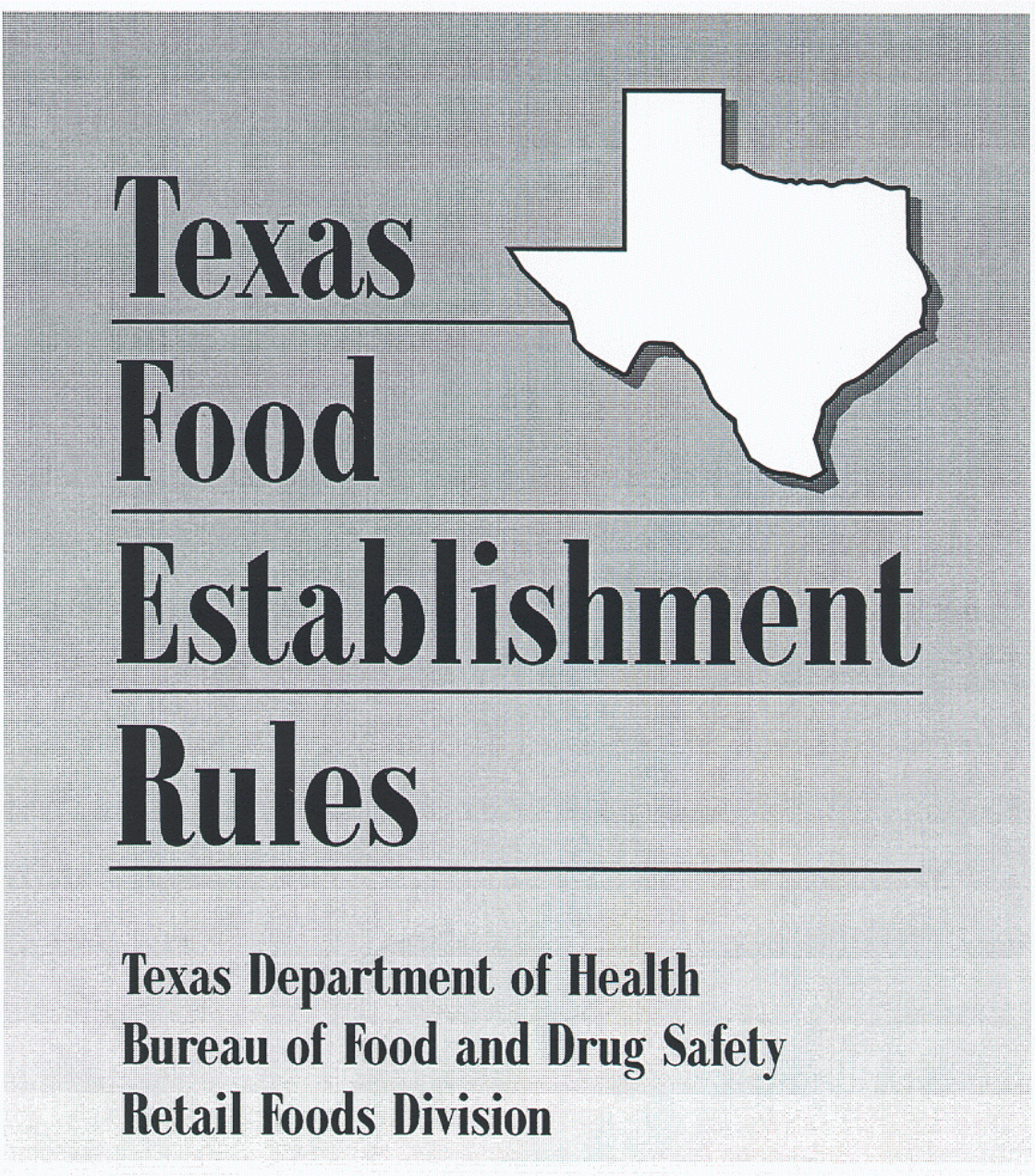

Field Inspection Manual

January 2000

Texas Food Establishment Rules

25 TAC §§229.161 - 229.171, 229.173 - 229.175

Field Inspection Manual

Texas Department of Health
Bureau of Food and Drug Safety
Retail Foods Division
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PREFACE

This Field Inspection Manual consists of the Texas Food Establishment Rules in a format designed to promote uniformity in the application of the rules. The Texas Food Establishment Rules, or "TFER", were adopted by the Texas Board of Health in September, 1998. All critical items are underlined to assist the user in verifying those portions of the rules that are critical and non-critical. Also, the respective Item Numbers have been assigned to the critical items which correspond to the retail food inspection report form. This will promote and ensure uniformity in the application of the Texas Food Establishment Rules when using the inspection report form found in the rules. A comprehensive index is also provided to enhance the use of the Manual.

These item interpretations were developed with input by the Southwest Region FDA Regional Food Specialists, FDA Standardized Inspection Officers, and the item interpretations as they appeared in the revision of the 1976 FDA Food Service Sanitation Manual.

I would like to acknowledge the following staff in the Field Operations and Enforcement Branch of the Retail Foods Division for their diligent efforts in the development of this work:

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TEXAS ADMINISTRATIVE CODE FORMAT

229.161 - Section
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TEXAS FOOD ESTABLISHMENT RULES

§§229.161 - 229.171, 229.173 - 229.175

Item No.

§229.161 Purpose. The purpose of these rules is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

§229.162 Definitions. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Additive-

(A) Food additive is a substance which affects the characteristics of any food as specified in the Texas Health and Safety Code, Chapter 431, §431.002(17).

(B) Color additive is any material imparting color to a food as stated in the Texas Health and Safety Code, Chapter 431, §431.002(6).

(2) Adulterated food - A food containing any poisonous or deleterious substance as specified in the Texas Health and Safety Code, Chapter 431, §431.081.

(3) Approved - Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(4) Bed & Breakfast -

(A) Bed & Breakfast Limited means:

(i) an establishment with seven or fewer rooms for rent;

(ii) that serves only breakfast to overnight guests;

(iii) the establishment is not a retail food establishment; and

(iv) the owner or manager shall successfully complete a food manager's certification course accredited by the department.

(B) Bed & Breakfast Extended means:

(i) an establishment with more than seven rooms for rent; or

(ii) that provides food service other than breakfast to overnight guests; and

(iii) the establishment must meet the specific requirements as outlined in §229.174 of this title (relating to Bed and Breakfast Extended Establishments).

(C) Bed & Breakfast Food Establishment means:

(i) an establishment that provides food service other than to its overnight guests; and

(ii) the establishment must meet the rules and regulations applicable to retail food establishments.

(5) Beverage - A liquid for drinking, including water.

(6) Bottled drinking water - Water from an approved source that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(7) Certification number - A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(8) Child care center - Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for on-site consumption.

(9) Cleaned in place (CIP) - 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. The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(10) Code of Federal Regulations (CFR) - The compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal government. Citations in these Rules to the CFR refer sequentially to the title, part, and section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, §1010.

(11) Comminuted - Reduced in size by methods including chopping, flaking, grinding, or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more

types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(12) Common dining area - A central location in a group residence where people gather to eat at mealtime. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

(13) Confirmed disease outbreak - A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

(14) Consumer - A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(15) Corrosion-resistant material - A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(16) Critical control point - A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(17) Critical item - A provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, injury, or environmental health hazard.

(18) Critical limit - The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(19) Department - The Texas Department of Health.

(20) Drinking water - Water that meets 30 TAC §290.101-§290.121 relating to (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). The term is traditionally known as "potable water" and 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.

(21) Dry storage area - A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

(22) Easily cleanable - A characteristic of a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; and 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.

(23) Easily movable - Weighing 14 kg (30 pounds) or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than 14 kg (30 pounds) of force to safely tilt a unit of equipment for cleaning; and 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.

(24) Employee - The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(25) EPA - The U.S. Environmental Protection Agency.

(26) Equipment - An article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(27) Exotic animal - Member of a species of game not indigenous to this state including axis deer, nilga antelope, red sheep, or other cloven-hoofed ruminant animals. Exotic animals are considered livestock as defined in these rules and are amenable to inspection under Texas Health and Safety Code, Chapter 433, §433.035 (Inspection and Other Regulation of Exotic Animals in Interstate Commerce).

(28) Fish - Fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(29) Food - 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.

(30) Foodborne disease outbreak - An incident in which two or more persons experience

a similar illness after ingestion of a common food, and epidemiological analysis implicates the food as the source of the illness; except that in cases of botulism or chemical poisoning, one ill person shall constitute an outbreak.

(31) Food-contact surface - A surface of equipment or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

(32) Food employee - An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(33) Food establishment - An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes 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; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a Bed and Breakfast Limited facility as defined in these rules; or a private home.

(34) Food processing plant - A commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food establishment as previously defined.

(35) Game animal - An animal, the products of which are food, that is not classified as livestock or fish as defined in these rules. The term includes animals such as wild rabbit, squirrel,

opossum, nutria, muskrat, and nonaquatic reptiles such as rattlesnake.

(36) General use pesticide - A pesticide that is not classified by the U.S. Environmental Protection Agency (EPA) for restricted use as specified in 40 CFR 152.175.

(37) Grade A standards - The requirements of the U.S. Public Health Service/Food and Drug Administration (USPHS/FDA) "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" with which certain fluid and dry milk and milk products must comply.

(38) Group residence - A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term health care facility.

(39) Hazard - A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(40) Hazard Analysis Critical Control Point (HACCP) - A rational, systematic approach that identifies and monitors specific foodborne hazards (biological, chemical, or physical) that may adversely affect the safety of the food product. This system utilizes the HACCP Principles as defined by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), 1992, or its successor document.

(41) Hazard Analysis Critical Control Point (HACCP) plan - A written document that delineates the formal procedures for following the HACCP principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(42) Hermetically sealed container - 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.

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

(44) Imminent health hazard - 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 number of potential injuries and the nature, severity, and duration of the anticipated

injury.

(45) Injected - Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

(46) Kitchenware - Food preparation and storage utensils.

(47) Law - Applicable local, state, and federal statutes, regulations, and ordinances.

(48) Linens - Fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(49) Livestock - Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds. Livestock are amenable to inspection.

(50) Meat - The flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, exotic animals as specified in §229.164(b)(6)(A)(ii) and (iii) and game animals as specified in §229.164(b)(6)(C)(ii) and (iii) of this title (relating to Food) that is offered for human consumption.

(51) Mobile food establishment - A vehicle mounted food establishment designed to be readily moveable.

(52) Milligrams per liter (mg/L) - The metric equivalent of parts per million (ppm).

(53) Molluscan shellfish - 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.

(54) Outfitter operation - Any operations such as trail rides or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment.

(55) Packaged - Bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(56) Permit - The document issued by the regulatory authority that authorizes a person to operate a food establishment.

(57) Permit holder - The entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and who possesses a valid permit to operate a food establishment.

(58) Person - An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(59) Person in charge - The individual present at a food establishment who is responsible for the operation at the time of inspection.

(60) Personal care items - 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. The term includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(61) "pH" - the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(62) Physical facilities - The structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(63) Plumbing fixture - A receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(64) Plumbing system - 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.

(65) Poisonous or toxic materials - Substances that are not intended for ingestion and are included in four 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, 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.

(66) Potentially hazardous food - A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of *Clostridium botulinum*; or in raw shell eggs, the growth of *Salmonella enteritidis*.

(A) The term includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified in this definition.

(B) The term does not include an air-cooled hard-boiled egg with shell intact; a food with a water activity (a_w) value of 0.85 or less; a food with a pH level of 4.6 or below when measured at 24 degrees Celsius (75 degrees Fahrenheit); and 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. The term also does not include a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* cannot occur, such as a food that has an a_w and a pH that are above the levels specified above and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms. The term also does not include a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified in the definition of a potentially hazardous food.

(67) Poultry - Any domesticated bird whether live or dead as defined in the Texas Health and Safety Code, Chapter 433, §433.003. Chickens, turkeys, ducks, geese, guineas, migratory waterfowl, game bird or squab such as pheasant, partridge, quail, and grouse, whether live or dead are examples of poultry. The term also includes ratites (e.g., ostrich, emu, and rhea) which are amenable to inspection as poultry.

(68) Premises - The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(69) Primal cut - 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.

(70) Public water system - Has the meaning stated in 30 TAC §290.101-§290.121 relating to (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(71) Pushcart - A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A push cart is classified as a mobile food establishment.

(72) Ready-to-eat food - Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. The term includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under §229.164(k) of this title (relating to Food); raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(73) Reduced oxygen packaging - The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen. The term includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

(74) Refuse - Solid waste not carried by water through the sewage system.

(75) Regulatory authority - The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(76) Restricted use pesticide - A pesticide product that contains the active ingredients specified in 40 CFR 152.175 (Pesticides) classified for restricted use, and that is limited to use

by or under the direct supervision of a certified applicator.

(77) Roadside food vendor - A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Potentially hazardous foods shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a food establishment.

(78) Safe material - 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; an additive that is used as specified in Chapter 431 of the Texas Health and Safety Code; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(79) Sanitization - The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

(80) Sealed - Free of cracks or other openings that allow the entry or passage of moisture.

(81) Servicing area - An operating base location to which a mobile food establishment or transportation vehicle returns as needed for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(82) Sewage - Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(83) Shellfish control authority - Texas Department of Health Seafood Safety Division.

(84) Shellstock - Raw, in-shell molluscan shellfish.

(85) Shucked shellfish - Molluscan shellfish that have one or both shells removed.

(86) Single-service articles - Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.

(87) Single-use articles - Utensils and bulk food containers designed and constructed to be used once and discarded. The term 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 contained in §229.165(a)(1), (c)(1), and (d)(1) of this title (relating to Equipment, Utensils, and Linens) for multi-use utensils.

(88) Slacking - The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

(89) Smooth - 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; a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(90) Support animal - A trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

(91) Table-mounted equipment - Equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(92) Tableware - Eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

(93) Temperature measuring device - A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(94) Temporary food establishment - A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(95) USDA - The United States Department of Agriculture.

(96) Utensil - 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; and food temperature measuring devices.

(97) Vending machine - A self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(98) Vending machine location - The room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used to service and maintain the vending machines.

(99) Warewashing - The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(100) Water activity (a_w) - 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.

§229.163(a) **§229.163(b)**

§229.163 Management and Personnel.

(a) Responsibility, assignment. The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

(b) Knowledge, demonstration. Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of these rules. The person in charge shall demonstrate this knowledge by compliance with these rules, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, or by responding correctly to the inspector's questions as they relate to the specific food operation. The person in charge may demonstrate such knowledge by:

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

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

(3) describing the symptoms associated with the diseases that are transmissible through food;

(4) explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

(5) explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

(6) stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

(7) stating the required temperatures and times for safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

(8) describing the relationship between the prevention of foodborne illness and the management and control of the following:

(A) cross-contamination;

(B) hand contact with ready-to-eat foods;

(C) handwashing; and

(D) maintaining the food establishment in a clean condition and in good repair;

(9) explaining the relationship between food safety and providing equipment that is:

(A) sufficient in number and capacity; and

(B) properly designed, constructed, located, installed, operated, maintained, and cleaned;

(10) explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

(11) 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;

(12) identifying poisonous and toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

(13) 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 these rules;

(14) explaining the details of how the person in charge and food employees comply with the Hazard Analysis Critical Control Point (HACCP) plan if a plan is required by the law, these rules, or an agreement between the regulatory authority and the establishment; and

(15) explaining the responsibilities, rights, and authorities assigned by these rules to the:

(A) food employee;

(B) person in charge; and

(C) regulatory authority.

(c) Duties, person in charge. The person in charge shall ensure that:

(1) food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under §229.167(d)(10) of this title (relating to Physical Facilities);

(2) persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(3) employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these rules;

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

(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;

(6) employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

(7) employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(8) consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under §229.164(k)(1)(C) and §229.164(r) of this title (relating to Food) that the food is not cooked sufficiently to ensure its safety;

(9) 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, hydrogen ion concentration (pH), temperature, and exposure time for chemical sanitizing;

(10) consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;

(11) employees are preventing cross-contamination of ready-to-eat food with their bare hands by proper handwashing or the use of suitable utensils such as deli tissue, spatulas, tongs or single-use gloves; and

(12) employees are trained in basic food safety principles.

(d) Disease or medical condition.

(1) Responsibility of the person in charge to require reporting by food employees and applicants to whom a conditional offer of employment is made. The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant to whom a conditional offer of employment is made shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subparagraph (C) of this paragraph, if the food employee or applicant to whom a conditional offer of employment is made:

(A) is diagnosed with an illness due to:

(i) *Salmonella typhi*;

(ii) *Shigella* spp.;

(iii) *Escherichia coli* O157:H7 or other enterohemorrhagic *E. coli*; or

(iv) hepatitis A virus;

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

(i) associated with an acute gastrointestinal illness such as:

(I) diarrhea;

(II) fever;

(III) vomiting;

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(IV) jaundice; or

(V) sore throat with fever; or

(ii) a lesion containing pus such as a boil or infected wound;

(C) had a past illness within the past three months from an infectious agent specified in subparagraph (A) of this paragraph; or

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

(i) is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus illness including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant to whom a conditional offer of employment is made:

(I) prepared food implicated in the outbreak;

(II) consumed food implicated in the outbreak; or

(III) consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent; or

(ii) lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus; or

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

 # 6 (2) Exclusions and restrictions. The person in charge shall:

(A) exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in paragraph (1)(A) of this subsection;

(B) except as specified under subparagraph (C) or (D) of this paragraph, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:

(i) suffering from a symptom specified in paragraph (1)(B) of this

subsection; or

(ii) not experiencing a symptom of acute gastroenteritis specified in paragraph (1)(B)(i) of this subsection but has a stool that yields a specimen culture that is positive for *Salmonella typhi*, *Shigella* spp. and *E. coli* 0157:H7;

(C) if the population served is a highly susceptible population, exclude a food employee who:

(i) is experiencing a symptom of acute gastrointestinal illness specified in paragraph (1)(B)(i) of this subsection and meets a high-risk condition specified in paragraph (1)(D) of this subsection;

(ii) is not experiencing a symptom of acute gastroenteritis specified in paragraph (1)(B)(i) of this subsection but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or *Escherichia coli* O157:H7;

(iii) had a past illness from *S. typhi* within the last three months; or

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

(D) for a food employee who is jaundiced:

(i) if the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment; or

(ii) if the onset of jaundice occurred more than seven calendar days before:

(I) exclude the food employee from a food establishment that serves a highly susceptible population; or

(II) restrict the food employee from activities specified in subparagraph (B) of this paragraph, if the food establishment does not serve a highly susceptible population.

(3) Removal of exclusions and restrictions.

(A) The person in charge may remove an exclusion specified in paragraph (2)(A) of this subsection if:

(i) the person in charge obtains approval from the regulatory authority; and

(ii) the person excluded as specified in paragraph (2)(A) of this subsection provides to the person in charge written medical documentation from a physician licensed to practice medicine that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in §229.171(o)(4) of this title (relating to Compliance and Enforcement).

(B) The person in charge may remove a restriction specified in:

(i) paragraph (2)(B)(i) of this subsection if the restricted person:

(I) is free of the symptoms specified in paragraph (1)(B) of this subsection and no foodborne illness occurs that may have been caused by the restricted person;

(II) is suspected of causing foodborne illness but is free of the symptoms specified in paragraph (1)(B) of this subsection, and provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in §229.171(o)(4) of this title; or

(III) provides written medical documentation from a physician licensed to practice medicine stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, ulcerative colitis or irritable bowel syndrome; or

(ii) paragraph (2)(B)(ii) of this subsection if the restricted person provides written medical documentation from a physician, licensed to practice medicine, according to the criteria specified in §229.171(o)(4) of this title that indicates the stools are free of *Salmonella typhi*, *Shigella* spp., *E. coli* O157:H7, or other enterohemorrhagic *E. coli*.

(C) The person in charge may remove an exclusion specified in subsection (d)(2)(C) of this section if the excluded person provides written medical documentation from a physician licensed to practice medicine:

(i) that specifies the person is free of:

(I) the infectious agent of concern, as specified in §229.171(o)(4) of this title; or

(II) jaundice as specified under subparagraph (D) of this paragraph if hepatitis A virus is the infectious agent of concern; or

(ii) if the person is excluded under subsection (d)(2)(C)(i) of this section stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(D) The person in charge may remove an exclusion specified in paragraphs (2)(D)(i) and (2)(D)(ii)(I) of this subsection and a restriction specified in paragraph (2)(D)(ii)(II) of this subsection if:

(i) no foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in §229.171(o)(4) of this title; or

(ii) the excluded or restricted person is suspected of causing foodborne illness and complies with clause (i) of this subparagraph.

(4) Responsibility of a food employee or an applicant to whom a conditional offer of employment is made to report to the person in charge. A food employee or a person to whom a conditional offer of employment is made shall:

(A) in a manner specified in paragraph (1) of this subsection, report to the person in charge the information specified in paragraph (1)(A)-(D) of this subsection; and

(B) comply with exclusions and restrictions that are specified in paragraph (2) of this subsection.

(e) Hands and arms.

(1) Clean condition. Food employees shall keep their hands and exposed portions of their arms clean. **# 7**

(2) Cleaning procedure. Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under §229.166(f)(2)(A) of this title (relating to Water, Plumbing, and Waste) by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall clean the areas underneath the fingernails and between the fingers. Use of automated handwashing equipment acceptable to the regulatory authority can be substituted for the above procedures provided the equipment is installed and operated per the **# 7**

manufacturer's instructions.

 # 7 (3) Special handwash procedures. Employees not utilizing suitable utensils or single-use gloves when handling ready-to-eat foods shall wash hands using the cleaning procedure specified in subsection (e)(2) of this section and follow this procedure with use of an approved hand sanitizer, or chemical hand sanitizing solution used as a hand dip.

 # 7 (4) When to wash. Food employees shall clean their hands and exposed portions of their arms as specified under paragraph (2) of this subsection at the following times:

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

(B) after using the toilet room;

(C) after caring for or handling support animals as allowed under subsection (k)(2) and (3) of this section;

(D) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(E) after handling soiled equipment or utensils;

(F) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;

(G) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(H) when switching between working with raw foods and working with ready-to-eat foods; or

(I) after engaging in other activities that contaminate the hands.

 # 8 (5) Where to wash. Food employees shall clean their hands in a handwashing lavatory or automated handwashing equipment and may not clean their hands in a sink used for food preparation, warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(6) Hand sanitizers.

(A) If used, a hand sanitizer, or a chemical hand sanitizing solution used as a hand dip, shall:

(i) have active antimicrobial ingredients that are:

(I) listed as safe and effective for application to human skin as an antiseptic handwash in a monograph for OTC (over-the-counter) Health-Care Antiseptic Drug Products; or

(II) previously authorized, and listed for such use in the USDA List of Proprietary Substances and Nonfood Compounds, Miscellaneous Publication No. 1419;

(ii) have components that are:

(I) regulated for the intended use as food additives as specified in 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; or

(II) generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug, and Cosmetic Act §201(s); or

(III) exempted from the requirement of being listed in the federal food additive regulations as specified in 21 CFR 170.39 Threshold of Regulation for Substances Used in Food-contact Articles; and

(iii) be applied only to hands that are cleaned as specified under subsection (e)(2) and (3) of this section.

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

(i) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(ii) limited to situations that involve no direct contact with food by the bare hands.

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

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

(g) Jewelry, prohibition. While preparing food, food employees may not wear jewelry on their arms and hands. This subsection does not apply to a plain ring such as a band style ring.

(h) 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.

(i) Food contamination prevention.

 # 8 (1) Eating, drinking, or using tobacco.

(A) Except as specified in subparagraph (B) of this paragraph, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

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

(i) the employee's hands;

(ii) the container; and

(iii) exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

 # 6 (2) 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.

(j) Hair restraints, effectiveness.

(1) Use required. Except as provided under paragraph (2) of this subsection, 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 control and keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(2) Exceptions. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods; hosts and hostesses; and wait staff if

they present a minimal risk of contaminating exposed food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles.

(k) Animals, handling prohibition.

(1) Handling, prohibition. Except as specified in paragraph (2) of this subsection, food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under §229.167(p)(15)(B)(ii)-(iv) of this title (relating to Physical Facilities). **# 8**

(2) Food employees with support animals. Food employees with support animals may handle or care for their support animals if they wash their hands as specified under subsection (e)(2) and (3) and (4)(C) of this section before working with exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles. **# 7**

(3) Food employees handling fish, shellfish, crustacea. Food employees handling edible fish in aquariums, shellfish or crustacea in display tanks shall wash their hands before handling exposed food; cleaning equipment, utensils, and linens; or unwrapped single-service and single-use articles. **# 7**

§229.164(a) **§229.164(b)**

§229.164 Food.

#10 (a) Condition safe, unadulterated, and honestly presented. Food shall be safe, unadulterated, and, as specified under subsection (p)(2) of this section, honestly presented.

 # 9 (b) Approved sources.

(1) Compliance with food law.

(A) Food shall be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food.

(B) Food prepared in a private home, except as allowed in these rules, or from an unlicensed food manufacturer or wholesaler, is considered to be from an unapproved source and may not be used or offered for human consumption in a food establishment.

(C) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under subsection (c)(8) and (9) of this section.

(D) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection (k)(1)(C) of this section shall be obtained from a supplier that freezes the fish as specified under subsection (l)(1) of this section; or shall be frozen on the premises as specified under subsection (l)(1) of this section and records shall be retained as specified under subsection (l)(3) of this section.

(2) Food in a hermetically sealed container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(3) 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.

(4) Fish.

(A) Fish may not be received for sale or service unless they are commercially and legally caught or harvested, or otherwise approved by the regulatory authority.

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

(5) Molluscan shellfish.

(A) 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 Manual of Operations, or its successor document.

(B) Molluscan shellfish shall be from sources that are currently certified by the appropriate state or national shellfish control authority.

(6) Exotic animals and game animals.

(A) If exotic animals are received for sale or service, they shall:

(i) be commercially raised for food and:

(I) slaughtered, processed, and deemed to be "inspected and approved" under an inspection program administered by U.S.D.A. in accordance with 9 CFR 352 Voluntary Exotic Animal Program; or

(II) slaughtered, processed, and deemed to be "inspected and passed" under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to U.S.D.A. inspection;

(ii) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (6)(A)(i)(I) or (II) of this subsection;

(iii) as allowed by law, for exotic animals that are field dressed:

(I) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (6)(A)(i)(I) or (II) of this subsection; and

(II) be field dressed, transported, and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (6)(A)(i)(I) or (II) of this subsection.

(B) No exotic animal or game animal may be received for sale or service if it is a species that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

(C) Game animals must be from a source approved by the regulatory authority

and must be commercially processed. Approved sources include:

(i) as allowed by law, commercially raised indigenous game animals;

(ii) indigenous game animals harvested under the authority of the Texas Parks and Wildlife Department, which are wholesome at the time of delivery to a commercial processor; and

(iii) other hunter killed indigenous game animal species, such as rattlesnakes, which are wholesome at the time of delivery to a commercial processor.

(c) Specifications for receiving.

(1) Temperature.

 # 2 (A) Except as specified in subparagraph (B) of this paragraph, refrigerated, potentially hazardous food shall be at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or below when received.

 # 2 (B) Foods such as milk, molluscan shellfish, and shell eggs may be received at the temperature specified in laws governing their distribution.

 # 3 (C) Potentially hazardous food that is cooked to a temperature and for a time specified under subsection (k) of this section and received hot shall be at a temperature of 60 degrees Celsius (140 degrees Fahrenheit) or above.

 # 2 (D) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

 # 2 or # 3 (E) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

 # 10 (2) Additives. Food may not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR, 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR, 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, 9 CFR 381.147 Restrictions on the use of substances in poultry products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

 # 10 (3) Shell eggs. Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56 - Regulations

Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

(4) Liquid, frozen, and dry eggs. Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized. **# 9**

(5) Fluid milk, dry milk, and milk products. **# 9**

(A) Fluid milk, dry milk, and milk products complying with Grade A standards as specified in law shall be obtained pasteurized.

(B) Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Texas Frozen Desserts Manufacturer Licensing Act, Texas Health and Safety Code, Chapter 440.

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

(6) 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. **# 10**

(7) Ice. Ice used as a food or a cooling medium shall be made from drinking water. **# 9**

(8) Shucked shellfish, packaging and identification. Raw shucked shellfish shall be obtained in nonreturnable packages legibly bearing the name and address of the person who shucks and packs or repacks the shellfish, the person’s authorized certification number, and the "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

(9) Shellstock identification. 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 Texas Molluscan Shellfish Rules, 25 TAC, Chapter 241, §241.50-§241.67. **# 9**

(A) Except as specified under subparagraph (C) of this paragraph, each dealer's tag or label shall contain the following information in the following order:

(i) the dealer's name and address, and the certification number assigned by the shellfish control authority;

(ii) the original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish were harvested;

(iii) the date of harvesting;

(iv) 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;

(v) the type and quantity of shellfish;

(vi) the following statement in bold, capitalized type: "**THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS**;" and

(vii) the consumer information statement required as specified in subsection (r) of this section.

(B) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as required in subparagraphs (A) and (B) of this subsection shall be subject to detention as provided in Texas Health and Safety Code, Chapter 436.

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

(D) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subparagraph (A)(i) of this paragraph, separate dealer tags or labels need not be provided.

(10) Shellstock, condition. When received by a food establishment, shellstock shall be reasonably free of mud, shall be alive, and have unbroken shells. Dead shellstock or shellstock with badly broken shells shall be discarded.

(d) Original containers and records.

(1) Molluscan shellfish, original container.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, molluscan shellfish may not be removed from the container in which they were received other than immediately before sale or preparation for service.

(B) Shellstock may be removed from the container in which they were received, displayed on drained ice, or held in a display container, maintained at or below 41 degrees Fahrenheit, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(i) the source of the shellstock on display is identified as specified under subsection (c)(9) of this section, the source information is displayed with the shellstock and recorded as specified under paragraph (2) of this subsection; and

(ii) the shellstock are protected from contamination.

(C) Shucked shellfish may be removed from the container in which they were received and held in a display container maintained at or below 41 degrees Fahrenheit from which individual servings are dispensed upon a consumer's request if:

(i) the labeling information for the shellfish on display as specified under subsection (c)(8) of this section is retained and correlated to the date when, or dates during which, the shellfish are sold or served and the information is displayed with the shellfish; and

(ii) the shellfish are protected from contamination.

(2) Shellstock, maintaining identification. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by: **# 9**

(A) using a record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and

(B) if shellstock are removed from their tagged or labeled container, using only one tagged or labeled container at a time and ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container, unless all tag or label information is identical, before being ordered by the consumer. Shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

(3) Disclosure of tag or label information. Tag or label information shall be made available to any consumer upon request.

(e) Preventing contamination by employees.

(1) Preventing contamination from hands. **# 7**

 # 7 (A) Food employees shall wash their hands as specified under §229.163(e) of this title (relating to Management and Personnel).

#7, #11 (B) Except when washing fruits and vegetables as specified in subsection (f)(6) of this section, food employees shall avoid contact of exposed ready-to-eat food with their bare hands by use of suitable utensils such as deli tissue, spatulas, tongs, or single-use gloves; or shall wash hands as specified in §229.163(e)(3) of this title.

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

 # 12 (2) 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.

(f) Preventing food and ingredient contamination.

(1) General. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination.

 # 12 (2) Packaged and unpackaged food - separation, packaging, and segregation.

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

(i) separating raw animal foods during storage, preparation, holding, and display from:

(I) raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables; and

(II) cooked ready-to-eat food.

(ii) 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; or

(II) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(III) preparing each type of food at different times or in separate areas.

(iii) cleaning equipment and utensils as specified under §229.165(n)(1) of this title (relating to Equipment, Utensils, and Linens) and sanitizing as specified under §229.165(r) of this title;

(iv) except as specified under subparagraph (B) of this paragraph, storing the food in packages, covered containers, or wrappings;

(v) cleaning hermetically sealed containers of food of visible soil before opening;

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

(vii) storing damaged, spoiled or recalled food being held in the food establishment as specified under §229.167(n) of this title (relating to Physical Facilities); and

(viii) separating fruits and vegetables, before they are washed as specified under paragraph (6) of this subsection from ready-to-eat food.

(B) Subparagraph (A)(iv) of this paragraph does not apply to:

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

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

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

(iv) food being cooled as specified under subsection (n)(5)(B)(ii) of this section; or

(v) shellstock.

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

 # 9 (4) Pasteurized eggs, substitute for shell eggs for certain recipes and populations. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(A) foods such as Caesar salad, hollandaise or bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not:

(i) cooked as specified under subsection (k)(1)(A)(i) or (ii) of this section; or

(ii) included under subsection (k)(1)(C) of this section; and

(B) eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.

 # 10 (5) Protection from unapproved additives.

(A) Food shall be protected from contamination that may result from the addition of, as specified in subsection (c)(2) of this section:

(i) unsafe or unapproved food or color additives; and

(ii) unsafe or unapproved levels of approved food and color additives.

(B) A food employee may not:

(i) apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B_1; or

(ii) serve or sell food specified in clause (i) of this subparagraph that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet this subparagraph.

(6) Washing fruits and vegetables.

(A) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

(B) Fruits and vegetables may be washed by using chemicals as specified under §229.168(f)(2) of this title (relating to Poisonous or Toxic Materials).

(g) Preventing contamination from ice used as a coolant.

(1) Ice used as exterior coolant, prohibited as contamination 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. **# 10**

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

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

(B) Except as specified in subparagraphs (C) and (D) of this paragraph, unpackaged food may not be stored in direct contact with undrained ice.

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

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

(h) Preventing contamination from equipment, utensils, wiping cloths, and linens.

(1) Food contact with equipment and utensils. Food may not contact:

(A) probe-type price or identification tags, unless each tag is cleaned and sanitized prior to each use and used only in raw foods that will not be consumed as a ready-to-eat food; and

(B) surfaces of utensils and equipment that are not cleaned as specified under §229.165(m)-(o) of this title and sanitized as specified in §229.165(p)-(r) of this title.

(2) In-use utensils, between-use storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(A) except as specified under subparagraph (B) of this paragraph, in the food with their handles above the top of the food and the container;

(B) in food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(C) on a clean portion of the food preparation table or cooking equipment and shall be cleaned and sanitized at a frequency specified under §229.165(n)(1) and (q) of this title;

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

(E) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

(F) in water that maintains a temperature of at least 60 degrees Celsius (140 degrees Fahrenheit).

(3) Wiping cloths, used for one purpose.

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

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

(i) dry and used for wiping food spills from tableware and carry-out containers; or

(ii) moist and cleaned as specified under §229.165(t)(4) of this title, stored in a chemical sanitizer as specified under §229.168(f)(1) of this title, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

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

(4) Linens and napkins, use limitation. Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(5) Gloves, use limitation.

 # 8 or #11, #12

(A) If used, single-use gloves shall be used for only one task such as working

with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(B) Except as specified in subparagraph (C) of this paragraph, 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 in these rules, such as frozen food or a primal cut of meat. **# 8**

(C) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove. **# 8**

(D) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in these rules such as frozen food or a primal cut of meat. **# 8**

(6) Using clean tableware for second portions and refills.

(A) Food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills except glasses and cups, provided no contact is made between the glasses and cups and the container from which the refills are dispensed.

(B) Except as specified in subparagraph (C) of this paragraph, 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. A card, sign or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas such as salad bars and buffets. **# 26**

(C) Cups and glasses may be reused by self-service consumers if refilling is a contamination-free process as specified under §229.165(f)(3)(A),(B) and (D) of this title.

(7) Refilling returnables.

(A) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

(B) Except as specified in subparagraph (C) of this paragraph, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in §229.165(o)(7) of this title.

(C) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified in §229.165(f)(3)(A),(B), and (D) of this title.

(i) Preventing contamination from the premises.

(1) Food Storage.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, food shall be protected from contamination by storing the food:

(i) in a clean, dry location;

(ii) where it is not exposed to splash, dust, or other contamination; and

(iii) at least 15 centimeters (6 inches) above the floor.

(B) Food in packages and working containers may be stored less than 15 centimeters (6 inches) above the floor on case lot handling equipment as specified under §229.165(f)(22) of this title.

(C) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(2) Food storage, prohibited areas. Food may not be stored:

(A) in locker rooms;

(B) in toilet rooms;

(C) in dressing rooms;

(D) in garbage rooms;

(E) in mechanical rooms;

(F) under sewer lines that are not shielded to intercept potential drips;

(G) under leaking water lines, including leaking automatic fire sprinkler heads,

or under lines on which water has condensed;

(H) under open stairwells; or

(I) under other sources of contamination.

(3) Vended potentially hazardous food, original container. Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared, unless the food was manufactured within the machine.

(4) Food preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

(j) Preventing contamination by consumers.

(1) 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.

(2) Condiments, protection.

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

(B) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at a location that is approved by the regulatory authority, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(3) Consumer self-service operations, sale from self-service containers.

(A) Unpackaged, raw animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This paragraph does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, or to 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. **# 12**

(B) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(C) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

(D) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(i) the self-service container has a tight-fitting lid that is securely attached to the container; and

(ii) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(E) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(F) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(G) The seller shall:

(i) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(ii) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

 # 12 (4) Returned food, reservice or sale.

(A) Except as specified under subparagraph (B) of this paragraph, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(B) Except as specified in subsection (u) of this section, food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold.

(5) Miscellaneous sources of contamination. Food shall be protected from

contamination that may result from a factor or source not specified in subsections (e)-(j) of this section.

(k) Cooking.

(1) Raw animal foods. **# 4**

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(i) 63 degrees Celsius (145 degrees Fahrenheit) or above for 15 seconds for:

(I) raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

(II) except as specified under subparagraph (A)(ii) and (iii) and subparagraph (B) of this paragraph, fish and meat including game animals and exotic animals commercially raised for food under a voluntary inspection program;

(ii) 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds or the temperature specified in the following table that corresponds to the holding time for pork, ratites, and injected meats; the following if they are comminuted: fish, meat, game animals and exotic animals commercially raised for food under a voluntary inspection program; and raw eggs that are not prepared as specified under subparagraph (A)(i)(I) of this paragraph; or

Figure 1: 25 TAC §229.164(k)(1)(A)(ii)

(iii) 74 degrees Celsius (165 degrees Fahrenheit) or above for 15 seconds for poultry except for ratites, wild game animals and exotic animals which are live caught and are under a routine inspection program, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.

(B) Whole beef roasts and corned beef roasts shall be cooked:

(i) in an oven that is preheated to the temperature specified for the roast's weight that is held at that temperature as specified in the following table:

Figure 2: 25 TAC §229.164(k)(1)(B)(i)

(ii) and all parts of the food shall be heated to a temperature and for the holding time that corresponds to that temperature in the following table:

Figure 3: 25 TAC §229.164(k)(1)(B)(ii)

(C) Except for food establishments serving a highly susceptible population, subparagraphs (A) and (B) of this paragraph do not apply if, upon consumer order, the food is a raw animal food such as raw, marinated fish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready-to-eat form. Consumers should be informed by brochures, deli-case or menu advisories, label statements, table tents, placards, or other effective means, that, to ensure its safety, food should be cooked as specified in this paragraph.

 # 4

(2) Microwave cooking. Raw animal foods cooked in a microwave oven shall be:

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

(B) covered to retain surface moisture;

(C) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; and

(D) allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

(3) Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60 degrees Celsius (140 degrees Fahrenheit).

(l) Freezing.

 # 10 or # 9 from supplier, no records

(1) Parasite destruction. Except as specified in paragraph (2) of this subsection, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated- partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

(A) -20 degrees Celsius (-4 degrees Fahrenheit) or below for 168 hours (7 days) in a freezer; or

(B) -35 degrees Celsius (-31 degrees Fahrenheit) or below for 15 hours in a blast freezer.

(2) Tuna species. If the fish are tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), or Thunnus thynnus (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under paragraph (1) of this subsection. **# 10**

(3) Records, creation and retention.

(A) Except as specified in paragraph (2) of this subsection and subparagraph (B) of this paragraph, if raw, raw-marinated and lightly cooked-marinated fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

(B) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under paragraph (1) of this subsection may substitute for the records specified under subparagraph (A) of this paragraph.

(m) Reheating.

(1) Reheating for hot holding. **# 5**

(A) Except as specified under subparagraphs (B), (C), and (E) of this paragraph, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds.

(B) Except as specified under subparagraph (C) of this paragraph, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.

(C) Ready-to-eat food taken from a commercially-processed, hermetically-sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 60 degrees Celsius (140 degrees Fahrenheit) for hot holding.

(D) Reheating for hot holding shall be done rapidly and the minimum temperature specified under subsection (n)(6)(B) or (C) of this section shall be reached within two hours.

(E) Remaining unsliced portions of roasts of beef that are cooked as specified in subsection (k)(1)(B) of this section may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection (k)(1)(B) of this section.

(2) 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.

(n) Time and temperature control.

(1) Frozen food. Stored frozen foods shall be maintained frozen.

(2) Potentially hazardous food, slacking. Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

(A) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less, or at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified in paragraph (6)(C) of this subsection; or

(B) at any temperature if the food remains frozen.

(3) Thawing. Potentially hazardous food shall be thawed:

(A) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit), or less; or at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified in paragraph (6)(C) of this subsection;

(B) completely submerged under running water:

(i) at a water temperature of 21 degrees Celsius (70 degrees Fahrenheit) or below;

(ii) with sufficient water velocity to agitate and float off loose particles in an overflow; and

(iii) for a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees Celsius (41 degrees Fahrenheit), or 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection; or

(iv) for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in subsection (k)(1)(A) or (B) of this section to be above 5

degrees Celsius (41 degrees Fahrenheit) or 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection for more than four hours including the time the food is exposed to the running water and the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to 5 degrees Celsius (41 degrees Fahrenheit) or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection;

(C) as part of a cooking process if the food that is frozen is:

(i) cooked as specified in subsection (k)(1)(A) or (B) or (k)(2) of this section; or

(ii) thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(D) using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

(4) Cooling. **# 1**

(A) Cooked potentially hazardous food shall be cooled:

(i) from 60 degrees Celsius (140 degrees Fahrenheit) to 21 degrees Celsius (70 degrees Fahrenheit) within two hours; and

(ii) from 21 degrees Celsius (70 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit), or below, or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours.

(B) Potentially hazardous food shall be cooled to 5 degrees Celsius (41 degrees Fahrenheit) or below or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(C) A potentially hazardous food received in compliance with laws allowing a temperature above 5 degrees Celsius (41 degrees Fahrenheit) during shipment from the supplier shall be cooled to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours.

(5) Cooling methods.

(A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under paragraph (4) of this subsection by using one or more of the following methods based on the type of food being cooled:

(i) placing the food in shallow pans;

(ii) separating the food into smaller or thinner portions;

(iii) using rapid cooling equipment;

(iv) stirring the food in a container placed in an ice water bath;

(v) using containers that facilitate heat transfer;

(vi) adding ice as an ingredient; or

(vii) other effective methods.

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

(i) arranged in the equipment to provide maximum heat transfer through the container walls; and

(ii) loosely covered, or uncovered if protected from overhead contamination as specified under subsection (i)(1)(A)(ii) of this section, during the cooling period to facilitate heat transfer from the surface of the food.

(6) Potentially hazardous food, hot and cold holding. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under paragraph (10) of this subsection, potentially hazardous food shall be maintained:

 # 3 (A) at 60 degrees Celsius (140 degrees Fahrenheit) or above, except that roasts cooked to a temperature and for a time specified in subsection (k)(1)(B) of this section may be held at a temperature of 54 degrees Celsius (130 degrees Fahrenheit); or

 # 2 (B) at 5 degrees Celsius (41 degrees Fahrenheit) or below, except as specified under subparagraph (C) of this paragraph, paragraphs (7)-(9) of this subsection, and §229.165(f)(11) of this title; or

 # 2 (C) at 7 degrees Celsius (45 degrees Fahrenheit) provided the mechanical

refrigeration unit in which the food is held:

(i) is currently in place and in use in the food establishment; and **# 15**

(ii) is upgraded or replaced with a refrigeration unit that can meet the requirements of subparagraph (B) of this paragraph within five years of adoption of these rules by the department except that in-use food preparation line equipment is exempt from this requirement for the life of the existing equipment provided that all potentially hazardous food stored in these refrigeration units is clearly marked at the time of preparation or opening to indicate the date, including the day of preparation, by which the food shall be consumed or disposed of within four calendar days or less. **# 15**

(D) Shell eggs must be held at an ambient temperature of 45 degrees Fahrenheit or less. If the United States Department of Agriculture and the U.S. Food and Drug Administration determine by law that a lower temperature must be maintained, the lower temperature shall prevail. **# 2**

(7) Prepared on premise ready-to-eat potentially hazardous food, date marking. **# 13**

(A) Except as specified in paragraph (8)(C) of this subsection, refrigerated, ready-to-eat potentially hazardous food prepared and held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation to indicate the date, including the day of preparation, by which the food shall be consumed which shall be:

(i) seven calendar days or less from the day that the food is prepared, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days or less from the day the food is prepared, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) Except as specified in paragraph (8)(C) of this subsection, a ready-to-eat, potentially hazardous food prepared in a food establishment and subsequently frozen, shall be clearly marked:

(i) when the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(ii) when the food is placed into the freezer, to indicate the length of time before freezing, including the day of preparation, that the food is held refrigerated:

(I) seven calendar days or less from the day of preparation, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(II) four calendar days or less from the day of preparation, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(iii) when the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) seven calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less before and after freezing; or

(II) four calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection before and after freezing.

 # 13 (8) Commercially processed ready-to-eat potentially hazardous food, date marking.

(A) Except as specified in subparagraphs (C) and (D) of this paragraph, a container of refrigerated, ready-to-eat potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date, including the day the original container is opened, by which the food shall be consumed which is:

(i) seven calendar days or less after the original container is opened, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days or less from the day the original container is opened, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) Except as specified in subparagraphs (C) and (D) of this paragraph, a container of refrigerated, ready-to-eat potentially hazardous food prepared and packaged by a food processing plant and subsequently opened and frozen in a food establishment shall be clearly marked:

(i) when the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(ii) to indicate the time between the opening of the original container and

freezing that the food is held refrigerated and which is, including the day of opening the original container:

(I) seven calendar days or less, after opening the original container if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(II) four calendar days or less after opening the original container if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection; and

(iii) when the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) seven calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less before and after freezing; or

(II) four calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection before and after freezing.

(C) Paragraphs (7)(A) and (B) and (8)(A) and (B) of this subsection do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(D) Paragraph (8)(A) and (B) of this subsection do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

(9) Ready-to-eat potentially hazardous food, disposition. **# 13**

(A) A food specified in paragraph (7)(A) of this subsection shall be discarded if not consumed within:

(i) seven calendar days from the date of preparation if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days from the date of preparation if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) A food specified under paragraphs (7)(B)(i) or (8)(B)(i) of this subsection shall be discarded if not consumed within 24 hours after thawing.

(C) A food specified under paragraphs (7)(B)(ii) and (iii) or (8)(B)(ii) and (iii) of this subsection shall be discarded on or before the most recent date marked on the food container or package if the food is not consumed by that date.

(D) A food specified under paragraph (8)(A) of this subsection shall be discarded if not consumed within, including the day of opening the original container:

(i) seven calendar days after the date that the original package is opened in a food establishment if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days after the date that the original package is opened in a food establishment if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(E) A food specified under paragraphs (7)(A) or (B) and (8)(A) or (B) of this subsection shall be discarded if the food is:

(i) marked with the date specified under paragraphs (7)(A) or (B) or (8)(A) or (B) of this subsection and the food is not consumed before the most recent date expires;

(ii) in a container or package which does not bear a date or time; or

(iii) inappropriately marked with a date or time that exceeds the date or time specified under paragraphs (7)(A) or (B) or (8)(A) or (B) of this subsection.

(F) Refrigerated, ready-to-eat potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(i) 5 degrees Celsius (41 degrees Fahrenheit) shall be discarded if not sold within seven days; or

(ii) 7 degrees Celsius (45 degrees Fahrenheit) shall be discarded if not sold within four days.

 # 13 (10) Time as a public health control. If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

(A) the food shall be marked, labeled, tagged, or otherwise unmistakably identified to indicate the time which is four hours past the point when the food was removed from

temperature control;

(B) the food shall be cooked and served, served if a ready-to-eat food, or discarded within four hours of the time at which the food was removed from temperature control;

(C) the food in unmarked containers or packages or marked to exceed a four hour limit shall be discarded; and

(D) written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:

(i) subparagraphs (A)-(C) of this paragraph; and

(ii) paragraph (4) of this subsection for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(o) Specialized processing methods.

(1) Variance requirement for specialized processes. A food establishment shall obtain a variance as specified in §229.171(c)(1) and (2) of this title (relating to Compliance and Enforcement) before smoking or curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food nonpotentially hazardous; using a reduced oxygen method of packaging food except as specified in paragraph (2) of this subsection where a barrier to *Clostridium botulinum* in addition to refrigeration exists; or preparing food by another method that is determined by the regulatory authority to require a variance. **# 13**

(2) Reduced oxygen packaging, criteria.

(A) A food establishment that packages food using a reduced oxygen packaging method shall have a HACCP Plan that contains the information specified under §229.171(d)(2)(D) of this title and that: **# 13**

(i) identifies the food to be packaged;

(ii) limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(I) has a water activity (a_w) of 0.91 or less;

(II) has a hydrogen ion concentration (pH) of 4.6 or less;

(III) is a meat or poultry product cured at a food processing plant regulated by the U.S. Department of Agriculture or the department, and is received in an intact package; or

(IV) is a food with a high level of competing organisms such as raw meat or raw poultry;

(iii) specifies methods for maintaining food at 5 degrees Celsius (41 degrees Fahrenheit) or below;

(iv) describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(I) maintain the food at 5 degrees Celsius (41 degrees Fahrenheit) or below; and

(II) discard the food if within 14 calendar days of its packaging if it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

(v) limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(vi) includes operational procedures that:

(I) require employees contacting foods with bare hands to wash hands properly or utilize proper utensils;

(II) identify a designated area and the method by which physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation;

(III) delineate cleaning and sanitization procedures for food-contact surfaces; and

(vii) describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(I) concepts required for a safe operation;

(II) equipment and facilities; and

(III) procedures specified in paragraph (2)(A)(vi) of this subsection and §229.171(d)(2)(D) of this title.

(B) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method. Some foods, such as hard cheeses, may not require a HACCP plan. **# 10**

(p) Food identity and accurate representation.

(1) Standards of identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, 9 CFR 381.156-381.171, 381.173 and 381.174 Standards of Identity for Poultry and Poultry Products, and the general requirements in 21 CFR 130 Food Standards: General, and 9 CFR 319 Subpart A General.

(2) Honestly presented.

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

(B) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of food.

(q) Labeling. **# 9**

(1) Food labels.

(A) Food packaged in a food establishment shall be labeled according to law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers. 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 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) except as exempted in the Federal Food, Drug, and Cosmetic Act §403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B - Nutrition Labeling.

(B) Except as specified in paragraph (2)(C) of this subsection, food that is not packaged need not be labeled unless a health or nutrient content claim is made.

(2) Other forms of information.

(A) Consumer information, such as nutritional information, and consumer warnings if required by law, shall be provided.

(B) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

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

(i) the manufacturer's or processor's label that was provided with the food; or

(ii) a card, sign, or other method of notification that includes:

(I) the common name of the food;

(II) a list of ingredients in order of predominance;

(III) a declaration of artificial color or flavor and chemical preservatives, if contained in the food; and

(IV) nutrition labeling if specified in 21 CFR 101 Food Labeling.

(D) Bulk, unpackaged foods which are apportioned to consumers with the assistance of food establishment personnel, including bakery products, need not be labeled if:

(i) a health, nutrient content claim, or other claim is not made;

(ii) the food is manufactured or prepared on the premises of the food

establishment or a food processing plant that is owned by the same person and is licensed by the food regulatory agency that has primary jurisdiction; and

(iii) ingredients contained in the food, including potential allergens, are provided to the consumer on request from a recipe book or by other means.

(3) Menu claims.

(A) If a nutrient content claim or health claim is made, such claims shall conform to the definitions of such terms found in 21 Code of Federal Regulations Part 101.

(B) Claims must be capable of being substantiated. Substantiation may be based upon a recipe for the food, or a database developed and tested nationally and acceptable to the regulatory authority. Evidence of substantiation must be supplied to the regulatory authority upon request.

(C) Nutritional information must be made available to the consumer upon request for any food for which a nutrient content claim or health claim is made.

(r) Consumer advisory. Food establishments which deliver shellfish to a consumer for raw consumption shall inform consumers by brochures, deli-case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such shellfish in raw or undercooked form. The language in the advisory shall be as follows unless otherwise approved by the Retail Foods Division in the department in response to a written request from the food establishment: THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS OR ANY RAW ANIMAL PROTEIN. IF YOU HAVE CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD, OR HAVE IMMUNE DISORDERS, YOU ARE AT GREATEST RISK OF ILLNESS FROM RAW OYSTERS AND SHOULD EAT OYSTERS FULLY COOKED. IF UNSURE OF YOUR RISK, CONSULT YOUR PHYSICIAN. **# 26**

(s) Disposition, contaminated food.

(1) Unsafe, adulterated, or not honestly presented food. A food that is unsafe, adulterated, or not honestly presented as specified in subsection (a) of this section shall be reconditioned according to a procedure approved by the regulatory authority or discarded. It shall be the responsibility of the owner of the product to present a reconditioning plan to the regulatory authority for review. If, after review of the plan, the regulatory authority determines that the reconditioned product will be safe, unadulterated, and not misrepresented, the regulatory authority shall approve the reconditioning plan. **# 10**

 # 9 (2) Food from unapproved source. Food that is not from an approved source as specified in subsection (b)(1)-(7) of this section is subject to detention by the regulatory authority or shall be discarded.

 # 12 (3) Contaminated ready-to-eat food. Ready-to-eat food that may have become contaminated by an employee who has been restricted or excluded as specified in §229.163(d)(2) of this title shall be discarded.

 # 12 (4) Food contaminated by personal contact. 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.

(t) Donation of foods.

(1) Previous service. Foods which have been previously served to a consumer may not be donated.

(2) Potentially hazardous foods. A potentially hazardous food may be donated if:

 # 1, # 3 (A) the food has been kept at or above 60 degrees Celsius (140 degrees Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements under subsection (n)(4) and (5) of this section;

 # 15 (B) the donor can substantiate that the food recipient has the facilities to meet the transportation, storage, and reheating requirements of these rules;

 # 2, #12 (C) the temperature of the food is at or below 5 degrees Celsius (41 degrees Fahrenheit) at the time of donation, and is protected from contamination; and

 # 2 or # 3, #15 (D) if the food is to be transported by the recipient directly to a consumer, the recipient need meet only the transportation requirements, including holding temperatures, under these rules.

 # 9 (3) Labeling. Donated foods shall be labeled with the name of the food, the source of the food, and the date of preparation.

 # 10 (4) Shelf life. Donated potentially hazardous foods may not exceed the shelf life for leftover foods outlined in these rules.

 # 10 (5) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling, shall not be donated.

(6) Distressed foods. Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer. Such foods may be sold or donated to a licensed food salvage establishment if permitted under the provisions of the Health and Safety Code, Chapter 432. **# 10**

(u) Additional safeguards, requirements for food establishments serving highly susceptible populations.

(1) Apple juice beverages. Apple juice, apple cider, and other beverages containing apple juice served to a highly susceptible population shall be obtained pasteurized, or in a commercially sterile shelf-stable form in a hermetically sealed container. **# 9**

(2) Pasteurized eggs, egg products. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of: **# 9**

(A) foods such as Caesar salad, hollandaise or bearnaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified beverages; and

(B) eggs that are broken, combined in a container, and not cooked immediately or eggs that are held before service following cooking.

(3) Food in unopened original packages. Food in an unopened original package may not be re-served. **# 10**

(4) Raw animal foods. Raw animal food such as raw or raw-marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft-cooked eggs may not be served or offered for sale in a ready-to-eat form. **# 4**

§229.165 Equipment, Utensils, and Linens.

(a) Multiuse materials.

 # 25 (1) Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

(A) safe;

(B) durable, corrosion-resistant, and nonabsorbent;

(C) sufficient in weight and thickness to withstand repeated warewashing;

(D) finished to have a smooth, easily cleanable surface; and

(E) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(2) Cast iron, use limitation.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, cast iron may not be used for utensils or food-contact surfaces of equipment.

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

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

(3) Lead in ceramic, china, and crystal utensils, use limitation. Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits shown in the following table:

Figure 1: 25 TAC §229.165(a)(3)

 # 25 (4) Copper, use limitation.

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

carbonator.

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

(5) 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. **# 25**

(6) Sponges, use limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(7) Lead in pewter alloys, use limitation. Pewter alloys containing lead in excess of 0.05% may not be used as a food contact surface.

(8) Lead in solder and flux, use limitation. Solder and flux containing lead in excess of 0.2% may not be used as a food contact surface.

(9) Wood, use limitation.

(A) Except as specified in subparagraphs (B)- (E) of this paragraph, wood and wood wicker may not be used as a food-contact surface.

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

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees Celsius (230 degrees Fahrenheit) or above.

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

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

(i) untreated wood containers; or

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

(E) Wooden wicker baskets used for the proofing of bread can be used provided the product is fully baked after proofing in these baskets.

(10) 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.

(11) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

 # 25 (b) 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; or

(B) impart colors, odors, or tastes to food; and

(2) shall be:

(A) safe; and

(B) clean.

(c) Durability and strength.

(1) Equipment and utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

 # 24 (2) 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.

(d) Cleanability.

 # 25 (1) Food-contact surfaces. Multi use food-contact surfaces shall be:

(A) smooth;

(B) free of breaks, open seams, cracks, chips, pits, and similar imperfections;

(C) free of sharp internal angles, corners, and crevices;

(D) finished to have smooth welds and joints; and

(E) accessible for cleaning and inspection by one of the following methods:

(i) without being disassembled;

(ii) by disassembling without the use of tools; or

(iii) by easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as mallets, screwdrivers, pliers, or wrenches that are kept near the equipment and are accessible for use.

(2) Cleaned in place (CIP) equipment.

(A) CIP equipment shall meet the characteristics specified under paragraph (1) of this subsection and shall be designed and constructed so that:

(i) cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and

(ii) the system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

(B) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(3) "V" threads, use limitation. "V" type threads may not be used on food-contact surfaces. This paragraph does not apply to hot oil cooking or filtering equipment.

(4) Hot oil filtering equipment. Hot oil filtering equipment shall meet the characteristics specified under paragraphs (1) or (2) of this subsection and shall be readily accessible for filter replacement and cleaning of the filter.

(5) Can openers. Cutting or piercing parts of can openers shall be readily removable

for cleaning and for replacement.

(6) Nonfood-contact surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(7) Kick plates, removable. Kick plates, if used, shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(A) removable by one of the methods specified in paragraph (1)(E) of this subsection or capable of being rotated open; and

(B) removable or capable of being rotated open without unlocking equipment doors.

(8) 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.

(e) Accuracy of temperature measuring devices.

 # 24 (1) Temperature measuring device, food.

(A) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus 1 degrees Celsius (1.8 degrees Fahrenheit) in the intended range of use.

(B) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus 2 degrees Fahrenheit in the intended range of use.

(2) Temperature measuring device, ambient air and water.

(A) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus 1.5 degrees Celsius (2.7 degrees Fahrenheit) in the intended range of use.

(B) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus 3 degrees Fahrenheit in the intended range of use.

(3) Pressure measuring devices, mechanical warewashing equipment. Pressure

measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pound per square inch) or smaller and shall be accurate to plus or minus 14 kilopascals (plus or minus 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

(f) Functionality of equipment.

(1) 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.

(2) Equipment openings, closures and deflectors.

(A) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(C) Except as specified under subparagraph (D) of this paragraph, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(D) If a watertight joint is not provided:

(i) 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 food openings; and

(ii) the opening shall be flanged as specified under subparagraph (B) of this paragraph.

(3) Dispensing equipment, protection of equipment and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(A) the delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(B) the delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) the delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(i) 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

(ii) available for self-service during hours when it is not under the full-time supervision of a food employee; and

(D) the dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(4) Vending machine, vending stage closure. The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

(A) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) available for self-service during hours when it is not under the full-time supervision of a food employee.

(5) 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.

(6) Beverage tubing, separation. Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

(7) Ice units, separation of drains. Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(8) 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.

(9) 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.

(10) Molluscan shellfish tanks.

(A) Except as specified under subparagraph (B) of this paragraph, molluscan shellfish life-support system display tanks may only be used to display shellfish that are not offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(B) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a Hazard Analysis Critical Control Point (HACCP) Plan that: **# 13**

(i) is submitted by the permit holder and approved by the regulatory authority as specified under §229.171(c) of this title (relating to Compliance and Enforcement); and

(ii) ensures that:

(I) water used with fish other than molluscan shellfish does not flow into the molluscan tank;

(II) the safety and quality of the shellfish as they were received are not compromised by use of the tank; and

(III) the identity of the source of the shellstock is retained as specified under §229.164(d)(2) of this title (relating to Food), and the source information is displayed with the shellstock as required in §229.164(c)(9) of this title.

(11) Vending machines, automatic shutoff. **# 15**

(A) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

(i) 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 §229.164 of this title; and

(ii) if a condition specified in clause (i) of this subparagraph occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under §229.164 of this title.

(B) The temperature specified for activation of the automatic shutoff within a machine vending potentially hazardous food may deviate from the temperature and for a time as follows:

(i) in a refrigerated vending machine, at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or more, for no more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(ii) in a hot holding vending machine, at an ambient temperature of less than 60 degrees Celsius (140 degrees Fahrenheit), for no more than 120 minutes after the machine is filled, serviced, or restocked.

(12) Temperature measuring devices.

(A) In a mechanically-refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically-refrigerated unit and in the coolest part of a hot food storage unit.

 # 24 (B) Except as specified in subparagraph (C) of this paragraph, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(C) Subparagraph (B) of this paragraph does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(D) Temperature measuring devices shall be designed to be easily readable.

(E) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degree Celsius or 2 degrees Fahrenheit in the intended range of

use.

(13) Warewashing machine, data plate operating specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(A) temperatures required for washing, rinsing, and sanitizing;

(B) pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(C) conveyor speed for conveyor machines or cycle time for stationary rack machines.

(14) 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.

(15) Warewashing machines, temperature measuring devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water in each wash and rinse tank, and as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(16) Manual warewashing equipment, heaters and baskets. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(A) designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees Celsius (171 degrees Fahrenheit); and

(B) provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(17) Warewashing machines, sanitizer level indicator. A warewashing machine that uses a chemical for sanitization and that is installed after adoption of these rules shall be equipped with a device that indicates audibly or visually when more chemical sanitizer needs to be added.

(18) Warewashing machines, flow pressure device.

(A) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

(B) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(C) Subparagraphs (A) and (B) of this paragraph do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(19) Warewashing sinks and drain boards, self-draining. Sinks and drain boards of warewashing sinks and machines shall be self-draining.

(20) 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.

(21) Vending machines, liquid waste products.

(A) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) Vending machines that dispense liquid food in bulk shall be:

(i) provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(ii) equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified in subparagraph (B)(ii) of this paragraph 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.

(22) Case lot handling equipment, moveability. Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or over wrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

(23) Vending machine doors and openings.

(A) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

(i) being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this section;

(ii) being effectively gasketed;

(iii) having interface surfaces that are at least 13 millimeters or one-half inch wide; or

(iv) jambs or surfaces used to form an L-shaped entry path to the interface.

(B) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

(24) Food equipment certification, classification, acceptability. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with subsections (a)-(f) of this section.

(g) Equipment, numbers and capacities.

(1) 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 §229.164 of this title. **# 15**

(2) Manual warewashing, sink compartment requirements.

(A) Except as specified in subparagraph (C) of this paragraph, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. **# 21**

(B) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subparagraph (C) of this paragraph shall be used.

(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of the alternative equipment. Alternative manual warewashing equipment may include:

(i) high-pressure detergent sprayers;

(ii) low- or line-pressure spray detergent foamers;

(iii) other task-specific cleaning equipment;

(iv) brushes or other implements;

(v) two-compartment sinks as specified under subparagraph (D) and (E) of this paragraph; or

(vi) receptacles that substitute for the compartments of a multi compartment sink.

(D) Before a two-compartment sink is used:

(i) it must be approved by the regulatory authority; and

(ii) the nature of warewashing shall be limited to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift and:

(I) a limited number of items shall be cleaned;

(II) the cleaning and sanitizing solutions shall be made up immediately before use and drained immediately after use;

(III) a detergent-sanitizer shall be used to sanitize and shall be applied as specified under subsection (k)(15) of this section; or

(IV) a hot water sanitization immersion step shall be used as specified under subsection (o)(6)(C) of this section.

 # 21 <u>(E) 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.</u>

(3) Drain boards. Drain boards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

(4) 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.

(5) Clothes washers and dryers.

(A) Except as specified in subparagraph (B) of this paragraph, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(B) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under subsection (v)(2) of this section, a mechanical clothes washer and dryer need not be provided.

(h) Utensils, temperature measuring devices, and testing devices.

(1) Utensils, consumer self-service. A food dispensing utensil shall be available for each display container displayed at a consumer self-service unit such as a buffet or salad bar.

 # 24

(2) Food temperature measuring devices. Food temperature measuring devices shall be provided where required and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under §229.164 of this title.

(3) Temperature measuring devices, manual warewashing. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

(4) 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 and readily available for use.

(i) Location of equipment, clothes washers and dryers, and storage cabinets.

(1) Location requirements. Except as specified in paragraph (2) of this subsection, 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:

(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) Linen, single-service, single-use item exception. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(3) Clothes washer and dryer location requirements. 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.

(j) Installation, fixed equipment.

(1) Fixed equipment, spacing or sealing.

(A) A unit of equipment that is fixed because it is not easily movable shall be installed so that it is:

(i) spaced to allow access for cleaning along the sides, behind, and above the unit;

(ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or

(iii) sealed to adjoining equipment or walls, if the unit is exposed to spillage or seepage.

(B) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(i) sealed to the table; or

(ii) elevated on legs as specified under paragraph (2)(D) of this subsection.

(2) Fixed equipment, elevation or sealing.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment.

(B) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(C) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(D) Except as specified in subparagraph (E) of this paragraph, table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.

(E) The clearance space between the table and table-mounted equipment may be:

(i) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

(ii) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

(k) Equipment, maintenance and operation.

(1) Good repair and proper adjustment.

(A) Equipment shall be maintained in a state of repair and condition that meets the requirements specified in subsections (a) and (b).

(B) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturers' specifications.

(C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

(2) 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.

(3) Microwave ovens. Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10, Microwave Ovens.

(4) 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 drain boards or other equipment used to substitute for drain boards as specified in subsection (g)(3) of this section shall be cleaned:

(A) before use;

(B) throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(C) if used, at least every 24 hours.

(5) Warewashing machines, manufacturers' operating instructions.

(A) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(B) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(6) Warewashing sinks, use limitation.

(A) A warewashing sink may not be used for handwashing or dumping mop water.

(B) A warewashing sink may be used to wash wiping cloths, wash produce, or thaw food if the sink is cleaned as specified under paragraph (4) of this subsection before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under subsections (p)-(r) of this section before and after using the sink to wash produce or thaw food.

(7) Warewashing equipment, cleaning agents. The wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in subsection (g)(2)(C) of this section, shall, when used for warewashing, 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.

(8) Warewashing equipment, clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

(9) Manual warewashing equipment, wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees Celsius (110 degrees Fahrenheit) unless a different temperature is specified on the cleaning agent manufacturer's label instructions.

(10) Mechanical warewashing equipment, wash solution temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(i) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);

(ii) for a single tank, conveyor, dual temperature machine, 71 degrees Celsius (160 degrees Fahrenheit);

(iii) for a stationary rack, dual temperature machine, 66 degrees Celsius (150 degrees Fahrenheit); or

(iv) for a multitank, conveyor, multi temperature machine, 66 degrees Celsius (150 degrees Fahrenheit).

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49 degrees Celsius (120 degrees Fahrenheit).

(11) 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 **# 21**

shall be maintained at 77 degrees Celsius (171 degrees Fahrenheit) or above.

22 (12) Mechanical warewashing equipment, hot water sanitization temperatures.

(A) Except as specified in subparagraph (B) of this paragraph, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees Celsius (194 degrees Fahrenheit), or less than:

(i) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit); or

(ii) for all other machines, 82 degrees Celsius (180 degrees Fahrenheit).

(B) The maximum temperature specified under subparagraph (A) of this paragraph does not apply to the high pressure and temperature systems with wand-type, hand-held spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(13) Mechanical warewashing equipment, sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

#21or #22, #20 (14) Manual and mechanical warewashing equipment, chemical sanitization - temperature, water activity (pH), concentration, and hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in subsection (r)(3) of this section shall be listed in 21 CFR 178.1010, Sanitizing Solutions, shall be used in accordance with the U.S. Environmental Protection Agency (EPA)-approved manufacturer's label use instructions, and shall be used as follows:

(A) a chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following table:

Figure 2: 25 TAC §229.165(k)(14)(A)

(B) an iodine solution shall have a:

(i) minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);

(ii) pH of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher pH limit of effectiveness; and

(iii) concentration between 12.5 mg/L and 25 mg/L.

(C) a quaternary ammonium compound solution shall:

(i) have a minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);

(ii) have a concentration as specified under §229.168(f)(1) of this title (relating to Poisonous or Toxic Materials) and as indicated by the manufacturer's use directions included in the labeling; and

(iii) be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label.

(D) other solutions of the chemicals specified in subparagraphs (A)-(C) of this paragraph may be used if it can be demonstrated that sanitization is achieved and they are approved by the regulatory authority; or

(E) other chemical sanitizers may be used if approved by the regulatory authority and applied in accordance with the manufacturer's use directions included in the labeling.

(15) 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.

(16) Warewashing equipment, determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

(l) Utensils and temperature measuring devices.

(1) Good repair and proper calibration.

(A) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in subsections (a)-(f) of this section or shall be discarded.

(B) Temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy. **# 24**

(C) Ambient air temperature, water pressure, and water temperature measuring

devices shall be maintained in good repair and be accurate within the indicated range of use.

 # 25 (2) Single-service and single-use articles, required use. A food establishment without facilities specified in subsections (m)-(r) of this section 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 the consumer.

(3) Single-service and single-use articles, bulk milk dispensing tubes, reuse limitation.

(A) Single-service and single-use articles may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

(4) Shells, use limitation. Mollusk and crustacea shells may not be used more than once as serving containers. If the shell is not the original shell from which the mollusk or crustacea was harvested, the shell must be sanitized prior to use to preclude contamination of other foods. Shells specifically purchased for use as serving containers, which contain any evidence of filth or debris, are prohibited from use.

(m) Cleaning of equipment and utensils.

(1) Equipment, food-contact surfaces, and utensils.

 # 25 (A) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(B) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(2) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(n) Frequency of cleaning.

 # 25 (1) Equipment food-contact surfaces and utensils.

(A) Equipment food-contact surfaces and utensils shall be cleaned:

(i) except as specified in subparagraph (B) of this paragraph, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;

(ii) each time there is a change from working with raw foods to working with ready-to-eat foods;

(iii) between uses with raw fruits or vegetables and with potentially hazardous food;

(iv) before using or storing a food temperature measuring device; and

(v) at any time during the operation when contamination may have occurred.

(B) Subparagraph (A)(i) of this paragraph does not apply if raw animal foods that require cooking temperatures specified under §229.164(k)(1)(A)(iii) of this title are prepared after foods that require cooking temperatures specified under §229.164(k)(1)(A)(i) and (ii) and (B) of this title.

(C) Except as specified in subparagraph (D) of this paragraph, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

(D) Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

(i) in storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under §229.164 of this title and the containers are cleaned when they are empty;

(ii) utensils and equipment are used to prepare food in a refrigerated room maintained at 10 degrees Celsius (50 degrees Fahrenheit) or less, and food under preparation is maintained according to the times and at temperatures specified under §229.164 of this title, and the utensils and equipment are cleaned at least every 12 hours;

(iii) containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under §229.164 of this title, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(iv) temperature measuring devices are maintained in contact with foods, such as when left in a container of deli food or in a roast, held at temperatures specified under §229.164 of this title;

(v) equipment is used for storage of packaged or unpackaged foods such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; or

(vi) the regulatory authority approves the cleaning schedule 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.

(E) Except when dry cleaning methods are used as specified under subsection (o)(1) of this section, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

(i) at any time when contamination may have occurred;

(ii) at least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(iii) before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; or

(iv) equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage 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.

(2) Cooking and baking equipment.

(A) The food-contact surfaces of cooking and baking equipment shall be cleaned

at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified under paragraph (1)(D)(vi) of this subsection.

(B) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(3) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(o) Methods of cleaning.

(1) Dry cleaning.

(A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

(B) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(2) Precleaning.

(A) Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(B) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(3) 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 exposes the items to the unobstructed spray from all cycles and allows the items to drain.

(4) Wet cleaning.

(A) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(B) The washing procedures selected shall be based on the type and purpose of

the equipment or utensil, and on the type of soil to be removed.

(5) 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 subsection (g)(2)(C) of this section in accordance with the following procedures:

(A) equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

(B) equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and

(C) equipment and utensils shall be washed as specified under paragraph (4)(A) of this subsection.

(6) Rinsing procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(A) use of a distinct, separate water rinse after washing and before sanitizing if using:

(i) a three-compartment sink;

(ii) alternative manual warewashing equipment equivalent to a three-compartment sink as specified under subsection (g)(2)(C) of this section; or

(iii) a three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment.

(B) use of a detergent-sanitizer as specified under subsection (k)(15) of this section if using:

(i) alternative warewashing equipment as specified under subsection (g)(2)(C) of this section that is approved for use with a detergent-sanitizer; or

(ii) a warewashing system for CIP equipment.

(C) use of a nondistinct water rinse that is integrated in the hot water sanitization

immersion step of a two-compartment sink operation;

(D) if using a warewashing machine that does not recycle the sanitizing solution as specified in subparagraph (E) of this paragraph, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse:

(i) that is integrated in the application of the sanitizing solution; and

(ii) washed immediately after each application; or

(E) if using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

(7) Returnables, cleaning for refilling. **# 25**

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.

(B) A food-specific container for beverages may be refilled at a food establishment if:

(i) only a beverage that is not a potentially hazardous food is used as specified under §229.164(h)(7)(A) of this title;

(ii) the design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(iii) 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;

(iv) the consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(v) the container is refilled by:

(I) an employee of the food establishment; or

(II) the owner of the container if the beverage system includes a contamination-free transfer process that can not be bypassed by the container owner.

(C) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

 # 25 (p) Sanitization, food-contact surfaces and utensils. Equipment food-contact surfaces and utensils shall be sanitized.

 # 25 (q) Sanitization frequency, before use after cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

(r) Sanitization methods, hot water and chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

 # 21 (1) hot water manual operations by immersion for at least 30 seconds as specified under subsection (k)(11) of this section;

 # 22 (2) hot water mechanical operations by being cycled through equipment that is set up as specified under subsection (k)(5), (12) and (13) of this section and achieving a utensil surface temperature of 71 degrees Celsius (160 degrees Fahrenheit) as measured by an irreversible registering temperature indicator;

#21 or #22 (3) 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 subsection (k)(14) of this section by providing:

(A) except as specified in subparagraph (B) of this paragraph, an exposure time of at least 10 seconds for a chlorine solution as specified in subsection (k)(14)(A) of this section;

(B) an exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) or a pH of 8 or less and a temperature of at least 24 degrees Celsius (75 degrees Fahrenheit);

(C) an exposure time of at least 30 seconds for other chemical sanitizer solutions; or

(D) an exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in §229.162 of this title (relating to Definitions).

(s) Laundering, clean linens. Clean linens shall be free from food residues and other soiling matter.

(t) Laundering, frequency.

(1) Linens. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(2) Cloth gloves. Cloth gloves as specified in §229.164(h)(5)(D) of this title shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

(3) Certain linens. Linens that are used as specified in §229.164(h)(4) of this title and cloth napkins shall be laundered between each use.

(4) Wet wiping cloths. Wet wiping cloths shall be laundered daily and clean cloths shall be used with a fresh solution of cleanser or sanitizer.

(5) Dry wiping cloths. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(u) Laundering, methods.

(1) 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.

(2) Mechanical washing.

(A) Except as specified in subparagraph (B) of this paragraph, linens shall be mechanically washed.

(B) In food establishments in which only wiping cloths are laundered as specified in subsection (g)(5)(B) of this section, the wiping cloths may be laundered in a mechanical washer, a sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under subsection (k)(4) of this section.

(3) Use of laundry facilities.

(A) Except as specified in subparagraph (B) of this paragraph, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(B) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

(v) Drying, equipment and utensils.

(1) Equipment and utensils, air-drying required. After cleaning and sanitizing, equipment and utensils:

(A) shall be air-dried or used after adequate draining as specified in paragraph (a) of 21 CFR 178.1010, Sanitizing Solutions, before contact with food; and

(B) may be polished, after air-drying, with cloths that are maintained clean and dry, provided the cloths are used for no other purpose.

(2) Wiping cloths, air-drying locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in subsection (g)(5)(B) of this section shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under subsection (k)(14) of this section.

(w) Lubricating and reassembling of food-contact surfaces, equipment.

(1) Food-contact surfaces. Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(2) Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

(x) Storage.

(1) Equipment, utensils, linens, and single-service and single-use articles.

(A) Except as specified in subparagraph (D) of this paragraph, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(i) in a clean, dry location;

(ii) where they are not exposed to splash, dust, or other contamination; and

(iii) at least 15 centimeters (6 inches) above the floor.

(B) Clean equipment and utensils shall be stored as specified under subparagraph

(A) of this paragraph and shall be stored:

(i) in a self-draining position that permits air-drying; and

(ii) covered or inverted.

(C) Single-service and single-use articles shall be stored as specified under subparagraph (A) of this paragraph and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) Items that are kept in closed packages may be stored less than 15 centimeters (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as provided under subsection (f)(22) of this section.

(2) Storage prohibitions.

(A) Except as specified in subparagraph (B) of this paragraph, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(i) in locker rooms;

(ii) in toilet rooms;

(iii) in garbage rooms;

(iv) in mechanical rooms;

(v) under sewer lines that are not shielded to intercept potential drips;

(vi) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(vii) under open stairwells; or

(viii) under other sources of contamination.

(B) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

(y) Handling of utensils, single-service articles.

(1) Kitchenware and tableware.

(A) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(C) Except as specified under subparagraph (B) of this paragraph, 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.

(2) Soiled and clean tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(3) Preset tableware. If tableware is preset:

(A) it shall be protected from contamination by being wrapped, covered, or inverted;

(B) exposed and unused settings shall be removed when a consumer is seated; or

(C) exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

§229.166(a) **§229.166(b)**

§229.166 Water, Plumbing, and Waste.

(a) Water source. **# 14**

(1) Approved system. Drinking water shall be obtained from an approved source that is:

(A) a public water system; or

(B) a nonpublic water system that is constructed, maintained, and operated according to law.

(2) 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.

(3) Bottled drinking water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 25 TAC §229.81(b)(1) (Processing and Bottling of Bottled Drinking Water).

(b) Water quality standards.

(1) Public and private water systems. Except as specified under paragraph (2) of this subsection: **# 14**

(A) water from a public water system shall meet state drinking water quality standards in accordance with 30 TAC §290.101-§290.121 (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements); and

(B) water from a private water system shall meet state drinking water quality standards.

(2) Nondrinking water. **# 14**

(A) A nondrinking water supply may be used only if its use is approved by the regulatory authority.

(B) Nondrinking water shall be used only for non-culinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.

(3) Sampling. Except when used as specified under paragraph (2) of this subsection,

water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.

(4) Sample report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

 # 14 (c) Water quantity and availability.

(1) Capacity. The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.

(2) 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 in subsection (d)(2)(A) and (B) of this section to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

(3) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.

(d) Water distribution, delivery, and retention systems.

(1) Distribution. Water shall be received from the source through the use of:

(A) an approved public water main; or

(B) one or more of the following that shall be constructed, maintained, and operated according to law:

(i) nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;

(ii) water transport vehicles; and

(iii) water containers.

(2) Alternative water supply. Water meeting the requirements specified under subsections (a)-(c) of this section shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(A) a supply of containers of commercially bottled drinking water;

(B) one or more closed portable water containers;

(C) an enclosed vehicular water tank;

(D) an on-premises water storage tank; or

(E) piping, tubing, or hoses connected to an adjacent approved source.

(e) Plumbing systems, approved materials. **# 14**

(1) Construction. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.

(2) Water filter. A water filter shall be made of safe materials.

(f) Plumbing design, construction, and installation.

(1) Approved system and cleanable fixtures.

(A) A plumbing system shall be designed, constructed, and installed according to law. **# 14**

(B) A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.

(2) Handwashing lavatory, water temperature, and flow.

(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43 degrees Celsius (110 degrees Fahrenheit) through a mixing valve or combination faucet. **# 16**

(B) A steam mixing valve may not be used at a handwashing lavatory.

(C) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(3) Backflow prevention, air gap. An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch). **# 14**

(4) Backflow prevention device, design standard. A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(5) Conditioning device, design. A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(6) Service sink, water, water temperature. Service sinks shall be equipped to provide water at a temperature of 43 degrees Celsius (110 degrees Fahrenheit).

(g) Plumbing, numbers and capacities.

 # 16 (1) Handwashing lavatory. At least one handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under subsection (h)(1) of this section, and not fewer than the number of handwashing lavatories required by law shall be provided.

 # 23 (2) Toilets and urinals. At least one toilet and not fewer than the number of toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in the law.

(3) Service sink. In new or extensively remodeled food establishments, at least one service sink or one 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.

 # 14 (4) Backflow prevention device, when required. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(A) providing an air gap as specified under subsection (f)(3) of this section; or

(B) installing an approved backflow prevention device as specified under subsection (f)(4) of this section.

(h) Plumbing, location and placement.

 # 16 (1) Handwashing lavatory. A handwashing lavatory shall be located:

(A) to allow convenient use by employees in food preparation, food dispensing, and warewashing areas; and

(B) in, or immediately adjacent to, toilet rooms.

(2) Backflow prevention device, location. A backflow prevention device shall be located so that it may be serviced and maintained.

(3) 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.

(i) Plumbing, operation and maintenance.

(1) Using a handwashing lavatory.

(A) A handwashing lavatory shall be maintained so that it is accessible at all times for employee use. **# 16**

(B) A handwashing lavatory may not be used for purposes other than handwashing. **# 8**

(2) Prohibiting a cross connection.

(A) Except as allowed under 9 CFR 308.3(d) and 30 TAC §290.44(h), a person may not create a cross connection by connecting a pipe, hose, or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality. **# 14**

(B) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

(3) 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 for a period of one year.

(4) Water reservoir of fogging devices, cleaning. **# 14**

(A) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(i) maintained in accordance with manufacturer's specifications; and

(ii) cleaned in accordance with manufacturer's specifications or according to the procedures specified under subparagraph (B) of this paragraph, whichever is more stringent.

(B) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(i) draining and complete disassembly of the water and aerosol contact parts;

(ii) brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(iii) flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(iv) rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 milligrams per liter (mg/L) hypochlorite solution.

(5) System maintained in good repair. A plumbing system shall be:

#14 or #23 (A) repaired according to law; and

(B) maintained in good repair.

(j) Sewage retention, drainage, and delivery.

(1) Establishment drainage system. Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under subsection (f)(1)(A) of this section.

 # 23 (2) Backflow prevention.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

(B) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 meters (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented

floor drain trap.

(C) If allowed by law, a warewashing or culinary sink may have a direct connection.

(3) Grease trap. If used, a grease trap or grease interceptor shall be located to be easily accessible for cleaning.

(4) 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. **# 23**

(k) Disposal facility.

(1) Approved sewage disposal system. Sewage shall be disposed through an approved facility that is: **# 23**

(A) a public sewage treatment plant; or

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

(2) Other liquid wastes and rainwater. Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

(l) Storage facilities on the premises.

(1) Indoor storage area. If located within the food establishment a storage area for refuse, recyclables, and returnables shall meet the requirements specified under §229.167(a), (c), and (d)(5) and (6) of this title (relating to Physical Facilities).

(2) 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.

(3) Outdoor enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(4) Receptacles.

(A) Except as specified in subparagraph (B) of this paragraph, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect-and rodent-resistant, leakproof, and nonabsorbent.

(B) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

(5) 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.

(6) Outside receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(B) Equipment 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 equipment is not installed flush with the base pad, under the unit.

(7) Storage areas, rooms, and receptacles, capacity and availability.

(A) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(B) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(C) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(8) Toilet room receptacle, covered. A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(9) Cleaning implements and supplies.

(A) Except as specified in subparagraph (B) of this paragraph, suitable cleaning

implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(B) If approved by the regulatory authority, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

(10) Storage areas, redeeming machines, receptacles, and waste handling units, location.

(A) An area designated for refuse, recyclables, returnables, and, except as specified in subparagraph (B) of this paragraph, 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 nuisance is not created.

(B) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(C) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health nuisance or interfere with the cleaning of adjacent space.

(11) 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.

(12) Areas, enclosures, and receptacles, good repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(13) Outside storage prohibitions.

(A) Except as specified in subparagraph (B) of this paragraph, refuse receptacles not meeting the requirements specified under paragraph (4)(A) of this subsection such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

(B) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage

problem.

(14) Covering receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(A) inside the food establishment if the receptacles and units:

(i) contain food residue and are not in continuous use; or

(ii) after they are filled; and

(B) with tight-fitting lids or doors if kept outside the food establishment.

(15) Using drain plugs. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

(16) 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 §229.167(p)(14) of this title, and clean.

(17) Cleaning receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under subsection (j)(4) of this section.

(B) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

(m) Refuse removal.

(1) 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.

(2) Receptacles or vehicles. Refuse, recyclables, and returnables shall be removed from the premises by way of:

(A) portable receptacles that are constructed and maintained according to law; or

(B) a transport vehicle that is constructed, maintained, and operated according to law.

(n) 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.

§229.167 Physical Facilities.

(a) Indoor areas, surface characteristics. Materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(1) smooth, durable, and easily cleanable for areas where food establishment operations are conducted;

(2) closely woven and easily cleanable carpet for carpeted areas; and

(3) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(b) Outdoor areas, surface characteristics.

(1) Walking and driving areas. 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.

(2) Exterior surfaces. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

(3) Storage areas. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under §229.166(l)(2) and (3) of this title (relating to Water, Plumbing, and Waste).

(c) Floors, walls, and ceilings.

(1) Cleanability. Except as specified in paragraph (4) of this subsection, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

(2) Floors, walls, and ceilings, utility lines.

(A) Utility service lines and pipes may not be unnecessarily exposed.

(B) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(C) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(3) Floor and wall junctures, coved, and enclosed or sealed.

(A) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 millimeter (one thirty-second inch).

(B) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and graded to drain, and the floor and wall junctures shall be coved and sealed.

(4) Floor carpeting, restrictions and installation.

(A) Carpeting 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 subject to moisture, flushing, or spray cleaning methods.

(B) If carpeting is installed as a floor covering in areas other than those specified in subparagraph (A) of this paragraph, it shall be:

(i) securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(ii) 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.

(5) Floor covering, mats and duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.

(6) Wall and ceiling coverings and coatings.

(A) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(B) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(7) Walls and ceilings, attachments.

(A) Except as specified in subparagraph (B) of this paragraph, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(B) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(8) Walls and ceilings, studs, joists, and rafters. Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

(d) Functionality.

(1) Light bulbs, protective shielding.

(A) Except as specified in subparagraph (B) of this paragraph, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(B) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

(i) the integrity of the packages cannot be affected by broken glass falling onto them; and

(ii) the packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(C) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(2) 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.

(3) Insect control devices, design and installation.

(A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(B) Insect control devices shall be installed so that:

(i) the devices are not located over a food preparation area; and

(ii) 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.

(4) Toilet rooms, enclosed. A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

(5) Outer openings, protected.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

(i) filling or closing holes and other gaps along floors, walls and ceilings;

(ii) closed, tight-fitting windows; and

(iii) solid self-closing, tight-fitting doors, except that doors designed for emergency exit only and which are activated for security alarm when opened need not be self-closing.

(B) Subparagraph (A) of this paragraph does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(C) Except as specified in subparagraphs (B) and (D) of this paragraph, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes, or a temporary food establishment is not provided with windows and solid doors as specified under subparagraph (A) of this paragraph, the openings shall be protected against the entry of insects and rodents by:

(i) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;

(ii) properly designed and installed air curtains; or

(iii) other effective means.

(D) Subparagraph (C) of this paragraph does not apply if flying insects and other pests are absent due to the location of the establishment or other limiting condition.

(6) Exterior walls and roofs, protective barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(7) Outdoor food vending areas, overhead protection. If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

(8) Outdoor walking and driving surfaces, graded to drain. Exterior walking and driving surfaces shall be graded to drain.

(9) 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.

(10) Private homes and living or sleeping quarters, use prohibition. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.

(11) Living or sleeping quarters, separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

(e) Handwashing lavatories.

 # 16 (1) Minimum number. Handwashing lavatories shall be provided as specified under §229.166(g)(1) of this title.

 # 17 (2) Handwashing cleanser, availability. Each handwashing lavatory or group of two adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

 # 17 (3) Hand drying provision. Each handwashing lavatory or group of adjacent lavatories shall be provided with:

(A) individual, disposable towels;

(B) a continuous towel system that supplies the user with a clean towel; or

(C) a heated-air hand drying device.

(4) 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, shall not be provided with the handwashing aids and devices required for a handwashing lavatory as specified in paragraphs (2) and (3) of this subsection and §229.166(l)(7)(C) of this title.

(f) Toilets and urinals.

(1) Minimum number. Toilets and urinals shall be provided as specified under §229.166(g)(2) of this title.

(2) Toilet tissue, availability. A supply of toilet tissue shall be available at each toilet. **# 23**

(g) Lighting, intensity. The light intensity shall be:

(1) at least 110 lux (10 foot candles) at a distance of 75 centimeters (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) at least 220 lux (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; or

(C) at a distance of 75 centimeters (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) at least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

(h) 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.

(i) Dressing areas and lockers, designation.

(1) Provision for dressing rooms and areas. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

(2) Lockers. Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

(j) Service sinks, availability. A service sink or curbed cleaning facility shall be provided as specified under §229.166(g)(3) of this title.

(k) Handwashing lavatories, conveniently located. Handwashing lavatories shall be conveniently located as specified under §229.166(h)(1) of this title.

(l) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(m) Employee accommodations, designated areas.

(1) Eating and tobacco areas. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(2) Location of lockers. 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.

(n) 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.

(o) 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 §229.166(l)(10) of this title.

(p) Premises, buildings, systems, rooms, fixtures, equipment, devices, and materials.

(1) Repairing. The physical facilities shall be maintained in good repair.

(2) Cleaning, frequency and restrictions.

(A) The physical facilities shall be cleaned as often as necessary to keep them clean.

(B) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

(3) Cleaning floors, dustless methods.

(A) Except as specified in subparagraph (B) of this paragraph, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(B) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(i) without the use of dust-arresting compounds; and

(ii) 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.

(4) Cleaning ventilation systems, nuisance and discharge prohibition.

(A) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(B) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

(5) Cleaning maintenance tools, preventing contamination. Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes. **# 8**

(6) Drying mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(7) Absorbent materials on floors, use limitation. Except as specified under paragraph (3)(B) of this subsection, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

(8) Maintaining and using handwashing lavatories. Handwashing lavatories shall be kept clean and maintained and used as specified under §229.166(i)(1) of this title.

(9) Closing toilet room doors. Toilet room doors as specified under subsection (d)(4) of this section shall be kept closed except during cleaning and maintenance operations.

(10) Using dressing rooms and lockers.

(A) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(11) Controlling pests.

#18 or #19 (A) Insects, rodents, and other pests shall be controlled as specified in subparagraph (B) of this paragraph to minimize their presence:

(i) within the physical facility and its contents; and

(ii) on the contiguous land or property under the control of the permit holder.

(B) The presence of insects, rodents, and other pests shall be controlled by:

(i) routinely inspecting incoming shipments of food and supplies;

(ii) routinely inspecting the premises for evidence of pests;

#18 or #19 (iii) using methods, if pests are found, such as trapping devices or other means of pest control as specified under §229.168(d)(2) and (h)(2) and (3) of this title (relating to Poisonous or Toxic Materials); and

(iv) eliminating harborage conditions.

(12) 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.

(13) Storing maintenance tools. Maintenance tools such as brooms, mops, vacuum

cleaners, and similar items shall be:

(A) stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(B) stored in an orderly manner that facilitates cleaning of the area used for storing the maintenance tools.

(14) Maintaining premises, unnecessary items and litter. The premises shall be free of:

(A) items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

(B) litter.

(15) Prohibiting animals.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, live animals may not be allowed on the premises of a food establishment. **# 19**

(B) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles can not result: **# 19**

(i) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(ii) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(iii) in areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and

(iv) pets in the common dining areas of group residences 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.

 # 12 (C) Live or dead fish bait shall be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

§229.168 Poisonous or Toxic Materials.

(a) Original containers, identifying information, prominence. Containers of poisonous toxic materials and personal care items shall bear a legible manufacturer's label. **# 20**

(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. **# 20**

(c) 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: **# 20**

(1) separating the poisonous or toxic materials by spacing or partitioning; and **# 20**

(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. 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. **# 20**

(d) Presence and use.

(1) Restriction.

(A) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment. **# 20**

(B) Subparagraph (A) of this paragraph does not apply to packaged poisonous or toxic materials that are for retail sale. **# 20**

(2) Conditions of use. Poisonous or toxic materials shall be: **# 20**

(A) used according to:

(i) law and these rules;

(ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer’s label instructions that state that use is allowed in a food establishment;

(iii) the conditions of certification, if certification is required, for use of

the pest control materials; and

(iv) additional conditions that may be established by the regulatory authority; and

(B) applied so that:

(i) a hazard to employees or other persons is not constituted; and

(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

(I) removing the items;

(II) covering the items with impermeable covers;

(III) taking other appropriate preventive actions; and

(IV) cleaning and sanitizing equipment and utensils after the application; and

(C) for restricted use pesticides, applied only by an applicator certified as defined in 7 USC 136(e), Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.

 # 20 (e) 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. A food container may not be used to store, transport, or dispense poisonous or toxic materials.

 # 20 (f) Chemicals.

(1) Sanitizers, criteria. Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in 21 CFR 178.1010, Sanitizing Solutions.

(2) Chemicals for washing fruits and vegetables, criteria. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315, Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

(3) Boiler water additives, criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310, Boiler Water Additives.

(4) Drying agents, criteria. Drying agents used in conjunction with sanitization shall:

(A) contain only components that are listed as one of the following:

(i) generally recognized as safe for use in food as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe;

(ii) generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(iii) approved for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients;

(iv) specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178; or

(v) approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39, Threshold of regulation for substances used in food-contact articles; and

(B) when sanitization is with chemicals, the approval required in subparagraph (A)(iii) or (v) of this paragraph or the regulation as an indirect food additive required in subparagraph (A)(iv) of this paragraph, shall be specifically for use with chemical sanitizing solutions.

(g) Lubricants, incidental food contact, criteria. Lubricants shall meet the requirements specified in 21 CFR 178.3570, Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces. **# 20**

(h) Pesticides.

(1) Restricted use pesticides, criteria. Restricted use pesticides as specified in subsection (d)(2)(C) of this section shall be listed by the U.S. Environmental Protection Agency (EPA) as meeting the requirements specified in 40 CFR 152 Subpart l, Classification of Pesticides. **# 20**

 # 20 (2) Rodent bait stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.

(3) Tracking powders, pest control and monitoring.

 # 20 (A) A tracking powder pesticide may not be used in a food establishment.

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

 # 20 (i) Medicines.

(1) Restriction and storage.

(A) Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

(B) Medicines that are in a food establishment for the employees' use shall be labeled as specified under subsection (a) of this section and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(2) Refrigerated medicines, storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(A) stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(B) located so that they are inaccessible to children.

 # 20 (j) First aid supplies, storage. First aid supplies that are in a food establishment for the employees' use shall be:

(1) labeled as specified under subsection (a) of this section; 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.

(k) Other personal care items, storage. Except as specified in subsections (i)(2) and (j) of this section, employees shall store their other personal care items as specified under §229.167(i)(2) of this title (relating to Physical Facilities).

(l) 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: **# 20**

(1) separating the poisonous or toxic materials by spacing or partitioning; 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.

§229.169 Mobile Food Establishments.

(a) Mobile food establishment provisions.

(1) General. Mobile food establishments shall comply with the requirements of these rules, except as otherwise provided in this paragraph and in paragraph (2) of this subsection. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements as specified in paragraphs (5) and (6) of this subsection; subsection (b)(1) of this section; subsection (c)(1)(A)-(E) of this section and §229.164(k)-(n) of this title (relating to Food).

(2) Restricted operation. Mobile food establishments that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of these sections, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Single-service articles. Mobile food establishments shall provide only single-service articles for use by the consumer.

 # 15 (4) Existing refrigeration equipment. Existing refrigeration equipment will be upgraded to meet the 41 degree Fahrenheit requirement or replaced as specified in §229.164(n)(6)(C) of this title.

(5) Mobile water tank and mobile food establishment water tank.

(A) Approved materials. Materials that are used in the construction of a mobile water tank, mobile food establishment water tank and appurtenances shall meet the requirements specified in §229.165(a)(1)(A), (B), and (D) of this title (relating to Equipment, Utensils, and Linens).

 # 14 (B) Water system. A mobile food unit requiring a water system shall meet the requirements of §229.166(a)-(d) of this title (relating to Water, Plumbing, and Waste). The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with the requirements of these rules.

(C) Enclosed system, sloped to drain. A mobile water tank shall be enclosed

from the filling inlet to the discharge outlet and sloped to an outlet that allows complete drainage of the tank. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of these rules.

(D) 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:

(i) flanged upward at least 13 millimeters (one-half inch); and

(ii) equipped with a port cover assembly that is provided with a gasket and a device for securing the cover in place, and flanged to overlap the opening and sloped to drain.

(E) "V" type threads, use limitation. A fitting with "v" type threads on a water tank inlet or outlet may be allowed only when a hose is permanently attached.

(F) Tank vent, protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(i) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(ii) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(G) Inlet and outlet, sloped to drain.

(i) A water tank and its inlet and outlet shall be sloped to drain.

(ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(H) Hose, construction and identification. A hose used for conveying drinking water from a water tank shall be:

(i) safe;

(ii) durable, corrosion-resistant, and nonabsorbent;

(iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) finished with a smooth interior surface; and

(v) clearly and durably identified as to its use if not permanently attached.

(I) 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.

(J) 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.

(K) Mobile food establishment tank inlet. A mobile food establishment's water tank inlet shall be 19.1 millimeters (three-fourths inch) in inner diameter or less and provided with a hose connection of a size or type that will prevent its use for any other service.

 # 14 (L) 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.

 # 14 (M) 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.

(N) Protecting inlet, outlet, and hose fitting. If not in use, a water tank and hose inlet and outlet fitting shall be protected as specified under subparagraph (J) of this paragraph.

(O) Tank, pump, and hoses, dedication.

(i) Except as specified in clause (ii) of this subparagraph, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

(ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized after each use.

(6) Sewage, other liquid waste, and rainwater.

 # 23 (A) Waste retention. If liquid waste results from operation of a mobile food establishment, the waste shall be stored in a permanently installed retention tank.

(B) Capacity and drainage. A sewage holding tank in a mobile food establishment shall be:

(i) sized at least 15% larger in capacity than the water supply tank; and

(ii) sloped to a drain that is 25 millimeters (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(C) All connections on the vehicle for servicing the mobile food establishment waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food establishment.

(D) Discharge liquid waste shall not be discharged from the retention tank while the mobile food establishment is in motion.

(E) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner.

(F) Removing mobile food establishment wastes. Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. **# 23**

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. Mobile food establishments shall operate from a central preparation facility or other fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations.

(2) Construction. The central preparation facility or other fixed food service establishment, used as a base of operation for mobile food establishments, shall be constructed and operated in compliance with the requirements of these rules.

(c) Servicing area and operations.

(1) Protection.

(A) A mobile food establishment servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation except those areas used only for the loading of water and/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.

(B) Within this servicing area, a location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

(C) This servicing area will not be required where only packaged food is placed on the mobile food establishment or where mobile food establishments do not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to law and stored and handled in a way that protects the water and equipment from contamination.

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of §229.167(c)(1) of this title (relating to Physical Facilities).

§229.170 Temporary Food Establishments.

(a) General. A temporary food establishment shall comply with the requirements of these rules except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of these rules.

(b) Food temperatures. All food temperature requirements shall be met as contained in §229.164(k)-(n) of this title (relating to Food). **# 1 - # 5**

(c) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of these rules. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in their bags until it is dispensed in a way that protects it from contamination. **# 9**

(d) Equipment.

(1) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the establishment.

(3) Hot and cold holding equipment. Equipment for cooling or heating food, and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified under §229.164(k)-(n) of this title. **# 15**

(4) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contamination sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment.

(e) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.

(f) Water. Water from an approved source shall be made available in a temporary food **# 14**

establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment. Water need not be under pressure but shall come from approved sources which include: commercially bottled drinking water, closed portable water containers, enclosed vehicular water tanks, on-premise water storage tanks, or piping, tubing or hoses connected to an approved source.

(g) Wet storage. 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.

 # 23 (h) Sewage. All waste water and sewage generated from the establishment shall be disposed of through an approved sanitary sewage system that is constructed, maintained and operated according to law.

 # 16, # 17 (i) Handwashing. Handwash facilities with water, soap and individual disposable towels shall be provided for employee handwashing. The handwash facility may consist of a container of water with spigot and catch pan or two separate basins, one for washing and one for rinsing. When food exposure is limited and handwash facilities are not available, the regulatory authority may permit the use of chemically treated towelettes for handwashing.

(j) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel if it is covered with mats, removable platforms, duckboards, or other suitable materials approved by the regulatory authority that are effectively treated to control dust and mud.

(k) Ceilings and outer openings of food preparation areas.

(1) Ceilings. Ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.

(2) Outer openings. The outer openings shall be protected against entry of insects and rodents by:

(A) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains; or

(C) other effective means.

(3) Exclusion provision. Paragraph (2) of this subsection does not apply if flying insects and other pests are absent due to the location of the establishment or other limiting condition.

§229.171 Compliance and Enforcement.

(a) Use for intended purpose, public health protection.

(1) Safeguarding public health. The regulatory authority shall apply these rules to promote its underlying purpose, as specified in §229.161 of this title (relating to Purpose), of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(2) Assessment of existing facilities. In enforcing the provisions of these rules, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of these rules based on the following considerations:

(A) whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

(B) whether food-contact surfaces comply with §229.165(a) of this title (relating to Equipment, Utensils, and Linens); and

(C) whether the capacities of cooling, heating, and holding equipment are sufficient to comply with §229.165(g)(1) of this title.

(b) Additional requirements, preventing health hazards, provision for conditions not addressed.

(1) Option to impose additional requirements. If necessary to protect against public health hazards or nuisances, the department may impose specific requirements in addition to the requirements contained in these rules if authorized by law.

(2) Required documentation. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. A copy of the documentation shall be provided to the food establishment and the original shall be maintained in the regulatory authority's file for the food establishment.

(c) Variances.

(1) Modifications and waivers. The department's Retail Foods Division may grant a variance by modifying or waiving the requirements of these rules if in its opinion a health hazard or nuisance will not result from the variance. If a variance is granted, the department shall retain the information specified in paragraph (2) of this subsection in its records for the food establishment.

(2) Documentation of proposed variance and justification. Before a variance from

a requirement of these rules is approved, the information that shall be provided by the person requesting the variance shall include:

(A) a statement of the proposed variance of the rule requirement citing relevant rule section numbers;

(B) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal; and

(C) a Hazard Analysis Critical Control Point (HACCP) plan if required as specified in subsection (d)(1)(A) of this section that includes the information specified in subsection (d)(2)(A) of this section as it is relevant to the variance requested.

 # 13 (3) Conformance with Approved Procedures. If a variance is granted as specified in paragraph (1) of this subsection, or a HACCP plan is otherwise required as specified in subsection (d)(1) of this section, the food establishment shall:

(A) comply with the HACCP plans and procedures that are submitted and approved as specified in subsection (d)(2) of this section as a basis for the modification or waiver; and

(B) maintain and provide upon request, records specified in subsection (d)(2)(D) and (E) of this section that demonstrate that the following are routinely employed:

(i) procedures for monitoring critical control points;

(ii) monitoring of the critical control points;

(iii) verification of the effectiveness of an operation or process; and

(iv) necessary corrective actions if there is failure at a critical control point.

(d) HACCP plan requirements.

(1) When a HACCP plan is required.

(A) Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under paragraph (2) of this subsection and the relevant provisions of these rules if a variance is required as specified under §229.164(o)(1) of this title (relating to Food) or §229.165(f)(10)(B) of this title.

(B) A food establishment shall have a properly prepared HACCP plan as specified under §229.164(o)(2) of this title.

(2) Contents of a HACCP plan. For a food establishment that is required under paragraph (1) of this subsection to have a HACCP plan, the plan and specifications shall indicate:

(A) a categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;

(B) a flow diagram by specific food or category type identifying critical control points and providing information on the following:

(i) ingredients, materials, and equipment used in the preparation of that food; and

(ii) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(C) food employee and supervisory training plan for the person(s) in charge and food employee(s) pertaining to public health and the safety and integrity of food;

(D) a statement of standard operating procedures for the plan under consideration including and clearly identifying:

(i) each critical control point;

(ii) the critical limits for each critical control point;

(iii) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

(iv) 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;

(v) action to be taken by the person in charge if the critical limits for each critical control point are not met; and

(vi) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(E) additional scientific data or other information, as required by the regulatory

authority, supporting the determination that food safety is not compromised by the proposal.

(e) Confidentiality, trade secrets. The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, information that meets the criteria for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in subsection (d)(2) of this section.

 # 27 (f) Permit requirement, prerequisite for operation. A person may not operate a food establishment without a valid permit or license to operate issued by the regulatory authority.

(g) Conditions of permit retention, 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 food establishment that is conspicuous to consumers;

(2) comply with the provisions of these rules including the conditions of a granted variance as specified under subsection (c)(3) of this section;

(3) if a food establishment is required under subsection (d)(1) of this section to operate under a HACCP plan, comply with the plan as specified under subsection (c)(3) of this section;

(4) immediately discontinue operations and notify the regulatory authority if an imminent health hazard exists as specified in subsection (k) of this section;

(5) allow representatives of the regulatory authority access to the food establishment as specified under subsection (i)(1) of this section;

(6) except as specified in paragraph (7) of this subsection, replace existing facilities and equipment allowed in subsection (a) of this section with facilities and equipment that comply with these rules 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) there is a change of ownership in the establishment; or

(C) the facilities and equipment are replaced in the normal course of operation.

(7) except for in-use food preparation line equipment, upgrade or replace refrigeration equipment as specified under §229.164(n)(6)(C) of this title if the circumstances specified under paragraph (6)(A)-(C) of this subsection do not occur first;

(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 food establishment or in response to community emergencies;

(9) accept notices issued and served by the regulatory authority according to law; and

(10) be subject to the administrative, civil, injunctive, and criminal remedies authorized under law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(h) Inspection frequency, performance-based and risk-based. The regulatory authority should inspect each food establishment at least once every six months. If the regulatory authority cannot meet this frequency, inspection frequency shall be prioritized based upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness by evaluating:

(1) past performance for noncompliance with these rules, including HACCP plan requirements, that are critical;

(2) past performance for numerous or repeat violations of these rules, including HACCP plan requirements, that are noncritical;

(3) the hazards associated with the particular foods that are prepared, stored, or served;

(4) the type of operation including the methods and extent of food storage, preparation, and service;

(5) the number of people served;

(6) whether the population served is a highly susceptible population; and

(7) any other risk factor deemed relevant to the operation by the regulatory authority.

(i) Access.

(1) Allowed at reasonable times after due notice. After the regulatory authority presents official credentials, the person in charge shall allow the regulatory authority to determine if a food establishment is in compliance with these rules by allowing access to the establishment, allowing inspection, and providing information pertaining to food and supplies purchased, received or used, or to persons employed and records specified in these rules during the food establishment's hours of operation and other reasonable times.

(2) Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

(A) inform the person that:

(i) the food establishment is required to allow access to the regulatory authority as specified under this subsection;

(ii) access is a condition of the acceptance and retention of a food establishment permit to operate as specified under subsection (g)(5) of this section; and

(iii) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection warrant, may be obtained according to law; and

(B) make a final request for access.

(3) Refusal, reporting. If after the regulatory authority presents credentials and provides notice as specified under paragraph (1) of this subsection, explains the authority upon which access is requested, and makes a final request for access as specified in paragraph (2) of this subsection, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(4) Inspection warrant to gain access. If denied access to a food establishment for an authorized purpose and after complying with paragraph (2) of this subsection, the regulatory authority may issue, or apply for the issuance of, an inspection warrant to gain access as provided under law.

(j) Report of findings.

(1) Documenting information and observations. The regulatory authority shall document administrative information about the establishment's legal identity and all other findings and observations on the inspection report form. A copy of the inspection report form shall be furnished to the owner or person in charge which constitutes a written notice. The inspection report form shall summarize the inspectional findings, and shall set forth a weighted point value

for each classification of inspection items. The total demerits of the establishment shall be the cumulative total of the demerit values of the inspection items.

(2) Specifying time frame for corrections. The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under subsections (k)(1), (l)(1), and (m) of this section.

(3) Issuing report and obtaining acknowledgment of receipt. At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request that the person in charge during the inspection sign the completed inspection report.

(4) Refusal to sign acknowledgment. The regulatory authority shall:

(A) inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in paragraph (3) of this subsection that:

(i) an acknowledgment of receipt is not an agreement with findings;

(ii) 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;

(iii) a refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(B) make a final request that the person in charge sign an acknowledgment of receipt of inspectional findings.

(5) Public information. Unless prohibited by law and except as specified in subsection (e) of this section, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure upon request.

(6) Inspection report form. For the purposes of Chapter 437, Texas Health and Safety Code, the department adopts the Retail Food Establishment Inspection Report form as specified in the following figure:

Figure 1: 25 TAC §229.171(j)(6)

(k) Imminent health hazards.

(1) Ceasing operations and reporting.

(A) Except as specified in subparagraph (B) of this paragraph, a food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(B) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(2) Resumption of operations. If operations are discontinued as specified under paragraph (1) of this subsection or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

(l) Critical violations, time frame for corrections.

(1) Timely correction.

(A) Except as specified in subparagraph (B) of this paragraph, the food establishment shall at the time of inspection implement immediate corrective actions of all food (PHF) temperature violations; personnel/handling/source requirement violations; facility and equipment requirement violations; any HACCP plan provision that is not in compliance with its critical limit; and all other critical violations noted.

(B) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the food establishment to correct facility and equipment requirement violations.

(2) Verification and documentation of correction.

(A) After observing at the time of inspection a correction of a violation, the regulatory authority shall document the violation and note the corrective action on the inspection report.

(B) As specified under paragraph (1)(B) of this subsection, if immediate correction is not achieved, the regulatory authority shall verify correction of the violation made at the time of the next inspection, document the information on the inspection report, and enter the report in the regulatory authority's records.

(C) When the total cumulative demerit value of an establishment exceeds 30 demerits, the establishment shall initiate immediate corrective action on all identified critical violations and shall initiate corrective action on all other violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.

(D) In the case of temporary food establishments, all critical violations must be corrected immediately and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

(m) Other violations, time frame for corrections.

(1) Time frame. Except as specified in paragraph (2) of this subsection, the food establishment shall correct all other violations as soon as possible, and in any event, by the time of the next routine inspection, but no later than 90 calendar days after the inspection.

(2) Extension of compliance schedule. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under paragraph (1) of this subsection if a written schedule of compliance is submitted by the food establishment and no health hazard exists or will result from allowing an extended schedule for compliance.

(n) Examination and detention of food. The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefor, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, Chapter 431.

(o) Investigation and control.

(1) Obtaining information: personal history of illness, medical examination, and specimen analysis. The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection by requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

(2) Restriction or exclusion of food employee, establishment closure. Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the regulatory authority may require any or all of the following:

(A) immediately restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;

(B) immediately excluding the employee from all food establishments; or

(C) immediately closing the food establishment until, in the opinion of the regulatory authority, no further danger of disease outbreak exists.

(3) Restriction or exclusion order: warning or hearing not required, information required in order. Based on the findings of the investigation as specified in paragraph (1) of this subsection and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

(A) states the reasons for the restriction or exclusion that is ordered;

(B) states the evidence that the employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(C) states that the suspected employee or the permit holder may request an appeal hearing by submitting a timely request as provided under law; and

(D) provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(4) Release of employee from restriction or exclusion. The regulatory authority shall release an employee from restriction or exclusion according to Texas Health and Safety Code, Chapter 438, §438.033 and the following conditions:

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

(i) not earlier than one month after onset;

(ii) at least 48 hours after discontinuance of antibiotics; and

(iii) at least 24 hours apart;

(B) if one of the cultures taken as specified in subparagraph (A) of this paragraph is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained;

(C) an employee who was infected with *Shigella* spp. or *Escherichia coli* O157:H7 if the employee's stools are negative for *Shigella* spp. or *E. coli* O157:H7 based on testing of two consecutive stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics; and

(ii) at least 24 hours apart; and

(D) an employee who was infected with hepatitis A virus if:

(i) symptoms cease; or

(ii) at least two blood tests show falling liver enzymes.

(p) Reporting of communicable diseases.

(1) Who shall report. Certain persons, as required in 25 Texas Administrative Code (TAC), Chapter 97, §97.2, shall report certain confirmed and suspected foodborne diseases.

(2) What to report. Confirmed and suspected cases of the following diseases, including, but not limited to the following, are reportable: botulism; campylobacteriosis; cryptosporidiosis; Escherichia coli 0157:H7; hepatitis A, acute viral; listeriosis; salmonellosis; shigellosis; trichinosis; and Vibrio infection.

(3) When to report. Reporting of communicable diseases shall be done in accordance with 25 TAC, Chapter 97, §97.4.

(4) Where to report. Persons required to report communicable diseases shall report to the local health authority, or in the case where there is no local health authority, the report shall be made to the department's Regional Director as required in 25 TAC, Chapter 97, §97.5.

(5) Reporting and other duties of local health authorities and regional directors. Local health authorities and regional directors shall report communicable diseases to the department as provided for in 25 TAC, Chapter 97, §97.6.

(q) Food establishment inspector qualifications. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas, as defined in 25 TAC, Chapter 337, §337.181, or meet the equivalent educational requirements in order to:

(1) assure application of basic scientific principles, including HACCP principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of these rules; and

(4) assure fair and uniform enforcement of these rules.

§229.173 Heimlich Maneuver Poster.

(a) Purpose. The purpose of this section is to establish the requirements for signs depicting the Heimlich Maneuver for dislodging an obstruction from a choking person.

(b) Placement. The prescribed sign shall be in all food service establishments and shall be in a place conspicuous to employees or customers. **# 26**

(c) Implementation date. This rule shall be implemented 90 days after the effective date of the rule.

(d) Specifications. The prescribed sign shall meet the following poster requirements:

(1) the poster shall be printed on white 70 pound gloss coated cover stock and shall be no smaller than 15 inches wide by 18 inches long;

(2) the poster shall be printed in English and Spanish and in at least two conspicuous contrasting colors. Major title and figure blocks shall be in contrasting color to remaining copy blocks;

(3) major poster headings shall be a minimum Bengeat Bold 72 point or equivalent;

(4) subheadings shall be a minimum Bengeat Bold Italic 60 point or equivalent;

(5) remaining subheadings shall be a minimum Bengeat Bold 24 point or equivalent; and

(6) body copy shall be Helios Bold 14 point or equivalent.

(e) Camera ready copies. Camera ready copies of the sign shall be available for reproduction purposes upon written request to: Texas Department of Health, Retail Foods Division, 1100 West 49th Street, Austin, Texas 78756-3182.

§229.174 Bed and Breakfast Extended Establishments.

(a) General. Bed and breakfast extended establishments shall comply with these minimum requirements of this section.

 # 9, # 10 (b) Food supplies. Food shall be obtained from approved sources, shall be in sound condition, and be safe for human consumption.

(c) Food preparation and protection.

(1) Food preparation and protection. Food shall be prepared and protected in accordance with these rules.

 # 1 - # 5 (2) Temperature requirements. All food temperature requirements shall be met as contained in §229.164(k)-(n) of this title (relating to Food).

(d) Cleaning and sanitizing.

 # 21 (1) Manual. A three compartment sink shall be used if washing, rinsing and sanitizing of utensils and equipment is done manually; or a two compartment sink may be utilized if single service tableware is provided, or when an approved detergent sanitizer is used.

 # 22 (2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.

 # 8 (e) Personal hygiene. Employees shall conform to good hygienic practices as required in these rules.

 # 23 (f) Employee restrooms. A restroom shall be available for use by employees.

 # 25 (g) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(h) Handsinks.

 # 16 (1) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas.

 # 8 (2) Intended use. Handsink(s) shall be used for no other purpose other than handwashing.

(i) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable. **# 25**

(j) Insect proof/rodent proof.

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

(2) Chemical control. Pesticides and rodenticides shall be applied according to law. **# 20**

(k) Equipment. Equipment shall be provided to maintain potentially hazardous foods at the temperatures required by these rules. **# 15**

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

(m) Sewage. Sewage shall be disposed through an approved facility that is: **# 23**

(1) a public sewage treatment plant; or

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

(n) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source. **# 14**

§229.175 Outfitter Operations.

(a) General. Requirements in this section are specific for Outfitter Operations. The regulatory authority may impose additional requirements to protect against health hazards which may be specific to these operations.

 # 9 (b) Food supplies. Food supplies, including ice, shall be obtained from approved sources. No home prepared products shall be offered.

 # 1 - # 5 (c) Food temperatures. All food temperature requirements shall be met as contained in §229.164(k)-(n) of this title (relating to Food).

 # 21 (d) Warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used for washing and sanitizing utensils when approved by the regulatory authority. Outfitters without effective facilities for cleaning and sanitizing tableware shall only provide single-service articles for use by food employees and consumers.

 # 10 (e) Ice usage. Ice that is used for cooling food may not be used for human consumption.

 # 14 (f) Potable water. Potable water shall be used on excursions for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.

 # 16 (g) Handwashing lavatory. Facilities for handwashing shall be provided for employee usage. The facility may consist of a container of water with spigot and catch pan or two separate basins, one for washing and one for rinsing, with soap and individual paper towels. If approved by the regulatory authority, chemically treated towelettes for handwashing may be used.

 # 25 (h) Equipment. All equipment and utensils intended for food contact shall be approved for food use.

Figure 1: 25 TAC §229.164(k)(1)(A)(ii)

Cooking Raw Animal Foods
Alternatives to the 155 Degree Fahrenheit/15 Second Requirement

Minimum	
Temperature °C (°F)	Time in Minutes
63 (145)	3
66 (150)	1

Figure 2: 25 TAC §229.164(k)(1)(B)(i)

Cooking Whole Beef or Corned Beef Roasts
Oven Preheating/Holding Requirements Per Weight

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.

Figure 3: 25 TAC §229.164(k)(1)(B)(ii)

Cooking Whole Beef or Corned Beef Roasts
Heating Temperatures and Holding Times

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

[1]Holding time may include postoven heat rise.

Figure 1: 25 TAC §229.165(a)(3)

Ceramic, China, and Crystal Utensils
Lead Level Limitations

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

Figure 2: 25 TAC §229.165(k)(14)(A)

Manual and Mechanical Warewashing Equipment
Temperature, Concentration, and pH Parameters for Chlorine Solutions

Minimum Concentration	**Minimum Temperature**	
mg/L	pH 10 or less ºC (ºF)	pH 8 or less ºC (ºF)
25	49 (120)	49 (120)
50	38 (100)	24 (75)
100	13 (55)	13 (55)

Retail Food Establishment Inspection Report

									Yes	No						R												
San Code			**Mo**	**Day**	**Yr**	**Insp. Time**			**FPM Certified**		**CFN**										**Permit No.**						**Risk Cat.**	

Purpose of Inspection: 1-Compliance 2-Routine 3-Field Investigation 4-Visit 5-Other

Establishment:	Owner:	
Physical Address	Zip:	Phone: ( )

DEMERITS (5 Pts)	**Food (PHF) Temperature/Time Requirements** Violations Require Immediate Corrective Action	Remarks	COS
	1. Proper Cooling for Cooked/Prepared Food		
	2. Cold Hold (41 F/45 F)		
	3. Hot Hold (140 F)		
	4. Proper Cooking Temperatures per PHF		
	5. Rapid Reheating (165 F in 2 Hrs)		
Food/Temperatures			

DEMERITS (4 Pts)	**Personnel/Handling/Source Requirements** Violations Require Immediate Corrective Action	Remarks	COS
	6. Personnel with Infections Restricted/Excluded		
	7. Proper/Adequate Handwashing		
	8. Good Hygienic Practices (Eating/Drinking/Smoking/Other)		
	9. Approved Source/Labeling		
	10. Sound Condition		
	11. Proper Handling of Ready-To-Eat Foods		
	12. Cross-Contamination of Raw/Cooked Foods/Other		
	13. Approved systems (HACCP Plans/Time as Public Health Control)		
	14. Water Supply - Approved Source/Sufficient Capacity/Hot and Cold Under Pressure		

DEMERITS (3 Pts)	**Facility and Equipment Requirements** Violations Require Immediate Corrective Action, Not To Exceed 10 Days	Remarks	COS
	15. Equipment Adequate To Maintain Product Temperature		
	16. Handwash Facilities Adequate and Accessible		
	17. Handwash Facilities with Soap and Towels		
	18. No Evidence of Insect Contamination		
	19. No Evidence of Rodents/Other Animals		
	20. Toxic Items Properly Labeled/Stored/Used		
	21. Manual Warewashing and Sanitizing at ( ) ppm/temperature		
	22. Mechanical Warewashing and Sanitizing at ( ) ppm/temperature		
	23. Approved Sewage/Wastewater Disposal System, Proper Disposal		
	24. Thermometers Provided/Accurate/Properly Calibrated (±2 F)		
	25. Food Contact Surfaces of Equipment and Utensils Cleaned/Sanitized/Good Repair		
	26. Posting of Consumer Advisories (Heimlich/Raw Shellfish Warning/Buffet Plate)		
	27. Food Establishment Permit		
Subtotals	**Other Violations** - Violations Require Corrective Actions, Not To Exceed 90 Days Or The Next Inspection, Whichever Comes First		

5 Pts			
4 Pts			
3 Pts			
Total Demerits	Inspected by:	Print:	
Follow-Up Insp YES NO	Received by:	Print:	Title:

Form No. E-5 (09/98)

Corrective Actions to Ensure Safe Food

Item No.

1 Cooling

- Potentially hazardous food cooled from 140°F to 70°F more than 2 hours OR 70°F to 41°F (45°F) more than 4 hours OR prepared foods cooled to 41°F (45°F) more than 4 hours:
  Action: Voluntary destruction

2 Cold Hold

- Potentially hazardous food held above 41°F (45°F) more than 4 hours:
  Action: Voluntary destruction

- Potentially hazardous food held above 41°F (45°F) less than 4 hours:
  Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- Potentially hazardous food held below 140°F more than 4 hours:
  Action: Voluntary destruction

- Potentially hazardous food held below 140°F less than 4 hours:
  Action: Rapid reheat to 165°F or more

4 Cooking

- Potentially hazardous foods undercooked:
  Action: Recook to proper temperature

5 Rapid Reheating

- Cold potentially hazardous foods improperly reheated:
  Action: Reheat rapidly to 165°F

7 Handwashing

- Food employees observed not washing hands:
  Action: Employees should be instructed to wash hands before starting work and after smoking, eating, drinking, using the toilet, and all other times specified in the Rules.

9, 10 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:
  Action: Detention or voluntary destruction

11 Proper Handling of Ready-to-Eat Foods

- Ready-to-Eat foods handled with bare hands and employee did not properly wash hands before handling:
  Action: Voluntary destruction

12 Cross Contamination of Raw/Cooked Foods

- Ready-To-Eat foods contaminated by raw potentially hazardous foods:
  Action: Voluntary destruction of ready to eat foods

13 Approved Systems

- HACCP Plans for ROP, shellfish tanks, variances, others
- Written procedure for time as a public health control

Guide 1
Exclusions and Restrictions for Food Employees and Applicants to Whom a Conditional Offer of Employment is Made

Health Status	Facilities Serving Highly Susceptible Population	Facilities Not Serving Highly Susceptible Population
1. Diagnosed with illness due to ***Salmonella* Typhi**, ***Shigella*** spp., ***Escherichia coli*** O157:H7, or hepatitis A virus.	Exclude §229.163(d)(2)(A)	Exclude §229.163(d)(2)(A)
2. Experiencing a symptom listed in §229.163(d)(1)(B)	Restrict §229.163(d)(2)(B)	Restrict §229.163(d)(2)(B)
3. Experiencing a symptom listed in §229.163(d)(1)(B)(i) and meets a high-risk condition* of §229.163(d)(1)(D)	Exclude §229.163(d)(2)(C)(i)	Restrict §229.163(d)(2)(B)(i)
4. Asymptomatic but stools positive for ***S.*Typhi**, ***Shigella*** spp., or ***E. coli*** O157:H7	Exclude §229.163(d)(2)(C)(ii)	Restrict §229.163(d)(2)(B)(ii)
5. Past illness from ***Salmonella* Typhi**, within the last 3 months.	Exclude §229.163(d)(2)(C)(iii)	No Restrictions
6. Past illness from ***Shigella*** spp. or ***E. coli*** O157:H7 within last month	Exclude §229.163(d)(2)(C)(iv)	No Restrictions
7. Onset of jaundice within the last 7 days.	Exclude §229.163(d)(2)(D)(i)	Exclude §229.163(d)(2)(D)(i)
8. Onset of jaundice more than 7 days ago.	Exclude §229.163 (d)(2)(D)(ii)(I)	Restrict §229.163(d)(2)(D)(ii)(II)

*High-risk conditions apply only to exclusions under this Subparagraph.

(01/00)

Guide 2
Removal of Exclusions and Restrictions for Food Employees and Applicants to Whom a Conditional Offer of Employment is Made

Health Status §229.163(d)(1) & §229.163(d)(2)	**Facilities Serving Highly Susceptible Population §229.163(d)(3)**	**Facilities Not Serving Highly Susceptible Population §229.163(d)(3)**
1. Diagnosed with illness due to ***Salmonella* Typhi**, ***Shigella*** spp., ***Escherichia coli*** O157:H7, or hepatitis A virus. §229.163(d)(1)(A)	1. Regulatory Authority Approval + 2. Doctor: Stool free or blood free or symptom free §229.163(d)(3)(A)(i)	1. Regulatory Authority Approval + 2. Doctor: Stool free or blood free or symptom free §229.163(d)(3)(A)(ii)
2. Experiencing a symptom listed in §229.163(d)(1)(B)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor: stool or blood free or 3. Doctor: Noninfectious condition §229.163(d)(3)(B)(i)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor: stool or blood free or 3. Doctor: Noninfectious condition §229.163(d)(3)(B)(i)
3. Experiencing a symptom listed in §229.163(d)(1)(B) and meets a high-risk condition §229.163(d)(1)(D), §229.163(d)(2)(C)(i)	Doctor: 1. Stools or blood free or 2. No jaundice per 3. §229.163(d)(3)(C)(i) Noninfectious condition §229.163(d)(3)(C)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor: stool or blood free or 3. Doctor: Noninfectious condition §229.163(d)(3)(B)(i)
4. Asymptomatic but stools positive for ***S. typhi***, ***Shigella*** spp., or ***E. coli*** 0157:H7 §229.163(d)(2)(B)(ii); §229.163(d)(2)(C)(ii)	Doctor - Stools free §229.163(d)(3)(C)	Doctor - Stools free §229.163(d)(3)(B)(ii)
5. Past illness from ***Salmonella* Typhi** within the last 3 months. §229.163(d)(1)(C)	Doctor - Stools free §229.163(d)(3)(C)	NA
6. Past illness from ***Shigella*** spp., or ***E. coli*** O157:H7 within last month. §229.163(d)(1)(C)	Doctor - Stools free §229.163(d)(3)(C)	NA
7. Onset of jaundice within last 7 days. §229.163(d)(2)(D)(i)	1. No illness results + Doctor - blood free or Doctor - no jaundice or 2. Suspect cause of illness + both satisfied §229.163(d)(3)(D)	1. No illness results + Doctor - blood free or Doctor - no jaundice or 2. Suspect cause of illness + both satisfied §229.163(d)(3)(D)
8. Onset of jaundice more than 7 days ago. §229.163(d)(2)(D)(ii)	1. No illness results + Doctor - blood free or Doctor - no jaundice or 2. Suspect cause of illness + both satisfied §229.163(d)(3)(D)	1. No illness results + Doctor - blood free or Doctor - no jaundice or 2. Suspect cause of illness + both satisfied §229.163(d)(3)(D)

(01/00)

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