

ARTICLE 81
FOOD PREPARATION AND FOOD ESTABLISHMENTS

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§81.01 Scope.

The provisions of this Article shall apply equally to all food service establishments and non-retail food processing establishments, and shall be construed in a manner that protects the health and safety of the public. All other applicable provisions of this Code, the State Sanitary Code, and the rules of the Commissioner shall be complied with in addition to the requirements set forth in this Article. Owners and operators of food service establishments and non-retail food processing establishments shall operate such establishments in a sanitary manner so as to prevent imminent or public health hazards and to otherwise protect the public health. This Article applies to all food service establishments and non-retail processing establishments where food, as defined in Article 71 of this Code, is prepared and offered for service, including but not limited to:

- mobile food vending units,
- mobile food vending commissaries,
- other food commissaries and shared or communal kitchens that are not inspected or regulated according to the State Agriculture and Markets Law,
- vending machines,
- temporary food service establishments,
- caterers,
- cafeterias,
- charitable organizations' kitchens,
- social clubs,
- delicatessens,
- restaurants, and
- bars.

The terms “establishment” or “food establishment” when used in this Article shall refer to a food service establishment or non-retail processing establishment regulated by this Code.

§81.03 Definitions. When used in this Title and Code:

(a) Adequate or sufficient means able to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, or an activity conducted or act performed in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, consistent with generally accepted public health standards, is adequate or sufficient within the meaning of this Article.

(b) Aquatic animal means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including but not limited to 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.

(c) A_w means water activity, which is the measure of the free moisture in a food, and is indicated by the symbol A_w . Its numeric value is the quotient of the water vapor pressure of the food substance divided by the vapor pressure of pure water at the same temperature.

(d) Caterer means a food service establishment holding a permit issued by the Commissioner that prepares food and may provide transportation for, and service of food at, a location other than the establishment. A caterer also is any person who prepares food at a permitted food service or non-retail processing establishment for service at another location.

(e) Comminuted means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of aquatic animals or meat products that have been reduced in size and restructured and reformulated.

(f) Contaminated means adulterated or spoiled food, or food and equipment which is exposed to filth, toxic substances, rodent or insect contact or infestation, or potentially hazardous foods held at temperatures between 41 degrees Fahrenheit (5 degrees Celsius) and 140 degrees Fahrenheit (57 degrees Celsius) for a period of time exceeding that reasonably required for preparation, including potentially hazardous foods which are not heated or cooked to the temperatures

specified in §81.09, or food in or subject to any condition which could permit the introduction of pathogenic microorganisms or foreign matter, including manual contact during service or preparation if such foods will not be subsequently cooked or heated to the temperatures specified in §81.09.

(g) A controlled-location vending machine means a food vending machine which dispenses only food that is not potentially hazardous, can be serviced in a sanitary manner by an untrained person at the location and is located where it is protected from environmental contamination, abuse and vandalism.

(h) Cook chill processing means a type of reduced oxygen packaging process 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 (pathogens that grow slowly at refrigerated temperatures and that include, but are not limited to, *Listeria monocytogenes*, *Clostridium botulinum* and *Yersinia enterocolitica* or *yersiniosis*).

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

(j) 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.

(k) Cured food means food preserved by drying, salting, smoking or pickling, or a combination of such methods.

(l) Cut leafy greens means leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes, but is not limited to:

- iceberg lettuce,
- romaine lettuce,
- leaf lettuce,
- butter lettuce,
- baby leaf lettuce (i.e., immature lettuce or leafy greens),
- *arugula* or rocket lettuce,
- escarole,
- endive,
- spring mix,
- spinach,
- cabbage,
- kale, and,
- chard or any other cut, shredded, sliced, chopped or torn edible green leafy vegetable.

(m) Easily cleanable means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

(n) Easily movable equipment means equipment that is mounted on wheels or casters with flexible, extensible, or quick disconnecting utility connections, if any, so that the equipment may be easily moved for cleaning.

(o) Equipment means any tool, item, fixture or article used in the operation of a food service establishment, and any component of such tool, item, fixture and article including but not limited to, all stoves, ranges, microwave ovens, hoods, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

(p) Food-contact surfaces mean the surfaces of equipment, utensils, tableware and kitchenware, such as ladles, colanders, serving spoons, spatulas, pots and pans, which normally come into contact with food or from which liquids and residues may drain back into food or onto other food-contact surfaces.

(q) Food grade material means material used in the construction and design of food contact surfaces, equipment and utensils that is certified as meeting the standards of the National

Sanitation Foundation (NSF) or any other organization utilizing a process approved by the American National Standard Institute (ANSI) or that is otherwise acceptable to the Department, in compliance with §81.17 of this Article.

(r) Food worker or food handler means any person who works in a food service establishment or non-retail food processing establishment, including but not limited to any person described in §11.01(l) of this Code.

(s) Food service establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

(t) A food vending machine means a self-service device that when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

(u) A food vending machine commissary means a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

(v) A food vending machine operation means the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending machine operation and all other appurtenances required and used to operate and maintain the food vending machines.

(w) Frozen dessert means:

- ice cream,
- frozen custard,
- French ice cream,
- French custard ice cream,
- artificially sweetened ice cream,
- ice milk,
- artificially sweetened ice milk,
- fruit sherbet,
- non-fruit sherbet,
- water ices,
- non-fruit water ices,
- confection frozen without stirring,
- dairy confection frozen without stirring,
- manufactured dessert mix,
- frozen confection,
- melloream frozen dessert,
- parevine,
- frozen yogurt,
- freezer made shakes,
- freezer made milk shakes,
- dietary frozen dessert,
- whipped cream confection, and,
- bisque tortoni,

as all such products are commonly known, together with any mix used in making such frozen desserts, and any products that are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products, and chips or flakes of ice made from water with or without additives, served to the customer with or without flavoring, in accordance with standards of identity for such foods established in Article 4-a of the State Agriculture and Markets Law, or successor statute.

(x) Hazard Analysis and Critical Control Point (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.

(y) Imminent health hazard or public health hazard means any violation, condition, or combination of violations or conditions making it probable that food served to the public by the establishment or its continued operation will be injurious or dangerous to the health of any person consuming such foods.

(z) Indirect drain means a waste line which does not connect directly with the drainage system, but conveys and discharges liquid wastes through an air break into an approved plumbing fixture or receptacle that is directly connected to the drainage system.

(aa) Non-retail food processing establishment means a facility where food is processed, prepared, stored or packed for consumption off the premises and not given or sold directly to the consumer. This shall include but not be limited to mobile food vending commissaries, food vending machine commissaries, and shared kitchens where space and equipment are rented, leased or otherwise contracted for use by other persons, such as caterers.

(bb) Operating or in operation means that one or more food workers in a food service establishment is receiving, preparing, storing or serving food or that the establishment is open to the public.

(cc) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, and does not include a wrapper, carry out box, or other non durable container used to containerize food for the purpose of facilitating food protection during service and receipt of the food by the consumer.

(dd) pH means the symbol for the negative logarithm of the hydrogen ion concentration that is a measure of the degree of acidity or alkalinity of a solution.

(ee) Potentially hazardous food (PHF) or time and temperature controlled for safety (TCS) food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea and other aquatic animals, foods of plant origin that have been heat treated; garlic in oil mixtures that support the growth of *Clostridium botulinum* or toxin formation; 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 toxins formation; raw bean or seed sprouts; or other foods in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or growth of *C. botulinum*. The term does not include food with a water activity (a_w) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below. A food may be deemed not potentially hazardous because of the combined effect of a_w and pH other than as previously specified if supported by a food product assessment acceptable to the Department.

(ff) Processed fish means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

(gg) Ready-to-eat food means food that is in a form that is edible without additional preparation or heat treatment to achieve food safety in accordance with the provisions of this Article.

(hh) Reduced oxygen packaging means the reduction of the amount of oxygen in a food packaged 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 where the food being packaged requires control of *Clostridium botulinum* or *Listeria monocytogenes* in the final packaged form. Reduced oxygen packaging includes, but is not limited to, vacuum packaging, cook chill packaging, and *sous vide* processing.

(ii) Sanitization means effective bactericidal treatment by heat or chemical means that destroys pathogens on surfaces treated. Acceptable sanitization methods are:

(1) immersion for at least one-half minute in clean hot water at a temperature of not less than 170 degrees Fahrenheit (76.7 degrees Celsius);

(2) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(3) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(4) immersion for at least one minute in a solution of 200 parts per million quaternary ammonium at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(5) immersion in a clean solution containing any other food grade chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite which has been held at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius) for one minute;

(6) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(7) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

(jj) Single service articles means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks and all similar articles which are intended by the manufacturer for single eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

(kk) Shared kitchen means a commercial kitchen that is rented or leased by more than one food service establishment operator.

(ll) *Sous vide* processing is a type of reduced oxygen packaging in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, and either served or rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(mm) Stand means a movable, portable or collapsible structure, framework, device, container, or other contrivance, other than a vehicle or pushcart, used for displaying, keeping or storing any food at a temporary food service establishment.

(nn) Temporary food service establishment means a food service establishment as defined in Article 88 of this Code. Additional to the provisions of this Article, a temporary food service establishment shall be operated at all times in compliance with the provisions of Article 88 and all applicable provisions of this Code.

(oo) Utensil means any tableware, such as knives, forks, spoons, glasses, cups, dishes and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

(pp) Ware washing means the cleaning and sanitizing of utensils and food contact surfaces of equipment.

§81.04 Approved sources of food. Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules, and regulations related to food, the use of food, and food labeling.

(a) *Frozen desserts.* Frozen desserts shall be identified, manufactured, and sold in accordance with Article 4-A of the State Agriculture and Markets Law or any successor statute.

(b) *Meat.* No meat shall be served or sold in a food service or non-retail food processing establishment unless the meat is inspected and approved by the United States Department of Agriculture or any other authorized government agency.

(c) *Shellfish tags.* Fresh and frozen shellfish, shelled or shucked shellfish (oysters, clams, scallops, scallops with roe attached or mussels) shall be identified with the name and address of the original shell stock processor, shucker-packer or repacker, and the foreign intrastate and interstate identification number issued pursuant to applicable law. Identification tags shall be retained on the premises for 90 days from the date the shellfish was used, in accordance with State Sanitary Code § 14-1.33 (b) or any successor provision. No tags are required to be kept for shucked scallop abductor muscles.

(d) *Exotic and game animals.* Exotic animals not native to New York State and any game animals served in food service establishments must be obtained from commercially regulated sources, such as those described in regulations of the State Department of Agriculture and Markets found at 1 NYCRR §271-2.2, or successor regulations.

(e) *Labeling unpasteurized packaged juices.*

(1) *Definitions.* For the purposes of this subdivision:

(A) *Juice* means the aqueous (water-based) liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purees.

(B) *Packaged juice* means juice that has been sealed in bottles or other containers.

(2) *Labeling.* Unpasteurized packaged juices prepared by a food service establishment for direct sale to the establishment's patrons must be labeled in accordance with §71.05(d) of this Code so as not to be misbranded, and such label must include the following information:

(A) Food ingredients, using common names;

(B) Food additives, if any;

(C) Name and address of the entity that packaged the juice;

(D) "Use by" date;

(E) The statements: "WARNING: This product has not been pasteurized. It may contain harmful bacteria that can cause serious illness, especially in children, elderly persons and persons with weakened immune systems." and "Must keep refrigerated."

(3) *Juice produced for wider distribution.* Juice produced and/or packaged by any establishment that is distributed at wholesale or to any persons other than the establishment's patrons must be produced and packaged in accordance with 21 CFR Part 120, or any successor regulations.

§81.05 Permitting requirements; technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(a) *Permit required.* Except as specified in this section, no person shall operate a food service establishment or non-retail food processing establishment without a permit therefor issued by the Commissioner.

(b) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.

(c) Prior to new construction or major renovation of a food service establishment or non-retail food processing establishment, or at any time thereafter where the Department determines that the public health and safety requires a Departmental review of the physical plant of such establishment, the Department may require such establishment to submit sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities, sewage disposal facilities and similar information on a form acceptable to the Department. Submission and review of plans shall not relieve the operator of such establishment or his or her successor from meeting all requirements of this section.

(d) A food service or non-retail food processing establishment may not operate without a permit for 21 days after submitting an application for a permit unless the Department has conducted an inspection and approved issuance of a permit. If the Department does not make an inspection of the establishment during this 21 day period, operations may commence without a permit on the twenty-second day after submission of an application for a permit, and the establishment may continue operating without being in violation of this section until such time as the Department inspects the establishment and either approves issuance of a permit or issues an order to cease operation for cause in accordance with this Code.

(e) A permit for a food service establishment or non-retail food processing establishment shall be issued subject to the establishment being constructed, maintained and operated in compliance

with this Code, and not presenting a danger to the health or safety of the consumer or to the public. The condition of the establishment, including its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances, and, if applicable, past history of compliance or non-compliance, shall be considered in determining whether its operation may be dangerous or detrimental to the public health. If the pre-permitting inspection indicates that such conditions are unsatisfactory, the operator shall be advised of the violations which prevent issuance of such permit.

(f) Religious, fraternal and charitable organizations which provide food services more often than once a week shall obtain a permit pursuant to this Article; provided, however, that an organization providing food service less frequently than once a week shall notify the Department in writing of its intention to engage in such food service operations and shall obtain authorization from the Department. Such authorization may be issued for a term not to exceed two years. The payment of a fee for such authorization shall not be required. The provisions of this subsection shall not limit in any way the right of the Department to take any actions necessary to protect the public health.

(g) Every person using or contracting for use of shared kitchen space and equipment shall obtain a permit to operate a food service establishment unless such person is licensed or regulated by the Commissioner of Agriculture and Markets pursuant to Article 20-C, or any successor provision, of the Agriculture and Markets Law. However, a person holding a non-retail processing establishment permit to operate a shared kitchen shall be responsible for maintaining the condition of the establishment, its equipment, surroundings, water supply, waste handling, furnishings and other appurtenances in accordance with this Code.

(h) No person operating a shared kitchen shall rent space or equipment in the shared kitchen to an individual who intends to use the facility to prepare food for sale or service to the public and does not have a currently valid food service establishment permit issued by the Commissioner, unless such user is currently licensed or regulated by the Commissioner of Agriculture and Markets.

(i) Upon the request of the Department, the operator of a shared kitchen shall provide a copy of any agreement between the operator and the user. Such agreement shall indicate the purpose of using the shared kitchen, the type of food to be prepared, and the place where the food will be sold.

(j) A permit shall not be issued if the applicant or a principal of an entity applying for such has been denied a permit on the basis of violations of this Code which could have resulted in the suspension or revocation of a permit. A permit may be renewed, provided that the permittee meets all requirements for renewal, the permit has not been revoked or suspended, and the permittee has not been determined to have committed a violation that could be a basis for permit revocation or suspension under this Article.

§81.06 Prevention of imminent or public health hazards.

(a) *Additional requirements.* Whenever necessary to prevent the occurrence or recurrence of imminent or public health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the terms and conditions of operation that have been imposed, the reasons therefore, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

(b) *Hazard Analysis and Critical Control Point ("HACCP") plans.*

(1) To prevent the occurrence of an imminent or public health hazard, a HACCP plan shall be prepared by a food service establishment or non-retail processing establishment whenever such establishment prepares, processes, cooks, holds and stores foods in a manner other than as specified in this Code or other applicable law.

(2) Whenever a HACCP plan is required, such plan shall be submitted to and approved by the Department prior to its implementation, and shall thereafter be maintained at the establishment and be made available to Department inspectors for review upon request.

(3) A HACCP plan shall include the following:

- (i) Types and categories of foods to be addressed by the plan.
- (ii) Food flow diagram or plan identifying critical control points, specifying ingredients, materials and equipment used in processing, and addressing the food safety concerns identified at each such point.
- (iii) Standard operating procedures for implementing the plan, including clearly identifying each critical control point; method and frequency of monitoring and controlling each critical control point by a foodworker trained in HACCP plan implementation who is designated by the person in charge of food operations; and the method and frequency whereby the person in charge of food operations routinely verifies that the foodworker is following standard operating procedures and the action to be taken by the responsible foodworker if the critical limits for each critical control point are not met.
- (iv) The critical limits for each critical control point, and the method and frequency for monitoring and controlling critical limits at each critical control point by the designated foodworker.

(4) Records/logs shall be maintained by the permittee for at least 90 days after consumption of the food prepared pursuant to the HACCP plan to demonstrate that the HACCP plan has been properly implemented.

(c) *Prior approval required for certain foods and processing.* Approval by the Department of a food service establishment's HACCP plan shall be obtained prior to processing any potentially hazardous food on the food establishment's premises by means of reduced oxygen packaging methods, drying, fermentation, curing or smoking food products. No HACCP plan is required for processes that are conducted in accordance with the time and temperature requirements of §81.09 of this Article.

§81.07 Food; sanitary preparation, protection against contamination.

(a) *Food protection.* Food shall be free of and protected against contamination and shall be manufactured, prepared, processed or packed using clean and sanitary utensils and equipment.

(1) *Culinary sink.* A dedicated single compartment culinary sink shall be provided and used only for washing fruits, vegetables, meats, and aquatic animal foods prior to other preparation. However, where no culinary sink is provided, foods may be washed in (i) a food grade container or colander or (ii) one compartment of a multi-compartment sink. No sink used for washing foods shall be used as a slop, utility or hand washing sink. All sinks used for washing food shall be indirectly washed, cleaned and sanitized prior to washing food, and between washing raw meats and other foods.

(2) *Prevention of cross-contamination.* Food that will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked.

(3) *Storage on ice or in water.* Packaged food shall not be stored in direct contact with ice or water if packaging allows the entry of water. Unpackaged food may only be in direct contact with ice if stored in a container that drains, except that whole raw fruits or whole or cut vegetables, and tofu, may be immersed in clean and sanitary ice or water held in a container that does not drain.

(4) *Washing raw fruits and vegetables.* Raw fruits and vegetables shall be thoroughly washed with potable water before cutting or serving.

(5) *Storage of raw chicken and fish.* Raw chicken and raw fish that are received in ice in shipping containers may remain in such condition, provided the required cold holding temperature is maintained, while being stored or awaiting preparation, display, service or sale.

(b) *Packaging.* Food packages, including hermetically sealed containers, shall be in good condition so that food is not exposed to spoilage, filth or other contamination and remains suitable for human consumption. Food packages that are swollen, leaking, rusted or otherwise damaged shall be discarded or returned to their distributor. If such packages are to be returned to their distributor, they shall be segregated from intact packages and clearly labeled "Do Not Use" while stored at the establishment.

(c) *Eggs.* Only clean, whole eggs with shells intact that are free from cracks or splits; or pasteurized liquid, frozen or dry eggs; or pasteurized dry egg products shall be kept and used. No unpasteurized liquid, frozen or dry eggs shall be kept or used in the establishment.

(d) *Food storage.* Containers of food shall be stored at least six inches (14.24 centimeters) above the floor, in a refrigerator or dry storage area, or at a greater height if necessary to permit cleaning of the storage area. Potentially hazardous raw foods that are not properly packaged or in sealed containers and that may leak or drip shall not be placed in storage above other foods.

(e) *Food display.*

(1) *Containers.* Food shall be displayed only in equipment such as cleanable containers, cabinets, display cases or similar protective equipment that protects such food from contamination.

(2) *Protective shields.* Self-service equipment shall have protective shields or guards to prevent potential contamination of food.

(3) *Quantities to be limited.* The quantity of food displayed shall be minimized to that necessary to meet immediate needs.

(f) *Condiment storage.* Condiments, seasoning, sugar and dressings shall be provided in individual packages, protected dispensers or containers, or in the original container or pour-type dispensers.

(g) *Ice for consumption.* Ice for consumption shall be dispensed with scoops, tongs or other utensils, or automatic self-service ice-dispensing equipment.

(h) *Utensils.* Food dispensing utensils equipped with handles must be provided for use by food workers and for self-service in dispensing food and ice. Utensil handles must be of sufficient length to prevent bare hand contact with ready to eat potentially hazardous food. Between uses, food dispensing utensils shall be stored in the food with the handle extended so that the handles do not come into contact with food; kept clean and dry on a clean surface; kept in a dipper well with running water at an adequate velocity and volume to remove food residue during intervals between intermittent use; or kept in a container of water maintained at a temperature at or above 135 degrees Fahrenheit and changed at least every four hours and free from accumulated food residue. When stored, all clean and sanitized utensils must be segregated from unclean utensils and equipment to prevent contamination.

(i) *Supplies and equipment placement.* Supplies and equipment shall not be kept or stored under or near any source of contamination, including but not limited to, exposed or unprotected sewer lines. Equipment, unless easily movable, shall be sealed to the floor or raised on concrete or smooth masonry platforms or elevated on legs to provide at least six inches of clearance between the floor and the equipment.

(j) *Bare hand contact prohibited.* Food shall be prepared and served without bare hand contact unless the food will be heated to at least the minimum temperature required under §81.09. Convenient and suitable utensils, disposable food grade gloves, waxed paper or an equivalent barrier shall be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination. Gloves must be changed after handling raw foods, performing tasks that do not involve food preparation or processing, handling garbage, or any other work where the gloves may have become soiled or contaminated.

(k) *Unpasteurized milk prohibited.* Except in accordance with federal and state law, raw unpasteurized milk, or any product made from such milk, shall not be served in any food service establishment.

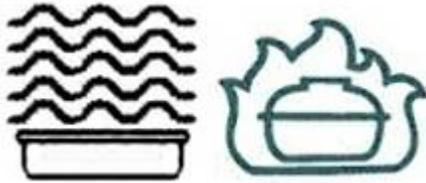
(l) *Re-service of previously served food prohibited.* Except for individually wrapped foods, where the wrapper seal has not been broken or opened, food that has been served to the public shall not be re-served.

(m) *Animal slaughter prohibited.* No live animals except fresh or saltwater finfish, crustaceans, or mollusks, shall be slaughtered at any food service or non-retail processing establishment. Tanks used to hold live fish or crustaceans intended for human consumption must be regularly cleaned and kept free of dead fish and algae.

(n) *Sausages.* Sausages may be made at a food service establishment in accordance with §81.06 of this Article. Sausages made at a food service establishment shall not be sold at wholesale other than at an establishment regulated and inspected by the United States Department of Agriculture.

(o) *Drinking straws and other single service articles.* Single service articles must be manufactured from clean non-toxic materials. Such items shall not be reused and must be discarded after use. Single service articles must be handled, transported, stored and dispensed in a manner that protects the food-contact and mouth-contact surfaces of such articles from contamination. Drinking straws shall not be offered to the consumer unless they are completely enclosed in a wrapper or dispensed from a sanitary device.

(p) *Microwavable plastic containers.* Only containers that display one of the following “microwave safe” icons, or the words “microwave-safe,” or words to the effect that they are approved for use in microwave ovens shall be used to heat food in a microwave oven.



(q) *Non-essential persons restricted.* Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or ware washing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens, tableware, and unwrapped single-service and single-use articles are protected against contamination.

(r) *Unfit food to be denatured.* Food that has become unfit for human consumption shall be promptly denatured, its label defaced and the product marked condemned, and shall be kept separate and apart from foodstuffs that are held or offered for sale. As used in this subdivision, the term “denature” means to treat the food with a substance satisfactory to the Department that alters the appearance or odor of the food such that the denatured food is clearly identified as being inedible.

§81.08 Foods containing artificial trans fat.

(a) *Artificial trans fat restricted.* No foods containing artificial trans fat, as defined in this section, shall be stored, distributed, held for service, used in preparation of any menu item or served in any food service establishment or by any mobile food unit commissary, as defined in §89.01 of this Code or successor provision, except food that is being served directly to patrons in a manufacturer's original sealed package.

(b) *Definition.* For the purposes of this section, a food shall be deemed to contain artificial trans fat if the food is labeled as, lists as an ingredient, or has vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. However, a food whose nutrition facts label or other documentation from the manufacturer lists the trans fat content of the food as less than 0.5 grams per serving, shall not be deemed to contain artificial trans fat.

(c) *Labels required.* (1) Original labels. Food service establishments and mobile food unit commissaries shall maintain on site the original labels for all food products:

- (i) that are, or that contain, fats, oils or shortenings, and
- (ii) that are, when purchased by such food service establishments or mobile food unit commissaries, required by applicable federal and state law to have labels, and
- (iii) that are currently being stored, distributed, held for service, used in preparation of any menu items, or served by the food service establishment, or by the mobile food unit commissary.

(2) Documentation instead of labels. Documentation acceptable to the Department, from the manufacturers of such food products, indicating whether the food products contain vegetable

shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content, may be maintained instead of original labels.

(3) Documentation required when food products are not labeled. If baked goods, or other food products restricted pursuant to subdivision (a) of this section, that are or that contain fats, oils or shortenings, are not required to be labeled when purchased, food service establishments and mobile food commissaries shall obtain and maintain documentation acceptable to the Department, from the manufacturers of the food products, indicating whether the food products contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content.

§81.09 Potentially hazardous (time and temperature control for safety) foods.

(a) *Holding and storage temperatures.* Potentially hazardous food must be stored or held at or below 41 degrees Fahrenheit (5 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius) except as follows:

(1) *Immediate service.* Cooked and refrigerated food prepared for immediate service in response to an individual consumer order may be served at any temperature.

(2) *Eggs.* Intact shell eggs must be stored at an ambient temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or below.

(3) *Processed fish.* All processed fish products must be prepared and stored at a temperature that does not exceed 38 degrees Fahrenheit (3.3 degrees Celsius) without interruption until served to the ultimate consumer, provided, however, that:

(A) Processed fish that contains a water phase salt level of at least 17 percent shall not require refrigerated storage; and

(B) Dry salted fish that contains a water phase level of at least 10 percent, salt water activity of less than 0.85 Aw, or a pH of 4.6 or lower, must be held at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(4) *Necessary preparation.* Foods may be held out of temperature during active necessary preparation. Active necessary preparation of food does not include time food is being heated, cooled, cooked, reheated or stored and requires temperature control.

(5) *Time as the sole public health control.* When using time alone as a public health control in accordance with §81.10 of this Article.

(b) *Freezing and storage of fish to be served raw, raw marinated or undercooked.*

(1) *Freezing required.* To destroy parasites in fish or fish products that are to be consumed raw, undercooked or raw-marinated, an establishment must either purchase frozen fish or fish products, or freeze fish or fish products prior to service as follows:

Minimum Freezing Temperature	Minimum Storage Temperature	Minimum Freezer Storage Time
-4 degrees F (-20 degrees C)	-4 degrees F (-20 degrees C)	168 hours (7 days); or
-31 degrees F (-35 degrees C)	-31 degrees F (-35 degrees C)	15 hours; or
-31 degrees F (-35 degrees C)	-4 degrees F (-20 degrees C)	24 hours.

(2) *Exceptions to freezing requirement.* Freezing is not required before serving raw or undercooked:

(A) Molluscan shellfish; or

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

(C) Aquacultured or farm raised fish, such as salmon that are:

(i) Raised in open water in net-pens or in land-based operations such as ponds or tanks, and

(ii) Fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish; or

(D) Fish eggs that have been removed from the skin and rinsed.

(c) *Cooking temperatures.* All parts of potentially hazardous foods requiring cooking are to be heated to 140 degrees Fahrenheit (60 degrees Celsius) or above for 15 seconds, except as follows:

(1) *Poultry.* Whole or ground poultry, poultry parts, all food containing poultry, poultry stuffing and poultry stuffing containing meat must be heated so all parts of the food are at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds with no interruption of the cooking process.

(2) *Pork.* Pork and food containing pork, other than whole pork roasts, and ground and comminuted pork, must be heated so all parts of the food are at least 150 degrees Fahrenheit (65.6 degrees Celsius) for 15 seconds, unless otherwise ordered by the consumer.

(3) *Whole meat roasts.* Roast beef, beef steak, corned beef, lamb roasts, pork and cured pork roasts must be heated to and cooked at the following minimum temperatures for the corresponding time:

Temperature °F (°C)	Cooking Time in Minutes	Temperature °F (°C)	Cooking Time in Minutes
130 (54.4)	112	138 (58.9)	18
131 (55.0)	89	140 (60.0)	12
133 (56.1)	56	142 (61.1)	8
135 (57.2)	36	144 (62.2)	5
136 (57.8)	28	145 (62.8)	4

(4) *Ground and comminuted meat.* Ground meats and comminuted meat products, other than poultry, and food containing ground meat must be heated so that all parts of the food are at least 158 degrees Fahrenheit (69.4 degrees Celsius) with no interruption of the cooking process, unless otherwise ordered by the consumer.

(5) *Stuffings and mechanically tenderized and injected meats.* Stuffed meats, stuffed fish, stuffed ratites and stuffing containing ratites and fish, must be heated to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) with no interruption of the cooking process, unless otherwise ordered by the consumer. Meats whose exterior surface has been mechanically tenderized or injected by breaking, puncturing, or scoring must be heated to a temperature of at least 155 degrees Fahrenheit (68 degrees Celsius).

(6) *Shell eggs and egg products.* Unpasteurized raw eggs or foods containing unpasteurized raw shell eggs, including but not limited to, drinks, condiments, dressings, desserts and sauces, must be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater for 15 seconds, unless the consumer requests preparation of shell eggs in a style such as raw, poached or fried which in order to comply with the request must be prepared at a temperature less than 145 degrees Fahrenheit.

(7) *Microwaving.* Raw animal foods cooked in a microwave oven must be covered during cooking; rotated or stirred during cooking to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius); and allowed to stand covered for 2 minutes after cooking.

(8) *Advisory for raw, undercooked foods.* When menu items containing raw or undercooked eggs, meat, fish or other potentially hazardous foods including but not limited to steak tartare, rare duck breasts, uncooked dessert mousse, Caesar salad dressing, sashimi, and ceviche or any other raw or undercooked seafood, are served, the consumer advisory required by §81.11 of this Article must be provided.

(d) *Reheating previously cooked food.* Potentially hazardous food that is cooked, cooled and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds. The minimum temperature of 165 degrees Fahrenheit (73.9 degrees Celsius) must be reached within 2 hours of commencing reheating. Reheated food must be held at or above 140 degrees Fahrenheit (60 degrees Celsius) until served.

(1) *Microwave reheating.* Food reheated in a microwave oven must be covered during heating; food must be rotated or stirred during heating, or otherwise manipulated according to label instructions, if provided, and must be reheated to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) and allowed to stand covered for 2 minutes after reheating.

(2) *Heating commercially processed foods.* Commercially processed pre-cooked potentially hazardous food in hermetically sealed containers and pre-cooked potentially hazardous food in intact packages from non-retail food processing establishments must be heated to 140 degrees Fahrenheit (60 degrees Celsius) within 2 hours of removal from container or package and held at such temperature until served.

(e) *Cooling.*

(1) *After cooking or removal from hot holding.* Foods removed from cooking or hot holding that require refrigeration must be rapidly cooled from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within 2 hours and from 70 degrees Fahrenheit (21.1 degrees Celsius) to 41 degrees Fahrenheit (5 degrees Celsius) within 4 hours after cooking or removal from hot holding by placing containers of food in an ice bath, a rapid chill unit or adding ice to the food, and

(A) Placing the food in shallow pans or containers (less than 4 inches in height); and/or

(B) Dividing foods into smaller or thinner pieces or portions; and/or

(C) Using containers made of materials that facilitate heat transfer; and/or

(D) Stirring foods that are liquids or semi-liquid, and

(E) Arranging containers in cooling equipment to provide maximum heat transfer through container walls, not stacking or nesting; and

(F) Keeping containers loosely covered, or uncovered if protected from overhead contamination during the cooling period, to facilitate heat transfer from the surface of the food.

(2) *Other cooling.* Potentially hazardous foods removed from cold holding or prepared from or combined with ingredients at room temperatures must be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation using cooling methods described in paragraph (1) of this subdivision.

(f) *Thawing frozen foods.* Potentially hazardous food must be thawed as follows:

(1) In refrigerated facilities at a temperature not to exceed 41 degrees Fahrenheit (5 degrees Celsius); or

(2) Completely submerged under potable running water at a temperature of 70 degrees Fahrenheit (21.1 degrees Celsius) or below, with sufficient water velocity to agitate and float off loose particles into the overflow; or

(3) In a microwave oven when the food will be immediately transferred to other conventional cooking equipment as part of a continuous cooking process, or when the entire uninterrupted cooking process takes place in the microwave oven; or

(4) As part of the conventional cooking process, without interruption.

(5) Whole frozen poultry, other than a single portion intended for service to an individual consumer, must be completely thawed prior to conventional cooking; a single portion may be thawed during the cooking process.

(g) *Thermometers and other temperature measuring devices.* Establishments must provide devices such as thermometers and thermocouples to measure internal temperatures of potentially hazardous foods during cooking, cooling, reheating, hot holding and cold holding. Such devices must be properly calibrated to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius), made from food grade materials that will not expose food to contamination and be kept readily accessible in the establishment's food preparation and hot and cold holding areas.

§81.10 Time as a public health control; exception to required holding temperatures of potentially hazardous (temperature control for safety) foods.

(a) *Use of time controls.* Food service establishments may use time as the sole public health control, rather than using time in conjunction with temperature, for holding potentially hazardous foods, only in accordance with the provisions of this section. Such foods shall not be returned to temperature control at any time with the intent to extend their use.

(1) *Initial temperatures.* Potentially hazardous foods shall be at an initial temperature at or below 41 degrees Fahrenheit (5 degrees Celsius) when removed from cold holding temperature control, or at or above 140 degrees Fahrenheit (60 degrees Celsius) when removed from hot holding temperature control.

(2) *After cold holding.* Ready-to-eat foods and other potentially hazardous foods removed from cold holding temperatures may be kept for a maximum of six hours without further temperature control provided that at four hours the food has not reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius). If such food has reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius) it shall be discarded immediately.

(3) *After hot holding.* Potentially hazardous foods removed from required hot holding temperatures may be held at ambient temperatures for no more than four hours after removal from temperature control.

(4) *Tomatoes.* Time as a public health control may be used when slicing whole tomatoes previously held at ambient temperature, and the sliced tomatoes may be held for no more than four hours, and then discarded if not used or consumed.

(5) *Holding limits.* Food shall not be held out of temperature control any longer than provided in paragraphs (2), (3) and (4) of this subdivision and must, by when the respective allowable period of time has passed, either be discarded or served.

(b) *Labeling.* All foods removed from temperature control in accordance with this section shall be labeled or marked as follows:

(1) *Four hour labeling.* Food to be held for up to four hours shall be labeled or marked at the time it is removed from temperature control with the date and time of removal, temperature at time of removal, and the discard time, four hours after removal from temperature control, when such food shall be discarded if not served.

(2) *Six hour labeling.* Food to be held for up to six hours shall be labeled or marked at the time it is removed from cold temperature control with the date and time of removal, temperature at time of removal, the time and temperature measured four hours after removal from temperature control, and the time, six hours after removal from temperature control, when such food shall be discarded if not served.

(3) *Labels to be kept.* Labels or marked containers shall be legibly marked and labels and markings must be kept on food containers until foods have been served or discarded.

(c) *Limits on use of time as a public health control.* Time shall not be used as the sole means of public health control, and §81.09 shall remain applicable as follows:

(1) Holding raw eggs prior to using such eggs in food prepared for (i) persons who may be at higher risk for food-borne illnesses, such as immunocompromised persons including residents or clients of senior centers, charitable feeding programs, adult day care programs, custodial care and health care facilities, and assisted living programs; (ii) infants and children in day care and pre-school programs; and (iii) pupils in primary and secondary schools.

(2) Preparation and holding of ready-to-eat potentially hazardous foods sold by or in (i) mobile food vending units; (ii) food vending machines; (iii) temporary food service establishments operating in accordance with Article 88 of this Code; or (iv) self-service salad bars or buffets.

(3) Preparation and holding of potentially hazardous foods consisting of smoked or vacuum-packed food products.

(d) *Violations.*

(1) *§81.09 violations.* An establishment shall be in violation of §81.09 of this Code if the Department finds that, while using time as a public health control, the establishment (i) has not

discarded food after the times specified in this section; or (ii) has not labeled or marked food as specified in this section.

(2) §81.07 violations. Food shall be deemed contaminated and an establishment shall be in violation of §81.07 (a) of this Code if the Department finds that while using time as a public health control, (i) cold potentially hazardous foods labeled for six hour holding are measured at or above temperatures of 70 degrees Fahrenheit (21 degrees Celsius) after removal from cold temperature control or (ii) is returned to temperature control instead of being discarded.

§81.10 **Table 1. Summary of procedures for using time as a public health control.**

Summary of Procedures for Using Time as a Public Health Control				
Removal From:	Maximum Time out of Holding Temperature	When to Measure Temperature	What to Note on Required Labels	When to Discard
Cold holding at or below 41°F (5°C)	6 hours	When removed from cold holding, and, at 4 hours after removal	<ul style="list-style-type: none"> • The date, time and temperature when removed from cold holding, and, • The time and temperature 4 hours after removal, and • The time to discard, serve, or cook 	If temperature is over 70°F (21° C) at 4 hours after removal or if not served within 6 hours
Hot holding at or above 140° F (60° C)	4 hours	When removed from hot holding	<ul style="list-style-type: none"> • The date, time and temperature when removed from hot holding, and, • The time 4 hours after removed from hot holding. This is the time when the food must be cooked, served, or discarded 	If not served within 4 hours

§81.11 **Consumer advisory: serving raw or undercooked foods.**

(a) *Written consumer advisory.* Effective January 1, 2016, when meat, fish, molluscan shellfish, or unpasteurized raw shell eggs are offered alone or as an ingredient in other foods, and are either raw or heated to a temperature below that required by this Code, written notice must be provided to consumers of the increased risk of food borne illness from eating such raw or undercooked foods.

(1) The statement “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness” must appear on menus, menu boards, brochures, signage, food labels, table tents, or placards, with either:

(A) A description or identification of the specific foods being served raw or undercooked, such as “oysters on the half shell (raw oysters),” or “raw-egg Caesar salad dressing,” as applicable; or

(B) Noted by an asterisk or other mark next to the listed food item on a menu or menu board with a footnote that references the statement in paragraph (1) of this subdivision.

(C) Prior to January 1, 2016, an establishment must warn of the increased risk for foodborne illness when serving raw or undercooked foods. Such warning may be given orally and need not be in writing.

(b) *Limitations on service.* Raw or undercooked meat, eggs, fish or molluscan shellfish, either alone, or as an ingredient in other menu items shall not be served in facilities that primarily serve persons who may be at a higher risk for food borne illnesses. Such facilities include those serving immunocompromised persons, senior centers, charitable feeding programs, custodial care facilities, hospitals and health care facilities, as defined in Article 28 of the Public Health Law or successor law; adult day care and assisted living programs; child care, children’s camps and pre-school programs; and elementary and secondary schools.

§81.12 Reduced oxygen packaging; cook chill and sous vide processing.

(a) *Scope and applicability.* A food service establishment may package and process food using reduced oxygen packaging (“ROP”), as defined in §81.03 of this Code, in accordance with this section, provided that the food being processed shall have at least two controls in place, including but not limited to time, temperature, Aw or pH, to prevent the growth and formation of *C. botulinum* or *Listeria monocytogenes*.

(b) *Approved Hazard Analysis and Critical Control Point (HACCP) plan required.* A food service establishment shall not utilize ROP processes without obtaining prior Department approval of a Hazard Analysis and Critical Control Point (HACCP) plan. The establishment shall submit to the Department its HACCP plan that conforms to §81.06(c) of this Article for each food item or food category it intends to prepare using a ROP processing technique.

(c) *On-site preparation, consumption, sale and distribution.* Foods processed by ROP shall be prepared and consumed on the premises of the food service establishment, or off premises if the preparation site is properly permitted and wholly owned and operated by the same business entity as the food service establishment, and no ROP food products shall be sold or distributed to any other business entities or consumers.

(d) *Specific requirements.* Foods shall be:

(1) Placed in an ROP package or ROP bag before cooking, or placed in a package or bag immediately after cooking and before reaching an internal temperature below 140 degrees Fahrenheit (60 degrees Celsius).

(2) Cooked immediately to require minimum internal temperatures specified in §81.09 of this Article or held at a specified temperature and time approved by the Department in the HACCP Plan. However, if such food has an A_w of 0.91 or less; has a pH of 4.6 or less; is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture using substances specified in 9 CFR 424.21, or successor regulation, and is received in an intact package; or is a food with high level of competing organisms such as raw meat or raw poultry, it may be held at 38 degrees Fahrenheit (2.2 degrees Celsius) without being cooked for no more than 14 calendar days, and shall be discarded thereafter.

(3) Protected from contamination after cooking as specified in §81.07 of this Article.

(4) Cooled so that every part of the ROP package is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within two (2) hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within four (4) additional hours and subsequently:

(i) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held at that temperature until consumed or discarded within 30 days after the date of packaging;

(ii) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius), removed from refrigeration equipment that maintains a 34 degree Fahrenheit (1 degree Celsius) food temperature and then held at 41 degrees Fahrenheit (5 degrees Celsius) or less for no more than 72 hours, at which time the food shall be consumed or discarded;

(iii) Cooled to 38 degrees Fahrenheit (3 degrees Celsius) or less within 24 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held there for no more than 72 hours from packaging, at which time the food shall be consumed or discarded; or

(iv) Held frozen with no shelf life restriction while frozen until consumed or used.

(5) 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.

(6) Labeled with the product name, date packed, and dates to be discarded, and stored in accordance with a "First-in" "First out" storage rotation procedure, in accordance with the HACCP plan.

(e) *Aquatic animals.* Except for aquatic animals that are frozen before, during, and after packaging, a food establishment may not package aquatic animals using an ROP method.

(f) *Cheese.* A food service establishment may package cheese using an ROP method provided that it limits the cheeses packaged to those commercially manufactured in a food processing plant with no ingredients added by the food establishment, and provided the cheese meets the United States Food and Drug Administration standards of identity specified in 21 CFR §133.150 ("Hard cheeses"); 21 CFR §133.169 ("Pasteurized process cheese"); and 21 CFR §133.187 ("Semisoft cheeses"), or successor regulations. The "use by" date of cheese shall not exceed 30 days after packaging, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(g) *Equipment.* All equipment used in ROP processing shall be approved by the Department and shall comply with all specifications for equipment in this Article, and the following additional criteria:

(1) Thermometers used in cook chill or sous vide cooking methods shall be food grade thermocouple type, equipped with probe, with a temperature range of -40 degrees Fahrenheit (-40 degrees Celsius) to 212 degrees Fahrenheit (100 degrees Celsius), and shall not contain glass or any parts that can easily fall into food. Thermometers shall be calibrated before each batch process, and at other times in accordance with manufacturers' instructions and whenever calibration could have been compromised by extreme temperatures or after being accidentally dropped.

(2) ROP products that are transported off site to a satellite location of the same business entity shall be kept in containers equipped with verifiable monitoring devices enabling monitoring of time and temperature and kept at temperatures no higher than 38 degrees Fahrenheit (3.3 Celsius) during transportation. Such products or containers shall be labeled with the product name, date packaged, and discard date.

(3) *Sous vide* processed foods shall be cooked in an approved water immersion unit or combination oven (an oven combining convection and added moisture) that can be equipped with an electronic system that continuously monitors time and temperature, and is visually examined for proper operation twice daily. At least one item of each type of food of similar size cooked in a water immersion or combination oven shall have its internal temperature monitored to determine if the food is being cooked to the temperatures required by §81.09 of this Article.

(4) *Sous vide* cooking equipment shall include a thermal bath and immersion circulator or a combination oven. The thermal bath and immersion circulator shall be a commercial type able to heat water to precise temperatures. The immersion circulator or combination oven shall be equipped with a temperature controller, temperature sensor, heater, and circulating element, and continuous temperature recorder and display accurate to one tenth of a degrees, capable of recording temperatures between 32 degrees Fahrenheit (0 degrees Celsius) and 212 degrees Fahrenheit (100 degrees Celsius), and large enough to enable complete immersion of the largest piece of food.

(5) ROP processors shall utilize a chamber type vacuum packaging machine with a pump able to achieve a flow rate of 10m³ per hour and capable of heat sealing the food storage bag to maintain the vacuum, or other commercial grade vacuum packaging equipment as approved by the Department in the establishment's HACCP plan or as determined on inspection.

(6) Cook chill processors shall utilize an ice bath or a NSF approved blast or tumble chiller that can lower temperatures of food from 185 degrees Fahrenheit (85 degrees Celsius) to 32-38 degrees Fahrenheit (0-3.3 degrees Celsius) within two hours, and is equipped with a factory installed temperature monitoring device and alarm system. If a tumble chiller is used, the associated ice builder must meet the sanitary requirements of this Article.

(7) Cook chill processors shall utilize a commercial type stainless steel NSF approved cook tank or steam kettle with an agitation mechanism, and factory installed temperature monitoring devices, or other cooking equipment approved by the Department in the establishment's HACCP plan or as determined on inspection.

(8) All cook chill bags (casings) shall be made of food grade plastic, able to withstand temperatures of 212 degrees Fahrenheit (100 degrees Celsius) to -20 degrees Fahrenheit (-28.8 degrees Celsius) and rapid temperature change from 185 degrees Fahrenheit (85 degrees Celsius) to 34 degrees Fahrenheit or below (1 degree Celsius).

§81.13 Food workers: health; hygienic practices. All food workers shall use hygienic practices and maintain personal cleanliness.

(a) *Work restriction.* No person shall work or shall be knowingly or negligently permitted to work in a food service establishment while afflicted with a boil or infected wound and unless he or she is free from acute, infectious diarrhea, amebiasis, cholera, cryptosporidiosis, diphtheria, E. coli 0157:H7, giardiasis, hepatitis A, poliomyelitis, salmonellosis, shigellosis, streptococcal sore throat (including scarlet fever), superficial staphylococcal infection, tuberculosis, typhoid, or yersiniosis and is not a carrier of organisms causing the above conditions or other disease listed in §11.03 in a communicable form and unless the period of isolation or exclusion prescribed by Article 11 of this Code has ended.

(b) *Hair restraints.* Food workers shall wear caps, hats, hair nets or other hair coverings to effectively keep hair from contaminating food or food contact surfaces. This requirement shall not apply to counter staff, bartenders, baristas, hosts or wait staff when they are preparing or serving beverages or serving food.

(c) *Clothing.* All food workers shall wear clean, washable outer garments when starting work and shall replace such garments with clean clothing as often as necessary thereafter to prevent contamination of food or food contact surfaces from soiled or contaminated clothing.

(d) *Hand washing.* Food workers and other employees shall wash hands and exposed areas of arms thoroughly with soap and water before starting work and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, or using electronic cigarettes, sneezing, coughing, eating, drinking or when otherwise soiling hands before returning to work. When gloves are used as a barrier to protect ready-to-eat food from bare hand contact, hands shall be washed before gloves are put on

(e) *Fingernails.* Food workers shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough, and unless wearing intact gloves in good repair, shall not wear fingernail polish or artificial fingernails when working with exposed food.

(f) *Jewelry.* Except for medical alert bracelets or a ring that is smooth and without crevices, such as a wedding band, food workers may not wear jewelry on their arms or hands.

(g) *Smoking.* Food workers shall not smoke any substance, use tobacco in any form or use electronic cigarettes in any indoor or outdoor area of the premises used by a food service establishment.

(h) *Eating and drinking.* Food workers shall not eat or drink in food preparation or other areas where food, equipment, and utensils may be exposed to contamination, except that a food worker may drink from beverages in closed containers.

(i) *No spitting allowed.* Spitting anywhere in the establishment is prohibited.

§81.15 Food protection course.

(a) *Food protection certificate required.* No person who is charged with the management or supervision of the operations of a food service establishment or non-retail food processing establishment shall engage or be employed in such capacity unless he or she obtains a certificate issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department. No person required to have a license issued pursuant to §89.03(b) of this Code shall be issued such license unless he or she obtains such a certificate. A person holding such certificate shall be on the premises and shall supervise all food preparation activities during all hours of operation.

(b) *Certificate available for inspection.* Such certificate shall be available for inspection at all times by the Department.

(c) *Courses to be provided or approved by the Department.* The Department may conduct such food protection courses, or any part thereof, or approve courses conducted by others. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance. Persons who supervise food service operations for a religious, fraternal or charitable organization that is open to the public for the purpose of providing food to the needy, free of charge will not be charged a fee for a food protection course conducted by the Department.

(d) *Additional food protection certificate holders; retaking courses.* In addition to the manager or supervisor of food operations, the Department may require the permittee, any persons supervising one or more specific food operations or the current holder of a food protection certificate in any food service establishment to complete a course when the Department finds imminent health hazards, or a food borne illness outbreak implicates food prepared or processed under the supervision of such person, or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles, or when otherwise deemed necessary by the Department for the protection of the public.

(e) *Photographs required.* Two (2) full-face photographs shall be taken by the Department when an applicant registers for such course or applies for such certificate. One photograph shall be affixed to the certificate of completion and the other maintained in the records of the Department.

§81.17 General requirements: design, construction, materials and maintenance.

(a) *Use of residential premises prohibited.*

(1) No food service or non-retail food processing establishment permit shall be issued for, and no food service or non-retail processing establishment shall be located in, a private home or apartment.

(2) Food shall not be processed, prepared, packed or stored in a private home or apartment except in accordance with §251-2-4 of the Agriculture and Markets Law and 1 NYCRR §276.4, or successor provisions, and no part of any food service establishment shall be located in any rooms used for dwelling or sleeping purposes.

(b) *Size of establishments and work areas.*

(1) *Size.* Adequate space shall be provided for conduct of operations and to enable thorough, regular cleaning, maintenance, and inspection of all areas of an establishment, including but not limited to those used for food preparation, ware washing, storage, dining, and garbage and waste holding and disposal.

(2) *Work spaces.* All work and storage areas shall have unobstructed aisles and working spaces of sufficient width to permit employees to perform their duties readily and without contaminating food or food-contact surfaces.

(3) *Dressing areas.* Dressing and locker areas shall not be located in food preparation, storage or ware washing areas.

(c) *Equipment, installation and maintenance.* Materials used to construct or repair equipment shall be of sufficient strength and thickness to withstand ordinary establishment usage and to permit cleaning and sanitizing. Equipment shall be installed flush with and sealed to the floor, or raised a minimum of six inches above the floor, or easily moveable to allow accessibility for cleaning on all sides, above and underneath the equipment. All equipment shall be maintained in working order.

(d) *Food contact surfaces.* Food contact surfaces of utensils and equipment shall be constructed of food grade materials, shall not be painted, and shall not contain lead, cadmium or any other substance that is toxic or may react with food, cleaning or sanitizing materials to form harmful compounds, or render food unwholesome or detrimental to health, and shall not impart any odor, color or taste to food.

(1) *Surfaces to be easily cleanable, sanitized and maintained.* An establishment shall not use equipment, utensils or containers that are chipped, cracked, rusted, corroded, worn or in a condition where food and debris cannot be removed and such items cannot be easily cleaned and sanitized. Surfaces that come into contact with food such as cutting blocks and boards that are subject to scratching and scoring must be replaced or resurfaced if they can no longer be effectively cleaned and sanitized. Food and other debris must be removed from such surfaces and surfaces must be washed and sanitized as needed to prevent contamination.

(2) *Food grade lubricants.* Establishments shall use food grade lubricants approved by the United States Food and Drug Administration to lubricate equipment. Such lubricants shall not leak or contact food or food contact surfaces. An establishment shall select and use equipment that requires only the use of simple tools for disassembly to encourage and facilitate cleaning and sanitizing of equipment. Such tools shall include, but not be limited to, mallets, screwdrivers, and open-end wrenches that are kept readily available near the equipment.

(3) *Cleaned in place equipment.* Equipment designed for in-place cleaning by the circulation or flowing by mechanical means through a piping system shall be constructed so that cleaning and sanitizing solutions circulate through an effective fixed system that allows such solutions to contact all interior food-contact surfaces, and so that the system is self-draining or can be completely evacuated.

(4) *Cleaning and polishing food contact surfaces.* No substance containing any cyanide preparation shall be used for cleaning or polishing copper, nickel, silver, silver plated ware or any utensils or appliances used in preparation or service of food. Cleaning and polishing formulations shall be used in accordance with the manufacturer's instructions so that such substances do not contaminate food.

(5) *Approved sanitizers.* Only chemical sanitizers and antimicrobial agents approved by the U.S. Environmental Protection Agency shall be used to clean food and food contact surfaces.

(e) *Non-food contact surfaces.*

(1) *Floors.* Floors, floor coverings, and materials used to repair floors of food storage, food preparation, utensil washing areas, walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms shall be constructed of a hard, smooth, durable, non-absorbent and easily cleanable material and shall be kept clean, without cracks, holes or gaps or other unintended openings at floor and wall junctions or around plumbing pipes and fixtures. Carpeting is prohibited on floors in food preparation areas. Mats and duckboards shall be designed to be removable and easily cleanable.

(2) *Walls and ceilings.* Walls, ceilings, doors, panels, windows, and other interior components of rooms, and equipment such as walk-in refrigerators, and the materials used to repair such components shall be smooth and non-absorbent, constructed of hard, impermeable, light colored materials, and shall be easily cleanable, kept clean and without cracks, holes or gaps or other unintended openings at floor, wall and ceiling junctions or around plumbing pipes and fixtures. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) *Equipment and fixtures.* Equipment and fixtures, including but not limited to, light fixtures, vent covers and hoods, fans, ducts, and decorative materials shall be easily cleanable, and kept clean and in working order.

(f) *Transporting food.* Vehicles and other conveyances used for the transportation of food by an establishment shall be kept clean, sanitary, and free of pests, and shall have sufficient equipment in operating condition to maintain temperatures required by this Code for holding potentially hazardous foods.

(g) *Toxic materials and hazardous substances: restrictions, labeling and storage.* Toxic materials and other hazardous substances, as defined in Article 173 of this Code, must be used only when required to maintain sanitary conditions and in accordance with label directions.

(1) *Labels.* Containers of such substances must be prominently labeled in accordance with applicable law and substances applied and removed without creating any risk to the health of any persons and without contaminating food, equipment, utensils and supplies.

(2) *Storage.* Toxic and hazardous materials are to be stored in designated storage areas in which food, equipment and utensils are not stored. Bactericides and cleaning compounds shall not be stored with insecticides, rodenticides or other toxic materials. Insecticides and rodenticides are to be kept in their original containers.

(3) *Toxic residues.* Bactericides, cleaning compounds or other compounds used on food contact surfaces must be rinsed and removed in accordance with label directions so as not to leave any toxic residues.

(4) *Phenolic compounds.* Phenolic compounds may not be used for sanitizing food contact surfaces.

(5) *Medications.* Medicinal first-aid supplies and medications must be kept in non-food storage areas in a manner that does not create a risk of food contamination.

§81.18 Cold and hot storage and holding facilities. A food service establishment shall have adequate refrigeration and hot holding and storage facilities for the proper storage, transportation, display, and service of potentially hazardous foods. Specific refrigeration and hot holding and storage needs shall be based upon the menu, number of meals, frequency of delivery, and preparation in advance of service.

(a) *Refrigeration.* Refrigerators shall be capable of maintaining and shall maintain potentially hazardous foods at or below 41 degrees Fahrenheit (5 degrees Celsius) at all times. Food preparation procedures should be conducted so that refrigerators are opened on only a limited basis.

(1) *Shelving.* Shelving for walk-in and reach-in refrigeration units shall be made of food grade material that is smooth and easily cleanable.

(2) *Air circulation and cooling ability.* Air circulation within refrigeration units shall not be obstructed and shall allow for an even and consistent flow of cold air throughout the units. Fans circulating air within refrigeration units shall be kept clean, dust free, and in working condition. Gaskets shall be kept clean and intact and shall be replaced as needed so that refrigeration units may maintain food at required temperatures.

(3) *Thermometers.* Refrigeration units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 2 degrees Fahrenheit. The thermometer shall be placed to measure air temperature in the warmest part of the unit.

(4) *Placement.* Refrigeration units, unless specified by the manufacturer and designed for such use, shall not be located directly adjacent to cooking equipment or other high heat producing equipment which may tax the cooling system's operation.

(5) *Walk-in refrigerator floors.* Walk-in refrigerator floors that are water-flushed for cleaning or that receive discharge of liquid waste or excessive melt water, shall be non-absorbent and sloped to drain.

(6) *Outdoor walk-in refrigerators.* Refrigerators located outdoors shall be kept clean, locked, secure, and in operating condition, and shall not permit entry or harborage of pests.

(b) *Hot holding.* Hot holding and storage equipment shall be capable of maintaining and shall maintain potentially hazardous foods at or above 140 degrees Fahrenheit (60 degrees Celsius) at all times.

(1) *Thermometers.* Hot holding units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 2 degrees. The thermometer shall be placed to measure air temperature in the coolest part of the unit.

§81.19. Lighting and ventilation.

(a) *Lighting.* Sufficient artificial light shall be provided so that operations and cleaning are conducted safely, and food workers are able to recognize the condition of food, equipment, utensils, and supplies. Artificial lighting shall be provided as follows:

(1) At least 540 lux (50 foot candles) at surfaces where food workers are preparing and processing food and working with utensils or equipment such as knives, slicers, grinders, or saws;

(2) At least 215 lux (20 foot candles) at surfaces where food is provided for consumer self-service such as buffets and salad bars; inside equipment such as reach-in and under-counter refrigerators; and at a distance of 30 inches (75 centimeters) above the floor in areas used for hand washing, ware washing, and equipment and utensil storage, and in toilet rooms; and

(3) At least 108 lux (10 foot candles) at a distance of 30 inches (75 centimeters) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

(b) *Lighting to be shielded.* All artificial lighting fixtures including infrared or other heat lamps located over, by or within food storage, preparation, service or display facilities, and facilities where utensils and equipment are cleaned and stored, which may shatter due to extreme heat, temperature changes or accidental contact and may contaminate food upon shattering, shall be fitted with light bulbs that are coated with a shatterproof sealant or otherwise rendered shatterproof or shall be shielded and encased, with end caps or other devices, to prevent broken glass from falling into food or onto food-contact surfaces.

(c) *Ventilation.* Establishments shall be adequately ventilated to prevent and control excessive heat, steam, condensation, vapors, odors, smoke, and fumes.

(1) Mechanical ventilation shall be installed in rooms where odors, vapors or fumes originate.

(2) Ventilation hoods and devices shall be constructed and installed to prevent grease or condensation from collecting on walls or ceilings and from dripping into food or onto food-contact surfaces.

(3) Intake and exhaust ducts shall be constructed and maintained to prevent dust, smoke and fumes, dirt or other contaminants from entering the establishment.

(4) Ventilation to the outside air shall comply with applicable law and regulation and shall not create a nuisance or unlawful emission.

(5) Concentrations of carbon monoxide gases shall not exceed nine (9) parts per million.

§81.20 Plumbing and water supply.

(a) *Potable water supply.* Establishments at all times must have adequate supplies of potable water, as defined in Part 5 of the State Sanitary Code (10 NYCRR Chapter 1). An establishment shall be equipped with plumbing and plumbing fixtures, in accordance with applicable law, that safely supply potable water to all parts of the establishment. Plumbing and fixtures shall be properly connected, vented, and drained to prevent contamination of the potable water supply. Potable water supply fixtures or other equipment connected to the potable water supply shall be designed and constructed or equipped with a device that prevents back-flow or siphonage into, or cross connection with the water supply.

(b) *Disposal of sewage and liquid waste.* Sewage and liquid wastes including but not limited to condensates discharged by equipment, such as refrigerators, ice machines, air conditioners, drain pans, evaporator trays, hoses and other plumbing or cooling lines and fixtures; fluids drained from culinary, slop or ware washing sinks; and fluids discarded after cooking shall be conveyed to the sewer or sewage disposal system so as to prevent contamination of the premises and its

contents and so as not to create harborage conditions. Liquid wastes consisting of discarded grease and oil shall be disposed of in accordance with applicable laws.

(1) *Indirect waste connection required.* There shall be no direct connection between the sewage system and any drains from plumbing fixtures and equipment used for hot and cold storage, or mechanical processing of food. Waste lines from equipment required to have indirect drains shall be installed to prevent back-flow from sewers and other drains and waste lines.

(2) *Direct connections required.* Waste water shall be discharged into properly trapped, sewer-connected plumbing lines.

(c) *Carbonated beverages.* All plumbing lines conducting carbon dioxide gas or carbonated beverages shall be manufactured from stainless steel, food-grade plastic or other material that will not produce toxic substances when exposed to carbon dioxide or carbonated water.

§ 81.21 **Hand wash sinks.**

(a) *Location.* Hand washing sinks equipped with hot and cold potable running water shall be installed in food preparation, food service, and ware washing areas, and in or adjacent to employee and patron toilet rooms, and may be located between such areas.

(1) Sufficient sinks shall be provided so that a hand washing sink is no more than 25 feet from any food preparation, service or ware washing area.

(2) Any area in which a hand wash sink is located shall be unobstructed by doors or equipment, and access shall be kept clear to enable its use as required by this Code. Hand washing sinks shall not be used for purposes other than hand washing.

(3) An automatic hand washing sink shall be used in accordance with the manufacturer's instructions. A self-closing, slow-closing or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet. A steam mixing valve shall not be used.

(b) *Soap, towels, trash receptacle.* Soap or detergent; single use disposable towels or mechanical drying devices; and a trash receptacle shall be provided. A supply of towels or a towel dispenser shall be located immediately adjacent to the hand wash sink, and available without requiring the user to open drawers, cabinets or other enclosures that could lead to recontamination of hands.

(c) *Wash hands signs.* Signs directing employees to wash hands after use of toilet shall be conspicuously posted near or above all hand washing sinks. Signs shall be posted in English and all languages as necessary so as to be understood by all food workers in an establishment.

§81.22 **Employee and patron toilets.**

(a) *Toilet facilities required.* Toilet facilities shall be provided for employees and shall be equipped with a minimum number of water closets, urinals, and other plumbing fixtures as required by §PC403 of Chapter 4 of the New York City Plumbing Code, Administrative Code Title 28, or any successor law.

(b) *Patron toilets required.* Food service establishments with a seating capacity of 20 or more, except those located in premises where a permitted food service establishment operated on or before December 5, 1977, shall provide toilet facilities for patrons. Establishments with a seating capacity of 20 or more in premises where a permitted food service establishment operated on or before December 5, 1977 shall, when undergoing renovations of sufficient scale to require a construction permit from the Department of Buildings, install and thereafter provide one or more patron toilets equipped as required by subdivision (a) of this section.

(c) *Toilet rooms.* All toilets shall be properly flushed and trapped. Toilet rooms must be adequately lighted and mechanically or naturally ventilated, maintained in sanitary operating condition, and furnished with supplies of toilet tissue and easily cleanable receptacles for waste paper and other refuse.

(d) *Shared toilet facilities.* Patrons and employees may use the same toilet facilities, except if patrons would be required to walk through a kitchen, food preparation or storage area, or utensil washing area to access the toilet.

§81.23 Integrated pest management.

(a) *Establishments to be pest free.* Food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, as defined in Article 151 of this Code, and of conditions conducive to pests, as defined in Article 151 of this Code, which shall include but not be limited to the following:

- (1) Accumulated refuse and other material on or in which pests may shelter, hide or nest;
- (2) Presence of cracks, gaps or holes in establishments' exteriors or interiors that permit free movement of pests;
- (3) Presence of food or water refuse and wastes accessible to and capable of sustaining or attracting a pest population including, but not limited to, standing water or other liquid wastes, grease and food residue and improperly closed food containers.

(b) *Prevention.* Premises, equipment and fixtures shall be of a construction, design and material so as to prevent and control entry and harborage of pests.

(1) *Daily inspections.* Permittees shall inspect the premises and incoming food and supplies daily to determine presence of pests and to prevent entry of and infestation by pests.

(2) *Exterminator required.* Permittees shall contract with a pest management professional licensed by New York State Department of Environmental Conservation to provide preventive measures and extermination services necessary to maintain their establishments free of pests. Records showing the name, address, Department of Environmental Conservation license number of the exterminator, the services provided, and the effective dates of such contracts shall be kept on the premises of the establishment. At the request of the Department, the permittee shall make available a fully executed copy of a contract with a pest management professional to provide at least monthly preventive inspections and services, and where pests are observed, to provide services for their elimination.

(3) *Doors.* All doors opening into the establishment from the outside shall be equipped with barriers such as anti-pest tension brushes or a space no larger than one-eighth of an inch (3.1750 millimeters) to prevent entry of rodents.

(4) *Pest monitors.* As part of an integrated pest management program, an establishment may use sticky monitoring traps or stations that are examined to determine if the establishment has a roach, other insect or rodent infestation. Such monitoring traps or stations shall be marked with the date the station was placed, and a date, no later than one month thereafter, or an earlier date, to be established by the pest management professional, when the traps or stations shall be removed and discarded. Such traps and stations shall be removed as soon as they contain one or more roaches, other insects or rodents.

(c) *Pest infestations.* Permittees shall take all preventive, control, and extermination measures necessary to maintain the establishment free of pests. When the Department determines that an establishment has a persistent pest infestation and conditions conducive to pests, the Department may order the permittee to institute and maintain a pest management plan in accordance with §151.02 (c) of this Code.

(d) *Pesticide applications.* Pesticides shall be properly labeled, authorized for use, and used only by licensed pest professionals in accordance with the New York State Environmental Conservation Law and Title 6 of the New York Codes, Rules and Regulations (N.Y.C.R.R.) Part 325, or any successor regulation, and applied so that:

- (1) There is no hazard to employees or other persons.
- (2) There is no pesticide spraying in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.

(3) Food, equipment, utensils, linens, and single-service or single use articles are protected from contamination and toxic residues that result from pesticide application. Such items are to be protected by impermeable coverings or other measures during pesticide application and must be cleaned and sanitized after pesticide application.

(4) The use of unprotected or unlocked bait stations is prohibited in food service establishments.

(e) *Toxic materials.* Where labels permit, poisonous and toxic materials shall be stored in areas designated solely for such purpose, or in a storage area outside the food, equipment and utensil storage area. Bactericides and cleaning compounds shall not be stored with insecticides, rodenticides or other poisonous materials. Insecticides and rodenticides shall be kept in their original containers.

§81.24 Garbage and waste disposal. Garbage and wastes shall be stored, handled, and disposed of in a manner that protects food and food-contact surfaces from contamination, and does not create a condition conducive to pests or a nuisance.

(a) *Garbage and waste stored for removal.* Prior to street placement and pickup, garbage and wastes shall be placed in easily cleanable, watertight, rodent-resistant, and insect-resistant containers with tight fitting lids that must be securely fastened. Containers must be stored in a manner that does not attract pests or create pest harborage conditions.

(b) *Garbage and waste removal.* Solid and putrescible wastes placed on sidewalks for collection shall be disposed of in accordance with applicable law, including but not limited to Title 16 of the Administrative Code and the rules of the Department of Sanitation and the Business Integrity Commission, or successor agencies.

(c) *Containers to be cleaned after emptying.* Garbage receptacles and covers shall be cleaned after emptying and prior to reuse.

§81.25 Live animals.

No live animal shall be kept, housed or permitted to enter into or remain in any food service establishment. This section shall not apply to edible fish, crustacea, mollusks, or fish in aquariums; service dogs or other animals accompanying and trained to assist disabled persons; or working dogs accompanying police officers.

§81.27 Cleaning of premises, equipment and utensils.

(a) *Non-food contact surface components.* Floors, walls, ceilings, and other non-food contact surfaces shall be kept free of accumulations of dust, dirt, food residue, grease, and other debris and shall be cleaned as necessary to prevent such accumulations.

(b) *Food contact surfaces.* Food contact surfaces, including food contact surfaces on equipment, and utensils shall be clean to sight and touch and shall be kept free of dust, dirt, food residues, grease deposits, and other contaminants. Equipment must be disassembled for the purpose of cleaning unless specifically constructed to enable cleaning in place. Food contact surfaces must be cleaned and sanitized:

(1) Before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry;

(2) Each time there is a change from working with raw to working with ready-to-eat foods; and

(3) At other times as necessary to prevent accumulation of dirt, mold encrusted food, grease or other substances or whenever contamination may have occurred.

(c) *Cloths.* Cloths used for the cleaning and sanitizing of food contact and non-food contact surfaces shall be stored clean and dry, or in a sanitizing solution, between uses.

(1) Moist cloths used for wiping food spills from kitchenware and food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

(2) Moist cloths used for wiping non-food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

§81.29 Dishwashing and ware washing. Tableware, including dishes, utensils, and equipment must be cleaned and sanitized, as defined in §81.03 of this Article, manually or by machine using either heat or chemical means, in accordance with this section, except that other adequate methods acceptable to the Department may be used.

(a) *Manual washing and sanitizing.* A three compartment sink must be used when washing and sanitizing equipment, dishes and utensils by hand, except where otherwise indicated in this

subdivision. All compartments of the sink must be large and deep enough to permit complete immersion of the largest equipment and utensils to be washed. Items must be:

- (1) Washed in the first compartment in a detergent solution;
- (2) Rinsed free of such solution in clean hot water in the second compartment; and
- (3) Sanitized in the third compartment with hot water or a chemical solution.

(A) *Hot water sanitizing.* Hot water used for sanitizing must be heated to and maintained at or above 170 degrees Fahrenheit (76.6 degrees Celsius). A numerically scaled, indicating or digital thermometer calibrated to be accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) must be used to measure water temperature. Items must be wholly immersed for at least 30 seconds to destroy surface pathogens.

(B) *Chemical sanitizing.* Only anti-microbial pesticides registered with the US Environmental Protection Agency shall be used for manual chemical sanitizing and must be used in sufficient amounts to achieve the sanitization levels required by subdivision (ii) of §81.03 of this Article, without leaving toxic residues on surfaces treated. A test kit or other device must be used to accurately measure the parts per million concentration of the solution used, and the pH of the solution when the pH level would affect the performance of the chemical sanitizer.

(C) *Glassware.* Glasses only may be washed in a two-compartment sink using a combination detergent and sanitizer in the first compartment and rinsed in clean water in the second compartment, if the manufacturer of the combination product indicates it may be used in this manner.

(b) *Mechanical washing and sanitizing*

(1) *Heat requirements for mechanical washing.* High temperature machines used for the cleaning and sanitizing of utensils, equipment, and food contact surfaces must be installed, maintained, and kept in working order. Machines must be equipped with thermometers, and operated so that all food contact surfaces achieve a surface temperature of at least 160 degrees Fahrenheit (71 degrees Celsius) in order to destroy surface pathogens.

(2) *Chemical requirements for mechanical washing.* Low temperature machines that use chemicals must be installed, maintained, kept in working order and operated so as to attain effective sanitization. A test kit or other device must be used to accurately measure the parts per million concentration of the solution used and the pH of the solution when the pH level would affect the performance of the chemical sanitizer and to ensure the chemical sanitizer is used in concentrations that will not leave toxic residues on surfaces treated.

(c) *Drain boards; air drying.* Drain boards of adequate size must be provided and used for the proper handling of soiled items prior to washing, and of clean items following sanitization. Drain boards must be self-draining, and located and constructed so that they do not interfere with the proper use of ware washing facilities. All tableware, utensils, and food contact equipment must be air dried after sanitizing.

§81.31 Outdoor cooking, food and beverage preparation facilities.

(a) *Street and sidewalk cooking prohibited; exceptions.* There shall be no cooking, preparation, processing or service of food, or storage of food, utensils or equipment on a street or sidewalk, except when an establishment is participating in an event as defined in Article 88 of this Code, or a mobile food vending unit is being operated in accordance with Article 89 and other applicable law, or permission has been obtained from appropriate City agencies.

(b) *Conducted on the premises owned by a food service establishment.* When permission has been obtained from the Department of Buildings, Fire Department, and other agencies when required, a permitted food service establishment may cook outdoors at the establishment within the premises under the establishment's ownership, management, operation, and control, including, but not limited to, in the establishment's backyard, in accordance with this section, and other provisions of this Article.

(c) *Prevention of nuisances.* No nuisance shall be created, including from smoke, garbage, noise or pests.

(d) *Structural components.*

(1) *Floors.* A hard surface floor whose construction and materials comply with §81.17 of this Code shall be provided.

(2) *Food protection.* During food and beverage preparation, hot and cold holding, and food storage, food shall be protected at all times by covering with barriers, including, but not limited to, awnings, tents, screens, vermin-resistant containers, or other methods required by §81.07 of this Code. No foods, or clean utensils and equipment, shall be stored outdoors when the outdoor cooking facility is not in operation. A hand wash sink shall be provided if any food is prepared at the outdoor cooking facility.

(3) *Overhead protection.* Cooking equipment and utensils shall be covered by lids or larger overhead protections such as a tent, canopy, umbrella or other device.

(4) *Lighting and ventilation.* Lighting and ventilation shall be provided in accordance with §81.19 of this Code.

§81.33 repealed.

§81.35 repealed.

§81.37 repealed.

§81.39 Food service establishments and non-retail food processing establishments; sealing of unclean equipment, utensils and vehicles; denial, suspension and revocation of permits; enforcement.

(a) When, in the opinion of an inspector or authorized employee of the Department, any equipment, utensil or vehicle in a food service establishment or non-retail food processing establishment presents an imminent health hazard, is in an unclean condition, or in disrepair or damaged to such an extent so as to render it unsafe, such equipment, utensil, vehicle or any part thereof may be ordered sealed and its use immediately discontinued upon the approval of the director of the bureau of the Department enforcing this Article. Upon such sealing, the representative of the Department shall affix thereto labels or conspicuous signs bearing the word "unclean" or any other wording necessary to describe the sanitary condition or safety of the sealed equipment, utensil or vehicle, and he or she shall also prepare or cause to be prepared an order of the Commissioner or Department. The order and notice shall direct the discontinuance of the use or operation of the unclean article until it shall have been cleaned and made sanitary and safe, and the seals, labels or signs removed by a representative or with the authorization of the Department.

(b) When a food service establishment or non-retail food processing establishment is found upon inspection to be operating without a valid permit in violation of §81.05 of this Code, the Department may order such establishment to close and cease all food operations immediately, and to remain closed until the establishment or operation has obtained and displays a valid permit.

(c) In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, the Department may deny, suspend or revoke any permit or authorization issued pursuant to this Article when serious, repeated or persistent violations of any of the provisions of this Code have been found, or where interference with personnel of the Department in the performance of their duties or a violation of §5.17 occurs. Any person ordered to cease operation and service pursuant to this Article shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(d) The Department may deny or suspend a permit or authorization and order immediate cessation of operations and/or service of food at a food service establishment or non-retail food processing establishment if continued operation is an imminent hazard to public health. Any person ordered to cease operations and/or service of food pursuant to this subsection shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(e) Any order or notice issued pursuant to this section shall be served by personal delivery to the owner or person in charge of the food establishment, or by any method authorized by §§17-

141 or 17-148 of the New York City Administrative Code, and an original thereof shall be filed with the Department.

(f) Seals, labels, signs, notices and orders affixed by the Department shall not be removed except by order of the Commissioner or his or her designated representative and not until the objectionable condition is removed or corrected.

§81.41 Dispensing devices used to dispense food; construction, cleanliness, refrigeration, safety.

(a) No person shall employ a food vending machine for the sale of packaged food or beverages in closed bottles or containers unless:

(1) the machine is designed and constructed to allow effective cleaning and maintenance and to remain free from insect and rodent harborages and other nuisances;

(2) the machine is designed and constructed so as not to become a hazard to children or others while in use or under foreseeable conditions of abuse;

(3) potentially hazardous foods shall be kept at or below 41 degrees Fahrenheit (5 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius);

(4) the machine and the surrounding area are kept clean and sanitary.

(b) No person shall employ a food vending machine for the sale of unpackaged food or for the sale of beverages other than in closed bottles or containers unless the requirements of subsection (a) of this section are met and, in addition, the device is free from lead, cadmium or any other substance which may be so affected by the food or beverage as to form dangerous or deleterious compounds, or as to render food or beverage which comes into contact with such substance unwholesome or detrimental to health, or to impart odor, color or taste to the food. When the food vending machine is connected to a water supply system, it shall be designed and constructed to prevent contamination of the water supply system. Devices which dispense carbonated beverages shall be equipped with an air gap at the water inlet, or a protective device to vent any leaking carbon dioxide to the atmosphere, or any other protective device approved by the Department which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. The water supply contact surfaces in devices which dispense carbonated beverages, from the protective device downstream including the protective device itself, shall not have any copper or copper-lined components in contact with the water supply or the beverage and its other components including any ice making and dispensing apparatus.

(c) There shall be provided in the immediate vicinity of all coin-operated or other mechanical dispensing devices, receptacles for the disposal of food or beverage containers.

(d) Potentially hazardous food shall be dispensed in individual, original containers or wrappers in which it was packaged at the food vending machine commissary or non-retail food processing establishment. Potentially hazardous food shall not be dispensed from bulk supplies.

(e) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, or dispensed into clean single-use containers, and all food shall be prepared and vended in a sanitary manner and shall in all respects comply with the provisions of this Article.

§81.43 Reporting complaints of patrons' illness, emergency occurrences.

(a) When a food service establishment or non-retail food processing establishment learns, has reason to suspect that a person has a food related illness, or is notified of any illness of a person diagnosed by a physician which allegedly resulted from food served at, or originating from, such establishment, the owner or person in charge shall immediately notify the Department. The Department may require the owner or the person in charge to submit, within 24 hours of the telephone report, a written report giving such additional information concerning the complaint as the Department may require. Under applicable provisions of the New York State Public Officers Law, reports may be subject to inspection by persons other than the Commissioner and authorized personnel of the Department but personal information about the patrons shall be redacted. Such reports shall not be used as a basis for prosecution by the Department.

(b) When a food service establishment or non-retail food processing establishment is subject to an occurrence which might result in contamination of food or food being held out of temperature limits, including but not limited to fire, power outage, or flood, the owner or person in charge shall immediately notify the Department.

§81.45 repealed.

§81.46 Refillable, returnable containers.

(a) *Beverage containers.* Employees or consumers may refill consumers' personal take-out beverage containers (such as thermally insulated bottles, non-spill coffee cups, and promotional beverage containers) with beverages that are not potentially hazardous foods, provided that beverages are dispensed in a manner that prevents contact with, or contamination of, the food-contact surfaces of the beverage dispensing equipment.

(b) *Other containers.* An establishment providing consumers with returnable containers must wash and sanitize all such containers before reuse in accordance with §81.29 of this Article. An establishment that does not wash and sanitize patrons' containers before reuse must obtain Department approval of a written standard operating procedure that demonstrates that there is no contamination of food and/or food contact surfaces. Such procedure must be maintained on the premises and made available at the time of Department inspection.

(c) *Container materials.* Reusable containers that will be washed and sanitized must be made of food grade materials resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, and of sufficient weight and thickness to be washed and sanitized in accordance with §81.29 of this Article.

§81.49 Sodium warning.

(a) Definitions. When used in this section the following words and terms have the following meanings:

(1) Combination meal means a standard menu item that consists of more than one food item. A combination meal may be represented on the menu or menu board in narrative form, numerically, or pictorially. Some combination meals may include a variable menu item or be a variable menu item, as defined in this subdivision, where the components may vary and the customer selects which components will be included in the meal.

(2) Covered establishment means a food service establishment, as defined in §81.03 of the Health Code and permitted by the Department, that is part of a chain with 15 or more locations doing business under the same name and offering for sale substantially the same menu items.

(3) Food item with a high sodium content means any standard menu item offered by a covered establishment that contains per discrete serving unit more than or equal to 2300 milligrams (mg) of sodium, or a combination meal offered by a covered establishment if any combination of food items available to the consumer contains more than or equal to 2300 mg of sodium.

(4) Food on display means food that is visible to the customer before the customer makes a selection, so long as there is not an ordinary expectation of further preparation by the customer before consumption.

(5) Menu or menu board means a printed list of the names or images of a food item or items, and the primary writing of a covered establishment from which a customer makes an order selection. Menus include breakfast, lunch, and dinner menus; dessert menus; beverage menus; children's menus; other specialty menus; electronic menus; and menus on the internet, and may be in various forms, including booklets, pamphlets, single sheets of paper, or electronic screens. Determining whether a writing is or is part of the primary writing of a covered establishment depends on a number of factors, including whether the writing lists the name of a standard menu item (or an image depicting the standard menu item) and the price of the standard menu item, and whether the writing can be used by a customer to make an order selection at the time the customer

is viewing the writing. Menu boards include menu boards inside the establishment as well as drive-through menu boards outside the establishment.

(6) Point of purchase means any place where a customer may order food within an establishment.

(7) Standard menu item means any individual food item or combination of food items listed or displayed on a menu or menu board that is sold by a covered establishment.

(8) Variable menu item means a standard menu item that comes in different flavors, varieties or combinations and is listed as a single menu item.

(b) Required warning. A covered establishment that offers for sale any food item with a high sodium content must provide the following warning:

(1) An icon must appear on a menu or menu board next to any food item with a high sodium content, or on a tag next to any food on display that is a food item with a high sodium content:



The icon must be a black and white equilateral triangle as wide as it is tall and equal in height to the largest letter in the food item's name, as displayed on the menu, menu board, or tag next to any food on display; and

(2) The following statement must be posted conspicuously at the point of purchase:

“Warning:  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.”

(d) Enforcement. The monetary penalty for a violation of this section is \$200 dollars. Violations may be adjudicated at any tribunal operated by the Office of Administrative Trials and Hearings.

(e) Effective date. This section takes effect on December 1, 2015.

(f) Severability. If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

§81.50 Posting of calorie information.

(a) *Definitions and construction of words and terms used in this section.*

(1) *Covered food service establishment* shall mean a food service establishment within the City of New York that is one of a group of 15 or more food service establishments doing business nationally, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

(2) *Menu* shall mean a printed list or pictorial display of a food item or items, and their price(s), that are available for sale from a covered food service establishment and shall include menus distributed or provided outside of the establishment.

(3) *Menu board* shall mean any list or pictorial display of a food item or items and their price(s) posted in and visible within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window.

(4) *Menu item* shall mean any individual food item, or combination of food items, listed or displayed on a menu board or menu that is/are sold by a covered food service establishment.

(5) *Food item tag* shall mean a label or tag that identifies any food item displayed for sale at a covered food service establishment.

(b) *Scope and applicability.* This section shall apply to menu items that are served in portions the size and content of which are standardized at a covered food service establishment. This section shall not apply to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

(c) *Posting calorie information for menu items.* All menu boards and menus in any covered food service establishment shall bear the total number of calories derived from any source for each menu item they list. Such information shall be listed clearly and conspicuously, adjacent or in close proximity such as to be clearly associated with the menu item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item.

(1) *Calculating calories.* Calorie content values (in kcal) required by this section shall be based upon a verifiable analysis of the menu item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and shall be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie content values 50 calories and below.

(2) *Food item tags.* When a food item is displayed for sale with a food item tag, such food item tag shall include the calorie content value for that food item in a font size and format at least as prominent as the font size of the name of the food item.

(3) *Drive-through windows.* Calorie content values at drive-through windows shall be displayed on either the drive through menu board, or on an adjacent stanchion visible at or prior to the point of ordering, so long as the calorie content values are as clearly and conspicuously posted on the stanchion adjacent to their respective menu item names, as the price or menu item is on the drive through menu board.

(4) *Range of calorie content values for different flavors, varieties and combinations.*

(i) *Different flavors and varieties.* For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale, provided however that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale, in accordance with paragraph (2) of this subdivision.

(ii) *Combinations.* For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that menu item shall be listed on menu boards and menus. If there is only one possible calorie total for the combination, then that total shall be listed on menu boards and menus.

(d) *Effective date.* This section shall take effect on March 31, 2008.

(e) *Severability.* If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

§81.51 Grading of inspection results and posting of grades by certain food service establishments.

(a) *Grading.* The Department shall establish and implement a system for grading and classifying inspection results for food service establishments using letters to identify and represent an establishment's degree of compliance with the provisions of this Code, the State Sanitary Code and other applicable laws that require such establishments to operate in a sanitary manner so as to protect public health. The letter "A" shall be the grade representing the highest degree of compliance with such laws. Subject to the provisions of this section, the Department shall provide each operating establishment that it inspects with a letter grade card indicating the establishment's inspection grade, except that no letter grade card shall be provided when the Department orders an establishment closed after an inspection.

(b) *Posting.* Upon receipt, and except as provided in subdivisions (c) and (e), an establishment shall conspicuously post a letter grade card so that it is visible to the general public and to patrons

prior to entering the establishment. The letter grade card shall not be defaced, marred, camouflaged or hidden from public view.

(c) Issuance of grade card.

(1) *"A" grades.* For any establishment receiving an "A" grade, the Department shall provide the establishment with a letter grade card at the conclusion of the inspection where such grade is determined. The grade card shall be posted immediately.

(2) *Other grades.* For any food service establishment receiving a grade lower than an "A," the Department shall advise the establishment of its inspection grade and the findings upon which it was based. The Department shall conduct a subsequent inspection of the establishment no sooner than seven (7) days after the first inspection. At the conclusion of the second inspection, the Department shall provide the establishment with a letter grade card indicating the inspection grade that the establishment received on that inspection.

(d) Adjudications. After any notice of violation ("NOV") issued at an inspection at which a letter grade card was provided to a food service establishment is heard and determined by the Health Tribunal at the Office of Administrative Trials and Hearings ("OATH"), the Department shall re-grade the inspection results taking into account only the violations alleged in the NOV that were either admitted by the establishment or sustained by a hearing examiner. If re-grading changes the inspection grade, the Department shall issue the food service establishment a new letter grade card that the establishment shall immediately post instead of or in place of the letter grade card provided by the Department at the conclusion of the inspection resulting in the issuance of the NOV.

(e) When posting may be deferred.

(1) Any food service establishment receiving a grade lower than an "A" at a second inspection conducted pursuant to subdivision (c) of this section may defer posting the letter grade card provided by the Department at the conclusion of that inspection until the hearing date scheduled by the Department. If an establishment chooses to defer posting this letter grade card, the establishment shall remove any letter grade card that is currently posted, and instead post a sign provided by the Department advising the public that the establishment's inspection result is under review and that the results of the inspection can be obtained from the Department.

(2) If an establishment does not appear at the Health Tribunal at OATH on the date scheduled for hearing the NOV referred to in subdivision (d), the establishment shall immediately post the letter grade card issued by the Department at the second inspection conducted pursuant to subdivision (c). If the establishment appears at the Health Tribunal at OATH on the scheduled date, but the hearing is unable to proceed for any reason, or if the establishment makes a timely request for an adjournment and such adjournment is granted, the establishment may continue to defer posting the letter grade card until the adjourned hearing date. In no event shall an establishment defer posting its letter grade card after the adjourned hearing date if the establishment is not able to proceed on such date.

(f) Scope and applicability. This section shall not apply to mobile food vending units, mobile food vending commissaries, temporary food service establishments, food service establishments operated in or by primary and secondary schools, hospital-operated cafeterias, correctional facilities, or charitable organizations, including soup kitchens or other prepared food distribution programs, nor to food service establishments operated by not for profit membership organizations for service to their members only.

(g) No effect on other enforcement. Nothing in this section shall affect the Department's authority to take any other action necessary to protect the public health or to enforce the provisions of this Code or any other law or rule applicable to operation of a food service establishment.

§81.55 Modification by Commissioner.

When the strict application of any provision of this Article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as in his or her opinion are necessary to provide for clean and sanitary food manufactured, processed or

served in clean and sanitary establishments. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.