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Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission:	Department of Health, Health Services Administration
Division:	CEDEP Environmental Health Program
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Statement of Necessity:

On May 17, 2023 Governor Bill Lee signed Public Chapter 475 into law. Public Chapter 475 requires that beginning January 1, 2024 farmers market food units apply for a permit from the department of health. These rules require the department to issue a permit to qualified applicants after proper application, preoperational inspection to determine compliance with applicable rules of the department for food service establishments and payment of fees. Public Chapter 475 specifically authorizes the department to promulgate rules, including emergency rules, under the authority vested in T.C.A. § 4-5-208(a)(5). These rules fall squarely within the statutory authority in as much that emergency rules are necessary to clarify the food service establishment rules and to ensure those rules align with the newly created Public Chapter and additions to the Food Safety Act.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-23-01	Food Service Establishment
Rule Number	Rule Title
1200-23-01-.01	Definition

1200-23-01-.04	Equipment, Utensils, and Linens
1200-23-01-.06	Physical Facilities
1200-23-01-.08	Compliance and Enforcement

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-23-01
Food Service Establishment

Amendments

Rule 1200-23-01-.01 Definitions is amended by deleting subparagraph (38)(a) in its entirety and substituting instead the following language, and is further amended by adding new paragraphs (40), including its subparagraphs and parts, (41), including its subparagraphs, and (89), and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs, subparagraphs, and parts shall read:

- (38) (a) "Equipment" means an article that is used in the operation of a food establishment or farmers market food unit such as a beverage cooler, dish pans, food and beverage dispensing equipment, freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, or ware washing machine.
- (40) "Farmers market" means a public market with the purpose of connecting and mutually benefiting farmers, communities, and shoppers while promoting and selling products grown and raised by participating farmers, and that:
- (a) Has set hours of operation and operates on a regular schedule; and
- (b) Has, and follows, a set of rules that:
1. Governs the operation of the farmers market; and
 2. Assures the primary purpose of the farmers market as providing a direct marketing opportunity for farmers, foresters, fisheries, food businesses, and other producers;
- (c) Includes other businesses that serve the public or make the market more convenient, efficient, profitable, or successful, including food service, baked goods, and non-food retail.
- (41) "Farmers market food unit" means a stationary food service establishment that:
- (a) Prepares, sells, or services unpackaged time/temperature control for safety food in conjunction with one (1) or more farmers markets; and
- (b) Has improvised, rather than permanent, facilities or equipment for accomplishing functions, such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control.
- (89) "Public Market" means a building, structure, or place, operated on a not-for-profit basis in the public interest for the buying, selling, or keeping for sale farm and food products at retail or wholesale; and includes a farmers market.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.

Rule 1200-23-01-.04 Equipment, Utensils, and Linens is amended by adding new subpart (3)(a)2(iii), so that as amended, the new subpart shall read:

- (3) (a) 2. (iii) For farmers market food units, at least three (3) dish pans that are large enough to submerge the largest equipment/utensils shall be present at all farmers markets. The dish pans shall be used to wash, rinse and sanitize equipment and utensils. Clean water, dish

soap, approved sanitizers and sanitizer test strips shall be utilized and available for inspection.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.

Rule 1200-23-01-.06 Physical Facilities is amended by deleting parts (1)(a)2, (1)(b)1, (2)(a)8 and subparts (5)(o)2(iv) and (5)(o)2(v) in their entirety and substituting instead the following language, and is further amended by adding new subparts (2)(b)5(iii) and (5)(o)2(vi) and re-lettering the remaining subparts accordingly, part (3)(a)7, and subparagraph (4)(c) and relettering the remaining subparagraphs accordingly, so that as amended, the new subparagraphs, parts, and subparts shall read:

- (1) (a) 2. In a temporary food establishment and farmers market food unit:
 - (b) 1. For all food service establishment except farmers market food units, the outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.
- (2) (a) 8. Walls and Ceilings, Studs, Joists, and Rafters. Except for temporary food establishments and farmers market food units, studs, joists, and rafters may not be exposed in areas subject to moisture.
 - (b) 5. (iii) Subpart (i) of this part does not apply to open air farmers markets.
- (3) (a) 7. Improvised handwashing equipment shall be available for farmers market food units. Specifically, farmers market food units are required, at a minimum, to provide a beverage cooler which has at least a five (5) gallon capacity and a spigot, or an equivalent alternative, for handwashing. Handwashing soap and disposable towels shall be provided with a waste receptacle. A five (5) gallon container must be available to collect used waste water.
- (4) (c) For purposes of farmers market food units, improvised hand washing equipment must be available for use in a location which does not contaminate food.
- (5) (o) 2. (iv) Dogs (*Canis lupus familiaris*) and cats (*Felis catus*) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food establishment. Except for service animals described in subpart (iii) of this part, nothing in this Chapter prohibits a food establishment from prohibiting dogs and cats in outdoor dining areas;
 - (v) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and
 - (vi) In open air and outdoor farmers markets.

Authority: T.C.A. §§ 6-54-135, 53-8-117, and 68-14-701 through 68-14-726.

Rule 1200-23-01-.08 Compliance and Enforcement is amended by deleting subparagraphs (3)(b) and (3)(e), subpart (4)(a)2(iii), and part (4)(a)3 in their entirety and substituting instead the following language, and is further amended by adding new subparts (4)(a)2(iv), (4)(e)1(iii), and part (4)(e)3, including its subpart, so that as amended, the new subparagraphs, parts, and subparts shall read:

- (3) (b) Submission 15 Calendar Days Before Proposed Opening. An applicant shall submit an application for a permit at least 15 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility or a farmers market food unit.

- (e) Contents of the Application. The application for a food service establishment, excluding farmers market food units, shall include:
 - (4) (a) 2. (iii) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels; or
 - (iv) The establishment is a farmers market food unit.
 - 3. The department may periodically inspect throughout its permit period a temporary food establishment or farmers market food unit that prepares, sells, or services unpackaged time/temperature control for safety food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (e) 1. (iii) In the case of farmers market food units, all violations of priority items must be corrected immediately, whenever possible, and in any event within twenty-four (24) hours.
- 4. Farmers Market Food Units – Time Frame for Corrections.
 - (i) In the case of farmers market food units, all violations of priority items must be corrected immediately whenever possible, and in any event within twenty-four (24) hours. If violations are not corrected within twenty-four (24) hours, the farmers market food unit shall immediately cease operation until authorized to resume by the department.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 03/15/24

Signature: Krista Krueger

Name of Officer: Krista J. Krueger

Title of Officer: Senior Associate Counsel

Agency/Board/Commission: Department of Health, Health Services Administration, Food Service Establishment

Rule Chapter Number(s): 1200-23-01

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Jonathan Skrmetti by delegation
Jonathan Skrmetti
Attorney General and Reporter

April 8, 2024
Date

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* Emergency rule(s) may be effective for up to 180 days from the date of filing.

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Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These rule amendments should not have a financial impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

1. A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule packet implements provisions of a recent statutory change by including farmers market food units in the current food service establishment rules. These rules include statutory definitions, explain the requirements to obtain a permit and establish applicable processes for farmers market food units.

2. A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A §§ 68-14-703, 68-14-713(a), and 68-14-716(b), have been amended, and T.C.A, Title 68, Chapter 14, Part 7 has been amended by adding new subsections §§ 68-14-727 and 68-14-728. Public Chapter 475 gives the commissioner of health the authority to promulgate rules to effectuate the act, which may be promulgated as emergency rules, pursuant to T.C.A. § 4-5-208(a)(5).

3. Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule positively impacts the citizens of the state and impacts those who operate farmers market food units. The department is unaware of any persons, organizations, corporations or governmental entities that urge adoption or rejection of this rule.

4. Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

5. An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should have minimal impact revenues or expenditures.

6. Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Krista J. Krueger, Senior Associate Counsel, Department of Health

7. Identification of the appropriate agency representative or representatives who will explain the rule at scheduled meeting of the committees;

Krista J. Krueger, Senior Associate Counsel, Department of Health
Holt Whitt, Assistant Commissioner for Legislative Affairs

8. Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Department of Health, Office of General Counsel, 710 James Robertson Parkway, 5th Floor, Nashville, TN 37243, (615) 532-7924, Krista.J.Krueger@tn.gov, (615) 741-0948, Holt.Whitt@tn.gov

9. Any additional information relevant to the rule proposed for continuation that the committee requests;

None.

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

**CHAPTER 1200-23-01
FOOD SERVICE ESTABLISHMENT**

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1200-23-01-.01 DEFINITIONS.

- (1) Accredited Program.
 - (a) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.
 - (b) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.
 - (c) "Accredited program" does not refer to training functions or educational programs.
- (2) Additive.
 - (a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR § 170.3(e)(1).
 - (b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR § 70.3(f).
- (3) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.
- (4) "Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- (5) Asymptomatic
 - (a) "Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.
 - (b) "Asymptomatic" includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

- (6) "AW" 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 AW.
- (7) "Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.
- (8) "Beverage" means a liquid for drinking, including water.
- (9) "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.
- (10) "Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.
- (11) "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.
- (12) "CFR" means Code of Federal Regulations. Citations in this Chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR § 180.194 refers to Title 40, Part 180, Section 194.
- (13) 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.
- (14) "Commingle" means:
 - (a) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or
 - (b) To combine shucked shellfish from containers with different container codes or different shucking dates.
- (15) "Comminuted" means:
 - (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.
- (16) "Commissary" means a food establishment that services a mobile food unit or a pushcart.

- (17) "Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title I of the Americans with Disabilities Act of 1990.
- (18) "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.
- (19) "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.
- (20) Core Item.
 - (a) "Core item" means a provision in this chapter that is not designated as a priority item or a priority foundation item.
 - (b) "Core item" includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (ssops), facilities or structures, equipment design, or general maintenance.
- (21) "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.
- (22) "Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.
- (23) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
- (24) "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.
- (25) "Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.
- (26) "Department" means the Tennessee Department of Health or its authorized agent.
- (27) "Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.
- (28) "Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(29) Drinking Water.

- (a) "Drinking water" means water that meets criteria as specified in 40 CFR Part 141 National Primary Drinking Water Regulations.
- (b) "Drinking water" is traditionally known as "potable water."
- (c) "Drinking water" includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

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

(31) Easily Cleanable.

- (a) "Easily cleanable" means a characteristic of a surface that:
 - 1. Allows effective removal of soil by normal cleaning methods;
 - 2. Is dependent on the material, design, construction, and installation of the surface; and
 - 3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.
- (b) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:
 - 1. 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
 - 2. 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.

(32) "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.

(33) Egg.

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

- (b) "Egg" does not include:
1. A balut;
 2. The egg of reptile species such as alligator; or
 3. An egg product.
- (34) Egg Product.
- (a) "Egg Product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant , with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs.
- (b) "Egg Product" does not include food that contains eggs only in a relatively small proportion such as cake mixes.
- (35) "Employee" means the permit holder, person in charge, food employee, 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.
- (36) "Enterohemorrhagic Escherichia coli (EHEC)" means E. coli which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with E. coli that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: E. coli O157:H7; E. coli O157:NM; E. coli O26:H11; E. coli O145:NM; E. coli O103:H2; or E. coli O111:NM. Also see SHIGA TOXIN-PRODUCING E. COLI.
- (37) "EPA" means the U.S. Environmental Protection Agency.
- (38) Equipment.
- (a) "Equipment" means an article that is used in the operation of a food establishment or farmers market food unit such as a beverage cooler, dish pans, food and beverage dispensing equipment, freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, or ware washing machine.
- (b) "Equipment" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.
- (39) "Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.
- (40) "Farmers market" means a public market with the purpose of connecting and mutually benefiting farmers, communities, and shoppers while promoting and selling products grown and raised by participating farmers, and that:
- (a) Has set hours of operation and operates on a regular schedule; and

(b) Has, and follows, a set of rules that:

1. Governs the operation of the farmers market; and

2. Assures the primary purpose of the farmers market as providing a direct marketing opportunity for farmers, foresters, fisheries, food businesses, and other producers;

(c) Includes other businesses that serve the public or make the market more convenient, efficient, profitable, or successful, including food service, baked goods, and non-food retail.

(41) "Farmers market food unit" means a stationary food service establishment that:

(a) Prepares, sells, or services unpackaged time/temperature control for safety food in conjunction with one (1) or more farmers markets; and

(b) Has improvised, rather than permanent, facilities or equipment for accomplishing functions, such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control.

(4240) "FDA" means the U.S. Food and Drug Administration.

(4341) 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.

(4442) "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.

(4543) "Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(4644) "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:

1. Into a food, or

2. Onto a surface normally in contact with food.

(4745) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(4846) "Food Establishment" means:

- (a) Any establishment, place or location, whether permanent, temporary, seasonal or itinerant, where food is prepared and the public is offered to be served, or is served, food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water mixtures. "Food establishment" includes any such places regardless of whether there is a charge for the food.
- (b) "Food establishment" does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, the location of vending machines, and supply vehicles.
- (c) "Food establishment" does not include churches, temples, synagogues or other religious institutions, civic, fraternal, or veteran's organizations where food is prepared, served, transported, or stored by volunteer personnel only on non-consecutive days; provided, however, that the storage of unopened, commercially canned food, packaged bulk food that is not potentially hazardous (time/temperature control for safety food) and dry goods shall not apply for these purposes;
- (d) " Food establishment" does not include grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. For the purposes of this subparagraph, infrequent casual sales means sales not in excess of one hundred fifty dollars (\$150) per day on any particular day;
- (e) "Food establishment" does not include a location from which casual, occasional food sales are conducted solely in connection with youth-related amateur athletic or recreational activities or primary or secondary school-related clubs by volunteer personnel and that are in operation for twenty-four (24) consecutive hours or less;
- (f) "Food establishment" does not include a catering business that employs no regular, full-time employees, the food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only "occasional sales" during any thirty-day period; and
- (g) "Food establishment" does not include a house or other residential structure where seriously ill or injured children and their families are provided temporary accommodations in proximity to their treatment hospitals and where food is prepared, served, transported or stored by volunteer personnel; provided, that the house or structure is supported by a § 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that has as a component of its mission the support of programs that directly improve the health and well-being of children.

(4947) Food Processing Plant.

- (a) "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.
- (b) "Food processing plant" does not include a food establishment.

(5048) Game Animal.

- (a) "Game animal" means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR § 301.2 Definitions, or as poultry, or fish.
- (b) "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.
- (c) "Game animal" does not include ratites.

(5149) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR § 152.175 Pesticides classified for restricted use.

(5250) "Good repair" means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under 1200-23-01-.04.

(5354) "Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(5452) "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(5553) Handwashing Sink.

- (a) "Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands.
- (b) "Handwashing sink" includes an automatic handwashing facility.

(5654) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(5755) "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, or physician assistant.

(5856) "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.

(5957) "Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

- (a) Immunocompromised; preschool age children, or older adults; and
- (b) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

- (6058) "Imminent health hazard" means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person.
- (6159) "Injected" means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping".
- (6260) Juice.
- (a) "Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée.
- (b) "Juice" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.
- (6361) "Kitchenware" means food preparation and storage utensils.
- (6462) "Law" means applicable local, state, and federal statutes, regulations, and ordinances.
- (6563) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- (6664) Major Food Allergen.
- (a) "Major food allergen" means:
1. Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or
 2. A food ingredient that contains protein derived from a food, as specified in part (a)1. of this definition.
- (b) "Major food allergen" does not include:
1. Any highly refined oil derived from a food specified in part (a)1. of this definition and any ingredient derived from such highly refined oil; or
 2. Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).
- (6765) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goat, other edible animals except fish, poultry, and wild game animals as specified under 1200-23-01-.03(a)3. and 4.
- (6866) Mechanically Tenderized.
- (a) "Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles or any mechanical device.

- (b) "Mechanically tenderized" does not include processes by which solutions are injected into meat.
- (6967) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).
- (7068) "Mobile food unit" means a food establishment designed to be readily moved and vend food.
- (7169) "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.
- (7270) Non-Continuous Cooking.
- (a) "Non-continuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.
- (b) "Non-continuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.
- (7374) Packaged.
- (a) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.
- (b) "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- (7472) "Permit" means the document issued by the department that authorizes a person to operate a food establishment.
- (7573) "Permit holder" means the entity that:
- (a) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and
- (b) Possesses a valid permit to operate a food establishment.
- (7674) "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- (7775) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.
- (7876) 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.

(7977) "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.

(8078) "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.

(8179) "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.

(8280) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(8381) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

- (a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (b) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
- (c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(8482) "Poultry" means:

- (a) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR § 381.1 Poultry Products Inspection Regulations Definitions, Poultry, and
- (b) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR § 362.1 Voluntary Poultry Inspection Regulations, Definitions.

(8583) "Premises" means:

- (a) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or
- (b) The physical facility, its contents, and the land or property not described in Subparagraph (a) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(8684) "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.

(8785) Priority Item.

- (a) "Priority item" means a provision in this Chapter whose application contributes directly to the elimination, prevention or reduction to an acceptable level, of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.
- (b) "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing; and
- (c) "Priority item" is an item that is denoted in this chapter with (P).

(8886) Priority Foundation Item.

- (a) "Priority foundation item" means a provision in this chapter whose application supports, facilitates or enables one or more priority items.
- (b) "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and
- (c) "Priority foundation item" is an item that is denoted in this chapter with (Pf).

(89) "Public Market" means a building, structure, or place, operated on a not-for-profit basis in the public interest for the buying, selling, or keeping for sale farm and food products at retail or wholesale; and includes a farmers market.

(9087) "Public water system" has the meaning stated in 40 CFR Part 141 National Primary Drinking Water Regulations.

(9188) "Ratite" means a flightless bird such as an emu, ostrich, or rhea.

(9289) "Ready-to-Eat Food" means food that:

- (a) Is in a form that is edible without additional preparation to achieve food safety, as specified under one of the following 1200-23-01-.03(4)(a)1.(i) or (ii), 1200-23-01-.03(4)(a)2., or 1200-23-01-.03(4)(b)1. or as specified in 1200-23-01-.03(4)(a)1.(iii); or

- (b) Is a raw or partially cooked animal food and the consumer is advised as specified in 1200-23-01-.03(4)(a)1.(iv)(I) and (III); or
- (c) Is prepared in accordance with a variance that is granted as specified in 1200-23-01-.03(4)(a)1.(iv)(IV); and
- (d) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.
- (e) "Ready-to-eat food" includes:
 1. Raw animal food that is cooked as specified under or 1200-23-01-.03(4)(a)1., or frozen as specified under 1200-23-01-.03(4)(b);
 2. Raw fruits and vegetables that are washed as specified under or 1200-23-01-.03(3)(b)5.;
 3. Fruits and vegetables that are cooked for hot holding, as specified under or 1200-23-01-.03(4)(a)3.;
 4. All potentially hazardous food time/temperature control for safety food that is cooked to the temperature and time required for the specific food under or 1200-23-01-.03(4) and cooled as specified under or 1200-23-01-.03(5)(a)4.;
 5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;
 6. Substances derived from plants such as spices, seasonings, and sugar;
 7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
 8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
 9. Food manufactured as specified in 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(9390) 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 atmosphere (approximately 21% at sea level); and

2. A process as specified in part (a)1. of this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

(b) "Reduced oxygen packaging" includes:

1. Vacuum packing, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
2. 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;
3. 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;
4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or
5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(9494) "Refuse" means solid waste not carried by water through the sewage system.

(9592) "Reminder" means a written statement concerning the health risk of consuming animal food raw, undercooked, or without otherwise being processed to eliminate pathogens.

(9693) "Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

(9794) "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

(9895) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR § 590.5.

(9996) "Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR § 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(10097) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

- (10198) "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 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.
- (10299) "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.
- (103409) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.
- (104404) "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.
- (105402) "Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
- (106403) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
- (107404) "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.
- (108405) "Shellstock" means raw, in-shell molluscan shellfish.
- (109406) "Shiga toxin-producing Escherichia coli (STEC)" means any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 E. coli. Also see Enterohemorrhagic Escherichia Coli.
- (110407) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.
- (111408) "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.
- (112409) 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 1200-23-01-.04(1)(a), (2)(a), and (b) for multiuse utensils.

(113440) "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 shrimp.

(114444) "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.

(115442) "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.

(116443) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(117444) "Temporary food establishment" means a food establishment that operates at a fixed location in conjunction with an organized temporary event for more than one (1) day and not more than fourteen (14) consecutive days.

(118445) Time/Temperature Control for Safety Food.

- (a) "Time/temperature control for safety food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.
- (b) "Time/temperature control for safety food" includes:
 - 1. An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
 - 2. Except as specified in Subpart 3.(iv) of this definition, a food that because of the interaction of its A_w and PH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of PH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

A _w values	PH values		
	4.6 or less	> 4.6 - 5.6	> 5.6
≤0.92	non-TCS FOOD*	non-TCS FOOD	non-TCS FOOD
> 0.92 - .95	non-TCS FOOD	non-TCS FOOD	PA**
> 0.95	non-TCS FOOD	PA	PA
* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ** PA means Product Assessment required			

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

3. "Time/temperature control for safety food" does not include:

- (i) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard boiled, but has been pasteurized to destroy all viable salmonellae;
- (ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (iii) A food that because of its PH or AW value, or interaction of AW and PH values, is designated as a non-TCS food in Table A or B of this definition;
- (iv) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
 - (I) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,
 - (II) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or
 - (III) A combination of intrinsic and extrinsic factors; or
- (v) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the Subparts 3.(i) - 3.(iv) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(119446) "USDA" means the U.S. Department of Agriculture.

(120447) "Utensil" means a food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single use, gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(121448) "Variance" means a written document issued by the department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the department, a health hazard or nuisance will not result from the modification or waiver.

(122449) "Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

(123420) "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.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.

1200-23-01-.04 EQUIPMENT, UTENSILS, AND LINENS.

(1) Materials for Construction and Repair

(a) Multiuse

1. Characteristics

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

(I) Safe; (P)

(II) Durable, corrosion-resistant, and nonabsorbent;

(III) Sufficient in weight and thickness to withstand repeated warewashing;

(IV) Finished to have a smooth, easily cleanable surface; and

(V) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.

(ii) Cast Iron, Use Limitation.

(I) Except as specified in items (II) and (III) of this subpart, cast iron may not be used for utensils or food-contact surfaces of equipment.

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

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

(iii) Lead, Use Limitation.

(I) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories (P)

Utensil Category	Ceramic Article Description	Maximum Lead Mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls \geq 1.1 Liter (1.16 Quart)	1
Small Hollowware (excluding cups & mugs)	Bowls < 1.1 Liter (1.16 Quart)	2.0

- (II) Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface. (P)
- (III) Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.
- (iv) Copper, Use Limitation.
 - (I) Except as specified in item (II) of this subpart, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.
 - (II) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and Utensil Category Ceramic Article Description Maximum Lead Mg/L Beverage Mugs, Cups, Pitchers Coffee Mugs 0.5 Large Hollowware (excluding pitchers) Bowls > 1.1 Liter (1.16 Quart) 1 Small Hollowware (excluding cups & mugs) Bowls < 1.1 Liter (1.16 Quart)
- 2. 0 Flat Tableware Plates, Saucers 3.0 fermentation steps of a beer brewing operation such as a brewpub or microbrewery.
 - (v) Galvanized Metal, Use Limitation. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food. (vi) Sponges, Use Limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces. (vii) Wood, Use Limitation.
 - (I) Except as specified in items (II), (III) and (IV) of this subpart, wood and wood wicker may not be used as a food-contact surface.
 - (II) Hard maple or an equivalently hard, close-grained wood may be used for:
 - I. Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
 - II. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.
 - (III) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

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

I. Untreated wood containers; or

II. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR § 178.3800 Preservatives for wood. (viii) Nonstick Coatings, Use Limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids. (ix) Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material. (b) Single Service and Single-Use. 1. Characteristics. Materials that are used to make single-service and single-use articles: (i) May not: (I) Allow the migration of deleterious substances, (P) or (II) Impart colors, odors, or tastes to food; and

(ii) Shall be:

(I) Safe, (P) and

(II) Clean.

(2) Design and Construction

(a) Durability and Strength

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

2. Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used. (P)

(b) Cleanability

1. Food-Contact Surfaces.

(i) Multiuse food-contact surfaces shall be:

(I) Smooth; (Pf)

(II) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections; (Pf)

(III) Free of sharp internal angles, corners, and crevices; (Pf)

(IV) Finished to have smooth welds and joints; (Pf) and

- (V) Except as specified in subpart (ii). of this part, accessible for cleaning and inspection by one of the following methods:
 - I. Without being disassembled, (Pf)
 - II. By disassembling without the use of tools, (Pf) or
 - III. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches. (Pf)
 - (ii) Item (i)(V) of this part does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.
2. CIP Equipment.
- (i) CIP equipment shall meet the characteristics specified under 1200-23-01-.04(2)(a) and shall be designed and constructed so that:
 - (I) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces, (Pf) and
 - (II) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and
 - (ii) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.
3. "V" Threads, Use Limitation - Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.
4. Hot Oil Filtering Equipment - Hot oil filtering equipment shall meet the characteristics specified under 1200-23-01-.04(2)(a) and shall be readily accessible for filter replacement and cleaning of the filter.
5. Can Openers. - Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.
6. Nonfood-contact surfaces - Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.
7. Kick Plates, Removable - Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:
- (i) Removable by one of the methods specified under Subparagraph 1200-23-01-.04 (2)(b)1.(i)(V) or capable of being rotated open; and
 - (ii) Removable or capable of being rotated open without unlocking equipment doors.

8. Ventilation Hood Systems, Filters - Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(c) Accuracy

1. Temperature Measuring Devices, Food.
 - (i) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use. (Pf)
 - (ii) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use. (Pf)
2. Temperature Measuring Devices, Ambient Air and Water.
 - (i) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to $\pm 1.5^{\circ}\text{C}$ in the intended range of use. (Pf)
 - (ii) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}\text{F}$ in the intended range of use. (Pf)
3. Pressure Measuring Devices, Mechanical Warewashing Equipment. - Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pound per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the range indicated on the manufacturer's data plate.

(d) Functionality

1. Ventilation Hood Systems, Drip Prevention. - Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.
2. Equipment Openings, Closures and Deflectors.
 - (i) A cover or lid for equipment shall overlap the opening and be sloped to drain.
 - (ii) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).
 - (iii) Except as specified under subpart (iv) of this part, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.
 - (iv) If a watertight joint is not provided:

- (I) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
 - (II) The opening shall be flanged as specified under (ii) of this part.
3. Dispensing Equipment, Protection of Food. - In equipment that dispenses or vends liquid food or ice in unpackaged form:
- (i) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;
 - (ii) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;
 - (iii) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
 - (I) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or
 - (II) Available for self-service during hours when it is not under the fulltime supervision of a food employee; and
 - (iv) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.
 - (v) Dispensing equipment in which time/temperature control for safety food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under 1200-23-01-.03(5)(a)6. shall:
 - (I) be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; (P) and
 - (II) conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 - Manual Food and Beverage Dispensing Equipment. (P)
4. Bearings and Gear Boxes, Leakproof - Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

5. Beverage Tubing, Separation. - Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.
6. Ice Units, Separation of Drains. - Liquid waste drain lines may not pass through an ice machine or ice storage bin.
7. Condenser Unit, Separation. - If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.
8. Molluscan Shellfish Tanks.
 - (i) Except as specified under subpart (ii) of this part, molluscan shellfish life support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only. (P)
 - (ii) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the department as specified in 1200-23-01-.08(1)(d)1 and a HACCP plan that: (Pf)
 - (I) Is submitted by the permit holder and approved as specified under 1200-23-01-.08(2); (Pf) and
 - (II) Ensures that:
 - I. Water used with fish other than molluscan shellfish does not flow into the molluscan tank, (Pf)
 - II. The safety and quality of the shellfish as they were received are not compromised by the use of the tank, (Pf) and
 - III. The identity of the source of the shellstock is retained as specified under 1200-23-01-.03(2)(c)1. (Pf)
9. Temperature Measuring Devices.
 - (i) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.
 - (ii) Except as specified in (iii) of this part, cold or hot holding equipment used for time/temperature control for safety food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

- (iii) Subpart (ii) of this part does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.
 - (iv) Temperature measuring devices shall be designed to be easily readable.
 - (v) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F in the intended range of use. (Pf)
10. Warewashing Machines, Data Plate Operating Specifications - A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:
- (i) Temperatures required for washing, rinsing, and sanitizing;
 - (ii) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and
 - (iii) Conveyor speed for conveyor machines or cycle time for stationary rack machines.
11. Warewashing Machines, Internal Baffles. - Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.
12. Warewashing Machines, Temperature Measuring Devices. - A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:
- (i) In each wash and rinse tank; (Pf) and
 - (ii) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank. (Pf)
13. Manual Warewashing Equipment, Heaters and Baskets. - If hot water is used for sanitation in manual warewashing operations, the sanitizing compartment of the sink shall be:
- (i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F); (Pf) and
 - (ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water. (Pf)
14. Warewashing Machines, Automatic Dispensing of Detergents and Sanitizers. - A warewashing machine that is installed after adoption of these regulations, shall be equipped to:

- (i) Automatically dispense detergents and sanitizers; (Pf) and
 - (ii) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles. (Pf)
 - 15. Warewashing Machine Flow Pressure Device.
 - (i) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and
 - (ii) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.
 - (iii) Subparts (i) and (ii) of this part do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.
 - 16. Warewashing Sinks and Drainboards, Self-Draining. - Warewashing sinks and drainboards of warewashing sinks and machines shall be self-draining.
 - 17. Equipment Compartments, Drainage. - Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.
 - 18. Case Lot Handling Apparatuses, Movability. - Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.
- (e) Acceptability
- 1. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with 1200-23-01-.04.
- (3) Numbers and Capacities
- (a) Equipment
- 1. Cooling, Heating, and Holding Capacities. - Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under 1200-23-01-.03. (Pf)
 - 2. Manual Warewashing, Sink Compartment Requirements.
 - (i) A sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. (Pf)

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. (Pf)

(iii) For farmers markets food units, at least three (3) dish pans that are large enough to submerge the largest equipment/utensils shall be present at all farmers markets. The dish pans shall be used to wash, rinse and sanitize equipment and utensils. Clean water, dish soap, approved sanitizers and sanitizer test strips shall be utilized and available for inspection.

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

4. Ventilation Hood Systems, Adequacy. - Ventilation hood systems and devices shall prevent grease or condensation from collecting on equipment, walls, and ceilings.

5. Clothes Washers and Dryers.

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

(ii) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under 1200-23-01-.04(9)(a), a mechanical clothes washer and dryer need not be provided.

(b) Utensils, Temperature Measuring Devices, and Testing Devices.

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

2. Food Temperature Measuring Devices.

(i) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under 1200-23-01-.03. (Pf)

(ii) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets. (Pf)

3. Temperature Measuring Devices, Manual Warewashing. - In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

4. Sanitizing Solutions, Testing Devices. - A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided. (Pf)

(4) Location and Installation

(a) Location

1. Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

- (i) Except as specified in subpart (ii) of this part, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:
 - (I) In locker rooms;
 - (II) In toilet rooms;
 - (III) In garbage rooms;
 - (IV) In mechanical rooms;
 - (V) Under sewer lines that are not shielded to intercept potential drips;
 - (VI) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
 - (VII) Under open stairwells; or
 - (VIII) Under other sources of contamination.
- (ii) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.
- (iii) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Installation

1. Fixed Equipment, Spacing or Sealing.

- (i) Equipment that is fixed because it is not easily movable shall be installed so that it is:
 - (I) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
 - (II) Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or
 - (III) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.
- (ii) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

- (I) Sealed; or
- (II) Elevated on legs as specified under 1200-23-01-.04(4)(b)2.(iv).

2. Fixed Equipment, Elevation or Sealing.

- (i) Except as specified in subparts (ii) and (iii) of this part, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment.
- (ii) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).
- (iii) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.
- (iv) Except as specified in (v) of this part, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.
- (v) The clearance space between the table and counter-mounted equipment may be:
 - (I) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or
 - (II) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

(5) Maintenance and Operation

(a) Equipment

1. Good Repair and Proper Adjustment.

- (i) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under 1200-23-01-.04(1) and 1200-23-01-.04(2)
- (ii) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.
- (iii) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

2. Cutting Surfaces. - Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.
3. Microwave Ovens. - Microwave ovens shall meet the safety standards specified in 21CFR § 1030.10 Microwave ovens.
4. Warewashing Equipment, Cleaning Frequency. - A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under 1200-23-01-.04(3)(a)3. shall be cleaned:
 - (i) Before use;
 - (ii) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
 - (iii) If used, at least every 24 hours.
5. Warewashing Machines, Manufacturers' Operating Instructions.
 - (i) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.
 - (ii) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.
6. Warewashing Sinks, Use Limitation.
 - (i) A warewashing sink may not be used for handwashing as specified under 1200-23-01-.02(3)(d).
 - (ii) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 1200-23-01-.04(5)(a)4. before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under 1200-23-01-.04(7) before and after using the sink to wash produce or thaw food.
7. Warewashing Equipment, Cleaning Agents. - When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in 1200-23-01-.04(3)(a)2. shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions. (Pf)
8. Warewashing Equipment, Clean Solutions. - The wash, rinse, and sanitize solutions shall be maintained clean. 9 Manual Warewashing Equipment, Wash Solution Temperature. - The temperature of the wash solution in manual

warewashing equipment shall be maintained at not less than 43oC (110oF) or the temperature specified on the cleaning agent manufacturer's label instructions. (Pf)

10. Mechanical Warewashing Equipment, Wash Solution Temperature.
 - (i) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:
 - (I) For a stationary rack, single temperature machine, 74oC (165oF); (Pf)
 - (II) For a stationary rack, dual temperature machine, 66oC (150oF); (Pf)
 - (III) For a single tank, conveyor, dual temperature machine, 71oC (160oF); (Pf) or
 - (IV) For a multitank, conveyor, multitemperature machine, 66oC (150oF). (Pf)
 - (ii) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49oC (120oF). (Pf)
11. Manual Warewashing Equipment, Hot Water Sanitization Temperatures. - If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77oC (171oF) or above. (P)
12. Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.
 - (i) Except as specified in subpart (ii) of this part, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90oC (194of), or less than: (Pf)
 - (I) For a stationary rack, single temperature machine, 74oC (165oF); (Pf) or
 - (II) For all other machines, 82oC (180oF). (Pf)
 - (ii) The maximum temperature specified under subpart (i) of this part, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.
13. Mechanical Warewashing Equipment, Sanitization Pressure. - The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than 35 kilopascals (5 pounds per square inch) or more than 200 kilopascals (30 pounds per square inch).
14. Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness. - A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under 1200-23-01-.04(7)(c) shall meet the criteria specified under 1200-23-01-

.07(2)(d)1. Sanitizers, Criteria, shall be used in accordance with the EPA-registered label use instructions, and shall be used as follows (P):

(i) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;(P)

Concentration Range mg/L	Minimum Temperature	
	pH 10 or less °C (°F)	pH 8 or less °C (°F)
25-49	49 (120)	49 (120)
50-99	38 (100)	24 (75)
100	13 (55)	13 (55)

(ii) An iodine solution shall have a:

(I) Minimum temperature of 20°C (68°F), (P)

(II) A pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, (P) and

(III) Concentration between 12.5 mg/L and 25 mg/L; (P)

(iii) A quaternary ammonium compound solution shall:

(I) Have a minimum temperature of 24°C (75°F), (P)

(II) Have a concentration as specified under 1200-23-01-.07(2)(d)1 and as indicated by the manufacturer's use directions included in the labeling, (P) and

(III) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; (P)

(iv) If another solution of a chemical specified under subparts (i)-(iii) of this part is used, the permit holder shall demonstrate to the department that the solution achieves sanitization and the use of the solution shall be approved; (P) or

(v) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions. (P)

15. Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers. - If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

16. Warewashing Equipment, Determining Chemical Sanitizer Concentration. - Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device. (Pf)

(b) Utensils and Temperature and Pressure Measuring Devices

1. Good Repair and Calibration.
 - (i) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under 1200-23-01-.04(1) and 1200-23-01-.04(2) or shall be discarded.
 - (ii) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy. (Pf)
 - (iii) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.
2. Single-Service and Single-Use Articles, Required Use. - A food establishment without facilities specified under 1200-23-01-.04(6) and 1200-23-01-.04(7) for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers. (P)
3. Single-Service and Single-Use Articles, Use Limitation.
 - (i) Single-service and single-use articles may not be reused.
 - (ii) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.
4. Shells, Use Limitation. - Mollusk and crustacean shells may not be used more than once as serving containers.

(6) Cleaning of Equipment and Utensils

(a) Objective

1. Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.
 - (i) Equipment food-contact surfaces and utensils shall be clean to sight and touch. (Pf)
 - (ii) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.
 - (iii) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(b) Frequency

1. Equipment Food-Contact Surfaces and Utensils.

- (i) Equipment food-contact surfaces and utensils shall be cleaned:
 - (I) Except as specified in (ii) of this part, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; (P)
 - (II) Each time there is a change from working with raw foods to working with ready-to-eat foods; (P)
 - (III) Between uses with raw fruits and vegetables and with time/temperature control for safety food; (P)
 - (IV) Before using or storing a food temperature measuring device; (P) and
 - (V) At any time during the operation when contamination may have occurred. (P)
- (ii) Item (i)(I) of this part does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under 1200-23-01-.03(4)(a)1. than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.
- (iii) Except as specified in subpart (iv) of this part, if used with time/temperature control for safety food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours. (P)
- (iv) Surfaces of utensils and equipment contacting time/temperature control for safety food may be cleaned less frequently than every 4 hours if:
 - (I) In storage, containers of time/temperature control for safety food and their contents are maintained at temperatures specified under 1200-23-01-.03 and the containers are cleaned when they are empty;
 - (II) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:
 - I. The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours

>10.0°C - 12.8°C
(>50°F - 55°F)

10 hours

- II. The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.
- (III) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat time/temperature control for safety food that is maintained at the temperatures specified under 1200-23-01-.03, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;
- (IV) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under 1200-23-01-.03;
- (V) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;
- (VI) The cleaning schedule is approved based on consideration of:
 - I. Characteristics of the equipment and its use,
 - II. The type of food involved,
 - III. The amount of food residue accumulation, and
 - IV. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or
- (VII) In-use utensils are intermittently stored in a container of water in which the water is maintained at 57°C (135°F) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.
- (v) Except when dry cleaning methods are used as specified under 1200-23-01-.04(6)(c)1., surfaces of utensils and equipment contacting food that is not time/temperature control for safety food shall be cleaned:
 - (I) At any time when contamination may have occurred;
 - (II) At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
 - (III) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(IV) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

- I. At a frequency specified by the manufacturer, or
- II. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

2. Cooking and Baking Equipment.

- (i) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in 1200-23-01-.04(6)(b)1.(iv)(VI).
- (ii) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

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

(c) Methods

1. Dry Cleaning.

- (i) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not time/temperature control for safety food.
- (ii) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose

2. Precleaning.

- (i) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
- (ii) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

3. Loading of Soiled Items, Warewashing Machines. - Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

- (i) Exposes the items to the unobstructed spray from all cycles; and
- (ii) Allows the items to drain.

4. Wet Cleaning.

- (i) Equipment, food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.
 - (ii) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.
5. Washing, Procedures for Alternative Manual Warewashing Equipment. - If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done in accordance with the following procedures:
- (i) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
 - (ii) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and
 - (iii) Equipment and utensils shall be washed as specified under 1200-23-01-.04(6)(c)4.(i).
6. Rinsing Procedures. - Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through use of a distinct, separate water rinse after washing and before sanitizing.
7. Returnables, Cleaning for Refilling.
- (i) Except as specified in subparts (ii) and (iii), returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant. (P)
 - (ii) A food-specific container for beverages may be refilled at a food establishment if:
 - (I) Only a beverage that is not a time/temperature control for safety food is used as specified under 1200-23-01-.03(3)(d)7.
 - (II) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
 - (III) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
 - (IV) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
 - (V) The container is refilled by:
 - I. An employee of the food establishment, or

II. The owner of the container if the beverage system includes a contamination-free transfer process that cannot be by-passed by the container owner.

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

(7) Sanitization of Equipment and Utensils

(a) Objective - Food-Contact Surfaces and Utensils. - Equipment, food-contact surfaces and utensils shall be sanitized.

(b) Frequency - Before Use After Cleaning. - Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning. (P)

(c) Methods - Hot Water and Chemical. - After being cleaned, equipment, food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds and as specified under 1200-23-01-.04(5)(a)11.;(P)

2. Hot water mechanical operations by being cycled through equipment that is set up as specified under 1200-23-01-.04(5)(a)5., 1200-23-01-.04(5)(a)12., and 1200-23-01-.04(5)(a)13. and achieving a utensil surface temperature of 71oc (160of) as measured by an irreversible registering temperature indicator;(P) or

3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 1200-23-01-.04(5)(a)14. Contact times shall be consistent with those on EPA-registered label use instructions by providing:

(i) Except as specified under part (c)2. of this subparagraph, a contact time of at least 10 seconds for a chlorine solution specified under 1200-23-01-.04(5)(a)14.(i), (P)

(ii) A contact time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38oc (100of) or a pH of 8 or less and a temperature of at least 24oc (75of), (P)

(iii) A contact time of at least 30 seconds for other chemical sanitizing solutions, (P) or

(iv) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 1200-23-01-.01. (P)

(8) Laundering.

(a) Objective - Clean Linens. - Clean linens shall be free from food residues and other soiling matter.

(b) Frequency - Specifications.

1. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.
2. Cloth gloves used as specified in 1200-23-01-.03(3)(d)5. shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.
3. Linens and cloth napkins that are used as specified under 1200-23-01-.03(3)(d)3. and cloth napkins shall be laundered between each use.
4. Wet wiping cloths shall be laundered daily.
5. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(c) Methods.

1. Storage of Soiled Linens. - Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.
2. Mechanical Washing.
 - (i) Except as specified in (ii) of this part, linens shall be mechanically washed.
 - (ii) In food establishments in which only wiping cloths are laundered as specified in 1200-23-01-.04(3)(a)5.(ii) the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under 1200-23-01-.04(5)(a)14.
3. Use of Laundry Facilities
 - (i) Except as specified in subpart (ii) of this part, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.
 - (ii) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

(9) Protection of Clean Items

(a) Drying.

1. Equipment and Utensils, Air-Drying Required. - After cleaning and sanitizing, equipment and utensils:
 - (i) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR § 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

- (ii) May not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.
2. Wiping Cloths, Air-Drying Locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in 1200-23-01-.04(3)(a)5.(ii) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under 1200-23-01-.04(5)(a)14.
- (b) Lubricating and Reassembling.
- 1. Food-Contact Surfaces. Lubricants as specified under 1200-23-01-.07(2)(e) shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.
 - 2. Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.
- (c) Storing
- 1. Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.
 - (i) Except as specified in subpart (iv) of this part, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
 - (I) In a clean, dry location;
 - (II) Where they are not exposed to splash, dust, or other contamination; and
 - (III) At least 15 cm (6 inches) above the floor.
 - (ii) Clean equipment and utensils shall be stored as specified under (i) of this part and shall be stored:
 - (I) In a self-draining position that allows air drying; and
 - (II) Covered or inverted.
 - (iii) Single-service and single-use articles shall be stored as specified under (i) of this part and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.
 - (iv) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under 1200-23-01-.04(2)(d)18.
 - 2. Prohibitions.

- (i) Except as specified in subpart (ii) of this part, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:
 - (I) In locker rooms;
 - (II) In toilet rooms;
 - (III) In garbage rooms;
 - (IV) In mechanical rooms;
 - (V) Under sewer lines that are not shielded to intercept potential drips;
 - (VI) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
 - (VII) Under open stairwells; or
 - (VIII) Under other sources of contamination.
- (ii) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

(d) Preventing Contamination

1. Kitchenware and Tableware.

- (i) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.
- (ii) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.
- (iii) Except as specified under subpart (ii) of this part, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

2. Soiled and Clean Tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

3. Preset Tableware.

- (i) Except as specified in subpart (ii) of this part, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.
- (ii) Preset tableware may be exposed if:
 - (I) Unused settings are removed when a consumer is seated; or

- (II) Settings not removed when a consumer is seated are cleaned and sanitized before further use.
4. Rinsing Equipment and Utensils after Cleaning and Sanitizing. After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:
- (i) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under 1200-23-01-.04(2)(d) and 1200-23-01-.04(5); and
 - (ii) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.

1200-23-01-.06 PHYSICAL FACILITIES.

(1) Materials for Construction and Repair.

(a) Indoor Areas. Surface Characteristics

- 1. Except as specified in part 2. of this subparagraph, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:
 - (i) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
 - (ii) Closely woven and easily cleanable carpet for carpeted areas; and
 - (iii) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.
- 2. In a temporary food establishment and farmers market food unit:
 - (i) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other approved materials that are effectively treated to control dust and mud; and
 - (ii) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

(b) Outdoor Areas. Surface Characteristics.

- 1. For all food service establishment except farmers markets food units, the outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

2. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.
3. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under 1200-23-01-.05(5)(a)2. and 1200-23-01-.05(5)(a)3.

(2) Design, Construction, and Installation.

(a) Cleanability.

1. Floors, Walls, and Ceilings. Except as specified under part 4. of this subparagraph and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.
2. Floors, Walls, and Ceilings, Utility Lines.
 - (i) Utility service lines and pipes may not be unnecessarily exposed.
 - (ii) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.
 - (iii) Exposed horizontal utility service lines and pipes may not be installed on the floor.
3. Floor and Wall Junctures, Coved, and Enclosed or Sealed.
 - (i) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).
 - (ii) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.
4. Floor Carpeting, Restrictions, and Installation.
 - (i) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.
 - (ii) If carpeting is installed as a floor covering in areas other than those specified under subpart (i) of this part, it shall be:
 - (I) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
 - (II) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

5. Floor Covering, Mats and Duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.
6. Wall and Ceiling Coverings and Coatings.
 - (i) Wall and ceiling covering materials shall be attached so that they are easily cleanable.
 - (ii) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.
7. Walls and Ceilings, Attachments.
 - (i) Except as specified in subpart (ii) of this part, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.
 - (ii) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.
8. Walls and Ceilings, Studs, Joists, and Rafters. Except for temporary food establishments and farmers market food units, studs, joists, and rafters may not be exposed in areas subject to moisture.

(b) Functionality.

1. Light Bulbs, Protective Shielding.
 - (i) Except as specified in subpart (ii) of this part, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.
 - (ii) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:
 - (I) The integrity of the packages cannot be affected by broken glass falling onto them; and
 - (II) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.
 - (iii) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.
2. Heating, Ventilating, Air Conditioning System Vents. Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

3. Insect Control Devices, Design and Installation.
 - (i) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.
 - (ii) Insect control devices shall be installed so that:
 - (I) The devices are not located over a food preparation area; and
 - (II) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.
4. Toilet Rooms, Enclosed. Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tightfitting and self-closing door.
5. Outer Openings, Protected.
 - (i) Except as specified in subparts (ii), (iii), (iv), ~~(v)~~ and (vi) of this part, outer openings of a food establishment shall be protected against the entry of insects and rodents by:
 - (I) Filling or closing holes and other gaps along floors, walls, and ceilings;
 - (II) Closed, tight-fitting windows; and
 - (III) Solid, self-closing, tight-fitting doors.
 - (ii) Subpart (i) of this part does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.
 - ~~(iii)~~ Subpart (i) of this part does not apply to open-air outdoor farmers markets.
 - ~~(iv)~~ⁱⁱⁱ Exterior doors used as exits need not be self-closing if they are:
 - (I) Solid and tight-fitting;
 - (II) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
 - (III) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.
 - ~~(v)~~^{iv} Except as specified in subparts (ii) and (v) of this part, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as

specified under subpart (i) of this part, the openings shall be protected against the entry of insects and rodents by:

- (I) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens;
- (II) Properly designed and installed air curtains to control flying insects; or
- (III) Other effective means.

(vii) Subpart (iv) of this part does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

- 6. Exterior Walls and Roofs, Protective Barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.
- 7. Outdoor Walking and Driving Surfaces, Graded to Drain. Exterior walking and driving surfaces shall be graded to drain.
- 8. Outdoor Refuse Areas, Curbed and Graded to Drain. Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.
- 9. Private Homes and Living or Sleeping Quarters, Use Prohibition. A private home, except as provided by T.C.A. § 53-8-117, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.
- 10. Living or Sleeping Quarters, Separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishments operations by complete partitioning and solid self-closing doors.

(3) Number and Capacities.

(a) Handwashing Sinks

- 1. Handwashing sinks shall be provided as specified under 1200-23-01-.05(2)(c)1.
- 2. Handwashing Cleanser, Availability. Each handwashing sink or group of 2 adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.
- 3. Hand Drying Provision. Each handwashing sink or group of adjacent handwashing sinks shall be provided with:
 - (i) Individual, disposable towels;
 - (ii) A continuous towel system that supplies the user with a clean towel; or

- (iii) A heated-air hand drying device; or
 - (iv) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.
4. Handwashing Aids and Devices, Use Restrictions. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified under 1200-23-01-.06(3)(a)2. and 1200-23-01-.06(3)(a)3. and 1200-23-01-.05(5)(a)6.
 5. Handwashing Signage. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.
 6. Disposable Towels, Waste Receptacle. A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under 1200-23-01-.05(5)(a)6.
 7. Improvised handwashing equipment shall be available for farmers market food unitss. Specifically, farmers market food unitss are required, at a minimum, to provide a beverage cooler which has at least a five (5) gallon capacity and a spigot, or an equivalent alternative, for handwashing. Handwashing soap and disposable towels shall be provided with a waste receptacle. A five (5) gallon container must be available to collect used waste water.

(b) Toilets and Urinals.

1. Toilets and urinals shall be provided as specified under 1200-23-01-.05(2)(c)2.
2. A supply of toilet tissue shall be available at each toilet. (Pf)

(c) Lighting. The light intensity shall be:

1. At least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;
2. At least 215 lux (20 foot candles):
 - (i) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption,
 - (ii) Inside equipment such as reach-in and under-counter refrigerators; and
 - (iii) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and
3. At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

- (d) Ventilation. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.
 - (e) Dressing Areas and Lockers.
 - 1. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.
 - 2. Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.
 - (f) A service sink or curbed cleaning facility shall be provided as specified under 1200-23-01-.05(2)(c)3.(i).
- (4) Location and Placement.
- (a) Handwashing sinks shall be conveniently located as specified under 1200-23-01-.05(2)(d)1.
 - (b) Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.
 - (c) For purposes of farmers market food units, improvised hand washing equipment must be available for use in a location which does not contaminate food.
 - ~~(d)~~ Employee Accommodations.
 - 1. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.
 - 2. Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.
 - ~~(e)~~ Distressed Merchandise. Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles. (Pf)
 - ~~(f)~~ Refuse, Recyclables, and Returnables. Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 1200-23-01-.05(5)(a)9.
- (5) Maintenance and Operation.
- (a) Physical facilities shall be maintained in good repair.
 - (b) Cleaning, Frequency and Restrictions.
 - 1. Physical facilities shall be cleaned as often as necessary to keep them clean.

2. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.
- (c) Cleaning Floors, Dustless Methods.
1. Except as specified in part 2. of this subparagraph, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.
 2. Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:
 - (i) Without the use of dust-arresting compounds; and
 - (ii) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.
- (d) Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.
1. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.
 2. If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.
- (e) Cleaning Maintenance Tools, Preventing Contamination. Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.
- (f) Drying Mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.
- (g) Absorbent Materials on Floors, Use Limitation. Except as specified in 1200-23-01-.06(5)(c)2., sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.
- (h) Cleaning of Plumbing Fixtures. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.
- (i) Closing Toilet Room Doors. Except during cleaning and maintenance operations, toilet room doors as specified under 1200-23-01-.06(2)(b)4. shall be kept closed.
- (j) Using Dressing Rooms and Lockers.
1. Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.
 2. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

- (k) Controlling Pests. The premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:
1. Routinely inspecting incoming shipments of food and supplies;
 2. Routinely inspecting the premises for evidence of pests;
 3. Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 1200-23-01-.07(2)(b)2. and 1200-23-01-.07(2)(f); and
 4. Eliminating harborage conditions.
- (l) Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.
- (m) Storing Maintenance Tools. Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:
1. Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use; and
 2. Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.
- (n) Maintaining Premises, Unnecessary Items and Litter. The premises shall be free of:
1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
 2. Litter.
- (o) Prohibiting Animals.
1. Except as specified in parts 2. and 3. of this subparagraph, live animals may not be allowed on the premises of a food establishment.
 2. Live animals are allowed in the following situations if the owner or operator does not permit animals to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food-contact surfaces and does not permit animals to physically contact employees engaged in the preparation or handling of food:
 - (i) Fish or crustacea in aquariums or display tanks;
 - (ii) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and sentry dogs in outside fenced areas;
 - (iii) Service animals accompanying persons with disabilities in areas that are not used for food preparation;

(iv) Dogs (*Canis lupus familiaris*) and cats (*Felis catus*) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food establishment. Except for service animals described in subpart (iii) of this part, nothing in this Chapter prohibits a food establishment from prohibiting dogs and cats in outdoor dining areas;
~~and~~

(v) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals;
~~and-~~

~~(vi) In open-air and outdoor farmers markets.~~

3. Live or dead fish bait may be stored if contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles cannot result.

(p) Dogs in outdoor Dining Areas Notwithstanding subparagraph (o) of this paragraph, where a county or municipality has passed an ordinance or resolution under T.C.A. § 6-54-135 authorizing individual restaurants to permit dogs in outdoor dining areas and to charge permit holders a reasonable permit fee, dogs other than service dogs may be permitted in outside areas of a food establishment, provided, however:

1. Except as provided in subparagraph (o), no dog shall be present in the interior of any restaurant or in any area where food is prepared;
2. The food establishment shall have the right to refuse to serve the owner of a dog if the owner fails to exercise reasonable control over the dog or the pet dog is otherwise behaving in a manner that compromises or threatens to compromise the health or safety of any person present in the food establishment;
3. The person in charge shall not permit dogs to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food-contact surfaces and shall not permit animals to physically contact employees engaged in the preparation or handling of food;
4. The person in charge shall instruct employees and patrons that dogs shall not be allowed to come into contact with serving dishes, utensils, tableware, linens, paper products or any other items involved in food service operations;
5. Patrons shall keep their dogs on a leash at all times and keep their dogs under reasonable control;
6. Dogs shall not be allowed on tables, chairs or other furnishings;
7. The person in charge shall ensure that any accidents involving dog waste are cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be kept near the designated outdoor area.

8. The permit holder shall post a sign or signs reminding employees and patrons of the applicable rules on the premises in a manner and in such place(s) as determined by the local permitting authority; and
9. Pet dogs shall not be permitted to travel through indoor or nondesignated portions of the food establishment, and ingress and egress to the designated outdoor portions of the food establishment shall not require entrance into nor passage through any indoor area of the food establishment.

Authority: T.C.A. §§ 6-54-135, 53-8-117, and 68-14-701 through 68-14-726.

1200-23-01-.08 COMPLIANCE AND ENFORCEMENT.

(1) Applicability

- (a) Public Health Protection - The department shall apply this code to promote its purpose of safeguarding public health and ensuring that food is safe, unadulterated and honestly presented when it is offered to the consumer.
- (b) In enforcing the provisions of this Chapter, the department shall assess existing facilities or equipment that were in use before the effective date of this Chapter based on the following considerations:
 1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
 2. Whether food-contact surfaces comply with 1200-23-01-.04(1)(a);
 3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 1200-23-01-.04(3)(a)1.; and
 4. The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under 1200-23-01-.08(3)(i)6.
- (c) Preventing Health Hazards, Provision for Conditions Not Addressed.
 1. If necessary to protect against public health hazards or nuisances, the department may impose specific requirements in addition to the requirements contained in this Chapter that are authorized by law.
 2. The department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the department's file for the food establishment.
- (d) Variances
 1. Modifications and Waivers. The department may grant a variance by modifying or waiving the requirements of this Chapter if in the opinion of the department a health hazard or nuisance will not result from the variance. If a variance is granted, the department shall retain the information specified under part 2. of this subparagraph in its records for the food establishment. Variance requests shall be submitted to

a committee including a food scientist and representatives from industry and state and local public health agencies appointed by the department.

2. Documentation of Proposed Variance and Justification. Before a variance from a requirement of this Chapter is approved, the information that shall be provided by the person requesting the variance and retained in the department's file on the food establishment includes:
 - (i) A statement of the proposed variance of the Chapter requirement citing relevant Chapter section numbers;
 - (ii) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Chapter sections will be alternatively addressed by the proposal; and
 - (iii) A HACCP plan if required as specified under 1200-23-01-.08(2)(c) that includes the information specified under 1200-23-01-.08(2)(d) as it is relevant to the variance requested.
3. Conformance with Approved Procedures. If the department grants a variance as specified in 1200-23-01-.08(1)(d), or a HACCP plan is otherwise required as specified under 1200-23-01-.08(2)(c), the permit holder shall:
 - (i) Comply with the HACCP plans and procedures that are submitted as specified under 1200-23-01-.08(2)(d) and approved as a basis for the modification or waiver; (P) and
 - (ii) Maintain and provide to the department, upon request, records specified under 1200-23-01-.08(2)(d)4. that demonstrate that the following are routinely employed:
 - (I) Procedures for monitoring the critical control points,
 - (II) Monitoring of the critical control points,
 - (III) Verification of the effectiveness of the operation or process, and
 - (IV) Necessary corrective actions if there is failure at a critical control point.

(2) Plan Submission and Approval

- (a) When Plans Are Required. Plans drawn to scale for food establishments shall be submitted for review and approval to the department. A permit applicant or permit holder shall submit to the department properly prepared plans and specifications for review and approval before:
 1. The construction of a food establishment;
 2. The conversion of an existing structure for use as a food establishment; or
 3. The remodeling of a food establishment or a change of type of food establishment or food operation as specified under 1200-23-01-.08(3)(e)3 if the department

determines that plans and specifications are necessary to ensure compliance with this Chapter.

(b) Contents of the Plans and Specifications. The plans and specifications for a food establishment, including a food establishment specified under 1200-23-01-.08(2)(c), shall include, as required by the department based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Chapter provisions:

1. Intended menu and plans to be reviewed;
2. Anticipated volume of food to be stored, prepared, and sold or served;
3. Proposed layout, mechanical schematics, construction materials, and finish schedules;
4. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
5. Evidence that standard procedures that ensure compliance with the requirements of this Chapter are developed or are being developed; and
6. Other information that may be required by the department for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP Plan is Required.

1. Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the department for approval a properly prepared HACCP plan as specified under 1200-23-01-.08(2)(d) and the relevant provisions of this Chapter if:
 - (i) Submission of a HACCP PLAN is required according to law;
 - (ii) A variance is required as specified under 1200-23-01-.03(4)(a)1.(iv), 1200-23-01-.03(5)(b), or 1200-23-01-.04(2)(d)8.(ii);
 - (iii) The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under 1200-23-01-.08(2)(b), an inspectional finding, or a variance request.
2. A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under 1200-23-01-.03(5)(c).

(d) Contents of a HACCP Plan. For a food establishment that is required under 1200-23-01-.08(2)(c) to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of time/temperature control for safety foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;

2. A flow diagram by specific or category type identifying critical control points and providing information on the following:
 - (i) Ingredients, materials, and equipment used in the preparation of that food, and
 - (ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
 3. Food employee and supervisory training plan that addresses the food safety issues of concern;
 4. A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - (i) Each critical control point,
 - (ii) The critical limits for each critical control points,
 - (iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,
 - (iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,
 - (v) Action to be taken by the person in charge if the critical limits for each critical control point are not met,
 - (vi) Records to be maintained by the person in charge to demonstrate that the HACCP Plan is properly operated and managed; and
 - (vii) Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.
- (e) Trade Secrets. The department shall treat as confidential in accordance with law information that meets the criteria specified in law for a trade secret which is contained on inspection report forms and in the plans and specifications submitted under subparagraphs (a) and (b) of this rule.
- (f) Preoperational Inspections. The department may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under part (2)(b)5. of this paragraph, and is in compliance with law and this Chapter.
- (3) Permit to Operate
- (a) Prerequisite for Operation. A person may not operate a food establishment without a valid permit to operate issued by the department.

- (b) Submission 15 Calendar Days Before Proposed Opening. An applicant shall submit an application for a permit at least 15 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility or a farmers market food unit.
- (c) Form of Submission. A person desiring to operate a food establishment shall submit to the department a written application for a permit on a form provided by the department.
- (d) To qualify for a permit, an applicant shall:
 - 1. Be an owner of the food establishment or an officer of the legal ownership;
 - 2. Comply with the requirements of this Chapter;
 - 3. As specified under 1200-23-01-.08(4)(b), agree to allow access to the food establishment and to provide required information; and
 - 4. Pay the applicable permit fees at the time the application is submitted.
- (e) Contents of the Application. The application for a food service establishment, excluding farmers market food units, shall include:
 - 1. The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
 - 2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
 - 3. A statement specifying whether the food establishment:
 - (i) Is mobile or stationary and temporary or permanent, and
 - (ii) Is an operation that includes one or more of the following:
 - (I) Prepares, offers for sale, or serves time/temperature control for safety food:
 - I. Only to order upon a consumer's request,
 - II. In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or
 - III. Using time as the public health control as specified under 1200-23-01-.03(5)(a)9.,
 - (II) Prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

- (III) Prepares food as specified under item 3.(ii)(II) of this subparagraph for delivery to and consumption at a location off the premises of the food establishment where it is prepared;
 - (IV) Prepares food as specified under item 3.(ii)(II) of this subparagraph for service to a highly susceptible population;
 - (V) Prepares only food that is not time/temperature control for safety food, or
 - (VI) Does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;
4. The name, title, address, and telephone number of the person directly responsible for the food establishment;
 5. The name, title, address and telephone number of the person who functions as the immediate supervisor of the person specified under 4 of this subparagraph such as the zone, district or regional supervisor;
 6. The names, titles, and addresses of the persons comprising the legal ownership as specified under 2 of this subparagraph including the owners and officers;
 7. A statement signed by the applicant that attests to the accuracy of the information provided in the application; and
 8. Other information required by the department.
- (f) New, Converted, or Remodeled Establishments. For food establishments that are required to submit plans as specified under 1200-23-01-.08(2)(a), the department shall issue a permit to the applicant after:
1. A properly completed application is submitted;
 2. The required fee is submitted;
 3. The required plans, specifications, and information are reviewed and approved; and
 4. A preoperational inspection as specified in 1200-23-01-.08(2)(f) shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Chapter.
- (g) Existing Establishments and Change of Ownership. As applicable, the department may issue a permit to a new owner of an existing food establishment after an application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this Chapter.
- (h) Denial of Application for Permit, Notice. If an application for a permit to operate is denied, the department shall provide the applicant with a notice that includes:
1. The specific reasons and Chapter citations for the permit denial;

2. The actions, if any, that the applicant must take to qualify for a permit; and
 3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.
- (i) Responsibilities of the Permit Holder. Upon acceptance of the permit issued by the department, the permit holder in order to retain the permit shall:
1. Comply with the provisions of this Chapter including the conditions of a granted variance as specified under 1200-23-01-.08(1)(d)3., and approved plans as specified under 1200-23-01-.08(2)(b);
 2. If a food establishment is required under 1200-23-01-.08(2)(c) to operate under a HACCP Plan, comply with the plan as specified under 1200-23-01-.08(1)(d)3.;
 3. Immediately contact the department to report an illness of a food employee or conditional employee as specified under 1200-23-01-.02(2)(a)2.;
 4. Immediately discontinue operations and notify the department if an imminent health hazard may exist as specified under 1200-23-01-.08(4)(d);
 5. Allow representatives of the department access to the food establishment as specified under 1200-23-01-.08(4)(b);
 6. Replace existing facilities and equipment specified in 1200-23-01-.08(1)(b) with facilities and equipment that comply with this Chapter if:
 - (i) The department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted; or
 - (ii) The department directs the replacement of the facilities and equipment because of a change of ownership.
 7. Comply with directives of the department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the department in regard to the permit holder's food establishment or in response to community emergencies;
 8. Accept notices issued and served by the department according to law;
 9. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives;
 10. Post the permit in a conspicuous manner as designated by the inspector at the time of inspection, and ensure that no person except an authorized representative of the department shall modify, remove, cover or otherwise make the permit less conspicuous; and
 11. In the event of a lost, misplaced or destroyed permit, immediately apply for a duplicate and forward the fee with the application for a duplicate permit.

- (j) A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under 1200-23-01-.08(3)(e)3 .

(4) Inspection and Correction of Violations

(a) Frequency.

1. Establishing Inspection Interval. Except as specified in parts 2 and 4 of this subparagraph, the department may inspect a food establishment at least once every 6 months.
2. The department may increase the interval between inspections beyond six months if:
 - (i) The food establishment is fully operating under an approved and validated HACCP plan as specified under 1200-23-01-.08(2)(d) and 1200-23-01-.08(1)(d)3.(i) and (ii);
 - (ii) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or
 - (iii) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels-; or
 - (iv) The establishment is a farmers market food unit.
3. The department may periodically inspect throughout its permit period a temporary food establishment or farmers market food unit that prepares, sells, or services unpackaged time/temperature control for safety food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
4. Performance- and Risk-Based. - Within the parameters specified in (4)(a)-(c) of this paragraph, the department shall prioritize and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:
 - (i) Past performance, for nonconformance with this chapter or HACCP plan requirements that are priority items or priority foundation items;
 - (ii) Past performance, for numerous or repeat violations of this chapter or HACCP plan requirements that are core items;
 - (iii) Past performance, for complaints investigated and found to be valid;

- (iv) The hazards associated with the particular foods that are prepared, stored, or served;
- (v) The type of operation including the methods and extent of food storage, preparation, and service;
- (vi) The number of people served; and
- (vii) Whether the population served is a highly susceptible population.

(b) Access

1. Allowed at Reasonable Times after Due Notice. After the department presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the department to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the department is entitled according to law, during the food establishment's hours of operation and other reasonable times.
2. Refusal, Notification of Right to Access, and Final Request for Access. If a person denies access to the department, the department shall inform the person that:
 - (i) The permit holder shall allow access to the department as specified under 1200-23-01-.08(4)(b)1.
 - (ii) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under 1200-23-01-.08(3)(i)5.,
 - (iii) If access is denied, an administrative warrant may be obtained according to law. and
 - (iv) A final request for access will be made.
3. Refusal, Reporting. If after the department presents credentials and provides notice as specified under 1200-23-01-.08(4)(b)1., explains the authority upon which access is requested, and makes a final request for access as specified in 1200-23-01-.08(4)(b)2., the person in charge continues to refuse access, the department shall provide details of the denial of access on an inspection report form.
4. Administrative Warrant to Gain Access: If denied access to a food establishment for an authorized purpose, and after complying with 1200-23-01-.08(4)(b)1.-1200-23-01-.08(4)(b)3., the department may issue an administrative warrant to gain access.

(c) Report of Findings.

1. Documenting Information and Observations. The department shall document on an inspection report form:
 - (i) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as

specified under 1200-23-01-.08(3)(e)3., inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

- (ii) Specific factual observations of violative conditions or other deviations from this Chapter that require correction by the permit holder including:
 - (I) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Chapter as specified under 1200-23-01-.02(1)(b),
 - (II) Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under 1200-23-01-.02(2)(a).
 - (III) Nonconformance with priority items or priority foundation items of this Chapter,
 - (IV) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified under 1200-23-01-.08(1)(d)3.,
 - (V) Failure of the person in charge to provide records required by the department for determining conformance with a HACCP plan as specified under 1200-23-01-.08(2)(d)4.(vi), and
 - (VI) Nonconformance with critical limits of a HACCP plan.
- 2. Specifying Time Frame for Corrections. The department shall specify on the inspection report form the time frame for correction of the violations as specified under 1200-23-01-.08(4)(e) and 1200-23-01-.08(4)(f)1.
- 3. Issuance of Report, Acknowledgment of Receipt and Posting. At the conclusion of the inspection:
 - (i) The department shall provide a copy of the completed inspection report and any notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt; and
 - (ii) The permit holder shall post the most recent completed report in a conspicuous location on the premises.
- 4. Refusal to Sign Acknowledgment. The department shall:
 - (i) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in 1200-23-01-.08(4)(c)3. that:
 - (I) An acknowledgment of receipt is not an agreement with findings,

- (II) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and
 - (III) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the department's historical record for the food establishment; and
 - (ii) Make a final request that the person in charge or permit holder sign an acknowledgment of receipt of inspectional findings.
 - 5. Public Information. Except as specified in 1200-23-01-.08(2)(e) the department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided by law.
- (d) Imminent Health Hazard
- 1. Ceasing Operations and Reporting.
 - (i) Except as specified in (ii) of this part, a permit holder shall immediately discontinue operations and notify the department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.
 - (ii) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.
 - (iii) Upon declaration of an imminent health hazard by the Commissioner, the permit holder shall immediately cease operations until authorized to reopen.
 - 2. Resumption of Operations. If operations are discontinued as specified under 1200-23-01-.08(4)(e)1. or otherwise according to law, the permit holder shall obtain approval from the department before resuming operations.
- (e) Violation of Priority Item or Priority Foundation Item. -
- 1. Timely Correction.
 - (i) Except as specified in subpart (ii) of this part, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item of this Chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.
 - (ii) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the department may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the permit holder to correct violations of a priority item or priority foundation item or HACCP plan deviations.

(iii) In the case of farmers market food units, all violations of priority items must be corrected immediately, whenever possible, and in any event within twenty-four (24) hours.

2. Verification and Documentation of Correction.

(i) After observing at the time of inspection a correction of a violation of a priority item or priority foundation item or a HACCP plan deviation, the department shall enter the violation and information about the corrective action on the inspection report.

(ii) As specified under 1200-23-01-.08(4)(e)1.(ii), after receiving notification that the permit holder has corrected a violation of a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the department may verify correction of the violation.

3. Farmers Market Food Units – Time frame for Corrections.

(i) In the case of farmers market food units, all violations of priority items must be corrected immediately whenever possible, and in any event within twenty-four (24) hours. If violations are not corrected within twenty-four (24) hours, the farmers market food unit shall immediately cease operation until authorized to resume by the department.

(f) Core Violation

1. Except as specified in part 2. of this subparagraph, the permit holder shall correct core items by a date and time agreed to or specified by the department but no later than 90 calendar days after the inspection.

2. The department may approve a compliance schedule that extends beyond the time limits specified under part 1. of this subparagraph if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

(g) Temporary Food Establishments - Time Frame for Correction. In the case of a temporary food establishment pursuant to 1200-23-01-.01(114), all violations shall be corrected within twenty four (24) hours. If violations are not corrected within twenty four (24) hours, the establishment shall immediately cease food service operation until authorized to resume by the department.

(5) Prevention of Foodborne Disease Transmission by Employees

(a) Obtaining Information: Personal History of Illness, Medical Examination and Specimen Analysis. The Department shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that may be transmitted through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound or an acute respiratory infection by:

1. Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.
- (b) Restriction or Exclusion of Food Employee or Summary Suspension of Permit. Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the Department may issue an order to the suspected food employee, conditional employee or permit holder instituting one or more of the following control measures:
 1. Restricting the food employee or conditional employee; 2 Excluding the food employee or conditional employee;
 3. Closing the food establishment by summarily suspending a permit to operate in accordance with the law.
 - (c) Restriction or Exclusion Order: Warning or Hearing Not Required; Information Required in Order. Based on the findings of an investigation and to control disease transmission, the department may issue a summary order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, a notice of hearing or a hearing if the order:
 1. States the reasons for the restriction or exclusion;
 2. States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
 3. States that the suspected food employee or permit holder may request an appeal hearing by submitting a timely request within seven business days of the issuance of the order; and
 4. Provides the name and address of the department representative to whom a request for appeal hearing may be made.
 - (d) Removal of Exclusions and Restrictions. The department shall release a food employee or conditional employee from restriction or exclusion upon a showing that the employee meets the conditions for reinstatement under Rule 1200-23-01-.02(2)(c).
- (6) Reviews Following Inspection
- (a) The inspection report shall state that failure to comply with any time limits specified by the department for correction may result in cessation of operation.
 - (b) The citation of a violation of a priority item may be reviewed, upon receipt of a written request submitted to the department within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for review shall identify the priority item(s) being reviewed. The final determination on the review shall be made by the Commissioner of Health or the Commissioner's designee in writing and within a reasonable time after receipt of the request for a review.
 - (c) The citation of a violation of a priority foundation item may also be reviewed upon the receipt of a written request submitted to the department within ten (10) calendar days following the date of the inspection report. If the tenth (10th) falls on a weekend or state

holiday, the first work day following shall be treated as the tenth (10th) day. The request for review shall identify the priority foundation item(s) being reviewed. The decision of the department shall be final and made in writing within a reasonable time after receipt of the request for a review.

- (d) In the event of an order of cessation of operation based upon the reviewed critical item(s), a request for a hearing may be made in writing to the Commissioner of Health received within ten (10) calendar days of the decision of the department. Except as otherwise provided by law, no action shall be taken regarding a closure on the critical item(s) under review or subject to a hearing pending the outcome of the hearing which shall be held pursuant to the Uniform Administrative Procedures Act.
- (7) Permit Revocation
- (a) After providing an opportunity for a hearing, the Commissioner of Health or his duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the department or its duly authorized representative in the performance of his duty.
 - (b) Prior to revocation, the department shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked, and that the permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the department within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.
- (8) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on re-inspection that conditions responsible for the order to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

Authority: T.C.A. §§ 68-14-701 through 68-14-726.