under 20 CAR § 192-501(f)(1), served immediately, or held using time as a public health control as specified under 20 CAR § 192-501(h) after complete cooking; P and

(6) Prepared and stored according to written procedures that:

(A) Have obtained prior approval from the regulatory authority; Pf

(B) Are maintained in the retail food establishment and are available to the regulatory authority upon request; Pf

(C) Describe how the requirements specified under subsection (d)(1) – (5) of this section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met; Pf

(D) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under subdivision (d)(4) of this section prior to being offered for sale or service; Pf and

(E) Describe how the foods, after initial heating but prior to cooking as specified under subdivision (d)(4) of this section, are to be separated from ready-to-eat foods as specified under 20 CAR § 192-302(a)(1). Pf

(e) **Manufacturer Cooking Instructions.**

(1) Commercially packaged food that bears a manufacturer's cooking instructions shall be cooked according to those instructions before use in ready-to-eat foods or offered in unpackaged form for human consumption, unless the manufacturer's instructions specify that the food may be consumed without cooking. P

(2) Food for which the manufacturer has provided information that it has not been processed to control pathogens, when used in ready-to-eat foods or offered for human consumption, shall be cooked according to a time and temperature appropriate for the food. P

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20 CAR § 192-402. Freezing.

(a) **Parasite destruction.**

(1) Except as specified in subdivision (a)(2) of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

(A) Frozen and stored at a temperature of negative twenty degrees Celsius (-20°C) (negative four degrees Fahrenheit (-4°F)) or below for one hundred sixty-eight (168) hours (seven (7) days) in a freezer; P

(B) Frozen at negative thirty-five degrees Celsius (-35°C) (negative thirty-one degrees Fahrenheit (-31°F)) or below until solid and stored at negative thirty-five degrees Celsius (-35°C) (negative thirty-one degrees Fahrenheit (-31°F)) or below for a minimum of fifteen (15) hours; P or

(C) Frozen at negative thirty-five degrees Celsius (-35°C) (negative thirty-one degrees Fahrenheit (-31°F)) or below until solid and stored at negative twenty degrees Celsius (-20°C) (negative four degrees Fahrenheit (-4°F)) or below for a minimum of twenty-four (24) hours. P

(2) Subdivision (a)(1) of this section does not apply to:

(A) Molluscan shellfish;

(B) A scallop product consisting only of the shucked adductor muscle;

(C) 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);

(D) Aquacultured fish, such as salmon, that:

(i) If raised in open water, are raised in net-pens; or

(ii) Are raised in land-based operations such as ponds or tanks; and

(iii) Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish; or

(E) Fish eggs that have been removed from the skein and rinsed.

(b) **Records — Creation and retention.**

(1) Except as specified in subdivisions (a)(2) and (b)(2) 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 in the retail food establishment for ninety (90) calendar days beyond the time of service or sale of the fish. Pf

(2) 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 subsection (a) of this section may substitute for the records specified under subdivision (b)(1) of this section.

(3) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subdivision (a)(2)(C) of this section, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subdivision (a)(2)(C) of this section shall be obtained by the person in charge and retained in the records of the retail food establishment for ninety (90) calendar days beyond the time of service or sale of the fish. Pf

(c) **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.

20 CAR § 192-403. Reheating — Reheating for hot holding.

(a) Except as specified under subsections (b), (c), and (e) of this section, time/temperature control for safety 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 seventy-four degrees Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)) for fifteen (15) seconds. P

(b) Except as specified under subsection (c) of this section, time/temperature control for safety 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 seventy-four degrees

Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)) and the food is rotated or stirred, covered, and allowed to stand covered for two (2) minutes after reheating. P

(c) Ready-to-eat time/temperature control for safety food that has been commercially processed and packaged in a food processing plant that is inspected by the regulatory authority that has jurisdiction over the plant shall be heated to a temperature of at least fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) when being reheated for hot holding. P

(d) Reheating for hot holding as specified under subsections (a) – (c) of this section shall be done rapidly and the time the food is between five degrees Celsius (5ºC) (forty-one degrees Fahrenheit (41ºF)) and the temperatures specified under subsections (a) – (c) of this section may not exceed two (2) hours. P

(e) Remaining unsliced portions of meat roasts that are cooked as specified under 20 CAR § 192-401(a)(2) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 20 CAR § 192-401(a)(2).

20 CAR § 192-404. Other methods.

Treating juice. Juice packaged in a retail food establishment shall be:

(1) Treated under an HACCP plan as specified in 20 CAR § 197-201(b)(6) to attain a 5-log reduction, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction of the most resistant microorganism of public health significance; P or

(2) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance: Pf

(A) As specified under 20 CAR § 192-602(a); Pf and

(B) As specified in 21 C.F.R. § 101.17(g), Food labeling warning, notice, and safe handling statements, Juices, that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful

bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." Pf

Subpart 5. Limitation of Growth of Organisms of Public Health Concern

20 CAR § 192-501. Temperature and time control.

(a) **Frozen food.** Stored frozen foods shall be maintained frozen.

(b) **Time/temperature control for safety food — Slacking.** Frozen time/temperature control for safety food that is slacked to moderate the temperature shall be held:

(1) Under refrigeration that maintains the food temperature at five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less, or at five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less; or

(2) At any temperature if the food remains frozen.

(c) **Thawing.**

(1) Except as specified in subdivision (c)(4) of this section, time/temperature control for safety food shall be thawed:

(A) Under refrigeration that maintains the food temperature at five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less Pf;

(B) Completely submerged under running water:

(i) At a water temperature of twenty-one degrees Celsius (21°C) (seventy degrees Fahrenheit (70°F)) or below Pf;

(ii) With sufficient water velocity to agitate and float off loose particles in an overflow Pf; and

(iii) For a period of time that does not allow thawed portions of ready-to-eat food to rise above five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)); or

(iv) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 20 CAR § 192-401(a)(1) or (a)(2) to

be above five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) for more than four (4) hours including:

(a) The time the food is exposed to the running water and the time needed for preparation for cooking Pf; or

(b) The time it takes under refrigeration to lower the food temperature to five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) Pf;

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

(i) Cooked as specified under 20 CAR § 192-401(a)(1), (a)(2), ~~or~~ (b), or (e)Pf ; or

(ii) Thawed in a microwave oven and immediately transferred to conventional cooking equipment with no interruption in the process;Pf 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.

(2) Reduced oxygen-packaged fish that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:

(A) Prior to its thawing under refrigeration as specified in subdivision (c)(1) of this section; or

(B) Prior to, or immediately upon completion of, its thawing using procedures specified in subdivision (c)(2) of this section.

(d) **Cooling.**~~*~~

(1) Cooked time/temperature control for safety food shall be cooled:

(A) Within two (2) hours from fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) to twenty-one degrees Celsius (21°C) (seventy degrees Fahrenheit (70°F)); P and

(B) Within six (6) hours from fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) to five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less. P

(2) Time/temperature control for safety food shall be cooled within four (4) hours to five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less if

prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna. P

(3) Except as specified in subdivision (d)(4) of this section, a time/temperature control for safety food received in compliance with laws allowing a temperature above five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) during shipment from the supplier as specified in 20 CAR § 192-202(a)(2), shall be cooled within four (4) hours to five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less. P

(4) Raw eggs shall be received as specified under 20 CAR § 192-202(a)(3) and immediately placed in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius (7°C) (forty-five degrees Fahrenheit (45°F)) or less. P

(e) **Cooling methods.**

(1) Cooling shall be accomplished in accordance with the time and temperature criteria specified under subsection (d) of this section by using one (1) or more of the following methods based on the type of food being cooled:

(A) Placing the food in shallow pans; Pf

(B) Separating the food into smaller or thinner portions; Pf

(C) Using rapid cooling equipment; Pf

(D) Stirring the food in a container placed in an ice water bath; Pf

(E) Using containers that facilitate heat transfer; Pf

(F) Adding ice as an ingredient; Pf or

(G) Other effective methods. Pf

(2) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(A) Arranged in the equipment to provide maximum heat transfer through the container walls; and

(B) Loosely covered, or uncovered if protected from overhead contamination as specified under 20 CAR § 192-305(a)(1)(B), during the cooling period to facilitate heat transfer from the surface of the food.

(f) **Time/temperature control for safety food — Hot and cold holding.**

(1) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified in subsection (i) of this section, and except as specified in subdivision (f)(2) and (3) of this section, time/temperature control for safety food shall be maintained:

(A) At fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) or above, except that roasts cooked to a temperature and for a time specified in 20 CAR § 192-401(a)(2) or reheated as specified in 20 CAR § 192-403(e) may be held at a temperature of fifty-four degrees Celsius (54°C) (one hundred thirty degrees Fahrenheit (130°F)) or above; P or

(B) At five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less. P

(2) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius (7°C) (forty-five degrees Fahrenheit (45°F)) or less. P

(3) Time/temperature control for safety food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subdivision (f)(1) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified under 20 CAR § 193-204(c)(5).

(g) **Ready-to-eat time/temperature control for safety food date marking.**

(1)(A) Except when packaging food using a reduced oxygen packaging method as specified under 20 CAR § 192-503, and except as specified in subdivisions (g)(5) and (6) of this section, refrigerated, ready-to-eat time/temperature control for safety food prepared and held in a retail food establishment for more than twenty-four (24) hours shall be clearly marked to indicate the date, or day by which, the food shall be consumed on the premises, sold, or discarded when held at a temperature of five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less for a maximum of seven (7) days.

(B) The day of preparation shall be counted as Day 1. Pf

(2) Except as specified in subdivisions (g)(5) and (7) of this section, refrigerated, ready-to-eat time/temperature control for safety food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a retail food establishment and if the food is held for more than twenty-four (24) hours, to indicate the date, or day by which, the food shall be consumed on the premises, sold, or discarded, based on the temperature specified in subdivision (g)(1) of this section and: Pf

(A) The day the original container is opened in the retail food establishment shall be counted as Day 1; Pf and

(B) The day or date marked by the retail food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. Pf

(3) A refrigerated, ready-to-eat time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient. Pf

(4) A date marking system that meets the criteria stated in subdivisions (g)(1) and (2) of this section may include:

(A) Using a method approved by the regulatory authority for refrigerated, ready-to-eat time/temperature control for safety food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(B) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subdivision (g)(1) of this section;

(C) Marking the date or day the original container is opened in a retail food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subdivision (g)(2) of this section; or

(D) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

(5) Subdivisions (g)(1) and (2) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) Subdivisions (g)(1) and (2) of this section do not apply to shellstock.

(7) Subdivision (g)(2) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(A) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 C.F.R. pt. ~~110~~117, Current good manufacturing practice in manufacturing, packing, or holding human food;

(B) Hard cheeses containing not more than thirty-nine percent (39%) moisture as defined in 21 C.F.R. pt. 133, Cheeses and related cheese products, such as cheddar, gruyere, Parmesan and Reggiano, and Romano;

(C) Semisoft cheeses containing more than thirty-nine percent (39%) moisture, but not more than fifty percent (50%) moisture, as defined in 21 C.F.R. pt. 133, Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and Monterey Jack;

(D) Cultured dairy products as defined in 21 C.F.R. pt. 131, Milk and cream, such as yogurt, sour cream, and buttermilk;

(E) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 C.F.R. pt. 114, Acidified foods;

(F) Shelf-stable dry fermented sausages, such as pepperoni and Genoa; and

(G) Shelf-stable salt-cured products such as prosciutto and Parma (ham).

(h) **Ready-to-eat time/temperature control for safety food — Disposition.**~~*~~

(1) A food specified in subdivisions (g)(1) or (g)(2) of this section shall be discarded if it:

(A) Exceeds the temperature and time combination specified in subdivision (g)(1) of this section, except time that the product is frozen; P

(B) Is in a container or package that does not bear a date or day; P or

(C) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subdivision (g)(1) of this section. P

(2) Refrigerated, ready-to-eat time/temperature control for safety food prepared in a retail food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subdivision (g)(1) of this section. P

(i) **Time as a public health control.** ~~*~~

(1) Except as specified under subdivision (i)(4) of this section, if time without temperature control is used as the public health control for a working supply of time/temperature control for safety food before cooking, or for ready-to-eat time/temperature control for safety food that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the retail food establishment and made available to the regulatory authority upon request that specify: Pf

(A) Methods of compliance with subdivisions (i)(3)(A) – (C) or (i)(4) of this section; Pf and

(B) Methods of compliance with subsection (d) of this section for food that is prepared, cooked, and refrigerated before time is used as a public health control. Pf

(2) **Time — Maximum up to four (4) hours.** If time/temperature control is used as the public health control up to a maximum of four (4) hours: ~~:~~

~~(3) **Time — Maximum up to four (4) hours.**~~

(A) Except as specified in paragraph (B), ~~T~~the food shall have an initial temperature of five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less when removed from cold holding temperature control, or fifty-seven degrees Celsius

(57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) or greater when removed from hot holding temperature control; P

(B) The food may have an initial temperature of twenty-one degrees Celsius (21°C) (seventy degrees Fahrenheit (70°F)) or less if;

(i) it is a ready-to-eat-fruit or vegetable that upon cutting is rendered a time/temperature control for safety food as defined in 20 CAR § 190-201 (b)(121), or

(ii) It is a ready-to-eat-hermetically sealed food that upon opening is rendered a time/temperature control for safety food as defined in 20 CAR § 190-201 (b)(121),

(iii) The food temperature does not exceed twenty-one degrees Celsius (21°C) (seventy degrees Fahrenheit (70°F)) within a maximum time period of 4 hours from the time it was rendered a time/temperature control for safety food; and

(iv) The food is marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is rendered a time/temperature control for safety food as specified in subparagraphs (1)(B)(i) and (ii) of this section.

(C) The food shall be marked or otherwise identified to indicate the time that is four (4) hours past the point in time when the food is removed from temperature control; Pf

(D~~C~~) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four (4) hours from the point in time when the food is removed from temperature control; P and

(E~~D~~) The food in unmarked containers or packages, or marked to exceed a four-hour limit shall be discarded. P

(4) A retail food establishment that serves a highly susceptible population may not use time as specified under subdivisions (i)(3)(A) or (i)(3)(B) of this section as the public health control for raw eggs.

20 CAR § 192-502. Specialized processing methods.

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Variance requirement. A retail food establishment shall obtain a variance from the regulatory authority as specified in 20 CAR § 197-103(a) and 20 CAR § 197-103(b) before: Pf

(1) Smoking food as a method of food preservation rather than as a method of flavor enhancement; Pf

(2) Curing food; Pf

(3) Using food additives or adding components such as vinegar: Pf

(A) As a method of food preservation rather than as a method of flavor enhancement; Pf or

(B) To render a food so that it is not time/temperature control for safety food; Pf

(4) Packaging time/temperature control for safety food using a reduced oxygen packaging method except where the growth of a toxin formation by Clostridium botulinum and the growth of Listeria monocytogenes are controlled as specified in 20 CAR § 192-503; Pf

(5) Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption; Pf

(6) Custom processing animals that are for personal use as food and not for sale or service in a retail food establishment; Pf

(7) Preparing food by another method that is determined by the regulatory authority to require a variance; Pf or

(8) Sprouting seeds or beans. Pf

20 CAR § 192-503. Clostridium botulinum and Listeria monocytogenes controls — Reduced oxygen packaging without a variance — Criteria.

(a) Except for a retail food establishment that obtains a variance as specified under 20 CAR § 192-502, a retail food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes. P

(b) Except as specified under subsection (f) of this section, a retail food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall have an HACCP plan that contains the information specified under 20 CAR § 197-201(d)(2) and (4) and that: Pf

(1) Identifies the food to be packaged; Pf

(2) Except as specified under subsections (c) – (e) of this section, requires that the packaged food shall be maintained at five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or less and meet at least one (1) of the following criteria: Pf

(A) Has an a_w of ninety-one hundredths (0.91) or less; Pf

(B) Has a pH of four and six tenths (4.6) or less; Pf

(C) Is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture using substances specified in 9 C.F.R. § 424.21, Use of food ingredients and sources of radiation, and is received in an intact package; Pf or

(D) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables; Pf

(3) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: Pf

(A) Maintain the food at five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) or below; Pf and

(B) Discard the food if within thirty (30) calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption; Pf

(4) Limits the refrigerated shelf life to no more than thirty (30) calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's sell-by or use-by date, whichever occurs first; P and

(5) Includes operational procedures that:

(A) Prohibit contacting ready-to-eat food with bare hands, under 20 CAR § 192-301(a)(2); Pf

(B) Identify a designated work area and the method by which: [Pf]

(i) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; [Pf] and

(ii) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation; [Pf]

(C) Delineate cleaning and sanitization procedures for food-contact surfaces; [Pf]

(D) Describe the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the: [Pf]

(i) Concepts required for a safe operation; [Pf]

(ii) Equipment and facilities; [Pf] and(5)

(iii) Procedures specified under subdivision (b)(5) of this section and 20 CAR § 197-201(d)(2) and (4); [Pf] and

(E) Are provided to the regulatory authority prior to implementation as specified under 20 CAR § 197-201(c)(2).

(c) Except for fish that is frozen before, during, and after packaging, a retail food establishment may not package fish using a reduced oxygen packaging method. [P]

(d) Except as specified under subsections (c) and (f) of this section, a retain food establishment that packages time/temperature control for safety food using a cook-chill or sous vide process shall:

(1) Provide to the regulatory authority before implementation an HACCP plan that contains the information as specified under 20 CAR § 197-201(d)(2) and (4); [Pf]

(2) Ensure the food is:

(A) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer; [Pf]

(B) Cooked to heat all parts of the food to a temperature and for a time as specified under 20 CAR § 192-401(a)(1) – (3); [P]

(C) Protected from contamination before and after cooking as specified under 20 CAR § 192-301 et seq., and 20 CAR § 192-401 et seq.; [P]

(D) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)); P

(E) Cooled to five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) in the sealed package or bag as specified under 20 CAR § 192-501(d) and: P

(i) Cooled to one degree Celsius (1°C) (thirty-four degrees Fahrenheit (34°F)) within forty-eight (48) hours of reaching five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) and held at that temperature until consumed or discarded within thirty (30) days after the date of packaging; P

(ii) Held at five degrees Celsius (5ºC) (forty-one degrees Fahrenheit (41ºF)) or less for no more than seven (7) days, at which time the food must be consumed or discarded; P or

(iii) Cooled to one degree Celsius (1ºC)(thirty-four degrees Fahrenheit (34ºF) within 48 hours of reaching five degrees Celsius (5ºC) (forty-one degrees Fahrenheit (41ºF)), removed from refrigeration equipment that maintains one degree Celsius (1ºC)(thirty-four degrees Fahrenheit (34ºF) food temperature and then held at five degrees Celsius (5ºC) (forty-one degrees Fahrenheit (41ºF)) or less for no more than 7 days, not to exceed 30 days from its date of packaging, at which time the food must be consumed or discarded; P or

(iv) Held frozen with no shelf-life restriction while frozen until consumed or used; P

(F) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily; Pf

(G) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation; Pf and

(H) Labeled with the product name and the date packaged; Pf

(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

(A) Make such records available to the regulatory authority upon request; [Pf] and

(B) Hold such records for at least six (6) months; [Pf] and

(4) Implement written operational procedures as specified under subdivision (b)(5) of this section and a training program as specified under (B)(6) of this section. [Pf]

(e) Except as specified under subsection (f) of this section, a retail food establishment that packages cheese using a reduced oxygen packaging method shall:

(1) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the retail food establishment and that meet the standards of identity as specified in 21 C.F.R. § 133.150, Hard cheeses, 21 C.F.R. § 133.169, Pasteurized process cheese, or 21 C.F.R. § 133.187, Semisoft cheeses; [P]

(2) Have an HACCP plan that contains the information specified under 20 CAR § 197-201(d)(2) and (4) and as specified under subdivisions (b)(1), (b)(3)(A), and (b)(5) of this section; [Pf]

(3) Labels the package on the principal display panel with a use-by date that does not exceed thirty (30) days from its packaging or the original manufacturer's sell-by or use-by date, whichever occurs first; [Pf] and

(4) Discards the reduced-oxygen-packaged cheese if it is not sold for off-premises consumption or consumed within thirty (30) calendar days of its packaging. [Pf]

(f) An HACCP plan is not required when a retail food establishment uses a reduced oxygen packaging method to package time/temperature control for safety food that is always:

(1) Labeled with the production time and date;

(2) Held at five degrees Celsius (5ºC) (forty-one degrees Fahrenheit (41ºF)) or less during refrigerated storage; and

(3) Removed from its package in the retail food establishment within forty-eight (48) hours after packaging.

Subpart 6. Food Identity, Presentation, and On-premises Labeling

20 CAR § 192-601. Accurate representation.

(a) **Standards of identity.** Packaged food shall comply with standard of identity requirements in 21 C.F.R. pts. 131 – 169 and 9 C.F.R. pt. 319, Definitions and standards of identity or composition, and the general requirements in 21 C.F.R. pt. 130, Food standards: General, and 9 C.F.R. pt. 319, Subpart A — General.

(b) **Honestly presented.**

(1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(2) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

(3) Foods lawfully manufactured without regulatory inspection shall be separated from foods that have been produced, prepared, or distributed under the jurisdiction of a regulatory agency.

20 CAR § 192-602. Labeling.

(a) **Food labels.**

(1) Food packaged in a retail food establishment shall be labeled as specified in law, including 21 C.F.R. pt. 101, Food labeling, and 9 C.F.R. pt. 317, Labeling, marking devices, and containers.

(2)(A) Label information shall include:

(i) The common name of the food, or, absent a common name, an adequately descriptive identity statement;

(ii) If made from two (2) 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;

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

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

(v) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient. [Pf]

(B) Except as exempted in section 403(q)(3) – (5) of the Federal Food, Drug, and Cosmetic Act, nutrition labeling as specified in 21 C.F.R. pt. 101, Food labeling, and 9 C.F.R. pt. 317, Subpart B — Nutrition labeling.

(C) For any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

(3) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(A) The manufacturer's or processor's label that was provided with the food; or

(B) A card, sign, or other method of notification that includes the information specified under subdivisions (a)(2)(A)(i), (ii), (v) and (a)(2)(B) of this section.

(4) Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

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

(B) There are no state or local laws requiring labeling; and

(C) The food is manufactured or prepared on the premises of the retail food establishment or another retail 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.

(b) **Other forms of information.**

(1) If required by law, consumer warnings shall be provided.

(2) Retail food establishment or manufacturers' dating information on foods may not be concealed or altered.

(3) The permit holder shall notify consumers by written notification of the presence of major food allergens as an ingredient in unpackaged food items that are served or sold to the consumer.

20 CAR § 192-603. Consumer advisory — Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.

(a) Except as specified in 20 CAR § 192-401(a)(3) and (a)(4)(D) and 20 CAR § 192-801(3), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections (b) and (c) of this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. Pf

(b) Disclosure shall include:

(1) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)", "raw-egg Caesar salad", and "hamburgers (can be cooked to order)"; Pf or

(2) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain or may contain raw or undercooked ingredients. Pf

(c) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

(1) Regarding the safety of these items, written information is available upon request; Pf

(2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; Pf 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.

Subpart 7. Contaminated Foods

20 CAR § 192-701. Disposition — Discarding or reconditioning unsafe, adulterated, or contaminated food.

(a) A food that is unsafe, adulterated, or not honestly presented as specified under 20 CAR § 192-101 shall be discarded or reconditioned according to an approved procedure. P

(b) Food that is not from an approved source as specified under 20 CAR § 192-201(a) – (g) shall be discarded. P

(c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 20 CAR § 191-201(b) shall be discarded. P

(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. P

Subpart 8. Special Requirements for Highly Susceptible Populations

20 CAR § 192-801. Additional safeguards.

Pasteurized foods, prohibited reservice, and prohibited food. In a retail food establishment that serves a highly susceptible population:

(1) The following criteria apply to juice:

(A) For the purposes of this paragraph only, children who are age nine (9) or less and receive food in a school, daycare setting, or similar facility that provides custodial care are included as highly susceptible populations;

(B) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 C.F.R. § 101.17(g), Food labeling, warning, notice, and safe handling statements, Juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under 20 CAR § 192-404(2) may not be served or offered for sale; P and

(C) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under an HACCP plan that contains the information specified under 20 CAR § 197-201(d)(2) and (5) and as specified in 21 C.F.R. pt. 120, Hazard analysis and critical control point (HACCP) systems, Subpart B — Pathogen reduction, § 120.24, Process controls; P

(2) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: P

(A) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; P and

(B) Except as specified in subdivision (5) of this section, recipes in which more than one (1) egg is broken and the eggs are combined; P

(3) The following foods may not be served or offered for sale in a ready-to-eat form: P

(A) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare; P

(B) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw ~~shell~~ eggs, and meringue; P and

(C) Raw seed sprouts.~~;~~ P

(D) Packaged food as specified under 20 CAR § 192-401 (e).

(4) Food employees may not contact ready-to-eat food as specified under 20 CAR § 192-301(a)(2) and (5); P

(5) Time only, as the public health control as specified under 20 CAR § 192-501(i)(4), may not be used for raw eggs; P

(6) Subdivision (2)(B) of this section does not apply if:

(A) The raw eggs are combined immediately before cooking for one (1) consumer's serving at a single meal, cooked as specified under 20 CAR § 192-401(a)(1)(A), and served immediately, such as an omelet, soufflé, or scrambled eggs;

(B) 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

(C) The preparation of the food is conducted under an HACCP plan that:

(i) Identifies the food to be prepared;

(ii) Prohibits contacting ready-to-eat food with bare hands;

(iii) Includes specifications and practices that ensure:

(a) Salmonella Enteritidis growth is controlled before and after cooking; and

(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 20 CAR § 192-401(a)(1)(B);

(iv) Contains the information specified under 20 CAR § 197-201(d)(4) including procedures that:

(a) Control cross-contamination of ready-to-eat food with raw eggs; and

(b) Delineate cleaning and sanitization procedures for food-contact surfaces; and

(v) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used;

(7) Except as specified in subdivision (8) of this section, food may be re-served as specified under 20 CAR § 192-306(d)(2)(A) and (B); and

(8) Food may not be re-served under the following conditions:

(A) Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside; and

(B) Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare
Chapter I. Generally, Department of Health
Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments
Part 193. Equipment, Utensils, and Linens
Subpart 1. Materials for Construction and Repair

20 CAR § 193-101. Multiuse.

(a) **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: P

(1) Safe; P

(2) Durable, corrosion-resistant, and nonabsorbent;

(3) Sufficient in weight and thickness to withstand repeated warewashing;

(4) Finished to have a smooth, easily cleanable surface; and

(5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(b) **Cast iron — Use limitation.**

(1) Except as specified in subdivisions (b)(2) and (3) of this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

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

(3) 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.

(c) **Lead — Use limitation.**

(1) Ceramic, china, and 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: [P]

Utensil Category	**Ceramic Article Description**	**Maximum Lead mg/L**
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls ≥1.1 L (1.16 QT)	1
Small Hollowware (excluding cups & mugs)	Bowls < 1.1 L (1.16 QT)	2.0
Flat Tableware	Plates, Saucers	3.0

(2) Pewter alloys containing lead in excess of five-hundredths of one percent (0.05%) may not be used as a food-contact surface. [P]

(3) Solder and flux containing lead in excess of two-tenths of one percent (0.2%) may not be used as a food-contact surface.

(d) **Copper — Use limitation.**

(1) Except as specified in subdivision (d)(2) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below six (6) such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator. P

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

(e) **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. P

(f) **Sponges — Use limitation.** Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(g) **Wood — Use limitation.**

(1) Except as specified in subdivisions (g)(2), (3), and (4) of this section, wood and wood wicker may not be used as a food-contact surface.

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

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

(B) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of one hundred ten degrees Celsius (110°C) (two hundred thirty degrees Fahrenheit (230°F)) or above.

(3) 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.

(4) 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:

(A) Untreated wood containers; or

(B) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 C.F.R. § 178.3800, Preservatives for wood.

(h) **Nonstick coatings — Use limitation.** Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(i) **Non-food-contact surfaces.** Non-food-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.

20 CAR § 193-102. Single-service and single-use.

Characteristics. Materials that are used to make single-service and single-use articles:

(1) May not:

(A) Allow the migration of deleterious substances; [P] or

(B) Impart colors, odors, or tastes to food; and

(2) Shall be:

(A) Safe; [P] and

(B) Clean.

Subpart 2. Design and Construction

20 CAR § 193-201. Durability and strength.

(a) **Equipment and utensils.** Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(b) **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.

20 CAR § 193-202. Cleanability.

(a) **Food-contact surfaces.**

(1) Multiuse food-contact surfaces shall be:

(A) Smooth; [Pf]

(B) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections; [Pf]

(C) Free of sharp internal angles, corners, and crevices; [Pf]

(D) Finished to have smooth welds and joints; [Pf] and

(E) Except as specified in subdivision (a)(2) of this section, accessible for cleaning and inspection by one (1) of the following methods:

(i) Without being disassembled; [Pf]

(ii) By disassembling without the use of tools; [Pf] or

(iii) 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. [Pf]

(2) Subdivision (a)(1)(E) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

(b) **CIP equipment.**

(1) CIP equipment shall meet the characteristics specified under subsection (a) of this section and shall be designed and constructed so that:

(A) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; [Pf] and

(B) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(2) 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.

(c) **"V" threads — Use limitation.** Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.

(d) **Hot oil filtering equipment.** Hot oil filtering equipment shall meet the characteristics specified under subsection (b) or (c) of this section and shall be readily accessible for filter replacement and cleaning of the filter.

(e) **Can openers.** Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(f) **Non-food-contact surfaces.** Non-food-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(g) **Kick plates— Removable.** Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(1) Removable by one (1) of the methods specified under subdivision (a)(1)(E) of this section or capable of being rotated open; and

(2) Removable or capable of being rotated open without unlocking equipment doors.

(h) **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.

20 CAR § 193-203. Accuracy.

(a) **Temperature measuring devices — Food.**

(1) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius (1°C) in the intended range of use. [Pf]

(2) Food-temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit (2°F) in the intended range of use. [Pf]

(b) **Temperature measuring devices — Ambient air and water.**

(1) 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 plus or minus one and one-half degrees Celsius (1.5°C) in the intended range of use. [Pf]

(2) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus three degrees Fahrenheit (3°F) in the intended range of use. [Pf]

(c) **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 seven kilopascals (7 kPa) (one pound per square inch (1 psi)) or smaller and shall be accurate to plus or minus fourteen kilopascals (14 kPa) (plus or minus two pounds per square inch (2 psi)) in the range indicated on the manufacturer's data plate.

20 CAR § 193-204. Functionality.

(a) **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.

(b) **Equipment openings — Closures and deflectors.**

(1) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(2) 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 five millimeters (5 mm) (two-tenths of an inch (0.2")).

(3) Except as specified under subdivision (b)(4) 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.

(4) If a watertight joint is not provided:

(A) 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

(B) The opening shall be flanged as specified under subdivision (b)(2) of this section.

(c) **Dispensing equipment — Protection of equipment and food.** In equipment that dispenses or vends liquid food or ice in unpackaged form:

(1) 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;

(2) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(3) 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:

(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) 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; and

(5) Dispensing equipment in which time/temperature control for safety food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under 20 CAR § 192-501(f)(1) shall:

(A) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; [P] and

(B) Conform to the requirements for this equipment as specified in NSF/American National Standards Institute (ANSI) Standard 18-2006, Manual Food and Beverage Dispensing Equipment. [P]

(d) **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 time/temperature control for safety food such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine 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.

(e) **Bearings and gear boxes — Leakproof.** Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

(f) **Beverage tubing — Separation.** Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

(g) **Ice units — Separation of drains.** Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(h) **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.

(i) **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.

(j) **Molluscan shellfish tanks.**

(1) Except as specified under subdivision (j)(2) of this section, molluscan shellfish life-support system display tanks may not be used to store or 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. [P]

(2) Molluscan shellfish life-support system display tanks that are used to store or 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 20 CAR § 197-103(a) and an HACCP plan that: [Pf]

(A) Is submitted by the permit holder and approved as specified under 20 CAR § 197-103(b); [Pf] and

(B) Ensures that:

(i) Water used with fish other than molluscan shellfish does not flow into the molluscan tank; [Pf]

(ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank; [Pf] and

(iii) The identity of the source of the shellstock is retained as specified under 20 CAR § 192-203(b). [Pf]

(k) **Vending machines — Automatic shutoff.**

(1) A machine vending time/temperature control for safety food shall have an automatic control that prevents the machine from vending food:

(A) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under 20 CAR pt. 192, Food; [P] and

(B) If a condition specified under subdivision (k)(1)(A) of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under 20 CAR pt. 192, Food. [P]

(2) When the automatic shutoff within a machine vending time/temperature control for safety food is activated:

(A) In a refrigerated vending machine, the ambient temperature may not exceed five degrees Celsius (5°C) (forty-one degrees Fahrenheit (41°F)) for more than thirty (30) minutes immediately after the machine is filled, serviced, or restocked; [P] or

(B) In a hot holding vending machine, the ambient temperature may not be less than fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) for more than one hundred twenty (120) minutes immediately after the machine is filled, serviced, or restocked. [P]

(l) **Temperature measuring devices.**

(1) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(2) Except as specified in subdivision (k)(3) of this section, cold or hot holding equipment used for time/temperature control for safety food shall be designed to include and shall be equipped with at least one (1) integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(3) Subdivision (k)(2) 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.

(4) Temperature measuring devices shall be designed to be easily readable.

(5) 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 one degree Celsius (1°C) or two degrees Fahrenheit (2°F) in the intended range of use. [Pf]

(m) **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:

(1) Temperatures required for washing, rinsing, and sanitizing;

(2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

(n) **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.

(o) **Warewashing machines — Temperature measuring devices.** A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(1) In each wash and rinse tank; [Pf] and

(2) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank. [Pf]

(p) **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:

(1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than seventy-seven degrees Celsius (77°C) (one hundred seventy-one degrees Fahrenheit (171°F)); [Pf] and

(2) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water. [Pf]

(q) **Warewashing machines — Automatic dispensing of detergents and sanitizers.** A warewashing machine that is installed after adoption of this subchapter by the regulatory authority shall be designed and equipped to:

(1) Automatically dispense detergents and sanitizers; [Pf] and

(2) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles. [Pf]

(r) **Warewashing machines — Flow pressure device.**

(1) 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

(2) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth-inch Iron Pipe Size valve.

(3) Subdivisions (q)(1) and (2) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(s) **Warewashing sinks and drainboards — Self-draining.** Sinks and drainboards of warewashing sinks and machines shall be self-draining.

(t) **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.

(u) **Vending machines — Liquid waste products.**

(1) 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.

(2) Vending machines that dispense liquid food in bulk shall be:

(A) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(B) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under subdivision (u)(2)(B) 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.

(v) **Case lot handling apparatuses — Moveability.** Apparatuses, 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.

(w) **Vending machine doors and openings.**

(1) 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 one and one-half millimeters (1.5 mm) or one-sixteenth inch (1/16") by:

(A)(i) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one and one-half millimeters (1.5 mm) or one-sixteenth inch (1/16").

(ii) Screening of twelve (12) or more mesh to two and one-half centimeters (2.5 cm) (twelve (12) mesh to one inch (1")) meets this requirement;

(B) Being effectively gasketed;

(C) Having interface surfaces that are at least thirteen millimeters (13 mm) (one-half inch (1/2")) wide; or

(D) Jambs or surfaces used to form an L-shaped entry path to the interface.

(2) 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 one-sixteenth inch (1/16").

20 CAR § 193-205. Acceptability.

Food equipment — Certification and classification. Food equipment that is certified or classified for sanitation in conformance to a recognized American National

Standard by an American National Standards Institute-accredited certification program will be deemed to comply with 20 CAR § 193-101 et seq., and 20 CAR § 193-201 et seq.

Subpart 3. Numbers and Capacities

20 CAR § 193-301. Equipment.

(a) **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 20 CAR pt. 192, Food. Pf

(b) **Manual warewashing — Sink compartment requirements.**

(1) Except as specified in subdivision (b)(3) of this section, a sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. Pf

(2)(A) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.

(B) If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subdivision (b)(3) of this section shall be used. Pf

(3)(A) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved.

(B) Alternative manual warewashing equipment may include:

(i) High-pressure detergent sprayers;

(ii) Low-pressure or line-pressure spray detergent foamers;

(iii) Other task-specific cleaning equipment;

(iv) Brushes or other implements;

(v) Two-compartment sinks as specified under subdivisions (b)(4) and (5) of this section; or

(vi) Receptacles that substitute for the compartments of a multicompartment sink.

(4) Before a two-compartment sink is used:

(A) The permit holder shall have its use approved; and

(B) The permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one (1) type of raw meat and another or cleanup at the end of a shift, and shall:

(i) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and

(ii) Use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified under 20 CAR § 193-501(o); or

(iii) Use a hot water sanitization immersion step as specified under 20 CAR § 193-603(f)(3).

(5) A two-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.

(c) **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.

(d) **Ventilation hood systems — Adequacy.** Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(e) **Clothes washers and dryers.**

(1) Except as specified in subdivision (e)(2) of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(2) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under 20 CAR § 193-901(b), a mechanical clothes washer and dryer need not be provided.

20 CAR § 193-302. Utensils, temperature measuring devices, and testing devices.

(a) **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. Pf

(b) **Food temperature measuring devices.**

(1) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under 20 CAR pt. 192, Food. Pf

(2) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets. Pf

(c) **Temperature measuring devices — Manual warewashing.**

(1) In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures. Pf

(2) In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature. Pf

(d) **Sanitizing solutions — Testing devices.** A test kit or other device that accurately measures the concentration in milligrams per liter (mg/l) of sanitizing solutions shall be provided. Pf

20 CAR § 193-303. Cleaning agents and sanitizers

(a) **Availability.** Cleaning agents that are used to clean equipment and utensils as specified under Subpart 6 of this Chapter, shall be provided and available for use during all hours of operation. Pf

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(b) Except for those that are generated on-site at the time of use, chemical sanitizers that are used to sanitize equipment and utensils as specified under Subpart 7 of this Chapter, shall be provided and available for use during all hours of operation. Pf

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Subpart 4. Location and Installation

20 CAR § 193-401. Location — Equipment, clothes washers and dryers, and storage cabinets — Contamination prevention.

(a) Except as specified in subdivision (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; Pf

(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.

20 CAR § 193-402. Installation.

(a) **Fixed equipment — Spacing or sealing.**

(1) Equipment that is fixed because it is not easily movable shall be installed so that it is:

(A) Spaced to allow access for cleaning along the sides, behind, and above the equipment;

(B) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter (1 mm) or one thirty-second inch (1/32”); or

(C) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(2) Counter-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:

(A) Sealed; or

(B) Elevated on legs as specified under subdivision (b)(4) of this section.

(b) **Fixed equipment — Elevation or sealing.**

(1) Except as specified in subdivisions (b)(2) 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 fifteen-centimeter (six-inch) clearance between the floor and the equipment.

(2) If no part of the floor under the floor-mounted equipment is more than fifteen centimeters (15 cm) (six inches (6”)) from the point of cleaning access, the clearance space may be only ten centimeters (10 cm) (four inches (4”)).

(3) 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.

(4) Except as specified in subdivision (b)(5) of this section, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a ten-centimeter (four-inch) clearance between the table and the equipment.

(5) The clearance space between the table and counter-mounted equipment may be:

(A) Seven and one-half centimeters (7.5 cm) (three inches (3″)) if the horizontal distance of the table top under the equipment is no more than fifty centimeters (50 cm) (twenty inches (20″)) from the point of access for cleaning; or

(B) Five centimeters (5 cm) (two inches (2″)) if the horizontal distance of the table top under the equipment is no more than seven and one-half centimeters (7.5 cm) (three inches (3″)) from the point of access for cleaning.

Subpart 5. Maintenance and Operation

20 CAR § 193-501. Equipment.

(a) **Good repair and proper adjustment.**

(1) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under 20 CAR § 193-101 et seq., and 20 CAR § 193-201 et seq.

(2) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(3) 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.

(b) **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.

(c) **Microwave ovens.** Microwave ovens shall meet the safety standards specified in 21 C.F.R. § 1030.10, Microwave ovens.

(d) **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 20 CAR § 193-301(c) shall be cleaned:

(1) Before use;

(2) 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

(3) If used, at least every twenty-four (24) hours.

(e) **Warewashing machines — Manufacturers' operating instructions.**

(1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(f) **Warewashing sinks — Use limitation.**

(1) A warewashing sink may not be used for handwashing as specified under 20 CAR § 191-301(e).

(2)(A) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under subdivision (d) of this section before and after each time it is used to wash wiping cloths or wash produce or thaw food.

(B) Sinks used to wash or thaw food shall be sanitized as specified under 20 CAR § 193-701 et seq., before and after using the sink to wash produce or thaw food.

(g) **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 20 CAR § 193-301(b)(3), 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. [Pf]

(h) **Warewashing equipment — Clean solutions.** The wash, rinse, and sanitize solutions shall be maintained clean.

(i) **Manual warewashing equipment — Wash solution temperature.** The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than forty-three degrees Celsius (43°C) (one hundred ten

degrees Fahrenheit (110°F)) or the temperature specified on the cleaning agent manufacturer's label instructions. Pf

(j) **Mechanical warewashing equipment — Wash solution temperature.**

(1) The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:

(A) For a stationary rack, single temperature machine, seventy-four degrees Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)); Pf

(B) For a stationary rack, dual temperature machine, sixty-six degrees Celsius (66°C) (one hundred fifty degrees Fahrenheit (150°F)); Pf

(C) For a single tank, conveyor, dual temperature machine, seventy-one degrees Celsius (71°C) (one hundred sixty degrees Fahrenheit (160°F)); Pf or

(D) For a multitank, conveyor, multitemperature machine, sixty-six degrees Celsius (66°C) (one hundred fifty degrees Fahrenheit (150°F)). Pf

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than forty-nine degrees Celsius (49°C) (one hundred twenty degrees Fahrenheit (120°F)). Pf

(k) **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 seventy-seven degrees Celsius (77°C) (one hundred seventy-one degrees Fahrenheit (171°F)) or above. P

(l) **Mechanical warewashing equipment — Hot water sanitization temperatures.**

(1) Except as specified in subdivision (l)(2) 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 ninety degrees Celsius (90°C) (one hundred ninety-four degrees Fahrenheit (194°F)), or less than: Pf

(A) For a stationary rack, single temperature machine, seventy-four degrees Celsius (74°C) (one hundred sixty-five degrees Fahrenheit (165°F)); Pf or

(B) For all other machines, eighty-two degrees Celsius (82°C) (one hundred eighty degrees Fahrenheit (180°F)). Pf

(2) The maximum temperature specified under subdivision (l)(1) of this section does not apply to the high pressure and temperature systems with wand-type, handheld spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(m) **Mechanical warewashing equipment — Sanitization pressure.** The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve shall be within the range specified on the machine manufacturer's data plate and may not be less than thirty-five kilopascals (35 kPa) (five pounds per square inch (5 psi)) or more than two hundred kilopascals (200 kPa) (thirty pounds per square inch (30 psi)).

(n) **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 contact times specified under 20 CAR § 193-703(3) shall meet the criteria specified under 20 CAR § 196-204(a), sanitizers — criteria, shall be used in accordance with the Environmental Protection Agency-registered label use instructions, and shall be used as follows:

(1) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart: [P]

Concentration Range	Minimum Temperature	Minimum Temperature
mg/L	pH 10 or less °C (°F)	pH 8 or less °C (°F)
25—49	49 (120)	49 (120)
50—99	38 (100)	24 (75)
100	13 (55)	13 (55)

;

(2) An iodine solution shall have a:

(A) Minimum temperature of twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)); P

(B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; P and

(C) Concentration between twelve and one-half milligrams per liter (12.5 mg/l) and twenty-five milligrams per liter (25 mg/l); P

(3) A quaternary ammonium compound solution shall:

(A) Have a minimum temperature of twenty-four degrees Celsius (24°C) (seventy-five degrees Fahrenheit (75°F)); P

(B) Have a concentration as specified under 20 CAR § 196-204(a) and as indicated by the manufacturer's use directions included in the labeling; P and

(C) Be used only in water with five hundred milligrams per liter (500 mg/L) hardness or less or in water having a hardness no greater than specified by the Environmental Protection Agency-registered label use instructions; P

(4) If another solution of a chemical specified under subdivisions (n)(1) – (3) 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; P

(5) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the Environmental Protection Agency-registered label use instructions; P and

(6) If a chemical sanitizer is generated by a device located on-site at the retail food establishment it shall be used as specified in subdivisions (n)(1) – (4) of this section and shall be produced by a device that:

(A) Complies with regulations as specified in Paragraphs 2(q)(1) and 12 of the Federal Insecticide, Fungicide, and Rodenticide Act, Pub. L. No. 80-104; P

(B) Complies with 40 C.F.R. § 152.500, Requirements for devices, and 40 C.F.R. § 156.10, Labeling requirements; P

(C) Displays the Environmental Protection Agency device manufacturing facility registration number on the device; [Pf] and

(D) Is operated and maintained in accordance with manufacturer's instructions. [Pf]

(o) **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.

(p) **Warewashing equipment — Determining chemical sanitizer concentration.** Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device. [Pf]

20 CAR § 193-502. Utensils and temperature and pressure measuring devices.

(a) **Good repair and calibration.**

(1) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under 20 CAR § 193-101 et seq., 20 CAR § 193-201 et seq., or shall be discarded.

(2) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy. [Pf]

(3) 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.

(b) **Single-service and single-use articles — Required use.** A retail food establishment without facilities specified under 20 CAR § 193-601 et seq., and 20 CAR § 193-701 et seq., 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. [P]

(c) **Single-service and single-use articles — Use limitation.**

(1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch (1″) protruding from the chilled dispensing head.

(d) **Shells — Use limitation.** Mollusk and Crustacea shells may not be used more than once as serving containers.

Subpart 6. Cleaning of Equipment and Utensils

20 CAR § 193-601. Objective — Equipment, food-contact surfaces, non-food-contact surfaces, and utensils.

(a) Equipment food-contact surfaces and utensils shall be clean to sight and touch. Pf

(b) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(c) Non-food-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

20 CAR § 193-602. Frequency.

(a) **Equipment food-contact surfaces and utensils.**

(1) Equipment food-contact surfaces and utensils shall be cleaned:

(A) Except as specified in subdivision (a)(2) of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; P

(B) Each time there is a change from working with raw foods to working with ready-to-eat foods; P

(C) Between uses with raw fruits and vegetables and with time/temperature control for safety food; P

(D) Before using or storing a food temperature measuring device; P and

(E) At any time during the operation when contamination may have occurred. P

(2) Subdivision (a)(1)(A) of this section does not apply if the food-contact surface or utensil is in contact with a succession of different types of raw meat and poultry each requiring a higher cooking temperature as specified under 20 CAR § 192-401(a) than the previous type.

(3) Except as specified in subdivision (a)(4) of this section, if used with time/temperature for control safety food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four (4) hours. P

(4) Surfaces of utensils and equipment contacting time/temperature control for safety food may be cleaned less frequently than every four (4) hours if:

(A) In storage, containers of time/temperature control for safety food and their contents are maintained at temperatures specified under 20 CAR pt. 192, Food, and the containers are cleaned when they are empty;

(B) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one (1) of the temperatures in the following chart and:

(i) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

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

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the retail food establishment;

(C) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat time/temperature control for safety food that is maintained at

the temperatures specified under 20 CAR pt. 192, Food, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every twenty-four (24) hours;

(D) 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 20 CAR pt. 192, Food;

(E) 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;

(F) The cleaning schedule is approved based on consideration of:

(i) Characteristics of the equipment and its use;

(ii) The type of food involved;

(iii) The amount of food residue accumulation; and

(iv) 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

(G) In-use utensils are intermittently stored in a container of water in which the water is maintained at fifty-seven degrees Celsius (57°C) (one hundred thirty-five degrees Fahrenheit (135°F)) or more and the utensils and container are cleaned at least every twenty-four (24) hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under 20 CAR § 193-603(a), surfaces of utensils and equipment contacting food that is not time/temperature control for safety food shall be cleaned:

(A) At any time when contamination may have occurred;

(B) At least every twenty-four (24) hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(C) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(D) 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:

(i) At a frequency specified by the manufacturer; or

(ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(b) **Cooking and baking equipment.**

(1)(A) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every twenty-four (24) hours.

(B) This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in subdivision (a)(4)(F) of this section.

(2) The cavities and door seals of microwave ovens shall be cleaned at least every twenty-four (24) hours by using the manufacturer's recommended cleaning procedure.

(c) **Non-food-contact surfaces.** Non-food-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

20 CAR § 193-603. Methods.

(a) **Dry cleaning.**

(1) 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 time/temperature for safety food.

(2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(b) **Precleaning.**

(1) Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(2) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(c) **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:

(1) Exposes the items to the unobstructed spray from all cycles; and

(2) Allows the items to drain.

(d) **Wet cleaning.**

(1) 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.

(2) 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.

(e) **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 20 CAR § 193-301(b)(3) in accordance with the following procedures:

(1) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

(2) Equipment components and utensils shall be scraped or rough-cleaned to remove food particle accumulation; and

(3) Equipment and utensils shall be washed as specified under subdivision (d)(1) of this section.

(f) **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 (1) of the following procedures:

(1) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(A) A three-compartment sink;

(B) Alternative manual warewashing equipment equivalent to a three-compartment sink as specified in 20 CAR § 193-301(b)(3); or

(C) A three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;

(2) Use of a detergent-sanitizer as specified under 20 CAR § 193-501(o) if using:

(A) Alternative warewashing equipment as specified in 20 CAR § 193-301(b)(3) that is approved for use with a detergent-sanitizer; or

(B) A warewashing system for CIP equipment;

(3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;

(4) If using a warewashing machine that does not recycle the sanitizing solution as specified under subdivision (f)(5) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

(A) Integrated in the application of the sanitizing solution; and

(B) Wasted immediately after each application; or

(5) 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.

Subpart 7. Sanitization of Equipment and Utensils

20 CAR § 193-701. Objective.

Food-contact surfaces and utensils. Equipment food-contact surfaces and utensils shall be sanitized.

20 CAR § 193-702. Frequency.

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

20 CAR § 193-703. Methods.

Hot water and chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(1) Hot water manual operations by immersion for at least thirty (30) seconds and as specified under 20 CAR § 193-501(k); P

(2) Hot water mechanical operations by being cycled through equipment that is set up as specified under 20 CAR § 193-501(e), (l), and (m) and achieving a utensil surface temperature of seventy-one degrees Celsius (71°C) (one hundred sixty degrees Fahrenheit (160°F)) as measured by an irreversible registering temperature indicator; P or

(3)(A) 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 20 CAR § 193-501(n).

(B) Contact times shall be consistent with those on Environmental Protection Agency-registered label use instructions by providing:

(i) Except as specified under subdivision (3)(B)(ii) of this section, a contact time of at least ten (10) seconds for a chlorine solution specified under 20 CAR § 193-501(n)(1); P

(ii) A contact time of at least seven (7) seconds for a chlorine solution of fifty milligrams per liter (50 mg/l) that has a pH of ten (10) or less and a temperature of at least thirty-eight degrees Celsius (38°C) (one hundred degrees Fahrenheit (100°F)) or a pH of eight (8) or less and a temperature of at least twenty-four degrees Celsius (24°C) (seventy-five degrees Fahrenheit (75°F)); P

(iii) A contact time of at least thirty (30) seconds for other chemical sanitizing solutions; P or

(iv) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 20 CAR § 190-201(b). [P]

Subpart 8. Laundering

20 CAR § 193-801. Objective.

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

20 CAR § 193-802. Frequency — 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 20 CAR § 192-304(e)(4) shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork, or poultry.

(c) Linens and napkins that are used as specified under 20 CAR § 192-304(c) 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.

20 CAR § 193-803. Methods.

(a) **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.

(b) **Mechanical washing.**

(1) Except as specified in subdivision (b)(2) of this section, linens shall be mechanically washed.

(2) In retail food establishments in which only wiping cloths are laundered as specified in 20 CAR § 193-301(e)(2), 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 20 CAR § 193-501(d).

(c) **Use of laundry facilities.**

(1) Except as specified in subdivision (c)(2) of this section, laundry facilities on the premises of a retail food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(2) 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 retail food establishment items.

Subpart 9. Protection of Clean Items

20 CAR § 193-901. Drying.

(a) **Equipment and utensils — Air-drying required.** After cleaning and sanitizing equipment and utensils:

(1) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 C.F.R. § 180.940, Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

(2) May not be cloth-dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

(b) **Wiping cloths — Air-drying locations.**

(1) Wiping cloths laundered in a retail food establishment that does not have a mechanical clothes dryer as specified in 20 CAR § 193-301(e)(2) 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.

(2) This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under 20 CAR § 193-501(n).

20 CAR § 193-902. Lubricating and reassembling.

(a) **Food-contact surfaces.** Lubricants as specified under 20 CAR § 196-205 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(b) **Equipment.** Equipment shall be reassembled so that food-contact surfaces are not contaminated.

20 CAR § 193-903. Storing.

(a) **Equipment, utensils, linens, and single-service and single-use articles.**

(1) Except as specified in subdivision (a)(4) of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(A) In a clean, dry location;

(B) Where they are not exposed to splash, dust, or other contamination; and

(C) At least fifteen centimeters (15 cm) (six inches (6”)) above the floor.

(2) Clean equipment and utensils shall be stored as specified under subdivision (a)(1) of this section and shall be stored:

(A) In a self-draining position that allows air drying; and

(B) Covered or inverted.

(3) Single-service and single-use articles shall be stored as specified under subdivision (a)(1) 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.

(4) Items that are kept in closed packages may be stored less than six inches (6”) above the floor on dollies, pallets, racks, and skids that are designed as specified under 20 CAR § 193-204(u).

(b) **Prohibitions.**

(1) Except as specified in subdivision (b)(2) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(A) In locker rooms;

(B) In toilet rooms;

(C) In garbage rooms;

(D) In mechanical rooms;

(E) Under sewer lines that are not shielded to intercept potential drips;

(F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) Under open stairwells; or

(H) Under other sources of contamination.

(2) 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.

20 CAR § 193-904. Preventing contamination.

(a) **Kitchenware and tableware.**

(1) 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.

(2) 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.

(3) Except as specified under subdivision (a)(2) 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.

(b) **Soiled and clean tableware.** Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(c) **Preset tableware.**

(1) Except as specified in subdivision (c)(2) of this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(2) Preset tableware may be exposed if:

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(A) Unused settings are removed when a consumer is seated; or

(B) Settings not removed when a consumer is seated are cleaned and sanitized before further use.

(d) **Rinsing equipment and utensils after cleaning and sanitizing.** After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

(1) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under 20 CAR § 193-201 et seq., and 20 CAR § 193-501; and

(2) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose Environmental Protection Agency-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments

Part 194. Water, Plumbing, and Waste

Subpart 1. Water

20 CAR § 194-101. Source.

(a) **Approved system.** Drinking water shall be obtained from an approved source that is:

(1) A public water system; [P] or

(2) A semipublic water system that is constructed, maintained, and operated according to law. [P]

(b) **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. [P]

(c) **Bottled drinking water.** Bottled drinking water used or sold in a retail food establishment shall be obtained from approved sources in accordance with 21 C.F.R. pt. 129, Processing and bottling of bottled drinking water. [P]

20 CAR § 194-102. Quality.

(a) **Standards.*** Except as specified under subsection (b) of this section:

(1) Water from a public water system shall meet 40 C.F.R. pt. 141, National primary drinking water regulations, and state drinking water quality standards; [P] and

(2) Water from a semipublic water system shall meet state drinking water quality standards. [P]

(b) **Nondrinking water.**

(1) A nondrinking water supply shall be used only if its use is approved by the Arkansas Plumbing Code, 17 CAR pt. 65. [P]

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection. [P]

(c) **Sampling.** Except when used as specified under subsection (b) of this section, water from a semipublic water system shall be sampled and tested at least annually and as required by state water quality regulations. [Pf]

(d) **Sample report.** The most recent sample report for the semipublic water system shall be retained on file in the retail food establishment or the report shall be maintained as specified by state water quality regulations.

20 CAR § 194-103. Quantity and availability.

(a) **Capacity.**

(1) The water source and system shall be of sufficient capacity to meet the peak water demands of the retail food establishment. [Pf]

(2) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the retail food establishment. [Pf]

(b) **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 20 CAR § 194-102(b) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure. [Pf]

20 CAR § 194-104. Distribution, delivery, and retention.

(a) **System.** Water shall be received from the source through the use of:

(1) An approved public water main; [Pf] or

(2) One (1) or more of the following that shall be constructed, maintained, and operated according to law: Pf

(A) Semipublic water main, water pumps, pipes, hoses, connections, and other appurtenances; Pf

(B) Water transport vehicles; Pf and

(C) Water containers. Pf

(b) **Alternative water supply.** Water meeting the requirements specified under 20 CAR §§ 194-101 – 103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a retail food establishment with a temporary interruption of its water supply through:

(1) A supply of containers of commercially bottled drinking water; Pf

(2) One (1) or more closed portable water containers; Pf

(3) An enclosed vehicular water tank; Pf

(4) An on-premises water storage tank; Pf or

(5) Piping, tubing, or hoses connected to an adjacent approved source. Pf

Subpart 2. Plumbing System

20 CAR § 194-201. Materials — Approved.

(a) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law. P

(b) A water filter shall be made of safe materials. P

20 CAR § 194-202. Design, construction, and installation.

(a) **Approved system and cleanable fixtures.**

(1) A plumbing system shall be designed, constructed, and installed according to law. P

(2) A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.

(b) **Handwashing sink — Installation.**

(1) A handwashing sink shall be equipped to provide water at a temperature of at least ~~thirty-eight degrees~~twenty-nine and four tenths' degrees Celsius (~~38~~29.4°C) (~~one hundred~~eighty-five degrees Fahrenheit (~~100~~85°F)) through a mixing valve or combination faucet. Pf

(2) A steam mixing valve may not be used at a handwashing sink.

(3) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

(4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

(c) **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 twenty-five millimeters (25 mm) (one inch (1")). P

(d) **Backflow prevention device — Design standard.** A backflow or backsiphonage prevention device installed on a water supply system shall meet ASSE International standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. P

(e) **Conditioning device — Design.**

(1) A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning.

(2) A water filter element shall be of the replaceable type.

20 CAR § 194-203. Numbers and capacities.

(a) **Handwashing sinks.~~*~~**

(1) Except as specified in subdivision (a)(2) of this section, at least one (1) handwashing sink, a number of handwashing sinks necessary for their convenient use by employees in areas specified under 20 CAR § 194-204(a), and not fewer than the number of handwashing sinks required by law shall be provided. Pf

(2) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a retail food establishment that has at least one (1) handwashing sink.

(b) **Toilets and urinals.**

(1) At least one (1) toilet and not fewer than the toilets required by law shall be provided.

(2) If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law.

(c) **Service sink.**

(1) At least one (1) service sink or one (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.

(2) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

(d) **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 retail 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:

(1) Providing an air gap as specified under 20 CAR § 194-202(c); P or

(2) Installing an approved backflow prevention device as specified under 20 CAR § 194-202(d). P

(e) **Backflow prevention device — Carbonator.**

(1) If not provided with an air gap as specified under 20 CAR § 194-202(b), a dual check valve with an intermediate vent preceded by a screen of not less than one hundred (100) mesh to twenty-five and four-tenths millimeters (25.4 mm) (one inch (1”)) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

(2) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under subdivision (e)(1) of this section.

20 CAR § 194-204. Location and placement.

(a) **Handwashing sinks.*** A handwashing facility shall be located:

(1) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas; Pf and

(2) In, or immediately adjacent to, toilet rooms. Pf

(b) **Backflow prevention device — Location.** A backflow prevention device shall be located so that it may be serviced and maintained.

(c) **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.

20 CAR § 194-205. Operation and maintenance.

(a) **Using a handwashing sink.**

(1) A handwashing sink shall be maintained so that it is accessible at all times for employee use. Pf

(2) A handwashing sink may not be used for purposes other than handwashing. Pf

(3) An automatic handwashing sink shall be used in accordance with manufacturer's instructions. Pf

(b) **Prohibiting a cross connection.***

(1) 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. P

(2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water. Pf

(c) **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. Pf

(d) **Water reservoir of fogging devices — Cleaning.**

(1) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(A) Maintained in accordance with manufacturer's specifications; P and

(B) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subdivision (d)(2) of this section, whichever is more stringent. P

(2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(A) Draining and complete disassembly of the water and aerosol contact parts; P

(B) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution; P

(C) Flushing the complete system with water to remove the detergent solution and particulate accumulation; P and

(D) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least a fifty milligrams per liter (50 mg/L) hypochlorite solution. P

(e) **System maintained in good repair.** A plumbing system shall be:

(1) Repaired according to law; P and

(2) Maintained in good repair.

Subpart 3. Mobile Retail Food Establishment Water Tank, Seasonal Retail Food Establishment Water Tank, Pushcart Retail Food Establishment Water Tank, and Coffee Kiosk Retail Food Establishment Water Tank

20 CAR § 194-301. Materials.

Approved. Materials that are used in the construction of a mobile water tank, mobile, seasonal food establishment, pushcart, and coffee kiosk water tank and appurtenances shall be:

(1) Safe; [P]

(2) Durable, corrosion-resistant, and nonabsorbent; and

(3) Finished to have a smooth, easily cleanable surface.

20 CAR § 194-302. Design and construction.

(a) **Enclosed system — Sloped to drain.** A mobile, seasonal food establishment, pushcart, and coffee kiosk water tank shall be:

(1) Enclosed from the filling inlet to the discharge outlet; and

(2) Sloped to an outlet that allows complete drainage of the tank.

(b) **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:

(1) Flanged upward at least thirteen millimeters (13 mm) (one-half inch (1/2″)); and

(2) Equipped with a port cover assembly that is:

(A) Provided with a gasket and a device for securing the cover in place; and

(B) Flanged to overlap the opening and sloped to drain.

(c) **"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.

(d) **Tank vent — Protected.** If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(1) Sixteen (16) mesh to twenty-five and four-tenths millimeters (25.4 mm) (sixteen (16) mesh to one inch (1″)) screen or equivalent when the vent is in a protected area; or

(2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(e) **Inlet and outlet — Sloped to drain.**

(1) A water tank and its inlet and outlet shall be sloped to drain.

(2) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(f) **Hose — Construction and identification.** A hose used for conveying drinking water from a water tank shall be:

(1) Safe; [P]

(2) Durable, corrosion-resistant, and nonabsorbent;

(3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(4) Finished with a smooth interior surface; and

(5) Clearly and durably identified as to its use if not permanently attached.

20 CAR § 194-303. Numbers and capacities.

(a) **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. [P]

(b) **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.

(c) **Mobile, seasonal, pushcart, coffee kiosk food establishment tank inlet.** A mobile, seasonal, coffee kiosk food establishment's water tank inlet shall be:

(1) Nineteen millimeters (19 mm) (three-fourths inch (3/4")) in inner diameter or less; and

(2) Provided with a hose connection of a size or type that will prevent its use for any other service.

20 CAR § 194-304. Operation and maintenance.

(a) **Operation.**

(1) If a water tank in a mobile food retail establishment, a seasonal retail food establishment, a pushcart, a coffee kiosk retail food establishment, or a retail food establishment with a temporary interruption of its water supply in accordance with 20 CAR § 194-104(b), is to be used as alternative water supply, then in accordance with manufacturer specifications or at least every fourteen (14) consecutive days, the water tank must be drained, sanitized, and filled with water from an approved source.

(2) A log must be maintained of the sanitizing and fresh water filling of the water tank.

(b) **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. P

(c) **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.

(d) **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 20 CAR § 194-303(b).

(e) **Tank, pump, and hoses — Dedication.**

(1) Except as specified in subdivision (e)(2) of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose. P

(2) 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.

Subpart 4. Sewage, Other Liquid Waste, and Rainwater

20 CAR § 194-401. Mobile, seasonal, pushcart, coffee kiosk holding tank — Capacity and drainage.

(a) A sewage holding tank in a mobile food establishment, a seasonal retail food establishment, a pushcart, or a coffee kiosk retail food establishment shall be:

(1) Sized fifteen percent (15%) larger in capacity than the water supply tank; and

(2) Sloped to a drain that is one inch (1") in inner diameter or greater, equipped with a shut-off valve.

(b) A wastewater holding tank may only be used when the establishment is in compliance with 20 CAR § 194-304(a).

20 CAR § 194-402. Retention, drainage, and delivery.

(a) **Establishment drainage system.** Retail food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 20 CAR § 194-202(a)(1).

(b) **Backflow prevention.***

(1) Except as specified in subdivisions (b)(2) and (3) 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. P

(2) Subdivision (b)(1) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) 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 one and one-half meters (1.5 m) (five feet (5')) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by law, a warewashing or culinary sink may have a direct connection.

(c) **Grease trap.** If used, a grease trap shall be located to be easily accessible for cleaning.

(d) **Conveying sewage.*** Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage

transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law. P

(e) **Removing mobile food establishment, seasonal, pushcart, and coffee kiosk wastes.**

(1) Sewage and other liquid wastes shall be removed from a mobile food establishment, pushcart, or coffee kiosk 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. Pf

(2) These food establishments in subdivision (e)(1) of this section must have a written agreement with the approved waste disposal site. Pf

(f) **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.

20 CAR § 194-403. Disposal facility.

(a) **Approved sewage disposal system.*** Sewage shall be disposed through an approved facility that is:

(1) A public sewage treatment plant; P or

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

(b) **Other liquid wastes and rainwater.** Condensate drainage and other non-sewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

Subpart 5. Refuse, Recyclables, and Returnables

20 CAR § 194-501. Facilities on the premises.

(a) **Indoor storage area.** If located within the retail food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 20 CAR § 195-101(a), 20 CAR § 195-201(a), 20 CAR § 195-201(h), 20 CAR § 195-202(e), and 20 CAR § 195-202(f).

(b) **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.

(c) **Outdoor enclosure.** If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) **Receptacles.**

(1) Except as specified in subdivision (d)(2) 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-resistant and rodent-resistant, leakproof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the retail food establishment, or within closed outside receptacles.

(e) **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.

(f) **Outside receptacles.**

(1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the retail food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(2) 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.

(g) **Storage areas, rooms, and receptacles — Capacity and availability.**

(1) 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.

(2) A receptacle shall be provided in each area of the retail food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(h) **Toilet room receptacle — Covered.** A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(i) **Cleaning implements and supplies.**

(1) Except as specified in subdivision (i)(2) 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.

(2) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

(j) **Storage areas, redeeming machines, receptacles, and waste handling units — Location.**

(1) An area designated for refuse, recyclables, returnables, and, except as specified in subdivision (j)(2) 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.

(2) A redeeming machine may be located in the packaged food storage area or consumer area of a retail 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.

(3) 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.

(k) **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.

(l) **Areas, enclosures, and receptacles — Good repair.** Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(m) **Outside storage prohibitions.**

(1) Except as specified in subdivision (m)(2) of this section, refuse receptacles not meeting the requirements specified under subdivision (d)(1) of this section 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.

(2) 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.

(n) **Covering receptacles.** Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(1) Inside the retail food establishment if the receptacles and units:

(A) Contain food residue and are not in continuous use; or

(B) After they are filled; and

(2) With tight-fitting lids or doors if kept outside the retail food establishment.

(o) **Using drain plugs.** Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

(p) **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 20 CAR § 195-501(n), and clean.

(q) **Cleaning receptacles.**

(1) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food,

equipment, utensils, or single-service and single-use articles, and waste water shall be disposed of as specified under 20 CAR § 194-402(d).

(2) 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.

20 CAR § 194-502. Removal.

(a) **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.

(b) **Receptacles or vehicles.** Refuse, recyclables, and returnables shall be removed from the premises by way of:

(1) Portable receptacles that are constructed and maintained according to law; or

(2) A transport vehicle that is constructed, maintained, and operated according to law.

20 CAR § 194-503. Facilities for disposal and recycling.

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.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments

Part 195. Physical Facilities

Subpart 1. Materials for Construction and Repairs

20 CAR § 195-101. Indoor areas — Surface characteristics.

(a) Except as specified in subsection (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 retail food establishment operations are conducted;

(2) Closely woven and easily cleanable carpet for carpeted areas; and

(3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(b) In a temporary food establishment:

(1) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and

(2) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

20 CAR § 195-102. Outdoor areas — 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 20 CAR § 194-101(b) and 20 CAR § 194-501(c).

Subpart 2. Design, Construction, and Installation

20 CAR § 195-201. Cleanability.

(a) **Floors, walls, and ceilings.** Except as specified under subsection (d) of this section, and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

(b) **Floors, walls, and ceilings — Utility lines.**

(1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(c) **Floor and wall junctures — Coved, and enclosed or sealed.**

(1) In retail 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 one millimeter (1 mm) (one thirty-second inch (1/32”)).

(2) The floors in retail 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.

(d) **Floor carpeting — Restrictions and installation.**

(1) 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.

(2) If carpeting is installed as a floor covering in areas other than those specified under subdivision (d)(1) of this section, it shall be:

(A) Securely attached to the floor with a durable mastic by using a stretch and tack method or by another method; and

(B) 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.

(e) **Floor covering — Mats and duckboards.** Mats and duckboards shall be designed to be removable and easily cleanable.

(f) **Wall and ceiling coverings and coatings.**

(1) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(2) 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.

(g) **Walls and ceilings — Attachments.**

(1) Except as specified in subdivision (g)(2) 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.

(2) 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.

(h) **Walls and ceilings — Studs, joists, and rafters.** Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

20 CAR § 195-202. Functionality.

(a) **Light bulbs — Protective shielding.**

(1) Except as specified in subdivision (a)(2) 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.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

(A) The integrity of the packages cannot be affected by broken glass falling onto them; and

(B) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) 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.

(b) **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.

(c) **Insect control devices — Design and installation.**

(1) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(2) Insect control devices shall be installed so that:

(A) The devices are not located over a food preparation area; and

(B) 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.

(d) **Toilet rooms — Enclosed.** Except where a toilet room is located outside a retail food establishment and does not open directly into the retail food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

(e) **Outer openings — Protected.**

(1) Except as specified in subdivision (e)(2), (3), and (5) of this section and under subdivision (e)(4) of this section, outer openings of a retail food establishment shall be protected against the entry of insects and rodents by:

(A) Filling or closing holes and other gaps along floors, walls, and ceilings;

(B) Closed, tight-fitting windows; and

(C) Solid, self-closing, tight-fitting doors.

(2) Subdivision (e)(1) of this section does not apply if a retail 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.

(3) Exterior doors used as exits need not be self-closing if they are:

(A) Solid and tight-fitting;

(B) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the retail food establishment; and

(C) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in subdivisions (e)(2) and (5) of this section, if the windows or doors of a retail food establishment, or of a larger structure within which a retail 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 subdivision (e)(1) of this section, the openings shall be protected against the entry of insects and rodents by:

(A) Sixteen (16) mesh to twenty-five millimeters (25 mm) (sixteen (16) mesh to one inch (1″)) screens;

(B) Properly designed and installed air curtains to control flying insects; or

(C) Other effective means.

(5) Subdivision (e)(4) 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.

(f) **Exterior walls and roofs — Protective barrier.** Perimeter walls and roofs of a retail food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(g) **Outdoor food vending areas — Overhead protection.** Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

(h) **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.

(i) **Outdoor walking and driving surfaces — Graded to drain.** Exterior walking and driving surfaces shall be graded to drain.

(j) **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.

(k) **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 retail food establishment operations. P

(l) **Living or sleeping quarters — Separation.** Living or sleeping quarters located on the premises of a retail food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for retail food establishment operations by complete partitioning and solid self-closing doors.

Subpart 3. Numbers and Capacities

20 CAR § 195-301. Handwashing facilities.

(a) **Minimum number.** Handwashing sinks shall be provided as specified under 20 CAR § 194-203(a).

(b) **Handwashing cleanser — Availability.** Each handwashing sink or group of two (2) adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap. [Pf]

(c) **Hand drying provision.** Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

(1) Individual, disposable towels; [Pf]

(2) A continuous towel system that supplies the user with a clean towel; [Pf]

(3) A heated-air hand drying device; [Pf] or

(4) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures. [Pf]

(d) **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 subsection (b) and (c) of this section and 20 CAR § 194-501(g)(3).

(e) **Handwashing signage.** A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(f) **Disposable towels — Waste receptacle.** A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under 20 CAR § 194-501(g)(3).

20 CAR § 195-302. Toilets and urinals.

(a) **Minimum number.** Toilets and urinals shall be provided as specified under 20 CAR § 194-203(b).

(b) **Toilet tissue — Availability.** A supply of toilet tissue shall be available at each toilet. [Pf]

20 CAR § 195-303. Lighting.

Intensity. The light intensity shall be:

(1) At least One hundred eight (108) lux (ten (10) foot-candles) at a distance of thirty inches (30”) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) At least two hundred fifteen (215) lux (twenty (20) foot-candles):

(A) 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;

(B) Inside equipment such as reach-in and under-counter refrigerators;

(C) At a distance of seventy-five centimeters (75 cm) (thirty inches (30”)) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) At least five hundred forty (540) lux (fifty (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.

20 CAR § 195-304. Ventilation.

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.

20 CAR § 195-305. Dressing areas and lockers — 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.

20 CAR § 195-306. Service sinks.

Availability. A service sink or curbed cleaning facility shall be provided as specified under 20 CAR § 194-203(c)(1).

Subpart 4. Location and Placement

20 CAR § 195-401. Handwashing sinks.

Conveniently located. Handwashing sinks shall be conveniently located as specified under 20 CAR § 194-204(a).

20 CAR § 195-402. Toilet rooms.

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

20 CAR § 195-403. Employee accommodations — Designated areas.

(a) Areas designated for employees to eat, drink, and use tobacco products 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 cannot occur.

20 CAR § 195-404. Distressed merchandise.

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. [Pf]

20 CAR § 195-405. Refuse, recyclables, and returnables.

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 20 CAR § 194-501(j).

Subpart 5. Maintenance and Operation

20 CAR § 195-501. Premises, structures, attachments, and fixtures — Methods.

(a) **Repairing.** The physical facilities shall be maintained in good repair.

(b) **Cleaning — Frequency and restrictions.**

(1) The physical facilities shall be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed, such as after closing.

(c) **Cleaning floors — Dustless methods.**

(1) Except as specified in subdivision (c)(2) 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.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(A) Without the use of dust-arresting compounds; and

(B) 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.

(d) **Cleaning ventilation systems — Nuisance and discharge prohibition.**

(1) 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.

(2) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

(e) **Cleaning maintenance tools — Preventing contamination.** Food preparation sinks, handwashing sinks, 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. Pf

(f) **Drying mops.** After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) **Absorbent materials on floors — Use limitation.** Except as specified in subdivision (c)(2) of this section, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

(h) **Maintaining and using handwashing facilities.** Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

(i) **Closing toilet room doors.** Except during cleaning and maintenance operations, toilet room doors as specified under 20 CAR § 195-202(d) shall be kept closed.

(j) **Using dressing rooms and lockers.**

(1) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) **Controlling pests.**~~*~~

(1) The premises shall be maintained free of insects, rodents, and other pests.

(2) The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 20 CAR § 196-202(b), 20 CAR § 196-206(b), and 20 CAR § 196-206(c); [Pf] and

(D) Eliminating harborage conditions.

(l) **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.

(m) **Storing maintenance tools.** Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(1) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(2) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(n) **Maintaining premises — Unnecessary items and litter.** The premises shall be free of:

(1) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

(2) Litter.

(o) **Prohibiting animals.**~~*~~

(1) Except as specified in subdivisions (o)(2)~~, and~~ (3)<u>, and (4)</u> of this section, live animals may not be allowed on the premises of a retail food establishment. [Pf]

(2) 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 cannot result:

(A) Edible fish or decorative fish in aquariums, shellfish or Crustacea on ice or under refrigeration, and shellfish and Crustacea in display tank systems;

(B) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(C) 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 and utilized by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(D) Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(E) 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 confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) 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 cannot result.

(4) If approved by the regulatory authority, food establishments may allow pet dogs in outdoor dining areas.

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare
Chapter I. Generally, Department of Health
Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments
Part 196. Poisonous or Toxic Materials
Subpart 1. Labeling and Identification

20 CAR § 196-101. Original containers.

(a) **Identifying information — Prominence.**~~*~~ Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label. Pf

(b) **Working containers — 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. Pf

Subpart 2. Operational Supplies and Applications

20 CAR § 196-201. Storage.

Separation.~~*~~ Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) Separating the poisonous or toxic materials by spacing or partitioning; P and

(2)(A) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

(B) 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. P

20 CAR § 196-202. Presence and use.

(a) **Restriction.** ~~*~~

(1) Only those poisonous or toxic materials that are required for the operation and maintenance of a retail 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 retail food establishment. Pf

(2) Subdivision (a)(1) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

(b) **Conditions of use.** ~~*~~ Poisonous or toxic materials shall be:

(1) Used according to:

(A) Law and rules;

(B) Manufacturer's use directions included in labeling and, for a pesticide, manufacturer's label instructions that state that use is allowed in a retail food establishment; P

(C) The conditions of certification, if certification is required, for use of the pest control materials; P and

(D) Additional conditions that may be established by the regulatory authority; and

(2) Applied so that:

(A) A hazard to employees or other persons is not constituted; P and

(B) Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service or single-use articles is prevented, and ~~for a restricted-use pesticide,~~ this is achieved by: P

(i) Removing the items; P

(ii) Covering the items with impermeable covers; P or

(iii) Taking other appropriate preventive actions; P and

(iv) Cleaning and sanitizing equipment and utensils after the application. P

(3) A restricted-use pesticide shall be applied only by an applicator certified as defined in 7 U.S.C. § 136(e), Definitions, (e) Certified ~~a~~Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, Pub. L. No. 80-104, or a person under the direct supervision of a certified applicator. Pf

20 CAR § 196-203. Container prohibitions.

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, equipment, utensils, linens, single-service or single-use articles. P

20 CAR § 196-204. Chemicals.

(a) **Sanitizers — Criteria.**~~*~~ Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 C.F.R. § 180.940, Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions). P

(b) **Chemicals for washing, treatment, storage, and processing fruits and vegetables — Criteria.**~~*~~

(1) Chemicals, including those generated on-site, used to wash or peel raw, whole fruits and vegetables shall:

(A) Be an approved food additive listed for this intended use in 21 C.F.R. pt. 173; P or

(B) Be generally recognized as safe (GRAS) for this intended use; P or

(C) Be the subject of an effective food contact notification for this intended use, only effective for the manufacturer or supplier identified in the notification; P and

(D) Meet the requirements in 40 C.F.R. pt. 156, Labeling requirements for pesticides and devices. P

~~(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a retail food establishment shall meet the requirements specified in 21 C.F.R. § 173.368, Ozone.~~ P

(c) **Boiler water additives — Criteria.** ~~*~~ Chemicals used as boiler water additives shall meet the requirements specified in 21 C.F.R. § 173.310, Boiler water additives. P

(d) **Drying agents — Criteria.** ~~*~~ Drying agents used in conjunction with sanitization shall:

(1) Contain only components that are listed as one of the following:

(A) Generally recognized as safe for use in food as specified in 21 C.F.R. pt. 182, Substances generally recognized as safe, or 21 C.F.R. pt. 184, Direct food substances affirmed as generally recognized as safe; P

(B) Generally recognized as safe for the intended use as specified in 21 C.F.R. pt. 186, Indirect food substances affirmed as generally recognized as safe; P

(C) Generally recognized as safe for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to food as described in 21 C.F.R. § 170.30, Eligibility for classification as generally recognized as safe (GRAS); P

(D) Subject of an effective food contact notification as described in Section 409(h) of the Federal Food, Drug, and Cosmetic Act; P

(E) Approved for use as a drying agent under a prior sanction specified in ~~21 C.F.R. pt. 181~~Federal Food Drug and Cosmetic Act 201 (s)(4), ~~Prior-sanctioned food ingredients;~~ P

(F) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 C.F.R. pts. 175 – 178; P or

(G) Approved for use as a drying agent under the threshold of regulation process established by 21 C.F.R. § 170.39, Threshold of regulation for substances used in food-contact articles; P and

(2) When sanitization is with chemicals, the approval required under subdivisions (d)(1)(C) or (d)(1)(E) of this section or the regulation as an indirect food additive required under subdivision (d)(1)(D) of this section shall be specifically for use with chemical sanitizing solutions. P

20 CAR § 196-205. Lubricants.

Incidental food contact — Criteria. Lubricants shall meet the requirements specified in 21 C.F.R. § 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. P

20 CAR § 196-206. Pesticides.

(a) **Restricted-use pesticides — Criteria.** Restricted-use pesticides specified under 20 CAR § 196-202(b) shall meet the requirements specified in 40 C.F.R. pt. 152, Subpart I — Classification of pesticides. P

(b) **Rodent bait stations.** Rodent bait shall be contained in a covered, tamper-resistant bait station. P

(c) **Tracking powders — Pest control and monitoring.**

(1) Except as specified in subdivision (c)(2) of this section, a tracking powder pesticide may not be used in a retail food establishment. P

(2) 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.

20 CAR § 196-207. Medicines.

(a) **Restriction and storage.**

(1)~~(A)~~ Except for medicines that are stored or displayed for retail sale, ~~O~~only those medicines that are necessary for the health of employees shall be allowed in a retail food establishment. Pf

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~~(B) This section does not apply to medicines that are stored or displayed for retail sale.~~ [Pf]

(2) Medicines that are in a retail food establishment for the employees' use shall be labeled as specified under 20 CAR § 196-101(a) and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles. [P]

(b) **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:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; [P] and

(2) Located so they are inaccessible to children. [P]

20 CAR § 196-208. First aid supplies.

(a) **Storage.** ~~*~~ First aid supplies that are in a retail food establishment for the employees' use shall be:

(1) Labeled as specified under 20 CAR § 196-101(a); [Pf] and

(2) 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. [P]

(b) **Other personal care items — Storage.** Except as specified under 20 CAR § 196-207(b) and subsection (a) of this section, employees shall store their personal care items in facilities as specified under 20 CAR § 195-305(b).

Subpart 3. Stock and Retail Sale

20 CAR § 196-301. Storage and display.

Separation. ~~*~~ Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) Separating the poisonous or toxic materials by spacing or partitioning; [P] and

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. [P]

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

~~Title~~Rules Pertaining to Food Establishments

Promulgated by:
Department of Health

Title 20. Public Health and Welfare
Chapter I. Generally, Department of Health
Subchapter G. Rules Pertaining to ~~Retail~~ Food Establishments
Part 197. Compliance and Enforcement
Subpart 1. Code Applicability

20 CAR § 197-101. Use for intended purpose — Public health protection.

(a) The regulatory authority shall apply this subchapter to promote its underlying purpose, as specified in 20 CAR § 190-102, of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer or donated.

(b) In enforcing the provisions of this subchapter, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this subchapter 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 20 CAR § 193-101;

(3) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 20 CAR § 193-301(a); and

(4) The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under 20 CAR § 197-304(b)(7).

20 CAR § 194-102. Additional requirements — 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 subchapter that are authorized by law.

(b)(1) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale.

(2) 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 retail food establishment.

20 CAR § 197-103. Variances.

(a) **Modifications and waivers.**

(1) The regulatory authority may grant a variance by modifying or waiving the requirements of this subchapter if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance.

(2) If a variance is granted, the regulatory authority shall retain the information specified under subsection (b) of this section in its records for the retail food establishment.

(b) **Documentation of proposed variance and justification.** Before a variance from a requirement of this subchapter is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the retail food establishment includes:

(1) A statement of the proposed variance of this subchapter requirement citing relevant rules section numbers; [Pf]

(2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant regulation sections will be alternatively addressed by the proposal; [Pf] and

(3) An HACCP plan if required as specified under 20 CAR § 197-201(c)(1) that includes the information specified under 20 CAR § 197-201(d) as it is relevant to the variance requested. Pf

(c) **Conformance with approved procedures.** If the regulatory authority grants a variance as specified in subsection (a) of this section, or an HACCP plan is otherwise required as specified under 20 CAR § 197-201(c), the permit holder shall:

(1) Maintain the approved variance at the food establishment; Pf and

(2) Comply with the HACCP plans and procedures that are submitted as specified under 20 CAR § 197-201(d) and approved as a basis for the modification or waiver; P and

(32) Maintain and provide to the regulatory authority, upon request, records specified under 20 CAR § 197-201(d)(4) and (5) that demonstrate that the following are routinely employed:

(A) Procedures for monitoring critical control points; Pf

(B) Monitoring of the critical control points; Pf

(C) Verification of the effectiveness of an operation or process; Pf and

(D) Necessary corrective actions if there is failure at a critical control point. Pf

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Subpart 2. Plan Submission and Approval

20 CAR § 197-201. Facility and operating plans.

(a) **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:

(1) The construction of a retail food establishment; Pf

(2) The conversion of an existing structure for use as a retail food establishment; Pf or

(3) The remodeling of a retail food establishment or a change of type of retail food establishment or food operation as specified under 20 CAR § 197-302(d)(3) if the

regulatory authority determines that plans and specifications are necessary to ensure compliance with this subchapter. Pf

(b) **Contents of the plans and specifications.** The plans and specifications for a retail food establishment, including a retail food establishment specified under subsection (c) of this section, 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 this subchapter provisions:

(1) Intended menu;

(2) Anticipated volume of food to be stored, prepared, and sold or served;

(3) Proposed layout, mechanical schematics, construction materials, and finish schedules;

(4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(5) Evidence that standard procedures that ensure compliance with the requirements of this subchapter are developed or are being developed; and

(6) 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 retail food establishment.

(c) **When an HACCP plan is required.**

(1) Before engaging in an activity that requires an HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under subsection (d) of this section and the relevant provisions of this subchapter if:

(A) Submission of an HACCP plan is required according to law;

(B) A variance is required as specified under 20 CAR § 192-401(a)(4)(C), 20 CAR § 192-502, or 20 CAR § 193-204(j)(2); or

(C) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under subsection (b) of this section, an inspectional finding, or a variance request.

(2) Before engaging in reduced oxygen packaging without a variance as specified under 20 CAR § 192-502, a permit applicant or permit holder shall submit a properly prepared HACCP plan to the regulatory authority.

(d) **Contents of a~~n~~ HACCP plan.** For a retail food establishment that is required under subsection (c) of this section to have an HACCP plan, the permit applicant or permit holder shall submit to the regulatory authority a properly prepared HACCP plan that includes~~the plan and specifications shall indicate~~:

(1) General information such as the name of the permit applicant or permit holder, the retail food establishment address, and contact information;

(2) A categorization of the types of time/temperature control for safety 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~~to be controlled under the HACCP plan; Pf

(~~2~~3) A flow diagram or chart for each~~by~~ specific food or category type that identifies: ~~identifying critical control points and providing information on the following:~~

(A) Each step in the process; Pf and ~~Ingredients, materials, and equipment used in the preparation of that food; Pf and~~

(B) ~~Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved~~The steps that are critical control points; Pf

(~~3~~4) The ingredients, recipes or formulations, materials and equipment used in the preparation of each specific food or category type and methods and procedural control measures that address the food safety concerns involved~~Food employee and supervisory training plan that addresses the food safety issues of concern~~; Pf

(~~4~~5) A critical control points summary for each specific food or category type that clearly identifies: ~~A statement of standard operating procedures for the plan under consideration including clearly identifying:~~

(A) Each critical control point; Pf

(B) The significant hazards for each critical control point, Pf

(C) The critical limits for each critical control point; Pf

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(D~~C~~) The method and frequency for monitoring and controlling each critical control point by the designated food employee or the person in charge; Pf

~~(D) The food employee designated by the person in charge; Pf~~

(E) The method and frequency for ~~the person in charge to routinely verify that the food employee is following standard operating procedures and~~ monitoring and controlling each critical control point~~s~~ by the designated food employee or the person in charge; Pf

(F) Action to be taken by the food employee or person in charge if the critical limits for each critical control point are not met; Pf and

(G) 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, ~~Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; Pf~~ and

(H) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; Pf

(5) Supporting documents such as:

(A) Food employee and supervisory training plan that addresses the food safety issues of concern; Pf

(B) Copies of blank records forms that are necessary to implement the HACCP plan; Pf

(C) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal. Pf

20 CAR § 197-202. Confidentiality.

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 20 CAR §§ 197-201(b) and (d).

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20 CAR § 197-203. Construction inspection and approval.

Preoperational inspections. The regulatory authority shall conduct one (1) or more preoperational inspections to verify that the retail 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 20 CAR § 197-201(b)(5), and is in compliance with law and this subchapter.

Subpart 3. Permit to Operate

20 CAR § 197-301. Requirement.

Prerequisite for operation. A person may not operate a retail food establishment without a valid permit to operate issued by the regulatory authority. [Pf]

20 CAR § 197-302. Application procedure.

(a) **Submission thirty (30) calendar days before proposed opening.** An applicant shall submit an application for a permit at least thirty (30) calendar days before the date planned for opening a retail food establishment or the expiration date of the current permit for an existing facility.

(b) **Form of submission.** A person desiring to operate a retail food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

(c) **Qualifications and responsibilities of applicants.** To qualify for a permit, an applicant shall:

(1) Be an owner of the retail food establishment or an officer of the legal ownership;

(2) Comply with the requirements of this subchapter;

(3) As specified under 20 CAR § 197-402(b), agree to allow access to the retail food establishment and to provide required information; and

(4) Pay the applicable permit application fee at the time the application is submitted.

(d) **Contents of the application.** The application should include:

(1) 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 retail food establishment;

(2) Information specifying whether the retail food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(3) A statement specifying whether the retail food establishment:

(A) Is mobile or stationary and temporary or permanent; and

(B) Is an operation that includes one (1) or more of the following:

(i) Prepares, offers for sale, or serves time/temperature control for safety food:

(a) Only to order upon consumer's request;

(b) In advance in quantities based on projected consumer demand and discards;

(c) Food that is not sold or served at an approved frequency; or

(d) Using time as a public health control as specified under 20 CAR § 192-501(i);

(ii) Prepares time/temperature control for safety food in advance using a food preparation method that involves two (2) or more steps which may include combining time/temperature control for safety food ingredients, cooking, cooling, reheating, hot or cold holding, freezing, or thawing;

(iii) Prepares food as specified under subdivision (d)(3)(B)(ii) of this section for delivery to and consumption at a location off the premises of the retail food establishment where it is prepared;

(iv) Prepares food as specified under subdivision (d)(3)(B)(ii) of this section for service to a highly susceptible population;

(v) Prepares only food that is not time/temperature control for safety food; or

(vi) Does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;

(4) The name, title, address, and telephone number of the person directly responsible for the retail food establishment;

(5) The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under subdivision (d)(4) of this section such as the zone, district, or regional supervisor;

(6) The names, titles, and addresses of:

(A) The persons comprising the legal ownership as specified under subdivision (d)(2) of this section including the owners and officers; and

(B) The local resident agent if one is required based on the type of legal ownership;

(7) A statement signed by the applicant that:

(A) Attests to the accuracy of the information provided in the application; and

(B) Affirms that the applicant will:

(i) Comply with this subchapter; and

(ii) Allow the regulatory authority access to the establishment as specified under 20 CAR § 197-402(b) and to the records specified under 20 CAR § 192-203(b), 20 CAR § 194-205(c), and 20 CAR § 197-201(d)(4)(G); and

(8) Other information required by the regulatory authority.

20 CAR § 197-303. Issuance.

(a) **New converted or remodeled establishments.** For retail food establishments that are required to submit plans as specified under 20 CAR § 197-201(a), the regulatory authority shall issue a permit after:

(1) A properly completed application is submitted;

(2) The required fee is submitted;

(3) The required plans, specifications, and information are reviewed and approved; and

(4) A preoperational inspection as specified in 20 CAR § 197-203 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 subchapter.

(b) **Existing establishments, permit renewal, and change of ownership.** The regulatory authority may renew a permit for an existing retail food establishment or may issue a permit to a new owner of an existing retail food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this subchapter.

(c) **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:

(1) The specific reasons and citations from this part for the permit denial;

(2) The actions, if any, that the applicant must take to qualify for a permit; and

(3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

20 CAR § 197-304. Conditions of retention.

(a) **Responsibilities of the regulatory authority.**

(1) At the time a permit is first issued, the regulatory authority shall provide to the permit holder a copy of this subchapter so that the permit holder is notified of the compliance requirements and the conditions of retention as specified under subsection (b) of this section that are applicable to the permit.

(2) Failure to provide the information specified in subdivision (a)(1) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this subchapter or an order, warning, or directive of the regulatory authority.

(b) **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:

(1) Post the permit in a location in the retail food establishment that is conspicuous to consumers;

(2) Comply with the provisions of this subchapter including the conditions of a granted variance as specified under 20 CAR § 197-103(b), and approved plans as specified under 20 CAR § 197-201(b);

(3) If a retail food establishment is required under 20 CAR § 197-201(c) to operate under an HACCP plan, comply with the plan as specified under 20 CAR § 197-103(c);

(4) Immediately contact the regulatory authority to report an illness of a food employee or conditional employee as specified under 20 CAR § 191-201(a)(2);

(5) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 20 CAR § 197-404(a);

(6) Allow representatives of the regulatory authority access to the retail food establishment as specified under 20 CAR § 197-402(b);

(7) Replace existing facilities and equipment specified in 20 CAR § 197-101 with facilities and equipment that comply with this subchapter if:

(A) 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;

(B) The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

(C) The facilities and equipment are replaced in the normal course of operation;

(8) 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 retail food establishment or in response to community emergencies;

(9) Accept notices issued and served by the regulatory authority according to this subchapter;

(10) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this subchapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

(11) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the retail food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

(c) **Permits not transferable.** A permit may not be transferred from one (1) person to another person, from one (1) retail food establishment to another, or from one (1) type of operation to another if the food operation changes from the type of operation specified in the application as specified under 20 CAR § 197-302(d)(3) and the change in operation is not approved.

Subpart 4. Inspection and Correction of Violations

20 CAR § 197-401. Frequency.

(a) **Establishing inspection interval.**

(1) Except as specified in subdivisions (a)(2) and (3) of this section, the regulatory authority shall inspect a retail food establishment at least once every six (6) months.

(2) The regulatory authority may increase the interval between inspections beyond six (6) months if:

(A) The retail food establishment is fully operating under an approved and validated HACCP plan as specified under 20 CAR § 197-201(d) and 20 CAR § 197-103 (c) (2) & (~~c~~3);

(B) The retail food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or

(C) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

(3) The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:

(A) 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

(B) Has inexperienced food employees.

(b) **Performance and risk-based.** Within the parameters specified in subsection (a) of this section, the regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a retail food establishment's history of compliance with this subchapter and the establishment's potential as a vector of foodborne illness by evaluating:

(1) Past performance, for nonconformance with this subchapter or HACCP plan requirements that are priority items or priority foundation items;

(2) Past performance for numerous or repeat violations of this subchapter or HACCP plan requirements that are core items;

(3) Past performance, for complaints investigated and found to be valid;

(4) The hazards associated with the particular foods that are prepared, stored, or served;

(5) The type of operation including the methods and extent of food storage, preparation, and service;

(6) The number of people served; and

(7) Whether the population served is a highly susceptible population.

20 CAR § 197-402. Competency and access.

(a) **Competency of inspectors.** An authorized representative of the regulatory authority who inspects a retail food establishment or conducts plan review for compliance with this subchapter shall have the knowledge, skills, and ability to adequately perform the required duties.

(b) **Allowed at reasonable times after due notice.** After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the retail food establishment is in compliance with this subchapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this subchapter and to which the regulatory authority is entitled according to law, during the retail food establishment's hours of operation and other reasonable times.

(c) **Refusal, notification of right to access, and final request for access.** If a person denies access to the regulatory authority, the regulatory authority shall:

(1) Inform the person that:

(A) The permit holder is required to allow access to the regulatory authority as specified under subsection (b) of this section;

(B) Access is a condition of the acceptance and retention of a retail food establishment permit to operate as specified under 20 CAR § 197-304(b); and

(C) 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

(2) Make a final request for access.

(d) **Refusal — Reporting.** If after the regulatory authority presents credentials and provides notice as specified under subsection (b) of this section, explains the authority upon which access is requested, and makes a final request for access as specified in subsection (c) of this section, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(e) **Inspection order to gain access.** If denied access to a retail food establishment for an authorized purpose and after complying with subsection (c) of this section, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in law.

20 CAR § 197-403. Report of findings.

(a) **Documenting information and observations.** The regulatory authority shall document on an inspection report form:

(1) Administrative information about the retail food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 20 CAR § 197-302(d)(3), inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

(2) Specific factual observations of violative conditions or other deviations from this subchapter that require correction by the permit holder including:

(A) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this subchapter specified under 20 CAR § 191-201(a);

(B) Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under 20 CAR § 191-201(a)(2) and (4);

(C) Nonconformance with priority items or priority foundation items of this subchapter;

(D) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 20 CAR § 197-103(c);

(E) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with an HACCP plan as specified under 20 CAR § 197-201(d)(4)(G); and

(F) Nonconformance with critical limits of an HACCP plan.

(b) **Specifying timeframe for corrections.** The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under 20 CAR §§ 197-404, 197-405(a), and 197-406(a).

(c) **Issuing report and obtaining acknowledgement of receipt.** At the conclusion of the inspection and according to this subchapter, 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.

(d) **Refusal to sign acknowledgement.** The regulatory authority shall:

(1) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in subsection (c) of this section that:

(A) An acknowledgment of receipt is not an agreement with findings;

(B) 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

(C) 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 retail food establishment; and

(2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

(e) **Public information.** Except as specified in 20 CAR § 197-202, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

20 CAR § 197-404. Imminent health hazard.

(a) **Ceasing operations and reporting.**

(1) Except as specified in subdivision (a)(2) 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. P

(2) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(b) **Resumption of operations.** If operations are discontinued as specified under subsection (a) of this section or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

20 CAR § 197-405. Violation of priority item or priority foundation.

(a) **Timely correction.**

(1) Except as specified in subdivision (a)(2) of this section, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item violation of this subchapter and implement corrective actions for an HACCP plan provision that is not in compliance with its critical limit. Pf

(2) 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:

(A) Seventy-two (72) hours after the inspection, for the permit holder to correct violations of a priority item; or

(B) Ten (10) calendar days after the inspection, for the permit holder to correct violations of a priority foundation item or HACCP plan deviations.

(b) **Verification and documentation of correction.**

(1) After observing at the time of inspection a correction of a violation of a priority item or priority foundation item or deviation of an HACCP plan, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

(2) As specified under subdivision (a)(2) of this section, after receiving notification that the permit holder has corrected a violation of a priority item or priority

foundation item or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

20 CAR § 197-406. Core item violation — Time frame for correction.

(a) Except as specified in subsection (b) of this section, the permit holder shall correct core items by a date and time agreed to or specified by the regulatory authority but no later than ninety (90) calendar days after the inspection.

(b) The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under subsection (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.

Subpart 5. Prevention of Foodborne Disease Transmission by Employees

20 CAR § 197-501. Investigation and control.

(a) **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 or conditional 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:

(1) Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.

(b) **Restriction or exclusion of food employee, or summary suspension of permit.** Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee, or permit holder instituting one (1) or more of the following control measures:

(1) Restricting the food employee or conditional employee;

(2) Excluding the food employee or conditional employee; and

(3) Closing the retail food establishment by summarily suspending a permit to operate in accordance with this subchapter.

(c) **Restriction or exclusion order — Warning or hearing not required — Information required in order.** Based on the findings of the investigation as specified in subsection (a) of this section 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:

(1) States the reasons for the restriction or exclusion that is ordered;

(2) 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;

(3) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in this subchapter; and

(4) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(d) **Removal of exclusions and restrictions.** The regulatory authority shall release a food employee or conditional employee from restriction or exclusion according to this subchapter and the conditions specified under 20 CAR § 191-201(c).

Subpart 6. Legal Actions

20 CAR § 197-601. Criminal proceedings — Authorities, methods, fines, and sentences.

(a) The regulatory authority may seek to enforce the provisions of this subchapter and its orders by instituting criminal proceedings as provided in law against the permit holder or other persons who violate its provisions.

(b)(1) A person who violates a provision of this subchapter shall be guilty of a misdemeanor, punishable by:

(A) A fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500);

(B) Imprisonment not exceeding one (1) month; or

(C) Both the fine and imprisonment.

(2) Each day on which a violation occurs is a separate violation under this section.

20 CAR § 197-602. Civil proceedings — Petitions, penalties, and continuing violations.

(a) The regulatory authority may petition a court of competent jurisdiction to enforce the provisions of this subchapter or its administrative orders and according to law collect penalties and fees for violations.

(b) In addition to any criminal fines and sentences imposed as specified in 20 CAR § 197-601, a person who violates a provision of this subchapter, any rule adopted in accordance with law related to retail food establishments within the scope of this subchapter, or to any term, condition, or limitation of a permit issued as specified in 20 CAR § 197-303(a) and (b) is subject to a civil penalty not exceeding one thousand dollars ($1,000).

(c) Each day on which a violation occurs is a separate violation under this section.