

290-5-14-.04 Food.

(1) **Condition.** Food shall be safe, unadulterated, and honestly presented.

(2) **Source.**

(a) **Compliance with Food Law.**

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

2. Food prepared in a private home may not be used or offered for human consumption in a food service establishment.

3. Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under subsections (3)(g) and (3)(h) of this Rule.

4. Fish, other than molluscan shellfish, that are intended for consumption in their raw form may be offered for sale or service in a food service establishment not serving a highly susceptible population if they are obtained from a supplier that freezes the fish to destroy parasites; or frozen on the premises and records are retained.

5. Whole - muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory shall be:

(i) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef, or

(ii) Deemed acceptable by the Health Authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef, and

(iii) If individually cut in a food service establishment:

(I) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in 5(i) of this subsection or identified as specified in 5(ii) of this subsection,

(II) Prepared so they remain intact, and

(III) If packaged for undercooking in a food service establishment, labeled as specified in 5(i) of this subsection or identified as specified in 5(ii) of this subsection.

6. Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

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7. Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

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

(c) **Fluid Milk and Milk Products.** Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in law.

(d) **Fish.**

1. Fish that are received for sale or service shall be commercially and legally caught or harvested; or approved for sale or service.

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

(e) **Molluscan Shellfish.**

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

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

(f) **Wild Mushrooms.**

1. Except as specified in 2 of this subsection, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert.

2. *This subsection does not apply to:*

(i) *Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or*

(ii) *Wild mushroom species if they are in packaged form and are the product of a Food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.*

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

(i) Commercially raised for food and:

(I) Raised slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, or

(II) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, and

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

(A) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(B) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;

(ii) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Exotic animals; voluntary inspection or rabbits that are "inspected and certified" in accordance with 9 CFR 354 voluntary inspection of rabbits and edible products thereof;

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

(I) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, and

(II) Slaughtered and processed according to:

(A) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(B) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or

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

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(I) Receive a postmortem examination by an approved veterinarian or veterinarian's designee, or

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

(III) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.

2. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and threatened wildlife and plants.

(3) Specifications for Receiving.**(a) Temperature.**

1. Except as specified in 2 of this subsection, refrigerated, potentially hazardous food (time/temperature control for safety food) shall be at a temperature of 41°F (5°C) or below when received.

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

3. Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

4. Potentially hazardous food (time/temperature control for safety food) that is cooked and received hot shall be at a temperature of 135°F (57°C) or above.

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

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

(b) **Additives.** Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180 Tolerances for pesticides chemicals in food, and exceptions.

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

(d) Eggs and Milk Products, Pasteurized.

1. Egg products shall be obtained pasteurized.

2. Fluid and dry milk and milk products shall:

(i) Be obtained pasteurized; and

(ii) Comply with Grade A standards as specified in law.

3. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen desserts.

4. Cheese shall be obtained pasteurized unless *alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and related cheese products, for curing certain cheese varieties.*

(e) **Package Integrity.** Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

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

(g) Shucked Shellfish, Packaging and Identification.

1. Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:

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

(ii) The "sell by" date for packages with a capacity of less than one-half gallon (1.89 L) or the date shucked for packages with a capacity of one-half gallon (1.89 L) or more.

2. A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under 1 of this subsection shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan shellfish.

(h) Shellstock Identification.

1. Shellstock shall be obtained in containers bearing legible source identification tags or labels

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that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list:

(i) Except as specified under 3 of this subsection, on the harvester's tag or label, the following order:

(I) The harvester's identification number that is assigned by the shellfish control authority, information in the following order:

(II) The date of harvesting,

(III) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested,

(IV) The type and quantity of shellfish, and

(V) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days;" and

(ii) Except as specified in 4 of this subsection, on each dealer's tag or label, the following information in the following order:

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

(II) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested,

(III) The same information as specified for a harvester's tag under 1(i)(II) – (IV) of this subsection, and

(IV) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

2. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under 1 of this subsection shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D – Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

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

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4. If the harvester's tag or label is designed to accommodate each dealer's identification as Specified under 1(ii)(I) and (II) of this subsection, individual dealer tags or labels need not be provided.

(i) **Shellstock, Condition.** When received by a food service establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

(j) **Juice Treated.** Pre-packaged juice shall:

1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and

2. Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24 Process Controls.

(k) **Molluscan Shellfish, Original Container.**

1. Except as specified in 2 – 4 of this subsection, Molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

2. For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(i) The source of the shellstock on display is identified and recorded; and

(ii) The shellstock are protected from contamination.

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

(i) The labeling information for the shellfish on display is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(ii) The shellfish are protected from contamination.

4. Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers where allowed by law if:

(i) The labeling information for the shellfish is on each consumer self service container;

(ii) The labeling information is retained and correlated with the date when, or dates during which, the shellfish are sold or served;

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(iii) *The labeling information and dates specified under 4(ii) of this subsection are maintained for 90 days ; and*

(iv) *The shellfish are protected from contamination.*

(l) Shellstock, Maintaining Identification.

1. Except as specified under 2(ii) of this subsection, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

2. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the dates of harvest:

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

(ii) If shellstock are removed from their tagged or labeled container:

(I) Preserving source identification by using a record keeping system as specified under 2(i) of this subsection, and

(II) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.

(4) Protection From Contamination After Receiving.**(a) Preventing Contamination from Hands.**

1. Food employees shall wash their hands as specified under Rule .03 subsection (5)(b).

2. *Except when washing fruits and vegetables*, food employees shall not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

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

(b) Preventing Contamination When Tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served.

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1. Food shall be protected from cross contamination by:

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

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

(II) Cooked ready-to-eat food;

(ii) *Except when combined as ingredients*, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(I) Using separate equipment for each type, or

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

(III) Preparing each type of food at different times or in separate areas;

(iii) Cleaning and sanitizing equipment and utensils;

(iv) Storing the food in packages, covered containers, or wrappings, except for loosely covered, or uncovered containers in which food is being cooled if protected from overhead contamination;

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

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

(vii) Storing damaged, spoiled, or recalled food being held in the food service establishment separate from food, equipment, utensils, linens and single-service and single-use articles;

(viii) Separating fruits and vegetables, before they are washed from ready-to-eat food.

2. *The requirement in 1(iv) of this subsection does not apply to:*

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

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

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

(iv) *Food being cooled in cooling or cold holding equipment loosely covered, or uncovered if protected from overhead contamination; or*

(v) *Shellstock.*

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

(e) Pasteurized Eggs, Substitute for Raw Eggs for Certain Recipes. *Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages if raw eggs are not cooked to the required temperatures specified under subsection (5)(a)1(i) or (ii) of this Rule or served with a consumer advisory in a food establishment that serves a population that is not a highly susceptible population,*

(f) Protection from Unapproved Additives.

1. Food shall be protected from contamination that may result from the addition of:

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

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

2. A food employee may not:

(i) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or

(ii) *Except for grapes, serve or sell food specified under 2(i) of this subsection that is treated with sulfiting agents before receipt by the food service establishment.*

(g) Washing Fruits and Vegetables.

1. *Except as specified in 2 of this subsection and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water, in a sink designated for that purpose only, to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.*

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2. *Fruits and vegetables may be washed by using chemicals as specified under Rule .07 subsection (6)(h).*

(h) **Ice Used as Exterior Coolant, Prohibited as Ingredient.** After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.

(i) Storage or Display of Food in Contact with Water or Ice.

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

2. Except as specified in 3 and 4 of this subsection, unpackaged food may not be stored in direct contact with undrained ice.

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

4. *Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.*

(j) Food Contact with Equipment and Utensils. Food shall only contact surfaces of:

1. Equipment and utensils that are cleaned and sanitized; or
2. Single-service and single-use articles.

(k) **In-Use Utensils, Between-Use Storage.** During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

1. Except as specified under 2 of this subsection, in the food with their handles above the top of the food and the container;

2. In food that is not potentially hazardous (time / temperature control for safety food) with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under Rule .05 subsection (7)(b) and Rule .05 subsection (8)(a);

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

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

6. In a container of water if the water is maintained at a temperature of at least 135°F (57°C) and the container is cleaned at a frequency specified under Rule .05 subsection (7)(b)3(vi).

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

(m) Wiping Cloths, Use Limitation.

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

- (i) Maintained dry; and
- (ii) Used for no other purpose.

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

- (i) Held between uses in a chemical sanitizer solution at a concentration specified under Rule .05 subsection (6)(n); and
- (ii) Laundered daily.

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

4. Dry wiping cloths and the chemical sanitizing solutions in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

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

6. Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(n) Gloves, Use Limitation.

1. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

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2. Except as specified in 3 of this subsection, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked such as frozen food or a primal cut of meat.

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

4. Cloth gloves may not be used in direct contact with food *unless the food is subsequently cooked such as frozen food or a primal cut of meat.*

(o) Using Clean Tableware for Second Portions and Refills.

1. Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

2. Except as specified in 3 of this subsection, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

3. *Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process.*

(p) Refilling Returnables.

1. A take-home food container returned to a food service establishment may not be refilled at a food service establishment with a potentially hazardous food (time/temperature control for safety food).

2. Except as specified in 3, a take-home food container refilled with food that is not potentially hazardous (time/temperature control for safety food) shall be cleaned as specified under Rule .05 subsection (7)(k)2.

3. *Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process.*

(q) Food Storage.

1. Except as specified in 2 and 3 of this subsection, food shall be protected from contamination by storing the food:

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(cont.)

- (i) In a clean, dry location;
- (ii) Where it is not exposed to splash, dust, or other contamination; and
- (iii) At least 6 inches (15 cm) above the floor.

2. Food in packages and working containers may be stored less than 6 inches (15 cm) above the floor on case lot handling equipment if the equipment can be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

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

(r) Food Storage, Prohibited Areas. Food may not be stored:

1. In locker rooms;
2. In toilet rooms;
3. In dressing rooms;
4. In garbage rooms;
5. In mechanical rooms;
6. Under sewer lines that are not shielded to intercept potential drips;
7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
8. Under open stairwells; or
9. Under other sources of contamination.

(s) Vended Potentially Hazardous Food (Time/Temperature Control for Safety Food), Original Container. Potentially hazardous food (time/temperature control for safety food) dispensed through a vending machine shall be in the package in which it was placed at the food service establishment or food processing plant at which it was prepared.

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

290-5-14-.04 Food. (4) Protection From Contamination After Receiving. (cont.)**(u) Food Display.**

1. *Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption*, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

2. Protective devices for counters, serving lines, salad bars and other similar food displays in food service establishments shall be designed and constructed so as to intercept contaminants which may be expelled from the customer's mouth or nose.

3. All food, whether on display, being prepared for service or placed for consumer self-service must be protected from contamination from consumers standing or sitting within eight (8) feet of the food, except that table side finishing as approved by the Health Authority and hibachi grills will be allowed when food preparation is for immediate service.

(v) Condiments, Protection.

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

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

(w) Consumer Self-Service Operations.

1. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. *This paragraph does not apply to:*

(i) *Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;*

(ii) *Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or*

(iii) *Raw, frozen, shell-on shrimp, or lobster.*

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

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3. Clean tableware for consumers returning to the self-service area for additional food shall be provided. A public notice informing consumers to use clean tableware shall be posted in a conspicuous place in the self-service area. Beverage cups and glasses, and flatware including forks, knives and spoons are exempt from this requirement.

4. When refilling containers of foods on a self-service display, the new food product shall not be mixed with the old food product unless:

(i) The displayed product is holding at 41°F or below or 135°F or above; and

(ii) The self-service operation is being monitored by employees trained in safe operating procedures; and

(iii) The date and time of the earliest food prepared shall either be marked on the container, or documented by an alternate approved method.

5. All unwrapped foods on a self-service buffet or salad bar shall be disposed of at the end of the business day or after a maximum of 24 hours.

(x) Returned Food and Re-Service of Food.

1. Except as specified in 2 of this subsection, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

2. Except for food served to patients or clients who are under contact precautions or protective environment isolation in a facility serving a highly susceptible population, *a container of food that is not potentially hazardous (time/temperature control for safety food) may be re-served from one consumer to another if:*

(i) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(ii) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(y) Outdoor Cooking and Service of Food.

1. For special events, foods requiring only cooking may be prepared, if served immediately, in an outside area on the premises of a permitted food service establishment. Prior approval must be obtained from the Health Authority.

2. The presentation of food orders and limited table side finishing, such as tossing salad and flaming desserts, is permissible from a permitted food service establishment in an adjoining outdoor seating area. Outdoor salad bars or unenclosed dessert carts are prohibited.

290-5-14-.04 Food. (4) Protection From Contamination After Receiving. (cont.)

(z) **Miscellaneous Sources of Contamination.** Food shall be protected from contamination that may result from a factor or source not specified under subsections (4)(a) - (4)(y) of this Rule.

(5) Pathogen Destruction.

(a) Raw Animal Foods.

1. Except as specified under 2 and in 3 and 4 of this subsection, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(i) 145°F (63°C) or above for 15 seconds for:

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

(II) Except as specified under 1(ii) and 1(iii) and 2, and in 3 of this subsection, fish and meat including game animals commercially raised for food and game animals under a voluntary inspection program;

(ii) 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food, and game animals under a voluntary inspection program; and raw eggs that are not prepared to a consumer's order and for immediate service:

Minimum	
Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
158 (70)	< 1 second (instantaneous)

; or

(iii) 165°F (74°C) or above for 15 seconds for poultry, baluts, wild game animals, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.

2. Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:

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

290-5-14-.04 Food. (5) Pathogen Destruction. (a) Raw Animal Foods. 2. (i) (cont.)

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163° (325°F) or more	121°C (250°F) or more
High Humidity ¹	121°C (250°F) or less	121°C (250°F) or less

¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

; and

(i) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		

¹Holding time may include postoven heat rise.

3. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(i) The food service establishment serves a population that is not a highly susceptible population, and

(ii) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef", and

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(iii) *The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.*

4. *A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in 3 of this subsection, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:*

(i) *The food service establishment serves a population that is not a highly susceptible population; and*

(ii) *The consumer is informed that to ensure its safety, the food should be cooked as specified under 1 or 2 of this subsection; or*

(iii) *The Health Authority grants a variance from 1 or 2 of this subsection based on a HACCP plan that:*

(I) *Is submitted by the permit holder and approved as specified under Rule .10 subsection (5)(b), and*

(II) *Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and*

(III) *Verifies that equipment and procedures for food preparation and training of food employees at the food service establishment meet the conditions of the variance.*

(b) **Microwave Cooking.** Raw animal foods cooked in a microwave oven shall be:

1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

2. Covered to retain surface moisture;

3. Heated to a temperature of at least 165°F (74°C) in all parts of the food; and

4. Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(c) **Plant Food Cooking for Hot Holding.** Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 135°F (57°C).

(d) **Parasite Destruction.**

1. Except as specified in 2 of this subsection, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

(i) Frozen and stored at a temperature of -4°F (-20°C) or below for a minimum of 7 days (168

290-5-14-.04 Food. (5) Pathogen Destruction. (d) Parasite Destruction. 1. (cont.)

hours) in a freezer;

(ii) Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) or below for a minimum of 15 hours; or

(iii) Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of 24 hours.

2. *The requirement in 1 of this subsection does not apply to:*

(i) *Molluscan shellfish;*

(ii) *Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern); or*

(iii) *Aquacultured fish, such as salmon, that:*

(I) *If raised in open water, are raised in net-pens, or*

(II) *Are raised in land-based operations such as ponds or tanks, and*

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

(e) Records, Creation and Retention.

1. Except as specified in subsection (5)(d)2 of this Rule and 2 of this subsection, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food service establishment for 90 calendar days beyond the time of service or sale of the fish.

2. *If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under subsection (5)(d) of this Rule may substitute for the records specified under 1 of this subsection.*

3. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subsection (5)(d)2(iii) of this Rule, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subsection (5)(d)2(iii) of this Rule shall be obtained by the person in charge and retained in the records of the food service establishment for 90 calendar days beyond the time of service or sale of the fish.

290-5-14-.04 Food. (5) Pathogen Destruction. (cont.)**(f) Reheating for Hot Holding.**

1. Except as specified under 2 and 3 and in 5 of this subsection, potentially hazardous food (time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) for 15 seconds.

2. Except as specified under 3 of this subsection, potentially hazardous food (time/temperature control for safety food) reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.

3. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 135°F (57°C) for hot holding.

4. Reheating for hot holding shall be done rapidly and the time the food is between the temperatures of 41°F (5°C) and 165°F (74°C) and 41°F (5°C) and 135°F (57°C) for commercially processed food, may not exceed 2 hours.

5. Remaining unsliced portions of meat roasts that are cooked as specified under subsection (5)(a)2 of this Rule may be reheated for hot holding using the same oven parameters and minimum time and temperature conditions under which it was cooked.

(g) Treating Juice. Juice packaged in a food service establishment shall be:

1. Treated under a HACCP plan to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

2. Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:

(i) As specified under subsection (7)(c) of this Rule, and

(ii) As specified in 21 CFR 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

290-5-14-.04 Food. (6) Limiting the Growth of Pathogens**(6) Limiting the Growth of Pathogens**

(a) **Frozen Food.** Stored frozen foods shall be maintained frozen.

(b) **Potentially Hazardous Food (Time/Temperature Control for Safety Food), Slacking.** Frozen potentially hazardous food (time/temperature control for safety food) that is slacked to moderate the temperature shall be held:

1. Under refrigeration that maintains the food temperature at 41° F (5°C) or less; or
2. At any temperature if the food remains frozen.

(c) **Thawing.** Except as specified in 4 of this subsection, potentially hazardous food (time/temperature control for safety food) shall be thawed:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
2. Completely submerged under running water:
 - (i) At a water temperature of 70°F (21°C) or below,
 - (ii) With sufficient water velocity to agitate and float off loose particles in an overflow, and
 - (iii) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C), or
 - (iv) For a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 41°F (5°C), for more than 4 hours including:
 - (I) The time the food is exposed to the running water and the time needed for preparation for cooking, or
 - (II) The time it takes under refrigeration to lower the food temperature to 41°F (5°C);
3. As part of a cooking process if the food that is frozen is:
 - (i) Cooked as specified under subsection (5)(a) 1 or 2 or (5)(b) of this Rule, or
 - (ii) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
4. *Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.*

290-5-14-.04 Food. (6) Limiting the Growth of Pathogens (cont.)**(d) Cooling.**

1. Cooked potentially hazardous food (time/temperature control for safety food) shall be cooled:

(i) Within 2 hours from 135°F (57°C) to 70°F (21°C); and

(ii) Within a total of 6 hours from 135°F (57°C) to 41°F (5°C).

2. Potentially hazardous food (time/temperature control for safety food) shall be cooled within 4 hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

3. Except as specified under 4 of this subsection, a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier shall be cooled within 4 hours to 41°F (5°C).

4. Raw eggs shall be received and immediately placed in refrigerated equipment that maintains an ambient air temperature of 41°F (5°C) or less.

(e) Cooling Methods.

1. Cooling shall be accomplished by using one or more of the following methods based on the type of food being cooled:

(i) Placing the food in shallow pans;

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

(iii) Using rapid cooling equipment;

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

(v) Using containers that facilitate heat transfer;

(vi) Adding ice as an ingredient; or

(vii) Other effective methods.

2. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

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

(ii) Loosely covered, or uncovered if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

290-5-14-.04 Food. (6) Limiting the Growth of Pathogens (cont.)

(f) Potentially Hazardous Food (Time/Temperature Control for Safety Food), Hot and Cold Holding. *Except during preparation, cooking, or cooling, or when time is used as the public health control, potentially hazardous food (time/temperature control for safety food) shall be maintained at 41°F (5°C) or below or 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified in subsection (5)(a)2 of this Rule and reheated using the same temperature and time conditions as cooking may be held at a temperature of 130°F (54°C) or above.*

(g) Ready-to-Eat, Potentially Hazardous Food (Time/Temperature Control for Safety Food), Date Marking.

1. Except when packaging food using a reduced oxygen packaging method, and except as specified in 4 and 5 of this subsection, refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, which is including the day of preparation a maximum of seven (7) calendar days from the day the food is prepared if the food is maintained at 41°F (5°C) or below.

2. Except as specified in 4 - 6 of this subsection, refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food service establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, which is including the day the original container is opened, a maximum of seven (7) calendar days after the original container is opened, or the use-by/sell by/ expiration date, whichever comes sooner, if the food is maintained at 41°F (5°C) or below.

3. A refrigerated, ready - to - eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

4. *A date marking system that meets the criteria stated in 1 and 2 of this subsection may include:*

(i) Using a method approved by the Health Authority for refrigerated, ready-to-eat potentially hazardous food (time / temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(ii) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded;

(iii) Marking the date or day the original container is opened in a food service establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded; or

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(iv) *Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the Health Authority upon request.*

5. *The requirements in 1 and 2 of this subsection do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.*

6. *The requirement in 2 of this subsection does not apply to the following foods prepared and packaged by a food processing plant inspected by a Health Authority:*

(i) *Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;*

(ii) *Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;*

(iii) *Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;*

(iv) *Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;*

(v) *Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods;*

(vi) *Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers, and which retain the original casing on the product; and*

(vii) *Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers.*

(h) Ready-to-Eat, Potentially Hazardous Food (Time/Temperature Control for Safety Food), Disposition.

1. A food that requires datemarking shall be discarded if it:

(i) Exceeds 7 days, except time that the product is frozen;

(ii) Is in a container or package that does not bear a date or day; or

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(iii) Is appropriately marked with a date or day that exceeds 7 days .

2. Refrigerated, ready-to-eat, potentially hazardous food (time / temperature control for safety food) prepared in a food service establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds 7 days.

(i) Time as a Public Health Control.

1. Except as specified under 4 of this subsection, if time only is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking, or for ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the food service establishment and made available to the regulatory authority upon request that specify:

(i) Methods of compliance with 2(i) - (iii) or 3(i) - (v) of this subsection; and

(ii) Methods of compliance with the cooling of potentially hazardous food (time/temperature control for safety food) that is prepared, cooked, and refrigerated before time is used as a public health control.

2. If time only, rather than time in conjunction with temperature control, up to a maximum of 4 hours, is used as the public health control:

(i) The food shall have an initial temperature of 41°F (5°C) or less if removed from cold holding temperature control, or 135°F (57°C) or greater if removed from hot holding temperature control;

(ii) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;

(iii) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; and

(iv) The food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded.

3. If time only, rather than time in conjunction with temperature control, up to a maximum of 6 hours, is used as the public health control:

(i) The food shall have an initial temperature of 41°F (5°C) or less when removed From temperature control and the food temperature may not exceed 70°F (21°C) within a maximum time period of 6 hours;

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3. (cont.)

(ii) The food shall be monitored to ensure the warmest portion of the food does not exceed 70°F (21°C) during the 6-hour period, *unless an ambient air temperature is maintained that ensures the food does not exceed 70°F (21°C) during the 6-hour holding period;*

(iii) The food shall be marked or otherwise identified to indicate:

(I) The time when the food is removed from 41°F (5°C) or less cold holding temperature control, and

(II) The time that is 6 hours past the point in time when the food is removed from cold holding temperature control;

(iv) The food shall be:

(I) Discarded if the temperature of the food exceeds 70°F (21°C), or

(II) Cooked and served, served if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 41°F (5°C) or less cold holding temperature control; and

(v) The food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded.

4. A food service establishment that serves a highly susceptible population may not use time as the public health control for raw eggs.

(j) **Variance Requirement.** A food service establishment shall obtain a variance from the Health Authority as specified in Rule .10 subsection (5)(a) and under Rule .10 subsection (5)(b) before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;

2. Curing food;

3. Using food additives or adding components such as vinegar:

(i) As a method of food preservation rather than as a method of flavor enhancement, or

(ii) To render a food so that it is not potentially hazardous (time/temperature control for safety food);

4. Packaging food using a reduced oxygen packaging method *except where a barrier to **Clostridium botulinum** in addition to refrigeration exists;*

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5. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;

6. Custom processing animals that are for personal use as food and not for sale or service in a food service establishment;

7. Preparing food by another method that is determined by the Health Authority to require a variance; or

8. Sprouting seeds or beans.

(k) Reduced Oxygen Packaging, Criteria.

1. Except for a food service establishment that obtains a variance as specified under (j) of this Rule and except as specified under 3 and 5 and as specified in 4 of this subsection, a food service establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

2. A food service establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under Rules .02 subsection (5)(d) and that:

(i) Identifies the food to be packaged;

(ii) Except as specified under 3 and 5 and as specified in 4 of this subsection, requires that the packaged food shall be maintained at 41°F (5°C) or less and meet at least one of the following criteria:

(I) Has an a_w of 0.91 or less,

(II) Has a pH of 4.6 or less,

(III) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21 Use of food ingredients and sources of radiation, and is received in an intact package, or

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

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

(I) Maintain the food at 41°F (5°C) or below, and

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

(iv) Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(v) Includes operational procedures that:

(I) Prohibit contacting food with bare hands,

(II) Identify a designated work area and the method by which:

(A) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

(B) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, and

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

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

(I) Concepts required for a safe operation,

(II) Equipment and facilities, and

(III) Procedures specified under 2(v) of this subsection and Rule .02 subsection (5)(d).

3. *Except for fish that is frozen before, during, and after packaging, a food service establishment may not package fish using a reduced oxygen packaging method.*

4. *Except as specified under 3 of this subsection, a food service establishment may package food using a cook-chill or sous vide process without obtaining a variance if:*

(i) *The food service establishment implements a HACCP plan that contains the information as specified under Rule .02 subsection (5)(d);*

(ii) *The food is:*

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(I) *Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer,*

(II) *Cooked to heat all parts of the food to a temperature and for a time as specified under Rule .04 subsection (5)(a),*

(III) *Protected from contamination after cooking,*

(IV) *Placed in a package or bag with an oxygen barrier before cooking, or placed in a package or bag immediately after cooking and before reaching a temperature below 135°F (57°C),*

(V) *Except for frozen food that is not shelf life restricted, cooled to 41°F (5°C) in the package or bag as specified under subsection (6)(d) of this Rule and then cooled to 34°F (1°C) or less within 48 hours of reaching 41°F (5°C), and:*

(A) *Held at 34°F (1°C) and consumed or discarded within 30 days after the date of preparation, or*

(B) *If removed from a storage unit that maintains a 34°F (1°C) food temperature, held at 41°F (5°C) or less for no more than 72 hours before consumption.*

(VI) *Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,*

(VII) *If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, and*

(VIII) *Labeled with the product name and the date packaged; and*

(iii) *The records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan, are maintained and are:*

(I) *Made available to the Health Authority upon request, and*

(II) *Held for 6 months; and*

(iv) *Written operational procedures as specified under 2(v) of this subsection and a training program as specified under 2(vi) of this subsection are implemented.*

5. *A food service establishment may package cheese using a reduced oxygen packaging method*

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without obtaining a variance if it:

(i) Limits the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food service establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;

(ii) Has a HACCP plan that contains the information specified under Rule .02 subsection (5)(d);

(iii) Except as specified under 2(ii), 2(iii)(II), and 2(iv), complies with 2 of this subsection;

(iv) Labels the package on the principal display panel with a “use by” date that does not exceed 30 days or the original manufacturer’s “sell by” or “use by” date, whichever occurs first; and

(v) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.

(7) Food Identity, Presentation, and On-Premises Labeling.

(a) Standards of Identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and standards of identity or composition, and the general requirements in 21 CFR 130 Food Standards: General and 9 CFR 319 Subpart A – General.

(b) Honestly Presented.

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

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

(c) Food Labels.

1. Food packaged in a food service establishment, shall be labeled as specified in law, including 21CFR 101- Food labeling, and 9 CFR 317 Labeling, marking devices, and containers.

2. Label information shall include:

(i) The common name of the food, or absent a common name, an adequately descriptive identity statement;

(ii) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical

290-5-14-.04 Food. (7) Food Identity, Presentation, and On-Premises Labeling. (c) Food Labels.**2. (cont.)**

preservatives, if contained in the food;

(iii) An accurate declaration of the quantity of contents;

(iv) The name and place of business of the manufacturer, packer, or distributor; and

(v) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient (Effective January 1, 2006).

(vi) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

(vii) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

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

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

(ii) A card, sign, or other method of notification that includes the information specified under 2(i), (ii), and (v) of this subsection.

4. *Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:*

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

(ii) *There are no state or local laws requiring labeling; and*

(iii) *The food is manufactured or prepared on the premises of the food service establishment or at another food service establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.*

(d) Other Forms of Information.

1. If required by law, consumer warnings shall be provided.

2. Food service establishment or manufacturers' dating information on foods may not be concealed or altered.

290-5-14-.04 Food. (7) Food Identity, Presentation, and On-Premises Labeling. (cont.)**(e) Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.**

1. Except as specified in subsection (5)(a)3 and (5)(a)4(iii) and under subsection (9)(a)3 of this Rule, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in 2 and 3 of this subsection using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. The disclosure and reminder statements shall be worded in legible type in all capital letters and no smaller than font size #8, or if displayed on a menu board shall be printed no smaller than the smallest lettering used for a menu item.

2. Disclosure shall include:

(i) A description of the animal-derived foods, such as “oysters on the half shell (raw oysters),” “raw-egg Caesar salad,” and “hamburgers (can be cooked to order);” or

(ii) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

3. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

(i) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or

(ii) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

(8) Contaminated Food.**(a) Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.**

1. A food that is unsafe, adulterated, or not honestly presented shall be discarded or reconditioned according to an approved procedure.

2. Food that is not from an approved source shall be discarded.

3. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded shall be discarded.

290-5-14-.04 Food. (8) Contaminated Food. (a) Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food. (cont.)

4. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

(b) **Expired Foods.** Packaged, commercially processed foods that are for sale to the consumer shall be removed from sale immediately after the manufacturer's expiration date or the sell-by date.

**(9) Special Requirements for Highly Susceptible Populations.
(Pasteurized Foods, Prohibited Re-Service, and Prohibited Food)**

In a food service establishment that serves a highly susceptible population:

1. The following criteria apply to juice:

(i) For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

(ii) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label may not be served or offered for sale; and

(iii) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under Rule .02 subsections (5)(b) – (e) and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction 120.24 Process controls.

2. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:

(i) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, and

(ii) Except as specified in 6 of this subsection, recipes in which more than one egg is broken and the eggs are combined;

3. The following foods may not be served or offered for sale in a ready-to-eat form:

(i) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare,

(ii) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and

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(iii) Raw seed sprouts.

4. Food employees shall not contact exposed ready-to-eat food with their bare hands except when washing fruits and vegetables.

5. Time only, as the public health control may not be used for raw eggs.

6. *The requirement in 2(ii) of this subsection does not apply if:*

(i) *The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked to 145°F (63°C) for 15 seconds, and served immediately, such as an omelet, soufflé, or scrambled eggs;*

(ii) *The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or*

(iii) *The preparation of the food is conducted under a HACCP plan that:*

(I) *Identifies the food to be prepared,*

(II) *Prohibits contacting ready-to-eat food with bare hands,*

(III) *Includes specifications and practices that ensure:*

(A) *Salmonella Enteritidis growth is controlled before and after cooking, and*

(B) *Salmonella Enteritidis is destroyed by cooking the eggs to 155°F (68°C) for 15 seconds or*

(IV) *Contains the information specified under Rule .02 subsection (5)(d) including procedures that:*

(A) *Control cross contamination of ready-to-eat food with raw eggs, and*

(B) *Delineate cleaning and sanitization procedures for food-contact surfaces, and*

(v) *Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.*

7. Except as specified in 8 of this subsection, food may be re-served if the food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or the food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

290-5-14-.04 Food. (9) Special Requirements for Highly Susceptible Populations. (Pasteurized Foods, Prohibited Re-Service, and Prohibited Food) (cont.)

8. *Food may not be re-served under the following conditions:*

(i) *Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.*

(ii) *Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.*

Authority O.C.G.A. 26-2-373; 31-2-4. Administrative History. Original Rule entitled "Application; Filing of" was filed and effective on July 19, 1965 as 270-5-6-.04. Amended: Rule repealed and a new Rule entitled "Food Protection" adopted. Filed January 24, 1967; effective February 12, 1967. Amended: Rule renumbered as 290-5-14-.04. Filed June 10, 1980; effective June 30, 1980. Amended: Rule repealed and a new Rule entitled "Personnel" adopted. Filed July 10, 1986; effective July 30, 1986. Amended: Rule repealed and a new Rule of the same title adopted. Filed July 11, 1995; effective July 31, 1995. Amended: Rule repealed and a new Rule entitled "Food Care" adopted. Filed Jan. 26, 2006; effective Feb. 15, 2006. Amended: Rule repealed and a new Rule entitled "Food" adopted. Filed. Jan. 24, 2007; effective Feb. 13, 2007. Amended: Rule repealed and a new Rule of same title adopted. Filed August 23, 2007; effective Sept. 12, 2007.