

1 (a) A retail food establishment that sells only packaged foods or fresh fruits and  
2 vegetables, provided the establishment does not sell potentially hazardous food and does not  
3 engage in food processing.

4 (b) A retail food establishment operated by a person holding a food processing plant  
5 license under s. 97.29, Stats., if all the following apply:

6 1. The person operates the retail food establishment at the same location as the licensed  
7 food processing plant.

8 2. Sales from the retail food establishment are included in the computation of the food  
9 processing plant license fee under s. 97.29 (3), Stats.

10 (c) A retail food establishment operated by a person holding a restaurant permit issued  
11 under s. 254.64, Stats., if all of the following apply:

12 1. The person operates the retail food establishment at the same location as the restaurant  
13 for which the person holds a permit under s. 254.64, Stats.

14 2. Non-meal food sales from that location comprise no more than 50% by dollar volume  
15 of all meal and non-meal food sales from that location. Sales of alcohol beverages and vitamin  
16 supplements shall be excluded from the calculation of food sales under this subdivision.

17 (d) A restaurant, vending machine, vending machine commissary or other establishment  
18 for which a permit is issued under s. 254.64, Stats., to the extent that the activities of the  
19 establishment are covered by that permit.

20 (e) A retail food establishment operated by a person holding a dairy plant license under  
21 s. 97.20, Stats., if all the following apply:

22 1. The person operates the retail food establishment at the same location as the licensed  
23 dairy plant.

1           2. Food sales from that location, other than sales of dairy products produced at that  
2 location, comprise no more than 25% by dollar volume of all dairy and non-dairy food sales  
3 from that location.

4           (f) A retail food establishment operated in conjunction with a state licensed or federally  
5 inspected meat establishment if all the following apply:

6           1. The meat establishment is licensed under s. 97.42, Stats., or inspected under 21 U.S.C.  
7 § 71 et seq. or 21 U.S.C. § 451 et seq.

8           2. The person operating the meat establishment operates the retail food establishment at  
9 the same location.

10          3. Food sales from that location, other than sales of inspected meat or meat products  
11 produced at that location, comprise no more than 25% by dollar volume of all meat and non-  
12 meat food sales from that location.

13          (g) A retail food establishment primarily engaged in selling fresh fruits and vegetables,  
14 honey, cider, sorghum or maple syrup produced by the operator of the retail food establishment  
15 if no other food processing activities are conducted at that retail food establishment.

16          (h) A temporary retail food processing facility operated by a religious, charitable or non-  
17 profit organization for no more than 14 days in any license year.

18          **ATCP 75.03 Denial, suspension or revocation of license; conditional license.** The  
19 department or its agent may deny, suspend or revoke a license, or impose conditions on a license  
20 as provided under s. 93.06 (7) and (8), Stats. Except as otherwise provided by statute, rule or  
21 local ordinance, the suspension or revocation of a license shall comply with the prior notice  
22 requirements of s. 227.51, Stats.

23          **ATCP 75.04 Standards for retail food establishments.** A retail food establishment  
24 shall comply with the model food code appended to this chapter.

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day  
2 of the month following publication in the Wisconsin administrative register, as provided under s.  
3 227.22(2)(intro.), Stats.

4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

5 **STATE OF WISCONSIN**  
6 **DEPARTMENT OF AGRICULTURE,**  
7 **TRADE AND CONSUMER PROTECTION**

8  
9  
10  
11 By \_\_\_\_\_  
12 **Ben Brancel, Secretary**

**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING OR REPEALING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to repeal and recreate ch. ATCP 75 relating to retail food establishments.

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**Analysis Prepared by the Department of  
Agriculture, Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1), 97.30(5) and 227.14(1s), Stats., as created by s. 2355mm., 1999 Wis. Act 9

Statutes Interpreted: s. 97.30, Stats.

This rule repeals and recreates current rules related to retail food establishments, such as grocery stores. The department of Agriculture, Trade and Consumer Protection ("DATCP") licenses and inspects retail food establishments under s. 97.30, Stats.

**Uniform Rules Based on Model Food Code**

Many retail food establishments also include restaurants, and vice-versa. The department of health and family services ("DHFS") licenses and inspects restaurants under s. 254.64., Stats. DATCP and DHFS now coordinate their activities so that a combined grocery store and restaurant is licensed and inspected by DATCP or DHFS, but not both. In metropolitan areas, agent counties or municipalities often license and inspect grocery stores and restaurants as agents of DATCP and DHFS.

Although DATCP and DHFS have coordinated their activities to avoid duplicate licensing and inspection, they still enforce somewhat different rules. This makes it difficult to administer a coordinated program, and makes it difficult for food businesses to comply. The current rules of both agencies are also outdated in certain respects.

DATCP and DHFS are therefore proposing uniform rules for retail food establishments. DATCP is proposing this rule for retail food establishments, while DHFS is proposing a nearly identical rule for restaurants. The proposed rule is based on the 1999 model food code published by the United States food and drug administration (FDA). The model food code is applicable to retail food establishments as well as restaurants. The FDA has recommended that state and local governments adopt the model food code. The model food code is based on the best science currently available to FDA.

## **Rule Contents**

The format of the model food code differs from that of state administrative rules. Under s. 227.14(1s), Stats., created by 1999 Wis. Act 9, DATCP and DHFS are authorized to adopt administrative rules in the format of the model food code. This rule, like the DHFS rule, has two parts:

- The first part contains DATCP licensing and administrative procedures related to retail food establishments. This part is drafted in the normal state format. This rule does not change current licensing or administrative procedures for retail food establishments. Nor does it change current license fees.
- The second part, attached as an appendix, is the model food code. The model food code is written in the federal format, as authorized by the Wisconsin legislature. The food industry is familiar with the model food code format. DATCP and DHFS have jointly reviewed the model food code, and have made minor modifications to adapt it for use in Wisconsin.

## **Retail Food Establishments; Rule Coverage**

This rule applies to retail food establishments licensed under s. 97.30, Stats., including grocery stores and retail food processing operations. It does not apply to activities conducted under a dairy plant license (s. 97.20, Stats.), a meat or poultry establishment license (s. 97.42, Stats.) or a food processing plant license (s. 97.29, Stats.).

## **Licensing and Fees**

DATCP currently licenses retail food establishments under s. 97.30, Wis. Stats. A retail food establishment operator must pay fees specified by statute and rule. This rule incorporates statutory licensing requirements and fees without change. This rule continues current provisions that eliminate overlapping license requirements between DATCP and DHFS.

## **Definitions**

The food code defines key terms. When a defined term is used in the code, it appears in SMALL CAPS.

## **Variances**

Under the state version of the model food code, DATCP may grant variances from specific code requirements. A variance request must be reasonable and the requester must document that the variance will not compromise food safety.

## **Potentially Hazardous Foods**

The food code revises the current definition of "potentially hazardous foods," and requires that those foods be kept at safe temperatures. Under the code:

- Potentially hazardous foods must be refrigerated at or below 41° F. or kept frozen.
- Hot-held potentially hazardous foods must be kept at or above 140° F. during handling and storage.
- Raw animal foods, cooked plant foods, wild game species and exotic game species must be cooked at or above specified minimum temperatures.
- Potentially hazardous foods that have been cooked must be rapidly cooled to 41°F. or less, according to one or more specified cooling methods.
- Cooked potentially hazardous food must be heated to a temperature of at least 145°F. for at least 15 seconds, except as otherwise provided in the code. The code provides specific cooking times and temperatures for various foods including poultry, pork, ground meats and rare roast beef.
- Potentially hazardous foods must be thawed in a refrigerated space at a temperature of 41°F. or less, or under running water at a temperature of 70°F. or less for no more than 4 hours, or in a microwave oven or other cooking equipment as part of the cooking process.
- Potentially hazardous food, if previously cooked and cooled, must be reheated to a temperature of at least 165°F for at least 15 seconds.
- Potentially hazardous foods cooked or reheated in a microwave oven must be cooked or reheated according to specified standards.
- Refrigerated potentially hazardous foods must be received at safe temperatures of 41°F. or less, except that milk or milk products, molluscan shellfish, eggs and smoked fish must be received according to other applicable laws.
- Cooked, hot potentially hazardous foods must be received at safe temperatures of 140°F. or more.

### **Construction, Equipment and Maintenance**

The food code, like current rules, establishes construction and equipment standards for retail food establishments. The code makes the following changes to current rules:

- It prohibits the use of living quarters for food establishment operations.
- It clarifies handwashing facility requirements for toilet rooms and processing rooms.
- It describes acceptable procedures for garbage recycling and refuse handling.

- It reconciles equipment standards between DATCP and DHFS.
- It regulates the operation and maintenance of live fish and crustacean display tanks.

### **Management and Personnel Standards**

This food code includes management and personnel standards. Management must understand principles for preventing foodborne disease or illness, must understand the use of a Hazard Analysis Critical Control Point (HACCP) program. The code also addresses employee health, personal cleanliness and hygienic practices.

### **Food Sources**

Under the food code:

- Food must be obtained from approved sources.
- Eggs offered for sale as “ungraded” must be grade “B” or better.
- Shellfish must comply with the National Shellfish Sanitation Program.

The food code prohibits a retail food establishment operator from doing any of the following:

- Vacuum packaging foods unless authorized in writing by DATCP or its agent.
- Vacuum packaging fish.
- Selling fish, shellfish or crustaceans unless they are commercially and legally harvested.

### **Date Marking and Food Labels**

The food code requires date marking of ready-to-eat potentially hazardous food held in a food establishment for longer than 24 hours. The food must be clearly marked to ensure that it will be consumed or discarded within 7 calendar days. If the food is received frozen or is subsequently frozen by the establishment, it must be discarded within 24 hours after thawing. Aged hard cheeses and whole, unsliced portions of cured and processed sausage are exempt from date marking.

This food code prohibits a retail food establishment operator from receiving molluscan shellfish that are not properly labeled as required by federal law.

### **Time as a Public Health Control**

The food code allows a retail food establishment to hold potentially hazardous food for up to 4 hours without temperature control if the food is being prepared for cooking or if it is being held for immediate sale and consumption as ready-to-eat food.

## **Receiving, Handling, Storing and Displaying Food**

The food code updates and clarifies basic requirements related to food receipt, handling, storage and display. A retail food establishment operator must:

- Handle, package and display food using the risk-based Hazard Analysis Critical Control Point (HACCP) system, if the food is specially processed (such as by smoking, curing, brewing, or reduced-oxygen packaging). DATCP or its agent must approve HACCP plans.
- Protect food from contamination during receipt.
- Receive only clean live shellfish, and store shellfish in their original shipping container.
- Provide an accurate thermometer for frequent food temperature monitoring.
- Identify containers holding food that has been removed from its original package.
- Protect food condiments from contamination while they are being dispensed.
- Refrain from storing packaged foods in direct contact with ice or water if water may enter the food.
- Designate a trained employee to monitor consumer self-service operations.
- Provide disposable, single service tissues or serving utensils at customer self-service display containers. Serving utensils must be removable for cleaning.
- Refrain from using sulfiting agents, except under certain defined circumstances.
- Present food for sale in a way that does not mislead or misinform the consumer.
- Thoroughly wash raw fruits and vegetables before cutting and offering them for consumption in ready-to-eat form.
- Keep produce-fogging devices clean and sanitary.

## **Consumer Advisory**

The food code requires the operator of a food establishment to inform consumers about the increased risk associated with eating certain raw or undercooked animal foods. The operator may inform consumers by brochures, deli counter or menu advisories, label statements, table tents, placards or other effective written means.



## Highly Susceptible Populations

The food code includes special requirements for food establishments serving highly susceptible populations. Highly susceptible populations may include infants, elderly people, pregnant women and people whose immune systems are compromised. The code restricts the serving of certain foods such as raw animal products and partially cooked food. Other high-risk foods may be served if they are prepared and served according to an approved HACCP plan.

## Cleaning, Sanitizing and Cross-Contamination

This rule updates and clarifies basic cleaning and sanitizing requirements, as well as requirements to minimize cross-contamination of food. A retail food establishment operator must:

- Clean equipment and utensils every 4 hours when processing potentially hazardous foods. The cleaning interval may be extended, up to 24 hours if the processing area is refrigerated.
- Wash equipment and utensils thoroughly in clean water at 110°F. if the equipment and utensils are washed manually.
- Clean equipment and utensils when there is a change in processing from raw foods to ready-to-eat foods.
- Clean equipment and utensils between uses when processing raw fruits and vegetables and potentially hazardous foods.
- Clean equipment and utensils whenever contamination may have occurred.
- Rinse equipment and utensils to remove abrasives and cleaning compounds.
- Use warewashing sinks only to clean equipment and utensils. An operator may use a sink for activities such as washing produce or thawing foods if the operator cleans and sanitizes the sink before and after use.
- Use warewashing sinks that are self-draining and equipped with self-draining drain boards.
- Immerse equipment and utensils for at least one minute in 150 parts-per-million quaternary ammonium when quaternary ammonium is used as a sanitizing agent.
- Use approved sanitizers in a safe manner.
- Provide accurate thermometers to measure washing and sanitizing solution temperatures.
- Store clean and sanitized equipment and utensils at least 6 inches above the floor in a self-draining position.

- Prohibit bare hand contact with ready-to-eat food, unless approved by the regulatory authority.
- Separate raw animal products from ready-to-eat foods.
- Separate raw animal products derived from different species.
- Clean and sanitize equipment and utensils between uses.
- Separate unwashed raw fruits and vegetables from ready-to-eat foods.

**Other Requirements**

The food code establishes requirements for:

- Mobile and temporary food establishments.
- Public toilet rooms.
- Food manager certification.

**Records and Reports**

The food code requires the operator of a retail food establishment to keep records related to:

- Molluscan shellfish sources and sale dates.
- HACCP plans required by the code.
- Microbiological analyses of water obtained from private wells.

**Technical Changes**

The food code makes a large number of technical changes to current rules.

1 **SECTION 1.** Chapter ATCP 75 is repealed and recreated to read:

2 **CHAPTER ATCP 75**

3 **RETAIL FOOD ESTABLISHMENTS**

4 **ATCP 75.01 Authority and purpose.** (1) **AUTHORITY.** The department of agriculture,  
 5 trade and consumer protection licenses and regulates retail food establishments under s. 97.30,  
 6 Stats. The department has adopted this chapter, and the appended model food code, under  
 7 authority provided in s. 93.07(1), s. 97.30(5) and 227.14(1s), Stats. Pursuant to s. 227.14(1s),

1 Stats., the department has adopted the model food code in the format published by the federal  
2 food and drug administration.

3 (2) SCOPE AND PURPOSE: This chapter applies to retail food establishments as defined in  
4 s. 97.30(1)(c), Stats. This chapter establishes licensing requirements for retail food  
5 establishments. It also establishes standards for the construction and operation of retail food  
6 establishments. A retail food establishment must comply with the model food code appended to  
7 this chapter.

8 **ATCP 75.02 Retail food establishments; licensing.** (1) LICENSE REQUIRED. Except as  
9 provided under sub. (7), no person may operate a retail food establishment without a valid  
10 license issued by the department or an agent municipality or county. Licenses expire on June 30  
11 annually. Each retail food establishment shall have a separate license, which shall be  
12 prominently displayed in the retail food establishment. A license is not transferable between  
13 persons or establishments.

14 (2) LICENSE APPLICATION. A person applying for a retail food establishment license shall  
15 apply on a form provided by the department, or by the agent municipality or county. The  
16 application shall include the fees under sub. (3).

17 (3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay  
18 an annual license fee as follows:

19 (a) For a retail food establishment that has annual food sales of at least \$25,000 but less  
20 than \$1,000,000, and processes potentially hazardous food, an annual license fee of \$175.

21 (b) For a retail food establishment that has annual food sales of at least \$1,000,000 and  
22 processes potentially hazardous food, an annual license fee of \$450.

1 (c) For a retail food establishment that has annual food sales of at least \$25,000 and is  
2 engaged in food processing, but does not process potentially hazardous food, an annual license  
3 fee of \$125.

4 (d) For a retail food establishment that has annual food sales of less than \$25,000, and is  
5 engaged in food processing, but does not process potentially hazardous food, an annual license  
6 fee of \$60.

7 (e) For a retail food establishment that is not engaged in food processing, an annual  
8 license fee of \$30.

9 (4) REINSPECTION FEE. (a) If the department reinspects a retail food establishment  
10 because the department has found a violation of ch. 97, Stats., or this chapter on a regularly  
11 scheduled inspection, the department shall charge the retail food establishment operator the  
12 reinspection fee specified in par. (b). A reinspection fee is payable when the reinspection is  
13 completed, and is due upon written demand from the department. The department may issue a  
14 demand for payment when it issues a license renewal application form to the retail food  
15 establishment operator.

16 (b) The reinspection fee required under par. (a) is as follows:

17 1. For a retail food establishment that has annual food sales of at least \$25,000 but less  
18 than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$125.

19 2. For a retail food establishment that has annual food sales of at least \$1,000,000 and  
20 processes potentially hazardous food, the reinspection fee is \$300.

21 3. For a retail food establishment that has annual food sales of at least \$25,000, and is  
22 engaged in food processing but does not process potentially hazardous food, the reinspection fee  
23 is \$125.

1           4. For a retail food establishment that has annual food sales of less than \$25,000 and is  
2 engaged in food processing, the reinspection fee is \$60.

3           5. For a retail food establishment that is not engaged in food processing, the reinspection  
4 fee is \$60.

5           (5) ACTION ON LICENSE APPLICATION. Within 15 business days after the department or  
6 its agent municipality or county receives a complete license application, the department or its  
7 agent shall do one of the following:

8           (a) Grant the application.

9           (b) Deny the application. If the department or its agent denies the application it shall  
10 give the applicant written notice specifying the reasons for the denial.

11           (c) Issue an interim license under sub. (6).

12           (6) INTERIM LICENSE. The department or its agent municipality or county may issue an  
13 interim license, for a period not to exceed 40 business days, pending final action on an  
14 application for an annual retail food establishment license. The department or its agent shall  
15 grant or deny the annual license application before the interim license expires. If the department  
16 or its agent denies a license application before the applicant's interim license expires, the interim  
17 license is automatically terminated when the applicant receives written notice of the denial. The  
18 holder of an interim license acquires no license rights beyond those conferred by the interim  
19 license under this subsection. The department or its agent may not issue an interim license in  
20 response to a renewal application by the holder of an existing license.

21           (7) PRE-LICENSE INSPECTION. The department or its agent municipality or county may  
22 inspect a retail food establishment, as the department or agent deems necessary, before issuing a  
23 license to the retail food establishment. The department or its agent may not issue a license or

1 interim license for a new retail food establishment until it inspects the new retail food  
2 establishment for compliance with this chapter. A previously licensed retail food establishment  
3 is not considered a new retail food establishment under this subsection solely because of a  
4 change of ownership, or solely because of alterations in the retail food establishment.

5 (8) PLAN REVIEW. A person may ask the department or its agent to review plans for the  
6 construction, reconstruction or alteration of a retail food establishment before the person  
7 constructs, reconstructs or alters the retail food establishment, or converts an existing structure  
8 for use as a retail food establishment.

9 (9) LICENSE EXEMPTIONS. A retail food establishment license is not required under s.  
10 97.30, Stats., or this section for any of the following:

11 (a) A retail food establishment that sells only packaged foods or fresh fruits and  
12 vegetables, provided the establishment does not sell potentially hazardous food and does not  
13 engage in food processing.

14 (b) A retail food establishment operated by a person holding a food processing plant  
15 license under s. 97.29, Stats., if all the following apply:

16 1. The person operates the retail food establishment at the same location as the licensed  
17 food processing plant.

18 2. Sales from the retail food establishment are included in the computation of the food  
19 processing plant license fee under s. 97.29 (3), Stats.

20 (c) A retail food establishment operated by a person holding a restaurant permit issued  
21 under s. 254.64, Stats., if all of the following apply:

22 1. The person operates the retail food establishment at the same location as the restaurant  
23 for which the person holds a permit under s. 254.64, Stats.

1 2. Non-meal food sales from that location comprise no more than 50% by dollar volume  
2 of all meal and non-meal food sales from that location. Sales of alcohol beverages and vitamin  
3 supplements shall be excluded from the calculation of food sales under this subdivision.

4 (d) A restaurant, vending machine, vending machine commissary or other establishment  
5 for which a permit is issued under s. 254.64, Stats., to the extent that the activities of the  
6 establishment are covered by that permit.

7 (e) A retail food establishment operated by a person holding a dairy plant license under  
8 s. 97.20, Stats., if all the following apply:

9 1. The person operates the retail food establishment at the same location as the licensed  
10 dairy plant.

11 2. Food sales from that location, other than sales of dairy products produced at that  
12 location, comprise no more than 25% by dollar volume of all dairy and non-dairy food sales  
13 from that location.

14 (f) A retail food establishment operated in conjunction with a state licensed or federally  
15 inspected meat establishment if all the following apply:

16 1. The meat establishment is licensed under s. 97.42, Stats., or inspected under 21 U.S.C.  
17 § 71 et seq. or 21 U.S.C. § 451 et seq.

18 2. The person operating the meat establishment operates the retail food establishment at  
19 the same location.

20 3. Food sales from that location, other than sales of inspected meat or meat products  
21 produced at that location, comprise no more than 25% by dollar volume of all meat and non-  
22 meat food sales from that location.

1 (g) A retail food establishment primarily engaged in selling fresh fruits and vegetables,  
2 honey, cider, sorghum or maple syrup produced by the operator of the retail food establishment  
3 if no other food processing activities are conducted at that retail food establishment.

4 (h) A temporary retail food establishment operated by a religious, charitable or non-  
5 profit organization for no more than 12 days in any license year.

6 **ATCP 75.03 Denial, suspension or revocation of license; conditional license.** The  
7 department or its agent may deny, suspend or revoke a license, or impose conditions on a license  
8 as provided under s. 93.06 (7) and (8), Stats. Except as otherwise provided by statute, rule or  
9 local ordinance, the suspension or revocation of a license shall comply with the prior notice  
10 requirements of s. 227.51, Stats.

11 **ATCP 75.04 Standards for retail food establishments.** A retail food establishment  
12 shall comply with the model food code appended to this chapter.

13 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day  
14 of the month following publication in the Wisconsin administrative register, as provided under s.  
15 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary



# Wisconsin Food Code

## Retail Food Establishments (ATCP 75)

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### Wisconsin Department of Agriculture, Trade & Consumer Protection

**PREFACE**  
**Information to Assist the User**

The following information explains the organizational format and the meaning of explanatory conventions used in the Wisconsin Food Code, which are intended to make the code easier to use.

**Structural Nomenclature**

Each chapter of the food code is divided into the following subunits. The system of numbering for a chapter and any of its subunits uses the following format:

Chapter	9
Part	9-1
Subpart	9-101
Section (§)	9-101.11
Paragraph (¶)	9-101.11(A)
Subparagraph	9-101.11(A)(1)

Internal cross-referencing is widely used throughout the code to eliminate the need for restating provisions. For example, fixtures and devices necessary for handwashing are relevant to both the plumbing (Chapter 5) and the facilities (Chapter 6) portions. To alert the reader to relevant information and provide a system by which each violation is recorded under the one most appropriate provision, the Code uses the phrase "...as specified under (followed by a Code cite such as a section or paragraph)." It must be determined within the context of the provision whether the cross reference simply provides information to explain the requirement or whether the observed violation is properly recorded against the provision that is cited after the word "under."

The Wisconsin Food Code presents requirements by principle rather than by subject. For example, equipment requirements are presented under headings such as Materials, Design and Construction, Numbers and Capacities, Location and Installation, and Maintenance and Operation rather than by refrigerators, sinks, and thermometers. In this way provisions need be stated only once rather than repeated for each piece or category of equipment. Where there are special requirements for certain equipment, the requirement is delineated under the appropriate principle (e.g., Design and Construction) and listed separately in the index.

**Section Designations Based on Categories of Importance**

Requirements contained in the Food Code are identified as being in one of 3 categories of importance: critical; "swing" (i.e., those that may or may not be critical depending on the circumstances); and noncritical. A bold superscripted letter C after a section title indicates that all of the provisions within that section are critical unless otherwise indicated. Any provisions that are "swing" items are followed by a bold, superscripted letter S. Any provisions that are noncritical are followed by a bold, superscripted letter N.

<b>Categories of Importance</b>		
Superscripted letter <sup>C</sup>	Critical	Indicates that all of the provisions within that section are critical unless otherwise indicated
Superscripted letter <sup>S</sup>	Swing	The requirement may or may not be critical depending on the circumstances.
Superscripted letter <sup>N</sup>	Noncritical	Noncritical item

Any unmarked provisions within a section that has a superscripted letter C after the section title are critical. All provisions following a section title that is not marked with a superscripted letter C are noncritical.

### Font Style

Portions of some sections are written in Italics. These provisions are not requirements, but are included in the code to convey relevant information about specific exceptions and alternative means for compliance.

Defined words and terms are capitalized (small caps) in the text of the Wisconsin Food Code to alert the reader to the fact that there is a specific meaning assigned to the capitalized words and terms, and that the meaning of a provision is to be interpreted in the defined context. A concerted effort was also made to capitalize all forms and combinations of those defined words and terms that are related to the definition.

<b>Font Style</b>	
<i>Italics Text</i>	Provisions are not requirements, but are provided to convey relevant information about specific exceptions and alternative means for compliance.
CAPITALIZED WORDS and TERMS	Indicates the CAPITALIZED word(s) or term(s) is defined under section 1-201.10(B)

Chapter

# 1 Purpose and Definitions

Parts

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

1-1 TITLE, INTENT, SCOPE

Subparts

- 1-101 Title
- 1-102 Intent
- 1-103 Authority and purpose
- 1-104 Scope

**Title** 1-101.10 Food Code.

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

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

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

**1-103.10 Authority and purpose.**

Chapters s. 254 and s. 97 of the Wisconsin statutes gives the DEPARTMENT of health and family services and the DEPARTMENT of agriculture, trade and consumer protection the authority to prescribe rules for FOOD ESTABLISHMENTS as defined in 1-201.10 (31) and to enforce these rules for the purpose of protecting public health and safety. This Code establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE restriction, and PERMIT suspension.

**Scope**

**1-104.10 Applicability.**

This chapter applies to all FOOD ESTABLISHMENTS defined in 1-201.10 (30), regardless of whether the FOOD ESTABLISHMENT is subject to licensing under this chapter or related statutes.

**1-104.11 Modifications And Waivers.**

When it appears to the DEPARTMENT that strict adherence to provision of this chapter is impractical for a particular FOOD ESTABLISHMENT, the DEPARTMENT may approve a modification in this chapter for that facility if the DEPARTMENT is provided with satisfactory proof that the grant of a VARIANCE will not jeopardize the public's health, safety or welfare.

**1-104.12 Procedure For Variance Request.**

(A) Request for modification or waiver of the requirements of this chapter shall be submitted in writing to the REGULATORY AUTHORITY having jurisdiction along with documentation specified in (D) of this section.

(B) The REGULATORY AUTHORITY shall review the request and forward it to the DEPARTMENT with recommendations for approval or disapproval

(C) On receipt of a complete VARIANCE request as specified in this section, the DEPARTMENT shall review the request and grant or deny the request in writing within 30 working days. If the VARIANCE is granted the REGULATORY AUTHORITY shall maintain a copy of the VARIANCE in the FOOD ESTABLISHMENT's inspection history file.

(D) Documentation justifying a proposed modification or waiver from the requirements of this chapter shall include the following information:

(1) A statement of the proposed VARIANCE from this chapter requirement citing relevant chapter section numbers.

(2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant chapter section will be alternatively addressed by the proposed VARIANCE; and

(3) A HACCP plan, if relevant to the VARIANCE request or required by the department.

(4) A statement from the REGULATORY AUTHORITY having jurisdiction indicating support or disapproval of the proposed VARIANCE request.

**1-2 DEFINITIONS**

**Subpart**

**1-201 Applicability and Terms Defined**

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

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

(B) Terms Defined.

(1) "**Accredited examination**" means a FOOD protection manager certification examination that has been evaluated and listed by an accrediting agency, approved by the Conference for Food Protection, as conforming to national standards for FOOD protection manager certification.

(2) **Additive.**

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

(b) "**Color additive**" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, ' 201(t) and 21 CFR 70.

(3) "**Adulterated**" has the meaning stated in s. 97.02 Stats.

(3m) "**Agent**" means the city, county or village designated by the DEPARTMENT to issue permits to and make investigations and inspections of FOOD ESTABLISHMENTS

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

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

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

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

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

(9) **CIP.**

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

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

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

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

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

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

(12) **Comminuted.**

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

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

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

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

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

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

(17) **Critical Item.**

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

(b) **"Critical item"** is an item that is denoted in this Code with an asterisk <sup>C</sup>.

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

(18m) **"Department"** means the department of health and family services or the department of agriculture, trade and consumer protection.

(19) **Drinking Water.**

(a) **"Drinking water"** means water that meets the requirements of NR 809 Wis. Adm. Code.

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

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

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

(21) **Easily Cleanable.**

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

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

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



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

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

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

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

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

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

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

(23) **"Employee"** means the PERMIT HOLDER, PERSON IN CHARGE, PERSON having supervisory or management duties, PERSON on the payroll, family member, volunteer, PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT.

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

(25) **Equipment.**

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

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

(25m) **"Existing"** in reference to a FOOD ESTABLISHMENT, means a food establishment operating under a PERMIT OR LICENSE issued by the REGULATORY AUTHORITY before the effective date of this code.

(26) **Fish.**

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

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

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

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

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

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

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

(i) Into a FOOD, or

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

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

(31) **Food Establishment.** means an operation that stores, prepares, serves, vends, sells or otherwise provides FOOD for human consumption. The term "food establishment" includes a "restaurant" as defined in s. 254.61(5) Stats.; a "retail food establishment" as defined in s. 97.30, Stats.; and a "temporary restaurant" as defined in s. 254.61(5m) Stats.

(32) **Food Processing Plant.**

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

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

**(33) Game Animal.**

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

(b) **"Game animal"**, except as provided in (c) of this section includes:

(i) "Fur-bearing animals", "Game", "Game animals", "Game birds" and "Wild animals" as defined in s. 29.001(30),(33),(36), and (39) of the Wisconsin Statutes.

(ii) Animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, bear, and muskrat; aquatic and nonaquatic birds such as wild ducks and geese, quail, and pheasant; nonaquatic reptiles such as rattlesnakes; aquatic reptiles such as alligators and turtles; and aquatic mammals;

(c) **"Game animal"** does not include:

(i) Captively raised game animals and birds obtained from inspected sources approved by the department of agriculture, trade and consumer protection or other REGULATORY AUTHORITY having jurisdiction.

(ii) Ratites such as ostrich, emu, and rhea

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

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

(35m) **"General Public"** means persons who are served a MEAL, but are not part of the household.

(a) "General public" includes but is not limited to members and guest of churches, religious, fraternal, youth or patriotic organizations, and members, guest, employees, customers and occupants of public or private service clubs, civic organizations, industrial plants, office buildings and businesses.

(b) "General public" does not include personal guest in private homes; residents or employees of governmental institutions; residents, patients or employees of health care facilities or of community-based residential facilities, defined in s. 50.01 (1), Stats.; residents, clients or employees of facilities licensed under ch. 48, Stats.; visitors of patients or of residents of health care facilities, community-based residential facilities, defined in s. 50.01, Stats., or governmental institutions; and visitors of residents or clients of facilities licensed under ch. 48. Stats.

(36) **Group Residence.**

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

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

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

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

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

(40) **"Highly susceptible population"** means a group of PERSONS who are more likely than other populations to experience foodborne disease because they are immunocompromised, older adults, or preschool age children.

(40m) **"Hot Water"** means water at a temperature of 110°F. (43°C) or higher as required by this code.

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

(a) The number of potential injuries, and

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

(41m) **"Incidental food service"** means MEALS or FOOD offered to the CONSUMER that is not a primary activity of the FOOD ESTABLISHMENT licensed by the department of health and family services or the department of agriculture, trade and consumer protection or their AGENTS; that comprises less than 50 % of gross annual FOOD sales of the FOOD ESTABLISHMENT excluding sales of alcoholic beverages. A FOOD ESTABLISHMENT operated within another FOOD ESTABLISHMENT as an independent business is not an "incidental food service".

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

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

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

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

(45m) **"Limited food establishment"** means the serving of food which is prepared and PACKAGED off the PREMISES with PREPARATION or PROCESSING on the PREMISES limited to heating and/or serving with SINGLE-SERVICE ARTICLES.

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

(46m) **"Meal"** means any READY TO EAT FOOD served or sold to the GENERAL PUBLIC in individual or prepackaged single portions or servings for immediate on-PREMISES consumption, or transported off-PREMISES in individual prePACKAGED carryout servings, or specifically preordered individual or multiple serving portions which are transported to an off-PREMISES location for immediate consumption with or without further PREPARATION. A MEAL may or may not consist wholly or in part of POTENTIALLY HAZARDOUS FOOD.

(a) **"Meal"** includes but is not limited to sandwiches, individual portions of cured and pickled FOOD sold from bulk containers, hard boiled eggs, hot READY-TO-EAT soup, individual pastry items generally sold with a beverage, raw or cooked processed FOODS sold or served in individual portions, or ingredients prepared, service or served or sold at retail for human consumption by any fixed or MOBILE FOOD ESTABLISHMENT or pushcart, coffee shop, cafeteria, cafe, luncheonette, grill, tearoom, sandwich shop, drive-in RESTAURANT, caterer, whether the caterer sells MEALS or lunches at a stated price or is contracted by the MEAL or on an hourly basis, commissary, delicatessen, industrial feeding establishment, private organization operating a FOOD service in a hospital, or TEMPORARY FOOD ESTABLISHMENT.

(b) **"Meal"** does not include soft drinks, ice cream, milk, milk drinks, ices and confections or free lunches served by taverns consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter. Nor does a MEAL include FOOD items sold by the weight, count or piece in individual packages requiring further preparation for consumption at another location.

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

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

(48m) **"Mobile food establishment"** means a FOOD ESTABLISHMENT operating from a movable vehicle, push cart, trailer or boat which periodically or continuously changes location and wherein meals or lunches are prepared or sold to the consumer for immediate consumption, excepting those vehicles used in delivery of pre-ordered FOOD prepared in a licensed FOOD ESTABLISHMENT. "Mobile food establishment" does not include a vehicle which is used solely to transport or deliver FOOD or a common carrier regulated by the state or federal government, or a movable concession stand designed to operate as a TEMPORARY FOOD ESTABLISHMENT or a traveling retail FOOD ESTABLISHMENT.

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

(49m) **"New"**, in reference to a FOOD ESTABLISHMENT, means operating with a permit from the DEPARTMENT for first time on or after {effective date}.

(49n) **"Occasional"** means not more than 3 days during any 12-month period.

(49p) **"Operator"** means the owner or PERSON responsible to the owner for the operation of the FOOD ESTABLISHMENT.

(50) **Packaged.**

(a) **"Packaged"** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT as defined in s. 97.01(12) Stats.

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

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

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

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

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

(53) **"Person"** means an individual, partnership, association, firm, company, corporation, organization, municipality, county, town, or state agency, whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these.

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

(55) **Personal Care Items.**

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

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

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

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

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

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

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

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

(c) Requires both a water supply connection and a discharge to the drain system of the premises.

(59) **"Plumbing system"** means the water supply system, the drain system, the vent system, PLUMBING FIXTURES, plumbing appliances and plumbing appurtenances which serve a building, structure or premises.

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

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

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

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

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

**(61) Potentially Hazardous Food.**

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

(i) The rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) The growth and toxin production of *Clostridium botulinum*; or

(iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.

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

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

(i) An air-cooled hard-boiled egg with shell intact;

(ii) A FOOD with an  $a_w$  value of 0.85 or less;

(iii) A FOOD with a pH level of 4.6 or below when measured at 24°C (75°F);

(iv) A FOOD, in an unopened HERMETICALLY SEALED CONTAINER, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(v) A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a FOOD that has an  $a_w$  and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(vi) A FOOD that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the FOOD may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.



(62) **Poultry.**

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

- (i) Any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and
- (ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.

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

(63) **"Premises"** means each individual building, space or stand where FOOD is prepared, served or sold

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

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

(63m) **"Preparation"** See Processing (64m)

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

(64m) **"Processing/Preparation"** means the manufacture or preparation of FOOD for sale or service through the process of canning, extracting, fermentation, distilling, pickling, freezing, baking, assembling, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process.

(65) **"Public water system"** means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A public water system is either a "community water system" or a "non-community water system". Such system includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and

(b) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

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

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

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

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

(ii) Raw, washed, cut fruits, vegetables and raw seed sprouts;

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

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

**(67) Reduced Oxygen Packaging.**

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

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

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

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

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

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

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

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

(69) "**Regulatory authority**" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the FOOD ESTABLISHMENT.

(70) "**Restricted use pesticide**" means a pesticide which, with respect to certain or all of its uses, is classified under the federal act or s. ATCP 29, as a restricted-use pesticide for use only by certified applicators.

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

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

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

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

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

(72m) "**School Lunchroom**" means the room or rooms where meals are served to students, faculty or staff of a school and their quests. In the subsection, "school" means any of the following:

(a) A public school as described in s. 115.01(1), Stats.;

(b) A private school as described in s. 115.001 (3r), Stats.;

(c) A vocational, technical or adult education school; or

(d) A college or university.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(83m) "**Special organization serving meals**" means a FOOD ESTABLISHMENT licensed under 254.64, operated by a church or a religious, fraternal, youth or patriotic organization or a service club or civic organization that prepares, serves or sells MEALS to which members of the GENERAL PUBLIC are invited, for at least 4 but not more than 12 days during any 12-month period. "MEALS", as used in this subsection, does not include a MEAL that is incidental to normal activities intended exclusively for members of the particular special organization nor does it include a MEAL served in conjunction with a church worship service, such as a funeral or wedding or to persons who attended that service.

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

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

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

(87) "**Temporary food establishment**" means a FOOD ESTABLISHMENT that operates at a fixed location for a period of no more than 14 consecutive days in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition, anniversary sale or OCCASIONAL sales promotion.

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

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

(90) "**Variance**" means a written document issued by the DEPARTMENT that authorizes a modification or waiver of one or more requirements of this Code.

(91) **"Vending machine"** means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of FOOD or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a device which dispenses only bottled, prepackaged or canned soft drinks, a one cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies or crackers, or a vending machine dispensing only prepackaged grade A pasteurized milk or milk products.

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

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

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

Chapter

# 2 Management and Personnel

Parts

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

**2-1 SUPERVISION**

**Subparts**

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

**Responsibility 2-101.11 Assignment.<sup>c</sup>**

The PERMIT HOLDER shall be the PERSON IN CHARGE or shall designate a PERSON IN CHARGE.

**Knowledge 2-102.11 Demonstration.<sup>c</sup>**

Based on the risks of foodborne illness inherent to the FOOD operation, during inspections and upon request the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD ANALYSIS CRITICAL CONTROL POINT principles, and the requirements of this Code. The PERSON IN CHARGE shall demonstrate this knowledge by compliance with this Code, by being a certified FOOD manager who has shown proficiency by meeting requirements of for Food Manager Certification specified in Chapter 12,, or by demonstrating food safety principles based on the licensed establishment's specific food operations . The areas of knowledge may include the following:

Note: FOOD ESTABLISHMENTS meeting the applicability requirements specified in 12-101.11 are required to employ at least one person who is a Certified Food Manager as required in s. 254.71(1), Stats.

(A) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a FOOD EMPLOYEE;

(B) Explaining the responsibility of the PERSON IN CHARGE for preventing the transmission of foodborne disease by a FOOD EMPLOYEE who has a disease or medical condition that may cause foodborne disease;

(C) Describing the symptoms associated with the diseases that are transmissible through FOOD;

(D) Explaining the significance of the relationship between maintaining the time and temperature of POTENTIALLY HAZARDOUS FOOD and the prevention of foodborne illness;

(E) Explaining the HAZARDS involved in the consumption of raw or undercooked MEAT, POULTRY, eggs, and FISH.

(F) Stating the required FOOD temperatures and times for safe cooking of POTENTIALLY HAZARDOUS FOOD including MEAT, POULTRY, eggs, and FISH.

(G) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of POTENTIALLY HAZARDOUS FOOD;

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

(1) Cross contamination,

(2) Hand contact with READY-TO-EAT FOODS,

(3) Handwashing, and

(4) Maintaining the FOOD ESTABLISHMENT in a clean condition and in good repair;

(I) Explaining the relationship between FOOD safety and providing EQUIPMENT that is:

(1) Sufficient in number and capacity, and

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

(J) Explaining correct procedures for cleaning and SANITIZING UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT;



(K) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(L) Identifying POISONOUS OR TOXIC MATERIALS in the FOOD ESTABLISHMENT and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to LAW;

(M) Identifying CRITICAL CONTROL POINTS in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code;

(N) Explaining the details of how the PERSON IN CHARGE and FOOD EMPLOYEES comply with the HACCP PLAN if a plan is required by the LAW, this Code, or an agreement between the REGULATORY AUTHORITY and the establishment; and

(O) Explaining the responsibilities, rights, and authorities assigned by this Code to the:

- (1) FOOD EMPLOYEE,
- (2) PERSON IN CHARGE, and
- (3) REGULATORY AUTHORITY.

## **Duties**

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

The PERSON IN CHARGE shall ensure that:

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

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

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

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

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

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

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

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

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

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

(K) EMPLOYEES are preventing cross-contamination of READY-TO-EAT FOOD with bare hands by properly using suitable UTENSILS such as deli tissue, spatulas, tongs, single-use gloves, or dispensing EQUIPMENT; as specified under § 3-301.11(B) and

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

(M) The REGULATORY AUTHORITY is notified of any fire, flood, electrical power outage or similar emergency circumstances by which food may become contaminated or, as a result of the emergency occurrence, it is unlikely that the food establishment can hold potentially hazardous food at temperatures required under this code.

**2-2****EMPLOYEE HEALTH****Subpart****2-201 Disease or Medical Condition**

**Disease or Medical Condition**  
 employer requires employee reporting of:

**2-201.11 Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants.<sup>C</sup>**

The PERMIT HOLDER shall inform FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and current FOOD EMPLOYEES to report to the PERSON IN CHARGE, any information about their health as it relates to diseases that are transmissible through FOOD. A FOOD EMPLOYEE or applicant shall report the information in a manner that allows the PERSON IN CHARGE to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified under ¶ (C) of this section, if the FOOD EMPLOYEE or applicant:

**health status**

employee is ill

(A) Is diagnosed with an illness due to:

- (1) **Salmonella Typhi**,
- (2) **Shigella** spp.,
- (3) **Shiga toxin-producing E. coli** spp., such as **Escherichia coli** O157H7,
- (4) Hepatitis A virus; or
- (5) Any other pathogen that can be transmitted through FOOD such as: Salmonella spp. (non-typhoid); Entamoeba histolytica, Campylobacter spp.; Calicivirus; Cryptosporidium spp.; Giardia spp.; Yersinia spp.; Staphylococcus aureus; or Listeria monocytogenes.

Note: A complete listing of communicable diseases that can be transmitted through FOOD can be obtained from any local health department.

employee has symptom of:

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

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

- *Boil or infected wound*

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

(a) On the hands or wrists, *unless an impermeable cover such as a finger cot or stall protects the lesion and a SINGLE-USE glove is worn over the impermeable cover,*

(b) On exposed portions of the arms, *unless the lesion is protected by an impermeable cover, or*

(c) On other parts of the body, *unless the lesion is covered by a dry, durable, tight-fitting bandage;*

- *employee previously ill*

(C) Had a past illness from:

(1) S. Typhi within the past three months,

(2) Shigella species or Shiga toxin-producing E. coli, *such as E. coli O157:H7,* within the past month, or

(3) Hepatitis A virus within the past month;

## 2-201.12 Exclusions and Restrictions.<sup>c</sup>

The PERSON IN CHARGE shall:

- *excluding ill employees*

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

- *restricting employees: (serving general population)*

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

- *with symptom of illness or of past illness*

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

(2) Not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for *Salmonella Typhi*, *Shigella* spp., *Shiga toxin-producing E. coli* spp., or other pathogens which can be transmitted through FOOD;

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

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

- (1) Is experiencing a symptom of acute gastrointestinal illness specified under Subparagraph 2-201.11(B)(1) ,
- (2) Is not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for **S. Typhi**, **Shigella** spp., *Shiga toxin-producing E. coli* spp., or other pathogens which can be transmitted through FOOD
- (3) Had a past illness from **S. Typhi** within the last 3 months, or
- (4) Had a past illness from **Shigella** spp. or *Shiga toxin-producing E. coli* spp. within the last month; and

excluding and restricting jaundiced employees

(D) For a FOOD EMPLOYEE who is jaundiced related to Hepatitis A:

- (1) If the onset of jaundice occurred within the last 10 calendar days, exclude the FOOD EMPLOYEE from the FOOD ESTABLISHMENT, or
- (2) If the onset of jaundice occurred more than 30 calendar days before:
  - (a) Exclude the FOOD EMPLOYEE from a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION, or
  - (b) Restrict the FOOD EMPLOYEE from activities specified under ¶ 2-201.12(B), if the FOOD ESTABLISHMENT does not serve a HIGHLY SUSCEPTIBLE POPULATION.

### 2-201.13 Removal of Exclusions and Restrictions.

reinstating an **excluded** employee who is:

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

- no longer ill
- or
- free of jaundice

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

*reinstating a  
restricted  
employee who is*

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

- *free of  
symptoms*

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

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

(b) Is suspected of causing foodborne illness but:

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

- *free of  
suspected  
infectious  
agent*

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

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

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

- *no longer a  
shedder*

(2) Subparagraph 2-201.12(B)(2) if the restricted PERSON provides written medical documentation from a physician, licensed to practice medicine, according to the criteria specified by the REGULATORY AUTHORITY that indicates the stools are free of **Salmonella Typhi**, **Shigella** spp., or **Shiga toxin-producing E. coli** spp., whichever is the infectious agent of concern.

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

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

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

(a) The infectious agent of concern as specified by the REGULATORY AUTHORITY, or

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

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

reinstating an employee who is:

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

• *not suspect source of illness*

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

• *suspect source of illness*

(2) The excluded or restricted PERSON is suspected of causing foodborne illness and complies with the requirements specified by the REGULATORY AUTHORITY.

#### **2-201.14 Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.<sup>c</sup>**

A FOOD EMPLOYEE or a PERSON to whom a conditional offer of employment is made as a FOOD EMPLOYEE shall:

(A) Report to the PERSON IN CHARGE information about their health and activities as they relate to diseases that are transmissible through FOOD as specified under ¶¶ 2-201.11(A)-(C); and

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

#### **2-201.15 Reporting by the Person in Charge.<sup>c</sup>**

The PERSON IN CHARGE shall notify the REGULATORY AUTHORITY that a FOOD EMPLOYEE is diagnosed with an illness due to, ***Salmonella Typhi***, ***Shigella*** spp., ***Shiga toxin-producing E. coli*** spp., hepatitis A virus, or other pathogen which can be transmitted through FOOD.

**2-3 PERSONAL CLEANLINESS**

**Subparts**

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

**Hands and Arms**

**2-301.11 Clean Condition.<sup>C</sup>**

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

**2-301.12 Cleaning Procedure.<sup>C</sup>**

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

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

(C) After effective cleaning, hands must be dried by one of the methods specified in section § 6-301.12

**2-301.13 Special Handwash Procedures.<sup>C</sup>**

Reserved.

**2-301.14 When to Wash.<sup>C</sup>**

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

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

(B) After using the toilet room;



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

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

(E) After handling soiled EQUIPMENT or UTENSILS;

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

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

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

#### **2-301.15 Where to Wash.**

(A) FOOD EMPLOYEES shall clean their hands in a handwashing lavatory or approved automatic handwashing facility, or an approved pre-wash sink as specified in ¶ (B); and may not clean their hands in a warewash sink or a sink used for FOOD preparation, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(B) The REGULATORY AUTHORITY may approve the use of a pre-wash/pre-scrape sink compartment for handwashing provided that the PERMIT/LICENSE HOLDER can demonstrate that sink can be used in a manner that minimizes the risk of contamination.

#### **2-301.16 Hand Sanitizers.**

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

(1) Comply with one of the following:

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

(b) Have active antimicrobial ingredients that are listed in the FDA monograph for Over The Counter Health-Care Antiseptic Drug Products as an antiseptic handwash; and

(2) Comply with one of the following:

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

(b) Comply with and be listed in:

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

(ii) 21 CFR 182 - Substances Generally Recognized as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with FOOD; and

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

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

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

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

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

**Fingernails 2-302.11 Maintenance.**

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

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