

**FOOD SERVICE REGULATION
LEXINGTON-FAYETTE URBAN COUNTY BOARD OF HEALTH**

Statuary Authority: KRS 212.627, KRS 217.155 and 902 KAR 45:005
Relates To: 902 KAR 45:005

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**REGULATION #19
FOOD SERVICE REGULATION**

SECTION 1. NECESSITY AND FUNCTION

- (1) The Lexington-Fayette Urban County Board of Health hereby finds and declares that uniform county-wide food service sanitation regulations are needed to regulate all food service establishments within Fayette County in order to protect the public health and to provide for uniformity of inspection.
- (2) This regulation shall be administered and enforced by the Lexington-Fayette County Health Department in accordance with the requirements set forth below.

SECTION 2. CITATION OF REGULATION

This regulation may be cited as the Lexington-Fayette Urban County Food Service Regulation and replaces Board of Health Regulation 19, which is hereby rescinded.

SECTION 3. DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this regulation:

- (1) APPROVED means acceptable to the Department based on determination as to conformance with appropriate standards and good public health practice.
- (2) BOARD OF HEALTH means the Lexington-Fayette Urban County Board of Health.
- (3) CORROSION-RESISTANT MATERIAL means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.
- (4) DEPARTMENT means the Lexington-Fayette County Health Department and their duly designated representatives.

- (5) EASILY CLEANABLE means those surfaces that are readily accessible and of such material and finish, and so fabricated that residue may be effectively removed by normal cleaning methods.
- (6) EMPLOYEE means the permit holder, individuals having supervisory or management duties and any other person employed, who prepares, dispenses, transports, or engages in food preparation or service and comes in contact with any food, food equipment or utensils.
- (7) EQUIPMENT includes, but is not limited to, stoves, ranges, hoods, ovens (including micro-wave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, slicers, sinks, tables, display cases, meat blocks, wrapping machines, scales, vehicles and similar items.
- (8) FDA means the Food and Drug Administration.
- (9) FOOD means articles used for food or drink for man or other animals, chewing gum; and articles used for components or any such articles.
- (10) FOOD DISEASE OUTBREAK means the occurrence of two or more cases of a similar illness resulting from ingestion of a common food.
- (11) FOOD-CONTACT SURFACES means those surfaces of equipment and utensils with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.
- (12) FOOD SERVICE ESTABLISHMENT means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; night clubs; roadside stands; industrial feeding establishments; private, public or non-profit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines or establishments serving beverages only in single service or original containers.
- (13) HACCP PLAN means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- (14) HIGHLY SUSCEPTIBLE POPULATION means persons who are more likely than other people in the general population to experience food borne disease because they are:
- a. Immunocompromised individuals; preschool aged children, or senior adults

- b. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

(15) HOME PREPARED FOOD is food prepared in the home or domestic facilities or at other locations not subject to inspection by a regulatory agency.

(16) KITCHEN-WARE means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(17) LOCATION is a property with a specific street address and/or may be determined by the Department.

(18) MISBRANDED means any food or food product misbranded as provided by the 2005 FDA Food Code.

(19) MOBILE FOOD UNIT means a food service establishment that is designed to be readily movable.

(20) PACKAGED means bottled, canned, cartoned, or securely wrapped at a food-processing establishment.

(21) PERISHABLE FOOD means any food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

(22) PERSON means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.

(23) PESTICIDES-CHEMICAL means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities

(24) POOLED EGGS means shelled eggs that have been cracked and combined in a container to be stored.

(25) POTABLE WATER is water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its physical, bacteriological, and chemical quality to the requirements of the Department for Natural Resources and Environmental Protection.

(26) POTENTIALLY HAZARDOUS FOOD means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean, or other ingredients including synthetic ingredients, capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

This term does not include foods which have a pH level of 4.5 or below or a water activity value of .85 or less.

- (27) POTLUCK MEAL OR EVENT means an occasional event or meal that is characterized by foods that are donated and shared by a defined group of participants and attendees. A pot luck meal or event is an assumed risk and shall be confined to a specific group who are accepting the risk. The meal or event is closed to the general public, and participants of the meal or event are members of the group and their invited guests.
- (28) RATITE means a flightless bird, such as an emu, ostrich, or rhea.
- (29) SAFE TEMPERATURE means when considering potentially hazardous food, food temperatures of 41° F or below and 135° F or above
- (30) SANITIZE means effective bactericidal treatment by a process that destroys microorganisms, including pathogens, and which has been approved by the Department.
- (31) SEALED means free of cracks or other openings which permit the entry or passage of moisture.
- (32) SINGLE-SERVICE ARTICLES shall include cups, containers, lids, or closures; plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, wrapping material, including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.
- (33) TABLEWARE means all multiuse eating and drinking utensils.
- (34) TEMPORARY FOOD SERVICE ESTABLISHMENT means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days in conjunction with a single event or celebration.
- (35) UTENSIL means any implement used in the preparation, storage, transportation of food.
- (36) VARIANCE means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this code if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.
- (37) WHOLESOME means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

SECTION 4. PERMIT REQUIRED

Any person desiring to operate a food service establishment shall make written application for a permit on forms provided by the Department at least 30 days prior to the desired opening date of the facility. Such application shall include the name and address of the applicant, the location and type of the proposed food service establishment, and the signature of the applicant. If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation. Prior to approval of an application for permit, the Department shall inspect the proposed food service establishment to determine compliance with the provisions of this regulation. The Department shall issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this regulation.

SECTION 5. FOOD SUPPLIES

(1) Food shall be wholesome, in sound condition and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable local state and federal laws and regulations relating to food and food labeling. The use of food and food products, canned, prepared or processed in the home is prohibited in food service establishments. Certain non-potentially hazardous food products may be sold by charitable or nonprofit organizations at one event type sale if prior written approval is granted by the Department. Caterers shall not prepare food in their home or domicile for service or distribution at other locations.

(2) All milk and milk products used or served shall comply with applicable state regulations relating thereto.

(3) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare may be served or offered for sale upon consumer request if the establishment serves a population that is not a highly susceptible population; and consumer is informed.

(4) Only clean eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen, or pasteurized dry eggs or pasteurized dry egg products shall be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) Game animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and non-aquatic reptiles such as land snakes, etc. that are received for sale or service, shall meet the provisions of FDA Code 3-201.17.

(7) Mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert, except:

- A) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
 - B) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
- (8) If a variance is needed for preparation of food products, a formal request shall be made to the regulatory agency, which will include a HACCP Plan for the food process. A variance can be obtained from the regulatory agency for the following food processes:
- A) Smoking food as a method of food preservation rather than as a method of flavor enhancement;
 - B) Curing food;
 - C) Using food additives or adding components such as vinegar:
 - I) As a method of food preservation rather than as a method of flavor enhancement, or
 - II) To render a food so that it is not potentially hazardous
 - D) Packaging food using a reduced oxygen packaging method;
 - E) Offering a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;
 - F) Custom processing animals that are for personal use as food and not for sale or service in a food establishment;
 - G) Preparing food by another method that is determined by the regulatory agency to require a variance; or
 - H) Producing seed sprouts

SECTION 6. FOOD SUPPLIES FOR HIGHLY SUSCEPTIBLE POPULATIONS

A food establishment that serves a highly susceptible population may not serve unpasteurized juice, raw animal foods (raw fish, raw-marinated fish, raw molluscan shellfish, steak tartare, etc.), partially cooked animal food (lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, meringue, raw seed sprouts, etc.).

Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP Plan. Pasteurized eggs or eggs products shall be substituted for raw eggs in the preparation of: Caesar salad, hollandaise or béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

SECTION 7. FOOD PROTECTION

At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from contamination from all agents, including dust, insects,

rodents, unclean equipment and utensils, unnecessary handling, coughs, and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be 41° F or below, or 135° F or above at all times, except during necessary periods of preparation and service. During preparation and service, if food is kept between 41°F and 135°F, food shall be discarded after a period of 4 hours unless the requirements of the 2005 FDA Food Code Subparagraph 3-501.19 (C)-(D) are fulfilled. Shell eggs shall be stored at 45° F or below. All establishments undergoing extensive remodeling or renovation shall close their food service section until new installation has been completed, or protect the area by partitions, canvas, or other suitable means approved by the Department.

In the event of an occurrence, such as fire, flood, power outage or similar event, which might result in the contamination of food, or which might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the Department who shall take whatever action deemed necessary to protect the public health.

SECTION 8. FOOD STORAGE

- (1) Stored food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be enclosed in a clean covered container, except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that clean unused linens or napkins may be used for lining or covering bread or roll containers.
- (2) Food shall be stored a minimum of six (6) inches above the floor on clean surfaces in a way that permits cleaning the storage area and that protects the food from contamination by splash and other means; Provided, That food in non-absorbent containers, cased food packaged in cans, glass or similar material, may be stored on the floor when it is maintained in an acceptable sanitary condition.
- (3) Food shall not be stored under exposed sewer or non-potable water lines. Storage of food and food products in toilet rooms, locker rooms, garbage rooms, mechanical rooms, open stairwells, or vestibules is prohibited.
- (4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination. Food shall be stored in such a way that protects it from cross contamination.
- (5) Packaged food or beverages shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.
- (6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, etc. not stored in the container or package in which it was obtained shall be stored in a container labeled identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of food at required temperatures during storage. Each cold food storage facility shall be provided with a numerically scaled indicating thermometer, accurate to $\pm 3^{\circ}$ F located to measure the air temperature in the warmest part of the facility and located to be easily readable.

(8) Potentially hazardous foods requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 41° F or below. Such foods in large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food containers so the cooling period shall not exceed six (6) hours, with the food reaching 70° F within 2 hours, and then reaching 41° F within an additional four (4) hours. Potentially hazardous foods to be transported shall be pre-chilled and held at a temperature of 41° F or below, unless maintained in accordance with paragraph 12 of this section.

(9) Frozen foods shall be kept frozen.

(10) Stored ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food storage facility shall be provided with a numerically scaled indicating or recording thermometer accurate to $\pm 3^{\circ}$ F located in the coolest part of the facility and located to be easily readable. Where impractical to install thermometers on equipment such as bain-maries, steam tables, steam kettles, heat lamps or insulated food transport carriers, a product thermometer must be available and used to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 135° F or more except during necessary periods of preparation. Potentially hazardous foods to be transported shall be held at a temperature of 135° F or above unless maintained in accordance with paragraph 8 of this section.

(13) Sufficient space shall be provided for the storage of canned foods, dry food in bulk, bulk single service containers, etc., to allow for orderly storage arrangements and prevention of rodent and insect harborage.

(14) When packaging and refrigerating ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations below. The day of preparation shall be counted as day 1. Food shall be maintained at:

- A) 41° F or less for a maximum of 7 days; or
- B) 45° F or between 41° F and 45° F for a maximum of 4 days in existing refrigeration equipment that is not capable of maintaining the food at 41° F or less if:

- I)The equipment is in place and in use in the food establishment, and
- II)Within 5 years of the regulatory authority’s adoption of this code (May 1, 2015), the equipment is up graded or replaced to maintain food at a temperature of 41°F or less.

(15) 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 and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in paragraph 14 of this section and:

- A) The day the original container is opened in the food establishment shall be counted as day 1; and
- B) The day or date marked by the food establishment may not exceed a manufacturer’s use-by-date.

(16) A date marking system that meets the criteria stated in paragraph 14 and 15 of this section may include:

- A) Using a method approved by the regulatory authority for refrigerated, ready-to-eat, potentially hazardous food that is frequently rewrapped or for which date marking is not practical.
- B) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded.
- C) Marking the date or day the original container is opened in a food service establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded.
- D) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority.

(17) Before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

- A) Frozen and stored at a temperature of -4°F or below for a minimum of 168 hours (7days) in a freezer;
- B) Frozen at -31°F or below until solid and stored at -31°F for a minimum of 15 hours; or
- C) Frozen at -31°F or below until solid and stored at -4°F or below for a minimum of 24 hours.

(18) Freezing procedures in paragraph 17 do not apply to:

- A) Molluscan shellfish;
- B) Yellowfin tuna, Bluefin tuna, Bigeye tuna; or
- C) Aquacultured fish, such as salmon, that:
 - I)If raised in open water, are raised in net-pens, or
 - II)Are raised in land-based operations such as ponds or tanks, and

III) Are fed formulated feed, such as pellets, that contains no live parasites infective to aquacultured fish.

(19) Except as specifies in paragraph 18 of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in read-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records in the food establishment for 90 calendar days beyond the time of service or sale of the fish.

SECTION 9. FOOD PREPARATION

(1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized. Methods and procedures used shall prevent cross contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:

A) Poultry, poultry stuffing and stuffed meats and stuffing containing meats shall be cooked to heat all parts of the food to at least 165° F with no interruption of the cooking procedure;

B) Rare roast beef shall be cooked to an internal temperature of at least 130° F and rare beefsteak shall be cooked to a temperature of 130° F unless otherwise ordered by the consumer.

(4) Reconstituted, dry milk, dry-milk products; liquid, frozen, dry eggs, shell eggs and egg products shall be used only for cooking and baking purposes if heated to 145° F or above. Pooled eggs shall be cooked to 155°F.

(5) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165° F. or higher throughout before being placed in a hot food storage facility. Steam tables, bain-maries, warmers, and other hot food holding facilities are prohibited for the rapid heating of potentially hazardous foods.

(6) Metal stem-type numerically scaled indicating thermometers accurate to $\pm 3^\circ$ F. shall be provided and used to assure attainment of proper internal cooking, holding or refrigeration temperatures on all potentially hazardous foods.

(7) Potentially hazardous foods shall be thawed:

A) In refrigerated units in a way that the temperature of the food does not exceed 41° F; or

- B) Submerged under potable running water of a temperature of 70° F or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or
- C) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- D) As part of the conventional cooking process.

SECTION 10. FOOD AND ICE DISPLAY AND SERVICE

- (1) Potentially hazardous foods shall be kept at an internal temperature of 41° F or lower or at an internal temperature of 135° F or higher during display and service except that rare roast beef shall be held for service at a temperature of at least 130° F.
- (2) Food on display shall be protected from consumer contamination by the use of easily cleanable counter-protection devices, display cases and similar equipment in addition to other means of protection. Sufficient hot or cold food display facilities shall be available to maintain all potentially hazardous food displayed.
- (3) Reuse of soiled tableware by the self-service consumer returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.
- (4) Suitable utensils shall be used by employees or provided for consumers' self-service to avoid unnecessary contact with food.
 - A) Equipment food-contact surfaces and utensils shall be cleaned:
 - I) Before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry (except when in contact with a succession of different raw animal foods each requiring a higher cooking temperature than the previous food);
 - 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 and 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) In-use equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours, unless:
 - I) The equipment and utensils are used to prepare food in a refrigerated room or utensils are in a serving situation such as a

salad bar, deli, or cafeteria lines that are maintaining correct temperatures.

II) In a container of water if the water is maintained at a temperature of at least 135°F or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

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

- A) Maintained dry; and
- B) Used for no other purpose.

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

- A) Held between uses in a chemical sanitizer solution; and
- B) Laundered daily.
- C) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.
- D) Dry wiping cloths and the chemical sanitizing solutions in which wet wiping cloths are held between uses shall be free of food debris and visible soil.
- E) Containers of chemical sanitizing solutions in which wet wiping cloths are held between uses shall be stored in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-service articles.
- F) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(7) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Between use and during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination. The dispensing utensil may be stored in the ice with its handle extended out of the ice. Ice storage bins shall be drained through an air gap.

(8) Sugar, condiments, seasonings, dry creaming products and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents. Catsup and other sauces may be served in the original container.

(9) Coffee cream or liquid substitute products shall be served from individual packages which have been produced and packaged by an approved plant. Such products shall be stored and served at safe temperatures. The use of cream pitchers or similar containers is prohibited.

(10) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome may be reserved.

(11) If food derived from animals such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by the way of a disclosure and reminder, using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective means.

SECTION 11. FOOD TRANSPORTATION

During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this regulation relating to protection and storage of food.

SECTION 12. EMPLOYEE HEALTH

1) Every person connected with a food service establishment, whose work brings them in contact with the production, processing, serving or handling of food, or with the containers of equipment required therefore, shall at the commencement of employment, and thereafter every three years, be required to pass an examination given by the Department which pertains to knowledge of basic food handling procedures relevant to the prevention of food borne disease. A fee will be charged for this examination.

(A) All food-service establishment personnel engaged in food handling activities must have satisfactorily passed the basic food handling certification teaching and testing program requirements and have a certificate on file at the establishment.

2) All food-service establishments must have a certified food manager on duty during all hours of operation and food preparation. Acceptable food manager certifications include those administered by the Department or from an accredited agency that has been approved by the Department.

A) Those persons who, at the time of application for a certificate to act as a certified food service manager, have attended and successfully completed a nationally-accredited program of instruction approved by the Department and who hold a valid certificate issued by the certifying organization, shall not be required to attend the Department's certification class as established by Section 12 of this regulation. Copies of these certificates, which must include the certification's expiration date, shall be supplied to the Department.

B) The Department shall maintain a registry database of valid certified foodservice managers for each foodservice establishment, which includes the dates that each foodservice manager's certification expires. Certifications must be renewed through either the Department or a nationally-accredited program of instruction approved by the Department. Establishments shall be charged an annual registry fee for this service with payments being made due upon the first of each calendar year.

SECTION 13. PERSONAL CLEANLINESS

Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet.

A sign or poster that notifies food employees to wash their hands shall be provided at all hand washing sinks used by food employees and shall be clearly visible to food employees.

Employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good repair, an employee may not wear fingernail polish or artificial fingernails when working with exposed food.

SECTION 14. CLOTHING

(1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that cover body hair that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. This does not include employees that present a minimal risk of contaminating food, such as: hostesses, counter staff, and wait staff.

SECTION 15. EMPLOYEE PRACTICES

(1) Employees shall consume food and beverages only in designated dining areas.

(2) Employees shall not use tobacco in any form while inside the establishment.

(3) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(4) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

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

(6) Employees shall use single-use gloves when working with ready-to-eat foods unless the permit holder has an acceptable, as deemed by the Department, written policy established that addresses hand washing while processing, preparing, and serving all

ready-to-eat foods; and the establishment does not serve food to a highly susceptible population.

. Gloves must be discarded and replaced when damaged or soiled, or when interruptions occur in operation, such as: when using the restroom, after eating or drinking, smoking, when handling different types of food products, when using chemicals, when handling money, when taking out the garbage, etc.

SECTION 16. EQUIPMENT AND UTENSIL MATERIALS

- (1) Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and shall be nonabsorbent, and shall be smooth, easily cleanable, and durable under conditions of normal use. All sinks used for the cleaning and sanitizing of equipment and utensils, vegetable sinks and baker's sinks shall be stainless steel or it's equal. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.
- (2) If solder is used, it shall be composed of safe materials and be corrosion resistant.
- (3) Cutting blocks and boards, bakers' tables and salad bowls, may be of hard maple or equivalent material which nontoxic, smooth, and free of cracks, crevices and open seams. Cutting boards shall be easily removable for cleaning. Wood may be used for single-service articles, such as chopsticks, stirrers, ice cream spoons and similar items.
- (4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in Subsection (1) of this section are permitted for use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.
- (5) The reuse of mollusk and crustacean shells as food containers is prohibited.
- (6) The reuse of single service articles is prohibited.

SECTION 17. EQUIPMENT AND UTENSIL DESIGN AND FABRICATION

- (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, grill tops, and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited.

- (2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
- (3) Sinks, dish tables, and drain boards shall be self-draining.
- (4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection.
 - A) Without being disassembled; or
 - B) By disassembling without the use of tools; or
 - C) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.
- (6) Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches and connections.
- (7) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to $\pm 3^{\circ}$ F.
- (8) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.
- (9) Ventilation hoods and devices shall be designed to prevent grease or condensate from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment, where used, shall be readily removable for cleaning and replacement if not designed to be cleaned in place.

SECTION 18. EQUIPMENT INSTALLATION AND LOCATION

- (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, non-potable water lines, stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.
- (2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.
- (3) Equipment is not portable within the meaning of Subsection (2) of this section unless:
 - A) It is small and light enough to be moved easily by one person; and

- B) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.
- (4) Floor-mounted equipment, unless readily movable, shall be:
- A) Sealed to the floor; or
 - B) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or
 - C) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.
- (5) Aisles and working spaces between units of equipment and between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.
- (6) Equipment which was installed prior to the effective date of this regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, as long as there is no change in ownership, if it is in good repair, capable of being maintained in a sanitary condition and the food contact surfaces are non-toxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section. Upon change of ownership, all equipment shall meet the requirements of this regulation.

SECTION 19. EQUIPMENT AND UTENSIL CLEANING AND SANITIZATION

- (1) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be pre-flushed or pre-scraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution that is kept clean and then shall be rinsed free of detergent and abrasives.
- A) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:
 1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 180° F; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least 75° F; or
3. Immersion for at least one (1) minute in a clean solution containing at least 12.5 parts per million of available iodine and having a ph not higher than 5.0 and having a temperature of at least 75° F; or
4. Immersion in a clean solution containing other chemical sanitizing agents approved by the Department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least 75° F for one (1) minute; or
5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Subsection (7) (a) of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

B) When chemicals are used for sanitization, a test kit or other device that accurately measures the parts per million concentration of the solution in use shall be provided and used.

C) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; Provided, That existing establishments not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the Department. Sink compartments shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. For restricted concession-type establishments a temporary three (3) compartment sink may be used in lieu of a permanent three (3) compartment sink where only single service tableware is used. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion.

D) Dish tables or drain boards of adequate size and constructed of stainless steel or the equivalent shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

E) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 180° F; and
2. A numerically scaled indicating thermometer accurate to $\pm 3^{\circ}$ F convenient to the sink that can be used for frequent checks of water temperature; and
3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(2) When mechanical cleaning and sanitizing is used, 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. Such machines and devices shall be properly installed and maintained in good repair. Such machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

A) The pressure of water supplied to spray-type dishwashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

B) Easily readable numerically scaled indicating thermometers accurate to $\pm 3^{\circ}$ F shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold

C) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications to the machines.

D) Drain boards of stainless steel or its equal shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables, constructed of stainless steel or its equal, for the storage of soiled utensils or for clean utensils following sanitization.

E) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a dishwashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent

wash and clean rinse water and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All dishwashing machines shall be thoroughly cleaned at least once a day or more often, when necessary, to maintain them in a satisfactory operating condition.

(3) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines and spray-type glass washers, the temperature of the wash water shall be not less than 120° F. Utensils and equipment shall be exposed to the final chemical sanitizing rinse for the time and at the concentration recommended by the manufacturers. The sanitizing rinse water shall be neither less than 75° F nor less than the temperature specified by the machine manufacturer. The wash water shall be kept clean, chemicals added for sanitization purposes shall be automatically dispensed, and a test kit or other device that accurately measures the parts per million concentration of the sanitizer shall be available and used.

(4) Where machines using hot water sanitization are used, wash water and pumped rinse water shall be kept clean. Water shall be maintained at not less than the temperatures stated in Subsection (10) (a) thru (e) of this subsection; Provided, that existing machines are not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the Department. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

A) Single tank, stationary rack, dual temperature machine:

Wash temperature	150° F
Final rinse temperature	180° F

B) Single tank, stationary rack, single temperature machine:

Wash temperature	165° F
Final rinse temperature	165° F

C) Single tank, conveyor machine:

Wash temperature	160° F
Final rinse temperature	180° F

D) Multiple tanks, conveyor machine:

Wash temperature	150° F
Pumped rinse temperature	160° F
Final rinse temperature	180° F

E) Single tank, pot, pan, and utensil washer; either stationary or moving rack:

Wash temperature	140° F
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- (5) All equipment and utensils shall be air dried after sanitization.
- (6) Establishments using automatic dishwashing machines shall also have an approved three (3) compartment sink made of stainless steel or its equivalent with a drain board on each end for the washing of cooking utensils.

SECTION 20. EQUIPMENT AND UTENSIL STORAGE

- (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact to inside surfaces or to surfaces that contact the user's mouth.
- (2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, etc. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or non-potable water lines.
 - A) Utensils shall be air dried before being stored or shall be stored in a self-draining position on suitably located racks.
 - B) Glasses and cups shall be stored inverted. Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives or forks shall be provided to protect the articles from contamination and shall be designed to present the handle to the employee or consumer.
- (3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.
- (4) Single-service articles shall be stored at least six (6) inches above the floor on clean shelves and in closed containers that protect them from contamination.
 - A) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination.
 - B) Single-service articles shall be used only once.
 - C) The storage of equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

SECTION 21.SANITARY FACILITIES AND CONTROLS

Sufficient potable water for the needs of the food service establishment shall be provided from an approved public or private water-supply system which is constructed, protected, operated, and maintained in conformance with applicable laws and State and local regulations. Provided, that, private water supply systems in existing establishments properly constructed, maintained, and operated, may be acceptable for as long as they are capable of producing potable water that meets physical, bacteriological, and chemical standards for potable water. Hot and cold running water, in sufficient quantity, under a minimum of 30 psi pressure shall be provided in all areas where food is prepared and where equipment, utensils, or containers are washed. Bottled or packaged potable water, if used, shall be obtained from an approved source and shall be handled and stored in a way that protects it from contamination. Bottled or packaged potable water shall be dispensed from the original container. Steam used in contact with food or food contact surfaces shall be free from all unapproved materials or additives.

SECTION 22.SEWAGE

All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage is not available, disposal shall be made into a private system designed, constructed, and operated in accordance with the requirements of the Department and/or the Department for Natural Resources and Environmental Protection; Provided, however, if a public sewerage system subsequently becomes available, connection shall be made thereto and the private sewerage system shall be disconnected. Non-water carried sewage disposal methods are prohibited.

SECTION 23. PLUMBING

(1) All plumbing shall be sized, installed, and maintained in accordance with the State Plumbing Code. There shall be no cross-connection between the potable water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated.

(2) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be approved by the Department and be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(3) If used, grease traps shall be located to be easily accessible for cleaning.

(4) There shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed as pursuant to 815 KAR 20:191 sec. 18..

SECTION 24. TOILET FACILITIES

- (1) In new establishments or establishments that are extensively altered, a restaurant with a business occupancy of one (1) to fifteen (15) persons shall:
- (a) Comply with the requirements in paragraphs (c) and (e) of this subsection; or
 - (b) Provide one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.
 - (c) There shall be:
 - 1. Two (2) water closets for one (1) to 100 persons;
 - 2. Three (3) water closets for 101 to 200 persons;
 - 3. Four (4) water closets for 201 to 300 persons; and
 - 4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof.
 - (d) There shall be:
 - 1. One (1) urinal for fifty (50) to 200 males; and
 - 2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof.
 - (e) There shall be:
 - 1. One (1) lavatory for one (1) to 200 persons;
 - 2. Two (2) lavatories for 201 to 400 persons;
 - 3. Three (3) lavatories for 401 to 600 persons; and
 - 4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof.
- (2) Strictly carryout type food service establishments with no seating provided shall be exempted from providing toilet facilities for patron use. Restroom facilities for patrons must be located so as to prevent the patrons from passing through food preparation, food storage, and utensil washing areas.
- (3) In new establishments or establishments that are extensively altered, vestibules shall be provided for each toilet facility opening directly into a dining or serving area.
- (4) Toilets and urinals shall be designed and constructed to be easily cleanable
- (5) Toilet room doors shall be tight-fitting, self-closing, and shall be closed except during cleaning or maintenance.
- (6) Toilet room walls and floors shall be constructed of non-absorbent materials and all surfaces shall be easily cleanable. Wall floor junctures shall be covered. Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in women's toilet rooms shall be covered.

SECTION 25. LAVATORY FACILITIES

- (1) Lavatories shall be installed in accordance with the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means

of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall also be conveniently located within the food preparation area. Sinks used for food preparation, for washing equipment or utensils and service sinks shall not be used for hand washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

SECTION 26. GARBAGE AND REFUSE

(1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, dumpsters, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers, dumpsters, etc., to hold all the garbage and residue that accumulates.

(4) After being emptied, each container excluding dumpsters, compactors, or similar large storage containers shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. Suitable facilities, including hot water or steam and detergent, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

(5) Garbage and refuse on the premises shall be stored in a place inaccessible to insects or rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate. Hot and cold water facilities shall be accessible to such storage rooms.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers located outside the establishment shall be stored either on a concrete or asphalt slab, or on a rack which is at least twelve (12) inches above the ground for a multiple bank of containers. Garbage and refuse dumpsters, compactors, or other bulk containers shall be placed on a concrete or asphalt slab. Hot and cold water facilities shall be accessible to the area. Doors and lids of all such containers must be kept closed except when in actual use. Areas around garbage and refuse containers, dumpsters, etc., shall be kept in a clean and orderly condition. All containers, dumpsters, compactors or similar storage facilities whether owned or leased shall be in good repair and be maintained in such a sanitary manner as to prevent a nuisance or unsanitary condition. Compliance to this requirement is the responsibility of the owner or operator of the food service establishment. When deemed necessary, dumpsters and other garbage storage facilities shall be screened from public view.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor; attraction of insects and rodents or constitute a nuisance. All such containers shall be emptied a minimum of twice weekly to prevent fly breeding.

(9) Where refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with applicable regulations of the Department and/or the Department for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly. The burning of garbage is prohibited.

SECTION 27. INSECT AND RODENT CONTROL

(1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch. There shall be no openings present under or around doors and windows.

(3) Toxic materials used for the control of rodents shall be placed in an approved type of bait box designed for such purpose. Bait boxes shall be constructed of metal, wood, plastic, or heavy duty cardboard and be strong, durable, and constructed so as to prevent spillage.

(4) Chemicals applied by a Kentucky licensed pest control operator or establishment management or employees for use within the establishment or along the outside

perimeters for rodent and insect control must be federally and state registered and be approved for the use intended. The use of an approved chemical must be consistent with the label directions. Devices used for the continuous dispensing of insecticides and pesticide strips shall not be in use in food preparation, utensil washing or serving areas, nor in areas where food or produce is openly displayed. Their use, however, is permissible in toilet rooms, vestibules or dry storage areas where food products are not exposed. Only pyretherin or other approved pesticides may be used.

SECTION 28. CONSTRUCTION AND MAINTENANCE OF PHYSICAL FACILITIES

(1) The floors of all food preparation, food storage, and utensil washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of linoleum or plastic (properly sealed to the floor surface), or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(2) Carpeting, if used, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, bar mixing areas, and in equipment and utensil washing areas or where it would be exposed to large amounts of grease and water.

(3) The use of sawdust, wood shavings, peanut hulls, or similar material on the floors in food preparation, equipment and washing and storage areas is prohibited.

(4) Properly installed, trapped, floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, quarry tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of size, material, design and construction as to facilitate their being cleaned.

(7) Junctures of walls with floors shall be coved in food preparation rooms or areas, utensil washing areas, dressing rooms, locker rooms, toilet rooms and vestibules.

(8) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

- (9) The walls, including non-supporting partitions, wall coverings, and ceilings of all walk-in refrigeration units, food preparation areas, utensil washing and equipment areas, toilet rooms and vestibules shall be light colored, smooth, non-absorbent and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, shingles, or acoustical tile ceilings is prohibited in those locations, except by special plan approval by the Department.
- (10) Studs, joists, and rafters shall not be exposed in food preparation, utensil washing areas and in toilet rooms except by special plan approval by the Department.
- (11) Utility service lines and pipes shall not be unnecessarily exposed on floors, walls, or ceilings in food preparation and utensil washing areas and in toilet rooms. If exposed, lines and pipes shall be installed in a way that does not obstruct or prevent cleaning. In all new establishments or those extensively remodeled, installation of exposed utility service lines or pipes on the floor is prohibited.
- (12) Light fixtures, vent covers, wall mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.
- (13) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.
- (14) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

SECTION 29. CLEANING PHYSICAL FACILITIES

All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative material shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facility shall be provided and used for clean mops and disposal of mop water or similar liquid waste. The use of lavatories, utensil washing or food preparation sinks for this purpose is prohibited.

SECTION 30. LIGHTING

- (1) At least fifty (50) foot candles or light shall be provided to all working surfaces and at least ten (10) foot candles of light shall be provided to all other surfaces and equipment in food preparation, utensil washing, and hand washing areas, and in toilet rooms. At least ten (10) foot candles of light at a distance of thirty (30) inches from the

floor shall be provided in all other areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, servicing areas and display facilities and facilities where utensils and equipment are cleaned and stored. Infra-red or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb leaving only the fact of bulb exposed.

SECTION 31. VENTILATION

(1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to applicable state laws and regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, such as stoves, grills, etc., from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

(4) All gas fired appliances and equipment shall be vented to the outside air by canopy, vents, or other methods approved by the Department and applicable state agencies.

SECTION 32. DRESSING AREAS AND LOCKERS

(1) If employees routinely change clothes within the establishment, areas shall be designated and used for that purpose. Those areas shall not be located in areas used for food preparation, storage, or for utensil washing or storage.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

(3) Dressing rooms or areas, and lockers, shall be kept in a clean condition. Lockers, where used, shall have tops which slope to the front to prevent improper storage of clothing items and accumulation of trash.

SECTION 33. POISONOUS OR TOXIC MATERIALS

Poisonous or toxic materials consist of the following categories:

A) Insecticides and rodenticides;

- B) Detergents, sanitizers and related cleaning or drying agents;
 - C) Caustics, acids, polishes and other chemicals.
- (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition, the cleaning and sanitization of equipment and utensils, and the control of insects and rodents, shall be present in food service establishments.
- (2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled for easy identification of contents.
- (3) Poisonous or toxic materials shall be stored in cabinets that are used for no other purpose or in a place other than an area where food is stored, prepared, displayed, or served and other than an area where clean equipment or utensils are stored. Bactericides, detergents, cleaning compounds and similar products shall not be stored in the same cabinet or area of a room as are insecticides, rodenticides, or other poisonous or toxic materials.
- (4) Bactericides, detergents, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that constitutes a hazard to employees or stored as to be a potential food adulterant.
- (5) Poisonous or toxic materials shall not be stored above or be used in a way that contaminates food, equipment, utensils or single-service articles, nor in a way that constitutes a hazard to employees or other persons. Poisonous or toxic materials shall not be stored or used in a way other than in full compliance with the manufacturer's labeling.
- (6) Personal medications shall not be stored in food storage, preparation, or service areas.
- (7) First-aid supplies shall be stored so as to prevent the contamination of food and food contact surfaces.

SECTION 34. PREMISES

- (1) Food service establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.
- (2) The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete, asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained to prevent pooling of stagnant water and shall be kept clean. New establishments or those establishments extensively altered shall provide means to prevent the discharge of condensate from air conditioning systems onto sidewalks or other areas utilized by the public.

- (3) Only articles necessary to the operation and maintenance of the food service establishment shall be stored on the premises.
- (4) The traffic of unnecessary persons through the food preparation and utensil washing areas, and the presence of those areas of persons not authorized to be there by the permit holder or person in charge, is prohibited.
- (5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
- (6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises, separate from food preparation and service areas.
- (7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.
- (8) Maintenance and cleaning materials and equipment shall be maintained and stored in an orderly manner and in a way that does not contaminate food, utensils, equipment, or linen storage.
- (9) The premises shall be maintained in such condition as to prevent safety hazards to customers or employees.
- (10) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, or to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or deaf persons shall be permitted in dining areas.

SECTION 35. MOBILE FOOD UNITS

- (1) Mobile food units shall comply with the requirements of this regulation, except as otherwise provided in this subsection and in Subsection (2) of this section. The Department may impose additional requirements to protect against health hazards related to the conduct of the food service 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 regulation relating to physical facilities, except those requirements of Subsections (4) and (5) of this section and Sections 35 and 36.
- (2) A mobile food unit that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of

this regulation, or beverages that are not potentially hazardous and are dispensed from covered urns or protected equipment made of non-toxic materials, need not comply with requirements of this regulation 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 commissary.

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

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand washing, in accordance with the requirements of this regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil or grease, and it shall be kept capped when not being filled. The water inlets shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit, it shall be stored in permanently installed retention tanks that are at least fifty percent (50%) larger than the water supply tank. A sewage holding tank shall be sloped to a drain that is 25mm (1 inch) in inner diameter or greater, equipped with a shut-off valve. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicles for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system. Mobile food units shall be clean, sanitary and in good repair.

(6) Mobile food unit operators must register their mobile food unit's operational location a minimum of forty-eight (48) hours prior to setting-up and operating at any location within Fayette County. At the time of registration, The Department, at the discretion of the Commissioner of Health, may, at anytime, void a registration certificate and order the mobile food unit be removed from a registered location, and/or order that all foodservice operations being conducted from the mobile food unit be discontinued.

SECTION 36. COMMISSARY

Mobile food units shall operate from a commissary if perishable food items are to be stored and/or prepared outside of the permitted mobile food unit. The commissary or other fixed food service operation shall be constructed and operated in compliance with this regulation.

SECTION 37. MOBILE FOOD UNIT SERVICING AREA AND OPERATIONS

- (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.
- (2) A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food units do not contain waste retention tanks.
- (3) The surface of the servicing area shall be constructed of a smooth non-absorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.
- (4) The construction of the walls and ceilings of the servicing area is exempted from the provisions of Section 27 of this regulation. Potable water servicing equipment shall be installed according to pertinent laws and regulations and shall be stored and handled in a way that protects the water and equipment from contamination. The mobile food unit's liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the Lexington-Fayette Urban County Board of Health and the Department for Natural Resources and Environmental Protection; Provided, However, if a public sewerage system subsequently becomes available, connection shall be made thereto and the establishment's sewerage system shall be disconnected.

SECTION 38. TEMPORARY FOOD SERVICE ESTABLISHMENTS

- (1) A temporary food service establishment shall comply with the requirements of this regulation, except as otherwise provided in this section. The Department may impose additional requirements to protect against health hazards related to the conduct of the temporary food service 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 this regulation, except those requirements of Subsections (2) to (10) of this section.
- (3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food-grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

- (4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.
- (5) Sufficient potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand washing. Hot water shall be provided for these purposes.
- (6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of no potentially hazardous beverages may be stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean. Wrapped sandwiches shall not be stored in direct contact with ice.
- (7) All sewage, including liquid waste, shall be disposed of in such a manner as not to create a public health hazard or nuisance.
- (8) A facility shall be provided for employee hand washing. Where water under pressure is unavailable, such facility shall consist of a water storage container equipped with a spigot, warm water, hand cleanser, and individual paper towels. There shall be a catch basin placed underneath the spigot to catch any runoff during hand washing. The water storage container is to be emptied after each use.
- (9) Floors shall be constructed of concrete, tight wood, asphalt, or other similar cleanable material, and kept in good repair. Dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.
- (10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for windows, doors or for walls shall be at least sixteen (16) mesh to the inch. A counter service opening shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter service windows, shall be kept closed except when food is being served.
- (11) Temporary foodservice operations may only set-up and operate from a specific location for a period of time not to exceed fourteen (14) consecutive days; with day one (1) beginning on the day that the mobile food unit was set-up to operate at the specific location. At the conclusion of the fourteenth (14th) day of operation, the temporary foodservice operation must be removed from the specific location, and may not return to

that specific location for a minimum period of thirty (30) days from the expiration of the fourteen(14) day operational period.

(12) Temporary foodservice operations must apply for a permit to operate with the Department at a specific location a minimum of forty-eight (48) hours prior to setting-up and operating at any location within Fayette County. An agent of the Department shall conduct a health and sanitation inspection of the temporary foodservice operation within twenty-four (24) hours of the temporary foodservice operation's initial foodservice operation at a registered location. The Department, at the discretion of the Commissioner of Health, may, at anytime, void a temporary foodservice operation's permit to operate, and order that the temporary foodservice operation be removed from a registered location, and/or order that all foodservice being conducted from the temporary foodservice operation be discontinued.

SECTION 39. RESTRICTED FOODS AND STREET VENDING CARTS

Restricted food service operations shall prepare and serve to the public a restricted menu of foods under limited facility requirements. Foods such as flavored ice items, shaved ice, snow cones, with commercially mixed and packaged flavorings are acceptable food items. Other items include: pork rinds, kettle corn, roasted nuts without the shell, nacho cheese and chips, cotton candy, commercially pre-packaged sandwiches, pre-packaged ice cream, popsicles, and pre-cooked hot dogs and similar meats such as Italian sausage, bratwurst, and frankfurters.

These foods, requiring minimal preparation and processing, can be prepared under the following conditions: if public water is available, then fixed plumbing shall be installed accordance with Kentucky Division of Plumbing requirements, KRS 318.130. If public water is not available, a restricted food service operation can operate with amended facilities; which must include a stored potable water source, which is to be used for washing, rinsing, and sanitizing of equipment. Washing, rinsing, and sanitizing of equipment must be conducted in tubs, buckets or similar containers large enough to immerse completely the largest item used in the establishment. A separate spigot container is also required of sufficient capacity to last through the day's activities, with potable water, and shall be equipped with a catch bucket to capture waste water. Restroom facilities shall be readily available for personnel to use with hand washing accessible after use.

The restricted food concession shall provide adequate cold and hot storage for products and safe dry food and single service storage.

The following low risk foods would not require permitting but would be required to have hand washing available: plain popcorn popped in a heated closed environment and is served with minimal hand contact; plain roasted or steamed nuts in the shell; carbonated beverages dispensed from protected equipment; coffee made from a coffee maker with pre-packaged sugar and creamers and served in single service cups.

Any pushcart that cannot meet these requirements shall be required to operate from a commissary. Any excess storage needed for the cart while not in operation or single service items, shall be considered as part of the cart permit fee and inspected for safety.

SECTION 40. PATIO AND SIDEWALK CAFES

All outside open air areas such as a patio, terrace, or sidewalk to be used for serving food to the public shall be connected with and contiguous to an approved food service establishment. Such facility, in addition to meeting pertinent provisions of this regulation, shall also comply with the following requirements:

- 1) Presetting of tableware is prohibited;
- 2) Waiter stations, if used, shall be constructed so as to protect from contamination all foods, tableware, utensils and equipment provided for table service;
- 3) Condiments, etc., shall be dispensed from approved covered containers or be individually packaged. All perishable foods such as creamers, etc., are to be maintained at safe temperature;
- 4) Plans shall be submitted to the Department showing the area to be used, floor plan showing the equipment and facilities to be provided and the relation of such equipment to serving and the protection of foods, utensils, tableware and other items supplied;
- 5) For the construction of patio or sidewalk food serving areas, written approval must be obtained from other concerned local governmental agencies. A copy of such approval is to be supplied to the Department for review and files.

SECTION 41. FOOD DONATED BY CHARITABLE ORGANIZATIONS

The *giving* of foods directly to consumers, by charitable or benevolent entities, is not food service, retail food, nor food storage or warehousing.

Churches or other benevolent groups or associations that provide to the needy may do so without being permitted, or inspected on a regular basis, provided that the foods are in a package form, from commercially approved sources, or from permitted retail food establishments, and are in safe and apparently wholesome condition. Further, the Department retains the right to conduct surveillance to determine if foods are being stored in a manner that is safe for public use.

Food establishments inspected under the provisions of KRS 217.127 that donate safe and apparently wholesome food shall not require further inspection or regulation.

Retail food establishments, corporations, partnerships, organizations, associations, and individuals who donate safe and apparently wholesome foods to nonprofit organizations for the distribution to the needy are protected from civil and criminal liability under the provisions of KRS 413.248 as amended by KY HB 68, 2006.

SECTION 42. CONTINENTAL BREAKFAST

The term “Continental Breakfast” as defined in the Kentucky Bed and Breakfast Regulation (902 KAR 45:006, Section 1, 6) is as follows:

- 1) Beverages such as coffee, tea, and fruit juices
- 2) Pasteurized Grade A milk
- 3) Fresh Fruits
- 4) Frozen and commercially processed fruits
- 5) Baked goods such as pastries, rolls, breads, and muffins
- 6) Cereals
- 7) Jams, jellies, honey, sorghum syrup and other table syrups
- 8) Pasteurized Grade A creams and butters, nondairy creamers
- 9) UHT (ultra high temperature pasteurized) creamers that do not require refrigeration
- 10) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt

Hotels and Motels may provide continental breakfast to guests from the list above without obtaining a permit to operate a Food Service.

To safely serve guests, the following requirements shall be followed:

- 1) All foods shall be obtained from approved sources in individually prepackaged single serving sizes, except that dry cereal may be poured from original containers into single service bowls.
- 2) Non-potentially hazardous baked goods may be offered unpackaged if displayed protected by means of individual wrapping or effective or suitable group coverings such as domes or sneeze shields.
- 3) Bare hand contact of foods shall be eliminated by the usage of deli tissues, tongs or similar utensils.
- 4) Only whole uncut fresh fruit shall be offered.
- 5) Beverages, including bag-in-box milk and fruit juices shall be stored at safe temperatures, and shall be poured or dispensed from original containers only into disposable cups.
- 6) Dairy products listed above shall be stored at a safe temperature of 41 degrees Fahrenheit or below and may not be stored at ambient temperatures except during times of preparation for service for a maximum of one hour.

- 7) All freezer or refrigeration units shall have a thermometer to indicate holding temperature. Refrigerators must be 41 degrees F or below and freezers shall be able to maintain frozen foods frozen.
- 8) Only single service, disposable utensils shall be used.
- 9) Toasters and microwave ovens may be used if maintained clean and in good repair.

If a hotel or motel chooses to serve foods other than those listed above or in a manner inconsistent with the methods outlined, then that establishment shall obtain a permit to operate a Food Service Facility in accordance with this regulation.

SECTION 43. POT LUCK

At the determination of the Department, should any organizations begin food preparation and service to the general public contrary to this regulation's definition of a "potluck meal or event", they shall obtain a permit to operate a Food Service Facility in accordance with this regulation.

SECTION 44. PLAN REVIEW OF FUTURE CONSTRUCTION

When a food service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, floor plan drawn to scale, arrangements, size, location, site plan and type of facilities and a plumbing riser diagram shall be submitted to the Department for approval before such work is begun.

SECTION 45. PROCEDURE WHEN INFECTION IS SUSPECTED

The permit holder shall require food handling employees to report to the person in charge information about their health as they relate to diseases that are transmissible through food. Food handling employees should report to the person in charge if they are experiencing: vomiting, diarrhea, jaundice, sore throat with fever, a lesion containing pus or infected wound that is open or draining and is on the hands or wrists (unless protected by an impermeable cover) or exposed portions of the arms. Food handling employees shall report if they have an illness that has been diagnosed by a health practitioner due to: Norovirus, Hepatitis A, Shigella, Shiga Toxin-Producing E. coli or Salmonella typhi. Food handling employees should report to the person in charge if they have been exposed to a confirmed disease outbreak of: Norovirus within the past 48 hours, Shiga Toxin-Producing E. coli within the past 3 days, Salmonella within the past 14 days or Hepatitis A within the past 30 days. The person in charge shall ensure that a food handling employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure to above diseases shall be excluded or restricted from food handling or preparatory activities, as specified under FDA 2-201.12. The person in charge shall

report to the Department if any of the conditions above occur within their foodservice establishment.

SECTION 46. GRADING

Food service establishments to be considered for scored health inspection report posting are limited to those engaged in preparation of food on the premises. Food service must constitute the larger portion of their business. Mobile Food Units, pushcarts, restricted concession food services, temporary food service, and similar food service facilities are not eligible for required inspection posting.

1) The criteria and restrictions for grading of eligible food service establishments are:

A) Posted health inspection reports and “Closed” signs are the property of the Department and are to be posted or removed only by authorized Department personnel. A Department-provided copy of an establishment’s most recent routine or follow-up health inspection report shall be posted within the establishment in a place conspicuous to the general public that is clearly visible upon entry into the establishment, as determined by an agent of the Department, and shall not be removed, defaced, covered or concealed from view of the customer.

B) A Department agent shall superimpose the numerical score of the inspection of the establishment upon the posted health inspection report. If the establishment receives a score of 85% or higher and no three (3), four (4) or five (5) point items found deficient, the score shall be superimposed in four (4) inch (or larger) green font upon the posted health inspection report. If the establishment receives a score of 84% or lower and/or three (3), four (4) or five (5) point items found deficient, the score shall be superimposed in four (4) inch (or larger) red font upon the posted health inspection report.

C) The health inspection report shall remain posted until the next inspection is conducted by the Department. Health inspection reports and “Closed” signs, upon removal, are to be returned to the Department. The removal, defacement or concealment of a posted health inspection report and/or “Closed” signs may result in the placard being reposted for an additional period of time to be determined by the Department and may constitute action for permit suspension or revocation.

2) Those establishments with a rating score below 70 will be issued a “Notice of Intent to Suspend the Permit.” The permit will be suspended within five (5) days after receipt of such notice unless a written request for a hearing is filed with the Department, by the permit holder.

3) Those establishments with a rating score below 60 will be immediately closed and will be issued a “Notice of Intent to Suspend the Permit”. The permit will be suspended

within five (5) days after receipt of such notice unless a written request for a hearing is filed with the Department, by the permit holder.

SECTION 48. ENFORCEMENT PROVISIONS

(1) Agents of the Department after proper identification shall be permitted to enter, at any reasonable time, any food service establishment for the purpose of making inspections to determine compliance with this regulation. He shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

(2) Whenever the Department has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or person in charge thereof has interfered with the Department in the performance of its duties, and after its agents have duly and officially identified themselves, the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(3) In all other instances if violation of the provisions of this regulation, the Department shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of five (5) days following service of such notice, unless a written request for a hearing is filed with the Department, by the permit holder, within such five (5) day period.

(4) Any person whose permit has been suspended may, at any time, make application for a re-inspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Department shall make a re-inspection. If the food service establishment is in compliance with the requirements of this regulation, the permit shall be reinstated.

(5) For serious or repeated violations of any of the requirements of this regulation, or for interference with the Department in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Department. Prior to such action, the Department shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five (5) days following service of such notice, unless a request for a hearing is filed with the Department, by the permit holder, within such five (5) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(6) Notices provided for under this regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered

personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(7) The hearings provided for in this regulation shall be conducted by the Department at a time and place designated by it. Based upon the record of such hearing, the Department shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefore at the time a hearing is requested.

(8) At least once every six (6) months, the Department shall inspect each food service establishment and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this regulation.

(9) Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from one hundred (100).

(10) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

A) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection;

B) When the rating score of the establishment is at least seventy (70), but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days;

C) Regardless of the rating score of the establishment, all "critical" violations as indicated on the inspection report by an asterisk, shall be corrected within a time specified by the Department, but in any event, not to exceed ten (10) days;

D) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a "Notice of Intent to Suspend Permit." The permit shall be suspended within five (5) days after receipt of such notice unless a written request for a hearing is filed with the Department, by the permit holder, within such five (5) day period;

E) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing, which shall be granted as soon as practical;

F) The report of inspection shall state that failure to comply with any time limits for corrections shall result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed within five (5) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the Department;

G) Whenever a food service establishment is required under provisions of this regulation to cease operations, it shall not resume operations until such time as a re-inspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

SECTION 49. EXAMINATION AND DETENTION OF FOODS

The Department may examine and collect samples of food as often as necessary for the enforcement of this regulation. The Department shall, upon written notice to permit holder or authorized agent specifying the reason therefore, place under quarantine any food which it has probably cause to believe is adulterated or misbranded with the meaning of the 2005 FDA Food Code, or where potentially hazardous foods are held at improper temperatures.

SECTION 50. VALIDITY

If any section, clause, sentence, phrase or word of this regulation is for any reason held by a court of competent jurisdiction to be invalid, such decisions shall not affect the validity of the remaining sections of this regulation, but shall only affect the said section, clause, sentence, phrase or word.