

Subtitle



# Compliance, Enforcement and Definitions

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## Chapter 41 CODE APPLICABILITY

### Sections

4100	Use for Intended Purpose
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### 4100 USE FOR INTENDED PURPOSE – PUBLIC HEALTH PROTECTION

- 4100.1 The *Department* shall use this Code to promote the safeguarding of public health and ensure that *food* is safe, not adulterated, misbranded, or falsely advertised when offered to the *consumer*.
- 4100.2 In enforcing the provisions of this Code, the *Department* shall assess existing facilities or *equipment* that were in use before the effective date of this Code based on the following considerations:

- (a) Whether the facilities or **equipment** are in good repair and capable of being maintained in a sanitary condition;
- (b) Whether **food-contact surfaces** comply with Chapter 14;
- (c) Whether the capacities of cooling, heating, and holding **equipment** are sufficient to comply with section 1600; and
- (d) The existence of a documented agreement with the **licensee** that the facilities or **equipment** will be replaced as specified in section 4310.8 or upgraded or replaced as specified in section 4310.9.

**4101 PREVENTING HEALTH HAZARDS – PROVISION FOR CONDITIONS NOT ADDRESSED**

- 4101.1 If necessary to protect against public health hazards or nuisances, the **Department** may impose specific requirements in addition to the requirements contained in this Code that are authorized pursuant to An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code §7-131).
- 4101.2 The **Department** shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to a **license** applicant or **licensee** and a copy shall be maintained in the **Department's** file.

**4102 VARIANCES – CRITERIA, MODIFICATIONS AND WAIVERS**

- 4102.1 The **Department** may grant a variance from the provisions of this Code, except as provided in section 4102.2.
- 4102.2 The **Department** may grant a variance if all of the following conditions are met, except as provided in section 4102.3:
- (a) The variance was requested in the manner prescribed by section 4103;
  - (b) The variance will have no adverse effect on public health, safety and the environment;
  - (c) The alternative measures to be taken, if any, are equivalent to or superior to those prescribed by this Code; and

- (d) Strict compliance with the provisions of this Code would impose an undue burden on the applicant if the variance was not granted.

4102.3 A variance shall not be granted for or from:

- (a) Chapter 3, Food Employee/Applicant Health;
- (b) Chapter 4, Personal Cleanliness of Food Employees;
- (c) Chapter 5, Hygienic Practices of Employees and Food Employees;
- (d) Sections 3210 - 3214, Physical Facilities – Controlling Pests; Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests; Storing Maintenance Tools; Maintaining Premises, Unnecessary Items and Litter; and Prohibiting Animals;
- (e) Subtitle G, Poisonous or Toxic Materials; and
- (f) Subtitle H, Special Requirements.

#### **4103 VARIANCES – APPLICATION, JUSTIFICATION & DOCUMENTATION**

4103.1 A variance shall be requested in writing and be accompanied by the appropriate fee.

4103.2 A request for a variance shall contain the following information, which shall be retained in the *Department's* file on the *food establishment*:

- (a) The specified provision(s) of this Code from which the variance is requested;
- (b) The reasons why the requirements of the provision(s) cannot be met;
- (c) Alternative measures that will be taken to ensure a comparable degree of protection to public health, safety, and the environment if a variance is granted;
- (d) Whether a *HACCP Plan*, as specified in section 4202 is involved that includes information specified under section 4205 that is relevant to the variance request;
- (e) The length of time for which the variance is requested; and
- (f) A statement that the party applying for the variance will agree to comply with the terms of any variance, if one is granted.

#### **4104 VARIANCES – ATTACHMENT OF CONDITIONS\***

4104.1 In granting a variance, the **Department** may attach conditions that it determines are needed to protect the public health, safety and the environment.

4104.2 If the **Department** grants a variance as specified in section 4102, or a **HACCP Plan** is otherwise required as specified in section 4202, the **licensee** shall:

- (a) Comply with the **HACCP Plan** and procedures submitted and **approved** as the basis for the variance; and
- (b) Maintain, and provide to the **Department** upon request, records specified in section 4205.1(d) and (e) that demonstrate the following are routinely used:
  - (1) Procedures for monitoring **critical control points**;
  - (2) The actual monitoring of the **critical control points**;
  - (3) Methods for verifying the effectiveness of an operation or process; and
  - (4) Necessary corrective actions if there is failure at a **critical control point**.

#### **4105 VARIANCES – EFFECT OF ALTERNATIVE MEASURES OR CONDITIONS**

4105.1 Alternative measures or conditions described in a variance shall have the force and effect of law.

4105.2 If a **person** violates any alternative measures or conditions described in a variance, the person shall be subjected to the enforcement actions and penalties provided in this Code.

#### **4106 VARIANCES – NOTIFICATION OF DECISION TO GRANT, CHANGED CONDITIONS**

4106.1 The **Department** shall notify the applicant in writing of its decision to grant or deny the variance.

4106.2 If a variance is granted, the notification shall specify the period of time for which the variance shall be effective and the alternative measures or conditions, if any, the applicant shall meet.

4106.3 A *person* to whom a variance has been issued shall notify the *Department* in writing within thirty (30) calendar days of a material change in the conditions upon which the variance was granted.

#### **4107 VARIANCES – RENEWAL**

4107.1 A request for the renewal of a variance shall be submitted to the *Department* in writing thirty (30) calendar days before its expiration date.

4107.2 Renewal requests shall contain the information specified in section 4103.

4107.3 The *Department* shall renew a variance if the *food establishment* continues to satisfy the criteria specified in section 4102 or the conditions set forth in section 4104 and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance was *approved*.

4107.4 A variance may not be renewed if there has been a material change in the conditions upon which the variance was granted.

#### **4108 VARIANCES – DENIAL, REVOCATION, OR REFUSAL TO RENEW**

4108.1 The *Department* shall notify the person in writing of the denial, revocation or refusal to renew a variance if it determines that the criteria in section 4102 or the conditions in section 4104 are not met.

4108.2 The written notification denying, revoking, or refusing to renew a variance shall set out the person's right to a hearing in accordance with Chapter 48.

## Chapter 42

## PLAN SUBMISSION AND APPROVAL

### Sections

4200 – 4206	Facility and Operating Plans
4207	Confidentiality
4208	Construction Inspection and Approval

### 4200 FACILITY AND OPERATING PLANS – WHEN REQUIRED

- 4200.1 A *license* applicant or *licensee* shall submit to the *Department* for review and approval properly prepared plans and specifications as set out in the Department's Food License Application Guidance Packet, before:
- (a) The construction of a *food establishment*;
  - (b) The conversion of an existing structure for use as a *food establishment*, or
  - (c) Major renovation, remodeling or alteration of a *food establishment* or a change of type of *food establishment* or *food operation* as specified in Chapter 43 if the *Department* determines that plans and specifications are necessary to ensure compliance with this Code.
- 4200.2 Plans required by this section shall include specifications showing layout, arrangement, and construction materials to be used in the *food operation*, and the location, size, and type of fixed *equipment* and facilities.
- 4200.3 Plans, specifications, an application form, and the applicable fee, as set out in the *Department's* Food License Application Guidance Packet, shall be submitted at least thirty (30) calendar days before beginning construction, remodeling, or conversion of a *food establishment*.
- 4200.4 A *license* applicant or *licensee* operating *mass gathering* or special events food stands and retail food vehicles, mobile facilities, or carts is not required to submit plans and specifications.
- 4200.5 The *Department* shall approve the completed plans and specifications if they meet the requirements of this Code, and the *Department* shall report its findings to the *license* applicant or *licensee* within thirty (30) days of the date the completed plans are received.
- 4200.6 Plans and specifications that are not *approved* as submitted shall be changed to comply or be deleted from the project.

## 4201 FACILITY AND OPERATING PLANS – CONTENTS AND SPECIFICATIONS

- 4201.1 Based on the type of operation, type of *food* preparation, and *foods* prepared, the plans and specifications for a *food establishment*, including a *food establishment* specified in section 4202, shall include the following information to demonstrate conformance with Code provision:
- (a) Intended menu;
  - (b) Anticipated volume of *food* to be stored, prepared, and sold or served;
  - (c) Proposed layout, mechanical schematics, construction materials, and finish schedules;
  - (d) Proposed *equipment* types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
  - (e) A complete set of elevations and drawings for all custom fabricated *equipment*;
  - (f) A functional flow plan indicating how *food* will be handled;
  - (g) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed;
  - (h) Evidence of an established *food* safety program such as an *employee* training manuals, standard operating procedures that ensure compliance with this Code; and
  - (i) Other information that may be required before the *Department* may approve proposed plans for the construction, conversion, or modification, including but not limited to approvals by other District agencies.
- 4201.2 Used *equipment* shall be equivalent to the standards specified in Chapters 14 - 22 and *approved* by the *Department* before use.
- 4201.3 The *Department* shall approve the submitted plans and specifications if they meet the requirements of this Code. The *Department* shall report its findings to the *licensee* within thirty (30) calendar days of the date the submitted plans are received.
- 4201.4 Plans and specifications that are not *approved* as submitted shall be changed to comply with the *Department's* recommendations or this Code, or be deleted from the project.

## 4202 FACILITY AND OPERATING PLANS – TYPES OF ACTIVITIES THAT REQUIRE A HACCP PLAN

4202.1 The following activities require a *license* applicant or *licensee* to prepare a *HACCP plan* where:

- (a) A variance is being sought to serve raw or partially cooked animal *foods*, except whole muscle intact beef, without meeting the requirements of section 900.3;
- (b) A variance is required as specified in section 1010 for specialized processing;
- (c) A variance is required as specified in section 1522.2 for operating and maintaining molluscan shellfish tanks;
- (d) A variance is required as specified in section 717.3 for removing tags or labels from shellstock;
- (e) A variance is required as specified in section 1011 for *reduced oxygen packaging*; and
- (f) The *Department* determines that a food preparation or processing method requires a variance based on a plan submitted as specified in section 4201, or an inspectional finding, or a variance request.

## 4203 FACILITY AND OPERATING PLANS – WHEN MUST A HACCP PLAN BE SUBMITTED

4203.1 A *license* applicant or *licensee* shall submit to the *Department* for approval a properly prepared *HACCP Plan* as specified in section 4205 and the relevant provisions of this Code:

- (a) At the time of the *license* application and plan review, if the *Department* determines at that point that a *HACCP Plan* is required;
- (b) At the time of the *license* application or when the license applicant or *licensee* is seeking a variance or a variance is required based on inspectional findings; or
- (c) At the time of the *license* application or after a *license* is issued if the *Department* determines that a *HACCP Plan* is required.

## 4204 FACILITY AND OPERATING PLANS – COMPLIANCE WITH HACCP PLAN



4204.1 A *licensee* shall maintain and provide to the *Department*, on request, the records specified in section 4205.1(d) and (e) that demonstrate that the following are routinely employed:

- (a) Procedures for monitoring *critical control points*;
- (b) Monitoring of the *critical control points*;
- (c) Verification of the effectiveness of an operation or process; and
- (d) Necessary corrective actions if there is failure at a *critical control point*.

#### **4205 FACILITY AND OPERATING PLANS – CONTENTS OF A HACCP PLAN**

4205.1 For a *food establishment* that is required in sections 4202 and 4203 to have a *HACCP Plan*, the plan and specifications shall indicate:

- (a) A categorization of the types of *potentially hazardous foods* that are specified in the menu including, but not limited to, soups and sauces, salads, and bulk, solid *foods* such as meat roasts or other *foods* that are specified by the *Department*;
- (b) A flow diagram by specific *food* or category type identifying *critical control points* and providing information on the following:
  - (1) Ingredients, materials, and *equipment* used in the preparation of that *food*; and
  - (2) Formulations or recipes that delineate methods and procedural control measures that address the *food* safety concerns involved;
- (c) A *food employee* and supervisory training plan that addresses *food* safety issues;
- (d) A statement of standard operating procedures for the plan under consideration, including clearly identifying:
  - (1) Each *critical control point*;
  - (2) The *critical limits* for each *critical control point*;
  - (3) The method and frequency for monitoring and controlling each *critical control point* by the *food employee* designated by the *person in charge*;

- (4) The method and frequency for the *person in charge* to routinely verify that the *food employee* is following standard operating procedures and monitoring *critical control points*;
  - (5) Actions to be taken by the *person in charge* if the *critical limits* for each *critical control point* are not met; and
  - (6) Records to be maintained by the *person in charge* to demonstrate that the *HACCP Plan* is properly operated and managed; and
- (e) Additional scientific data or other information, as required by the *Department*, supporting the determination that *food* safety is not compromised by the proposal.

4205.2 For a *food establishment* that is required in sections 4202.1(e) and 4203 to have a HACCP plan, the plan must be prepared as specified under section 1011 as indicated.

#### **4206 FACILITY AND OPERATING PLANS - CONFIDENTIALITY – TRADE SECRETS**

4206.1 The *Department* shall treat as confidential, information that is contained in the plans and specifications submitted as specified in sections 4201 and 4205.

#### **4207 CONSTRUCTION, INSPECTION AND APPROVAL – PREOPERATIONAL INSPECTIONS**

4207.1 The *Department* shall conduct one (1) or more preoperational inspections to verify that the *food establishment* is constructed and equipped in accordance with the *approved* plans and *approved* modifications of those plans, has established standard operating procedures as specified in section 4201.1(g), and is in compliance with law and this Code.

## Chapter 43 LICENSE TO OPERATE

### Sections

4300	Requirement
4301 – 4304	Application Procedure
4305 – 4308	Issuance
4309 – 4311	Conditions of Retention

### 4300 LICENSE REQUIREMENT – PREREQUISITE FOR OPERATION

4300.1 No *person* shall operate a *food establishment* without a valid license to operate issued by the Mayor.

### 4301 APPLICATION PROCEDURE – PERIOD FOR SUBMISSION

4301.1 An applicant shall submit an application for a *license* at least thirty (30) calendar days before the date planned for opening a *food establishment* or the expiration date of the current *license* for an existing facility.

4301.2 *Licenses* shall cover one (1) or two (2) year periods as provided by District law.

4301.3 Fees shall be prorated for *licenses* issued after beginning of the *license* period.

### 4302 APPLICATION PROCEDURE – FORM OF SUBMISSION

4302.1 An applicant shall submit a written application for a *license* on a form provided by the *Department* as set out in the Department's Food License Application Guidance Packet.

### 4303 APPLICATION PROCEDURE – QUALIFICATIONS AND RESPONSIBILITIES OF APPLICANTS

4303.1 To qualify for a *license*, an applicant shall:

- (a) Be an owner of the *food establishment* or an officer of the legal ownership;
- (b) Comply with sections 4302 – 4304 and all other requirements of this Code;

- (c) Agree to allow access to the **food establishment** and to provide required information, as specified in section 4402; and
- (d) Pay the applicable licensing fees.

#### **4304 APPLICATION PROCEDURE – CONTENTS OF THE APPLICATION**

- 4304.1 An application shall include the name, birth date, mailing address, telephone number, and signature of the person applying for the license and the name, mailing address, and location of the **food establishment**.
- 4304.2 An application shall include information specifying whether an association, corporation, individual, partnership, or other legal entity owns the **food establishment**.
- 4304.3 An application shall include a statement specifying whether the **food establishment** is mobile or stationary and temporary or permanent.
- 4304.4 An application shall include a statement specifying whether the **food establishment** prepares, offers for sale, or serves **potentially hazardous food**:
  - (a) Only to order upon a **consumer's** request;
  - (b) In advance in quantities based on projected **consumer** demand and discards **food** that is not sold or served at an **approved** frequency; or
  - (c) Using time as the public health control as specified in section 1009.
- 4304.5 An application shall include a statement specifying whether the **food establishment** prepares **potentially hazardous food** in advance using a **food** preparation method that involves two (2) or more steps which may include combining potentially hazardous ingredients, cooking, cooling, reheating, hot or cold holding, freezing, or thawing.
- 4304.6 An application shall include a statement specifying whether the **food establishment** prepares food as specified in section 4304.5 for delivery to and consumption at a location off the premises of the **food establishment** where it is prepared.
- 4304.7 An application shall include a statement specifying whether the **food establishment** prepares **food** under section 4304.5 for service to a **highly susceptible population**.
- 4304.8 An application shall include a statement specifying whether the **food establishment** prepares only **food** that is not potentially hazardous.

- 4304.9 An application shall include a statement specifying whether the *food establishment* does not prepare, but offers for sale only prepackaged *food* that is not potentially hazardous.
- 4304.10 An application shall include the name, title, address, and telephone number of the *person* directly responsible for the *food establishment*.
- 4304.11 An application shall include the name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified in section 4304.10 such as the zone, district, or regional supervisor.
- 4304.12 An application shall include the names, titles, and addresses of:
- (a) The *persons* comprising the legal ownership as specified in section 4304.2 including the owners and officers; and
  - (b) The local resident agent if one is required based on the type of legal ownership.
- 4304.13 An application shall include a statement signed by the applicant that attests to the accuracy of the information provided in the application, and affirms that the applicant will:
- (a) Comply with this Code; and
  - (b) Allow the *Department* access to the establishment as specified in section 4402 and to the records specified in sections 717 and 2416, and section 4205.1(d)(6).

## **4305 ISSUANCE – NEW, CONVERTED, OR REMODELED ESTABLISHMENTS**

- 4305.1 For *food establishments* that are required to submit plans as specified in section 4200, the *Department* shall issue a *license* to the applicant after:
- (a) A properly completed application is submitted;
  - (b) The required fee is submitted;
  - (c) The required plans, specifications, and information are reviewed and *approved*; and
  - (d) A preoperational inspection as specified in section 4207 shows that the establishment is built or remodeled in accordance with the *approved* plans and specifications and that the establishment is in compliance with this Code.

**4306 ISSUANCE REQUIREMENT – NOTICE OF OPENING**

4306.1 The *food establishment* shall provide notice of opening to the *Department* at least fourteen (14) calendar days before the opening date.

**4307 ISSUANCE – EXISTING ESTABLISHMENTS, LICENSE RENEWAL, AND CHANGE OF OWNERSHIP**

4307.1 The *Department* may renew a *license* for an existing *food establishment* or may issue a *license* to a new owner of an existing *food establishment* after a properly completed application is submitted, reviewed, and *approved*, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

**4308 ISSUANCE – DENIAL OF APPLICATION FOR LICENSE, NOTICE**

4308.1 If an application for a *license* to operate is denied, the *Department* shall provide the applicant with written notice that includes:

- (a) The specific reasons and legal authority for the *license* denial;
- (b) The actions, if any, that the applicant must take to qualify for a *license*; and
- (c) Advisement of the applicant’s right to appeal and the process and time frames for appeal as prescribed in Chapter 48.

**4309 CONDITIONS OF RETENTION – RESPONSIBILITIES OF THE DEPARTMENT**

4309.1 The *Department* through its Food License Application Guidance Packet shall notify each *license* applicant how to obtain a copy of this Code so that the *license* applicant is aware of compliance requirements and the conditions of *license* retention as specified in section 4310.

4309.2 Failure to provide the information specified in section 4309.1 will not prevent the *Department* from taking authorized action or seeking remedies if the licensee fails to comply with this Code or an order, warning, or directive of the *Department*.

## 4310 CONDITIONS OF RETENTION – RESPONSIBILITIES OF THE LICENSEE

- 4310.1 Upon acceptance of the *license* issued by the *Department*, the licensee in order to retain the *license* shall comply with sections 4310.2 - 4310.12.
- 4310.2 The *licensee* shall post the *license* and the most recent sanitation inspection in a location within the *food establishment* that is conspicuous to *consumers*.
- 4310.3 The *licensee* shall comply with the provisions of this Code including the conditions of a granted variance as specified in section 4105 and *approved* plans as specified in section 4201.
- 4310.4 If a *food establishment* is required in section 4202 to operate under a *HACCP Plan*, the *licensee* shall comply with the plan as specified in section 4105.
- 4310.5 The *licensee* shall immediately contact the *Department* to report an illness of an applicant or *employee* as specified in section 304.
- 4310.6 The *licensee* shall immediately discontinue operations and notify the *Department* if an *imminent health hazard* may exist as specified in section 4409.
- 4310.7 The *licensee* shall allow representatives of the *Department* access to the *food establishment* as specified in section 4402.
- 4310.8 The *licensee* shall replace existing facilities and *equipment approved* for use before the effective date of this Code as specified in section 4100, with facilities and *equipment* that comply with this Code, except as specified in section 4310.9 if:
- (a) The *Department* directs the replacement of existing facilities and *equipment* if the facilities and *equipment* constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and *equipment* were accepted;
  - (b) The *Department* directs the replacement of the facilities and *equipment* when there is a change of ownership; or
  - (c) The *licensee* replaces the facilities and *equipment* in the normal course of operation.
- 4310.9 The *licensee* shall upgrade or replace refrigeration *equipment* as specified in section 1005.1(c) if the circumstances specified in section 4310.8(c) do not occur first or by December 30, 2009.

- 4310.10 The *licensee* shall comply with directives of the **Department** including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the **Department** in regard to the *licensee's food establishment* or in response to community emergencies.
- 4310.11 The *licensee* shall accept notices issued and served by the **Department** according to law.
- 4310.12 The *licensee* shall be subject to the administrative, civil, injunctive, and criminal remedies, authorized by the Food Regulation Amendment Act of 2002, effective May 2, 2002 (D.C. Law 14-116; D.C. Official Code §48-101 *et seq.*) for failure to comply with this Code or a directive of the **Department**, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

#### **4311 CONDITIONS OF RETENTION – LICENSES NOT TRANSFERABLE**

- 4311.1 A *license* shall not be transferred from one *person* to another *person*, from one *food establishment* to another, or from one type of operation to another if the *food operation* changes from the type of operation stated in the application, as specified in sections 4304.3 - 4304.9, and the change in operation is not *approved*.



## Chapter 44 INSPECTION AND CORRECTION OF VIOLATIONS

### Sections

4400 – 4401	Frequency
4402	Access
4403 – 4408	Report of Findings
4409 – 4410	Imminent Health Hazard
4411 – 4412	Critical Violation
4413	Noncritical Violation
4414	Request for Reinspection

### 4400 FREQUENCY – RISK-BASED INSPECTION SCHEDULE

4400.1 The **Department** shall inspect a **food establishment** based on a written risk-based inspection schedule that is uniformly applied throughout the District. The **Department** shall determine, by telephone or other means, that the establishment, its management and the nature of its **food operation** are not changed.

4400.2 The **Department** shall characterize each **food establishment**, according to the following risks, for the purpose of inspection frequency:

- (a) **HIGH-RISK #5**: Extensive handling of raw ingredients. **Food** processing at the retail level, e.g., smoking and curing; **reduced oxygen packaging** for extended shelf-life.
- (b) **HIGH-RISK #4**: Extensive handling of raw ingredients. Preparation processes include the cooking, cooling, and reheating of **potentially hazardous foods**. A variety of processes require hot and cold holding of **potentially hazardous foods**. Food processes include advanced preparation for next-day service. Category would also include those facilities whose primary service population is immunocompromised.
- (c) **MODERATE-RISK #3**: Extensive handling of raw ingredients. Preparation process includes the cooking, cooling, and reheating of **potentially hazardous foods**. A variety of processes require hot and cold holding of **potentially hazardous food**. Advance preparation for next-day service is limited to 2 or 3 items. Retail **food** operations include deli and seafood departments, establishments doing **food** processing at retail.

- (d) **MODERATE-RISK #2:** Limited menu (1 or 2 main items). Pre-packaged raw ingredients are cooked or prepared to order. Retail *food* operations exclude deli or seafood departments. Raw ingredients require minimal assembly. Most products are cooked/prepared and served immediately. Hot and cold holding of *potentially hazardous foods* is restricted to single meal service. Preparation processes requiring cooking, cooling, and reheating are limited to 1 or 2 *potentially hazardous foods*.
- (e) **LOW-RISK #1:** Primarily prepackaged nonpotentially hazardous foods. Limited preparation of hot dogs and frankfurters. Mobile ice cream operations.

4400.3 The **Department** may increase the interval between inspections if the *food establishment* is fully operating under an *approved* and validated *HACCP Plan* as specified in sections 4205, 4105.1, and 4105.2.

4400.4 The **Department** may inspect a *food establishment* less frequently if the establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous such as carbonated *beverages* and snack *food* such as chips, nuts, popcorn, and pretzels.

4400.5 The **Department** shall periodically inspect throughout its *license* period a temporary *food* establishment that prepares, sells, or serves unpackaged *potentially hazardous food* and that:

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

#### **4401 FREQUENCY – PERFORMANCE AND RISK-BASED FACTORS**

4401.1 Within the parameters specified in section 4400, the **Department** shall prioritize, and conduct more frequent inspections based upon its assessment of a *food* establishment's history of compliance with this Code and the establishment's potential as a vector of foodborne illness by evaluating:

- (a) Past performance, for nonconformances with this Code or *HACCP Plan* requirements that are critical;
- (b) Past performance, for numerous or repeat violations of this Code or *HACCP Plan* requirements that are noncritical;

- (c) Past performance, for complaints investigated and found to be valid;
- (d) The hazards associated with the particular *foods* that are prepared, stored, or served;
- (e) The type of operation including the methods and extent of *food* storage, preparation, and service;
- (f) The number of people served; and
- (g) Whether the population served is a *highly susceptible population*.

## 4402 ACCESS – RIGHT OF ENTRY, DENIAL A MISDEMEANOR

4402.1 After representatives of the *Department* present official credentials and provide notice of the purpose of, and intent to conduct an inspection in accordance with this Code, the *person in charge* shall allow access to the *Department* during the *food establishment's* hours of operation and other reasonable times as determined by the *Department*, for one or more of the following purposes:

- (a) To determine if the *food establishment* is in compliance with this Code;
- (b) To examine and sample the *food*; and
- (c) To obtain information, and examine records on the premises relating to *food* purchased, received, or used by the *food establishment*.

4402.2 If a *person* denies access to the *Department*, the *Department* shall inform the *person* that:

- (a) The *licensee* is required to allow access to the *Department* as specified in section 4402.1;
- (b) Access is a condition of the acceptance and retention of a *food establishment license* to operate as specified in section 4310.7;
- (c) If access is denied, an inspection order allowing access may be obtained in accordance with District law; and
- (d) The *Department* is making a final request for access.

4402.3 If the *Department* presents credentials and provides notice as specified in 4402.1, explains the authority upon which access is requested, and makes a final request for access as specified in 4402.2, and the *person in charge* continues to refuse access, the *Department* shall provide details of the denial of access on an inspection report form.

4402.4 If denied access to a *food establishment* for an authorized purpose and after complying with 4402.2, the **Department** may issue, or apply for the issuance of, an inspection order to gain access as provided by District law.

#### 4403 REPORT OF FINDINGS – DOCUMENTING INFORMATION AND OBSERVATIONS

4403.1 The form to be used for each *food establishment* inspection shall be designated by the **Department** and shall be incorporated by reference.

4403.2 The **Department** shall document on an inspection report form:

- (a) Administrative information about the *food establishment's* legal identity, street and mailing addresses, type of establishment and the nature of its operations as specified in section 4304, inspection date, and other information such as type of water supply and sewage disposal, status of the *license*, and personnel *certificates* that may be required; and
- (b) Specific factual observations of violative conditions or other deviations from this Code that require correction by the *licensee* including:
  - (1) Failure of the *person in charge* to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code specified in section 201;
  - (2) Failure of *food employees* and the *person in charge* to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified in sections 303 and 304;
  - (3) Nonconformance with critical items of this Code;
  - (4) Failure of the appropriate *food employees* to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the **Department** as specified in section 4104;
  - (5) Failure of the *person in charge* to provide records required by the **Department** for determining conformance with a *HACCP Plan* as specified in section 4205.1(d)(6); and
  - (6) Nonconformance with critical limits of a *HACCP Plan*.

#### 4404 REPORT OF FINDINGS – SPECIFYING TIME FRAME FOR CORRECTIONS

4404.1 The **Department** shall specify on the inspection report form the time frame for correction of the violations as specified in sections 4409, 4411, and 4413.

#### **4405 REPORT OF FINDINGS – ISSUING REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT**

4405.1 At the conclusion of the inspection and according to this Code, the **Department** shall provide a copy of the completed inspection report and the notice to correct violations to the licensee or to the **person in charge**, and request a signed acknowledgment of receipt.

#### **4406 REPORT OF FINDINGS – REFUSAL TO SIGN ACKNOWLEDGMENT**

4406.1 The **Department** shall inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in section 4405 that:

- (a) An acknowledgment of receipt is not an agreement with finding;
- (b) Refusal to sign an acknowledgment of receipt will not affect the licensee's obligation to correct the violations noted in the inspection report within the time frames specified; and
- (c) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the **Department's** historical record for the **food establishment**.

4406.2 The **Department** shall make a final request that the **person in charge** sign an acknowledgment receipt of inspection findings.

#### **4407 REPORT OF FINDINGS – PUBLIC INFORMATION**

4407.1 The **Department** shall keep and maintain a record of each inspection made of any **food establishment** within the District.

4407.2 The **Department** shall treat the inspection report as a public document and shall make it available for disclosure to a **person** who requests it as provided in the District of Columbia Administrative Procedure Act, **approved** October 21, 1968 (82 Stat. 1204; D.C. Official Code §2-501 et seq.), except as provided in section 4206.

4407.3 The **Department** shall maintain the following information:

- (a) Total number of **licensed food establishments** by category;

- (b) Number of yearly inspections by category;
- (c) Number of reinspections by category;
- (d) Number of hearings;
- (e) Number of *license* suspensions;
- (f) Number of *license* revocations;
- (g) Number of foodborne illness complaints investigated (including the number of cases involving more than two (2) *persons* and the total number of *persons* involved);
- (h) Number of general complaints investigated;
- (i) Number and types of variances issued;
- (j) Total number of sanitarians; and
- (k) Other information the *Department* may deem necessary.

#### **4408 REPORT OF FINDINGS – CERTIFICATE OF ACHIEVEMENT**

4408.1 The *Department* shall develop and implement an annual Certificate of Achievement based on objective criteria during an annual rating period.

4408.2 A *licensee* who is awarded an annual Certificate of Achievement may post it in the same location where the *license* is displayed.

4408.3 Upon notification by the *Department* that the *licensee* fails to meet the requirements for the annual Certificate of Achievement, the *licensee* shall remove the out-dated certificate.

#### **4409 IMMINENT HEALTH HAZARD – CEASING OPERATIONS AND EMERGENCY REPORTING**

4409.1 A *licensee* shall immediately discontinue operations and notify the *Department* if an *imminent health hazard* may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

#### **4410 IMMINENT HEALTH HAZARD – RESUMPTION OF OPERATIONS**

4410.1 If operations are discontinued as specified in section 4409 or otherwise according to applicable D.C. laws and regulations, the *licensee* shall obtain approval from the *Department* before resuming operations.

#### 4411 CRITICAL VIOLATION – TIME FRAME FOR CORRECTION

4411.1 A *licensee* shall, at the time of inspection, correct a critical violation of this Code and implement corrective actions for a *HACCP Plan* provision that is not in compliance with its *critical limit*, except as specified in section 4411.2.

4411.2 The *Department* may consider the nature of the potential hazard involved and the complexity of the corrective action needed and agree to or specify a longer time frame, not to exceed five (5) calendar days after the inspection, for the *licensee* to correct critical violation of this Code or *HACCP Plan* deviations.

4411.3 Violations of this section may subject a *licensee* to an *embargo order* pursuant to section 4702, a *condemnation order* pursuant to section 4709, summary suspension of *license* pursuant to section 4714, revocation or suspension of license pursuant to section 4719, civil penalties pursuant to section 4720, and judicial remedies pursuant to section 4722.

#### 4412 CRITICAL VIOLATION – VERIFICATION AND DOCUMENTATION OF CORRECTION

4412.1 After observing at the time of inspection a correction of a critical violation or deviation, the *Department* shall enter the violation and information about the corrective action on the inspection report.

4412.2 After receiving notification that the *licensee* has corrected a critical violation or *HACCP Plan* deviation, or at the end of the specified period of time as stated in section 4411.2, the *Department* shall verify correction of the violation, document the information on an inspection report, and enter the report in the *Department's* records.

#### 4413 NONCRITICAL VIOLATION – TIME FRAME FOR CORRECTION

4413.1 The *licensee* shall correct noncritical violations by a date and time agreed to or specified by the *Department* but no later than forty-five (45) calendar days after the inspection, except as specified in section 4413.2.

4413.2 The *Department* may approve a compliance schedule that extends beyond the time limits specified in section 4413.1 if the *licensee* submits a written schedule of

compliance and no health hazard exists or will result from allowing an extended schedule for compliance.

4413.3 Violations of this section may subject a licensee to revocation or suspension of *license* pursuant to section 4719, civil penalties pursuant to section 4720, and judicial remedies pursuant to section 4722.

#### 4414 REQUEST FOR REINSPECTION

4414.1 If a *license* is suspended pursuant to section 4714, Summary License Suspension or section 4719, License Revocation or Suspension because of violations of this Code, the *licensee* shall submit a written request for reinspection.

4414.2 Upon receipt of a request for reinspection, the *Department* shall perform the reinspection of the *food establishment* within three (3) calendar days of receipt of the request.

4414.3 A *food establishment* shall not resume operation or remove from public view any warning or most recent sanitation inspection results until such time as the *Department* has reinspected the *food establishment* and certified that it is in compliance with this Code.



## Chapter 45

## PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES

### Sections

4500 – 4503

Investigation and Control

### 4500 INVESTIGATION AND CONTROL – OBTAINING INFORMATION, ILLNESSES

4500.1 The **Department** shall, when it has probable cause to believe that a **food employee**: has transmitted a disease; is infected with a disease in a communicable form that is transmissible through **food**; is a carrier of an infectious agent that causes a disease that is transmissible through **food**; or is affected with a boil, an infected wound, or acute respiratory infection:

- (a) Secure a confidential medical history of the **employee** suspected of transmitting disease or making other investigations as deemed appropriate; and
- (b) Require appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected **employee** and other **employees**.

### 4501 INVESTIGATION AND CONTROL – RESTRICTION OR EXCLUSION OF FOOD EMPLOYEE OR SUMMARY SUSPENSION OF LICENSE

4501.1 Based on the findings of an investigation related to a **food employee** who is suspected of being infected or diseased, or a carrier of an infectious agent that causes a disease that is transmissible through **food**, the **Department** may issue an order to the suspected **employee** or **licensee** instituting one (1) or more of the following control measures:

- (a) Restricting the **food employee's** services to specific areas and tasks in a **food establishment** that present no risk of transmitting the disease;
- (b) Excluding the **food employee** from a **food establishment**; or
- (c) Closing the **food establishment** by summarily suspending a **license** to operate in accordance with this Code.

**4502 INVESTIGATION AND CONTROL – RESTRICTION OR EXCLUSION ORDER**

- 4502.1 Based on the findings of the investigation as specified in section 4500 and to control disease transmission, the **Department** may issue an order of restriction or exclusion to a suspected **food employee** or the **licensee** without prior warning, notice of a hearing, or a hearing if the order recites:
- (a) The reasons for the restriction or exclusion that is ordered;
  - (b) The requirement that the **food employee** or **licensee** shall provide evidence demonstrating that the reasons for the restriction or exclusion have been eliminated;
  - (c) That the suspected **food employee** or the **licensee** may request a hearing by submitting a timely request as provided in the Code at section 4719; and
  - (d) The name and address of the **Department** representative to whom a request for a hearing may be made.

**4503 INVESTIGATION AND CONTROL – RELEASE OF FOOD EMPLOYEE FROM RESTRICTION OR EXCLUSION**

- 4503.1 The **Department** shall release a **food employee** who was infected with *Salmonella Typhi* from restriction or exclusion, if the **food employee's** stools are negative for *Salmonella Typhi* based on testing of at least three (3) consecutive stool specimen cultures that are taken:
- (a) Not earlier than one (1) month after onset;
  - (b) At least forty-eight (48) hours after discontinuance of antibiotics; and
  - (c) At least twenty-four (24) hours apart.
- 4503.2 If one (1) of the cultures taken as specified in section 4503.1 is positive, repeat cultures are to be taken at intervals of one (1) month until at least three (3) consecutive negative stool specimen cultures are obtained.
- 4503.3 The **Department** shall release a **food employee** who was infected with *Shigella* spp. or *Escherichia coli* O157:H7 from restriction or exclusion according to this Code and the following conditions, if the **food employee's** stools are negative for *Shigella* spp. or *Escherichia coli* O157:H7 based on testing of two (2) consecutive stool specimen cultures that are taken:
- (a) Not earlier than forty-eight (48) hours after discontinuance of antibiotics; and

(b) At least twenty-four (24) hours apart.

4503.4 The **Department** shall release a **food employee** who was infected with hepatitis A virus from restriction or exclusion if:

(a) Symptoms cease; or

(b) At least two (2) blood tests show falling liver enzymes.

## Chapter 46 NOTICES

### Sections

#### 4600 - 4603 Service of Notice

### 4600 SERVICE OF NOTICE – PROPER METHODS

4600.1 A notice issued in accordance with this Code shall be deemed properly served if it is served by one of the following methods:

(a) The notice is personally served by the **Department**, a law enforcement officer, or person authorized to serve a civil process and service is made to the licensee, the **person in charge**, or **person** operating a **food establishment** without a **license**;

(b) The notice is sent by the **Department** to the last known address of the **licensee** or **person** operating a **food establishment** without a **license**, or by other public means so that a written acknowledgment of receipt may be acquired; or

(c) For civil infraction penalties, the notice is provided by the **Department** in accordance with 16 DCMR 3102.

### 4601 SERVICE OF NOTICE – RESTRICTION OR EXCLUSION, EMBARGO, CONDEMNATION, OR SUMMARY SUSPENSION ORDERS

4601.1 An **employee** restriction or exclusion order, **embargo order**, **condemnation order**, or a summary suspension order shall be:

(a) Served as specified in section 4600.1(a); or

- (b) Clearly posted by the **Department** at a public entrance to the **food establishment** and a copy of the notice sent by first class mail to the licensee or the owner or custodian of the **food**, as appropriate.

**4602 SERVICE OF NOTICE – WHEN NOTICE IS EFFECTIVE**

- 4602.1 Service is effective at the time of the notice's receipt or if service is made as specified in section 4601.1(b), at the time of the notice's posting.

**4603 SERVICE OF NOTICE – PROOF OF PROPER SERVICE**

- 4603.1 Proof of proper service may be made by certificate of service signed by the **person** making service or by admission of a return receipt, certificate of mailing or a written acknowledgment signed by the **licensee**, the **person** operating a **food establishment** without a **license** to operate, or an authorized agent.

**Chapter 47    REMEDIES**

**Sections**

**4700                      Criteria for Seeking Remedies**

*Administrative*

**4701                      Examining, Sampling,  
and Testing Food**  
**4702 – 4708            Embargo Order**  
**4709 – 4713            Condemnation Order**  
**4714 – 4718            Summary License Suspension**  
**4719                      License Revocation, or Suspension**  
**4720 – 4721            Civil Penalties**

*Judicial*

**4722                      Criminal Penalties, Injunctive Relief, and  
Imprisonment**

**4700                      CRITERIA FOR SEEKING REMEDIES – CONDITIONS WARRANTING  
REMEDY**

- 4700.1            The **Department** may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if a person operating a **food establishment** or **employee**:
- (a)    Fails to have a valid license to operate a **food establishment** as specified in section 4300;
  - (b)    Violates any term or condition of a license as specified in section 4310;
  - (c)    Allows serious or repeat Code violations to remain uncorrected beyond time frames for correction **approved**, directed, or ordered by the **Department** as specified in sections 4412 and 4413;
  - (d)    Fails to comply with a **Department** order issued as specified in section 4502 concerning an employee suspected of having a disease transmissible through **food** by an infected person;

- (e) Fails to comply with an **embargo** or condemnation order as specified in this Chapter;
- (f) Fails to comply with a summary suspension order by the **Department** as specified in this Chapter; or
- (g) Fails to comply with an order issued as a result of an administrative hearing.

4700.2 The **Department** may simultaneously use one or more of the remedies listed in this Chapter to address a violation of this Code.

#### **4701 ADMINISTRATIVE – EXAMINING, SAMPLING, AND TESTING FOOD**

4701.1 The **Department** may collect, without cost, and examine samples as necessary in order to determine compliance with this Code.

#### **4702 ADMINISTRATIVE – EMBARGO ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF FOOD**

4702.1 The **Department** may embargo and forbid the sale of, or cause to be destroyed, any **food** that:

- (a) May be unsafe, adulterated, or not honestly presented;
- (b) Is not prepared, processed, handled, **packaged**, transported, or stored in compliance with this Code;
- (c) Originated from an **unapproved** source;
- (d) Is not labeled according to law, or if raw molluscan shellfish, is not tagged or labeled as specified in sections 713.2 and 714.4; or
- (e) Is otherwise not in compliance with this Code.

#### **4703 ADMINISTRATIVE – EMBARGO ORDER, CONTENTS**

4703.1 The **embargo order** notice shall:

- (a) State that **food** subject to the order may not be used, sold, moved from the **food establishment**, or destroyed without a written release of the order from the **Department**;

- (b) State the specific reasons for placing the *food* under the *embargo order* with reference to the applicable provisions of this Code and the hazard or adverse effect created by the observed condition;
- (c) Completely identify the *food* subject to the *embargo order* by the common name, the label information, a container description, the quantity, the *Department's* tag or identification information, and location;
- (d) State that the *licensee* has the right to a hearing and may request a hearing by submitting a timely request in accordance with Chapter 48, which does not stay the *Department's* imposition of the embargo;
- (e) State that the *Department* may order the destruction of the *food* if a timely request for a hearing is not received; and
- (f) Provide the name and address of the *Department* representative to whom a request for a hearing may be made.

**4704 ADMINISTRATIVE – EMBARGO ORDER, OFFICIAL TAGGING OF FOOD**

- 4704.1 The *Department* shall securely place an official tag or label on the *food* or containers or otherwise conspicuously identify *food* subject to the *embargo order*.
- 4704.2 The tag or other method used to identify a *food* that is the subject of an *embargo order* shall include a summary of the provisions specified in section 4702 and shall be signed and dated by the *Department*.

**4705 ADMINISTRATIVE – EMBARGO ORDER, FOOD MAY NOT BE USED OR MOVED**

- 4705.1 A *food* placed under an embargo order may not be used, sold, served, or moved from the establishment by any *person*, except as specified in section 4705.2.
- 4705.2 The *Department* may allow the *licensee* the opportunity to store the *food* in an area of the *food establishment* if the *food* is protected from subsequent deterioration and the storage does not restrict operations of the establishment.

**4706 ADMINISTRATIVE – EMBARGO ORDER, REMOVING THE OFFICIAL TAG**

4706.1 Only the *Department* may remove embargo order tags, labels, or other identification from *food* subject to an *embargo order*.

**4707 ADMINISTRATIVE – EMBARGO ORDER, DESTROYING OR DENATURING FOOD**

4707.1 If an *embargo order* is sustained pursuant to a hearing or if a timely request for a hearing is not filed, the *Department* may order the *licensee* or other *person* who owns or has custody of the *food* to bring the *food* into compliance with this Code or to destroy or denature the *food* under the *Department's* supervision.

**4708 ADMINISTRATIVE – EMBARGO ORDER, WARNING OR HEARING NOT REQUIRED**

4708.1 The *Department* may issue an *embargo order* to a *licensee* or to a *person* who owns or controls the *food*, as specified in section 4601, without prior warning, notice of a hearing, or a hearing on the *embargo order*.

4708.2 The *licensee* shall have a right to request a hearing within fifteen (15) days of receiving an *embargo order*. The *Department* shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the embargo action.

**4709 ADMINISTRATIVE – CONDEMNATION ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF EQUIPMENT, UTENSILS AND LINENS**

4709.1 The *Department* may condemn and cause to be removed any *equipment, utensils or linens* found in a *food establishment*, the use of which does not comply with this Code, or that is being used in violation of this Code, or that because of dirt, filth, extraneous matter, insects, corrosion, open seams, or chipped or cracked surfaces is unfit for use.



**4710 ADMINISTRATIVE – CONDEMNATION ORDER, CONTENTS**

4710.1 The condemnation order shall:

- (a) State that the *equipment, utensils or linens* subject to the order may not be used, sold, moved from the *food establishment*, or destroyed without a written release of the order from the *Department*;
- (b) State the specific reasons for placing the *equipment, utensils or linens* under the condemnation order with reference to the applicable provisions of this Code and the hazard or adverse effect created by the observed condition;
- (c) Completely identify the *equipment, utensils, or linens* subject to the condemnation order by the common name, the label or manufacturer's information, description of the item, the quantity, the *Department's* tag or identification information, and location;
- (d) State that the licensee has the right to a hearing and may request a hearing by submitting a timely request in accordance with Chapter 48, which request does not stay the *Department's* imposition of the condemnation order;
- (e) State that the *Department* may order the destruction, replacement or removal of the *equipment, utensils or linens* if a timely request for a hearing is not received; and
- (f) Provide the name and address of the *Department* representative to whom a request for a hearing may be made.

**4711 ADMINISTRATIVE – CONDEMNATION ORDER, OFFICIAL TAGGING OF EQUIPMENT, UTENSILS AND LINENS**

4711.1 The Department may place a tag to indicate the condemnation of *equipment, utensils, or linens* that do not meet the requirements of this Code.

4711.2 The tag or other method used to identify the *equipment, utensils, or linens* that is the subject of a condemnation order shall include a summary of the provisions specified in section 4710 and shall be signed and dated by the *Department*.

**4712 ADMINISTRATIVE – CONDEMNATION ORDER – REMOVING THE OFFICIAL TAG**

4712.1 No *person* shall remove the tag except under the direction of the *Department* as specified in section 4712.2.

4712.2 The *Department* shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other identification from *equipment, utensils and linens* if:

- (a) The *condemnation order* is vacated; or
- (b) The licensee notifies the *Department* that the *equipment, utensils and linens* have been modified to meet the National Sanitation Foundation (NSF) or NSF equivalent standards and requirements of this Code and after the *Department* has conducted a re-inspection.

**4213 ADMINISTRATIVE – CONDEMNATION ORDER, WARNING OR HEARING NOT REQUIRED**

4713.1 The *Department* may issue a *condemnation order* to a licensee or to a person who owns or controls the *equipment, utensils or linens* as specified in section 4601, without prior warning, notice of a hearing, or a hearing on the *condemnation order*.

4713.2 The *licensee* shall have the right to request a hearing within fifteen (15) days of receiving a *Department condemnation order*. The *Department* shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the condemnation action.

**4714 ADMINISTRATIVE – SUMMARY LICENSE SUSPENSION CONDITIONS WARRANTING ACTION**

4714.1 The *Department* may summarily suspend a *license* to operate a *food establishment* if it determines through inspection, or examination of *employees, food*, records, or other means as specified in this Code, that an *imminent health hazard* exists.

**4715 ADMINISTRATIVE – CONTENTS OF SUMMARY SUSPENSION NOTICE**

4715.1 A summary suspension notice shall state:

- (a) That the *food establishment license* is immediately suspended and that all operations shall immediately cease;
- (b) The reasons for summary suspension with reference to the provisions of this Code that are in violation;
- (c) The name and address of the *Department* representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
- (d) That the *licensee* may request a hearing by submitting a timely request in accordance with section 4716, which request does not stay the *Department's* imposition of the summary suspension notice.

**4716 ADMINISTRATIVE – SUMMARY SUSPENSION, WARNING OR HEARING NOT REQUIRED**

4716.1 The *Department* may summarily suspend a *person's license* as specified in section 4714 by providing written notice as specified in section 4601 of the summary suspension to the *licensee* or *person in charge*, without prior warning, notice of a hearing, or a hearing.

4716.2 The *licensee* shall have the right to request a hearing within fifteen (15) days of receiving the *Department's* summary suspension notice. The *Department* shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the summary suspension action.

**4717 ADMINISTRATIVE – SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION**

4717.1 After receiving a written request from the *licensee* stating that the conditions cited in the summary suspension order no longer exist, the *Department* shall conduct a reinspection of the *food establishment* for which the *license* was summarily suspended within three (3) calendar days during which the *Department's* office is open to the public.

**4718 ADMINISTRATIVE – SUMMARY SUSPENSION, TERM OF SUSPENSION, REINSTATEMENT**

- 4718.1 A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the *Department* through re-inspection and other means as appropriate.
- 4718.2 The suspended *license* shall be reinstated if the *Department* determines that the public health hazard or nuisance no longer exists. A notice of reinstatement shall be provided to the *licensee* or *person in charge*.

**4719 ADMINISTRATIVE – LICENSE REVOCATION OR SUSPENSION**

- 4719.1 Failure to comply with any of the provisions of this chapter shall be grounds for the revocation or suspension of any *license* issued for a *food establishment* pursuant to the Food Regulation Amendment Act of 2002, effective May 2, 2002 (D.C. Law 14-116; D.C. Official Code §48-101 *et seq.*). When there is a history of repeated violations or where a *license* has been previously suspended, the Mayor may revoke a license, upon a showing of a subsequent violation.
- 4719.2 Before the *Department* revokes or suspends a *food establishment license*, the *licensee* shall be given an opportunity to answer and to be heard on the charges.

**4720 ADMINISTRATIVE – CIVIL PENALTIES**

- 4720.1 Civil fines, penalties, or related costs may be imposed against any *food establishment*, owner or person in charge for violation of any provision of this Code.
- 4720.2 The *Department* may impose penalties for violations of any provision of this Code not to exceed \$10,000 for each violation. Each day of any failure to comply with this Code shall constitute a separate offense and the penalties prescribed in this section shall apply to each separate offense in accordance with the Food Regulation Amendment Act of 2002, effective May 2, 2002 (D.C. Law 14-116; D.C. Official Code §48-101 *et seq.*).
- 4720.3 The *Department* may impose civil fines, penalties, and fees as alternative sanctions for violations of any provision of this Code pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985, ("Civil Infractions Act") effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §2-1801.01 *et seq.*).
- 4720.4 Civil fines or penalties imposed pursuant to section 4720.2 in an amount exceeding the Civil Infractions Schedule of Fines authorized by section 4720.3 shall be limited to egregious violations or flagrant violations involving gross negligence or carelessness, or violations involving the transmission of communicable diseases through *foods* which do not meet the criminal penalty standards in section 4722.1.

**4721 ADMINISTRATIVE – CIVIL PENALTIES, NOTICES OF VIOLATION OR INFRACTIONS**

4721.1 The notice of violation shall state the nature of the violation and allow a reasonable time for performance of the necessary corrective action.

4721.2 If a *person* fails to comply with the time stated in the notice of violation issued pursuant to this section, the *Department* shall issue a proposed compliance order, or a proposed cease and desist order which shall include a statement of the nature of the violation, afford the right to a hearing and allow a reasonable time for compliance with the order and shall state any penalties to be assessed for failure to comply with the order.

4721.3 A notice of infraction shall comply with Chapter 31, Title 16 of the DCMR.

**4722 JUDICIAL – CRIMINAL PENALTIES, INJUNCTIVE RELIEF, IMPRISONMENT**

4722.1 Any *person* who knowingly violates any provision of this Code shall, upon conviction, be punished by a fine not to exceed ten thousand dollars (\$10,000), imprisonment not to exceed one (1) year or both for each violation. Each day of any failure to comply with this Code shall constitute a separate offense and the penalties prescribed in this section shall apply to each separate offense in accordance with the Food Regulation Amendment Act of 2002, effective May 2, 2002 (D.C. Law 14-116; D.C. Official Code §48-101 *et seq.*).

**Chapter 48 HEARING ADMINISTRATION**

**Sections**

*Administrative*

<b>4800</b>	<b>Notice, Request for Hearing, Basis and Timeframe</b>
<b>4801</b>	<b>Contents of Response to Hearing Notice, or Hearing Request</b>
<b>4802</b>	<b>Timeliness</b>

**4800 ADMINISTRATIVE – NOTICE, REQUEST FOR HEARING, BASIS AND TIME FRAME**

4800.1 A *person* who receives a notice of hearing for an administrative remedy as specified in Chapter 47 and elects to respond to the notice shall file a response to the notice within seven (7) calendar days after service.

4800.2 In response to an adverse administrative action, a licensee shall submit a written request for a hearing to the *Department* within fifteen (15) calendar days of the receipt of notice of adverse action.

4800.3 A hearing request does not stay the *Department's* restriction or exclusion of employees specified in sections 4501 to 4503, an *embargo order* as specified in section 4703, a *condemnation order* as specified in section 4710, or the imposition of a summary suspension as specified in section 4715.

**4801 ADMINISTRATIVE – HEARINGS ADMINISTRATION – CONTENTS OF RESPONSE TO HEARING NOTICE , OR HEARING REQUEST**

4801.1 A response to a hearing notice shall be in writing and contain the following:

- (a) An admission or denial of each allegation of fact;
- (b) A statement as to whether the respondent waives the right to a hearing;
- (c) A statement of defense, mitigation, or explanation concerning any allegation of fact if any;

- (d) A request to the **Department** for a settlement of the proceeding by consent agreement, (if the *Department* provides this opportunity); and
- (e) The name and address of the respondent's or requester's legal counsel, if any.

4801.2 A request for hearing shall be in writing and contain the following:

- (a) An admission statement or denial of each allegation of fact;
- (b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact; and
- (c) The name and address of the respondent's or requester's legal counsel, if any.

## **4802 ADMINISTRATIVE – HEARINGS ADMINISTRATION, TIMELINESS**

4802.1 The **Department** shall afford a hearing within seventy-two (72) hours after receiving a written request for a hearing from:

- (a) A person who is excluded by the **Department** from working in a **food establishment** as specified in sections 4501 to 4503;
- (b) A **licensee** or **person** whose **food** is subject to an **embargo order** as specified in sections 4702 to 4708; or a **condemnation order** as specified in sections 4709 - 4713;
- (c) A **licensee** whose license is summarily suspended as specified in sections 4714 to 4718; or
- (d) A **licensee** whose license is suspended or revoked as specified in section 4719.

4802.2 A **licensee** or **person** who submits a request for a hearing as specified in section 4801.2 may waive the expedited hearing in a written request to the **Department**.

**Chapter 49 JUDICIAL REVIEW**

**Section**

**4900**

**Appeals**

**4900 JUDICIAL REVIEW – APPEALS**

4900.1 Any *person* aggrieved by a final order or decision of the *Department* may seek judicial review in accordance with the District of Columbia Administrative Procedure Act, *approved* October 21, 1968 (82 Stat. 1204; D.C. Official Code §2-501 et seq.).



## Chapter 99 DEFINITIONS

### Sections

9900  
9901

General Provisions  
Definitions

### 9900 GENERAL PROVISIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this Chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise.

### 9901 DEFINITIONS

**Accredited program** – consist of the following:

- (a) A *food* protection manager certification program that has been evaluated and listed by the Interjurisdictional Food Service Manager Program as conforming to national standards for organizations that certify individuals;
- (b) Refers to the certification process and is a designation based upon an independent evaluation of factors such as: the sponsor’s mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline and grievance procedures; and test development and administration; and
- (c) Does not refer to training functions or educational programs.

**Additive (Color)** – has the meaning stated in §201(t) of the Federal Food Act, and 21 CFR 70.

**Additive (Food)** – has the meaning stated in §201(s) of the Federal Food Act, and 21 CFR 170.

**Adulterated food** – consist of any of the following food that:

- (a) Bears or contains any poisonous or deleterious substance which may render it injurious to health; except that if the poisonous or deleterious substance is not an added substance and the quantity of the poisonous or deleterious substance in the food does not ordinarily render it injurious to health the food is not adulterated for the purpose of this title;

- (b) Bears or contains any added poisonous or added deleterious substance (other than a substance that is a pesticide chemical residue in or on a raw agricultural commodity or processed food, a food additive, a color additive, or a new animal drug) that is unsafe within the meaning of section 406 of the Federal Food Act;
- (c) Bears or contains a pesticide chemical residue that is unsafe within the meaning of section 408 of the Federal Food Act;
- (d) Bears or contains any food additive that is unsafe within the meaning of section 409 of the Federal Food Act, or a new animal drug (or conversion product thereof) that is unsafe within the meaning of section 512 of the Federal Food Act;
- (e) Consists, in whole or in part, of any filthy, putrid, or decomposed substance, or is otherwise unfit for food;
- (f) Has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
- (g) In whole or in part, is the product of a diseased animal or of an animal which has died otherwise than by slaughter;
- (h) Is in a container that is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health;
- (i) Intentionally has been subjected to radiation, unless the radiation was used in conformity with a rule or exemption in effect pursuant to section 409 of the Federal Food Act;
- (j) To or from which any valuable constituent has been omitted or abstracted, in whole or in part;
- (k) To which any substance has been substituted, in whole or in part;
- (l) Whose damage or inferiority has been concealed in any manner;
- (m) To which any substance has been added, mixed or packed to increase the food's bulk or weight, reduce the food's quality or strength, or make the food appear better or of greater value;
- (n) Bears or contains a color additive that is unsafe within the meaning of section 721 of the Federal Food Act;
- (o) Is a confectionery:

- (1) Within which any nonnutritive object is partially or completely imbedded, except that the confectionery shall not be adulterated for purposes of this title if the Secretary of the US Department of Health and Human Services determines, by rule, that the nonnutritive object that is partially or completely imbedded in the confectionery has a practical, functional value to the confectionery that does not render the confectionery injurious or hazardous to health;
  - (2) That bears or contains more than one-half of one percent (0.5%) of alcohol by volume, which is derived solely from flavoring extracts, except that the confectionery shall not be adulterated for purposes of this title if the confectionery is introduced, delivered for introduction, received, or held for sale; or
  - (3) That bears or contains any nonnutritive substance, except that the confectionery shall not be adulterated for purposes of this title if the nonnutritive substance is a safe substance that is in or on a confectionery product because the nonnutritive substance serves a practical, functional purpose in the manufacture, packaging, or storage of the confectionery product and use of the nonnutritive substance does not promote deception of the consumer or violate any other provision of this act;
- (p) Is oleomargarine, margarine, butter, or any of the raw material in oleomargarine, margarine, or butter, which contains or consists, in whole or in part, of any filthy, putrid, or decomposed substance, or the oleomargarine, margarine, or butter is otherwise unfit for food; or
- (q) Is a dietary supplement or contains a dietary ingredient:
- (1) That presents a significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling or, if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use;
  - (2) That is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that the ingredient does not present a significant or unreasonable risk of illness or injury;
  - (3) That is or contains a dietary ingredient that renders the food adulterated under paragraph (a) of this subsection under the conditions of use recommended or suggested in the labeling of the dietary supplement; or
  - (4) That has been prepared, packed, or held under conditions that do not comply with current, good manufacturing practice rules, including rules that require expiration date labeling.

**Approved** – acceptable to the Department of Health or other regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

$a_w$  – water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $a_w$ .

**Bainmaries** – a hot water-heated, food holding table.

**Bed and breakfast operation** – a facility where breakfast is included in the rent and is the only meal offered.

**Beverage** – a liquid for drinking, including water.

**Bottled drinking water** – water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

**Calrod unit** – an electric heating element.

**Catered establishment** – a facility that receives food from an approved caterer or other food establishment including but not limited to a child development center, adult day care establishment, nursing home, school, community residential establishment, or other institution.

**Caterer** – any person who prepares food intended for individual portion service, transports and serves it at another location, or who prepares and serves food at a food establishment, other than one for which he holds a license, for service at a single meal, party or similar gathering.

**Certificate** – a document issued by the Director, or another jurisdiction or private vendor that is accepted by the Director, which demonstrates that the person identified on the certificate has been determined to be a “certified food protection manager” or a “certified limited food protection manager”.

**Certification number** – a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

**Certified Food Protection Manager** – food professional, trained and certified by an accredited program approved or provided by the Department, who meets specific food safety knowledge standards as to handling raw ingredients and the cooking, cooling or reheating of potentially hazardous foods in food establishments.

**Certified Limited Food Protection Manager** – food professional, trained and certified by an accredited program approved or provided by the Department, who meets specific food safety knowledge standards as to the operations of food establishments, which serve primarily prepackaged not potentially hazardous foods, and hot dogs and frankfurters or which are mobile ice cream operations.

**CFR** – the Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

**Child development center** – a child development facility for more than five (5) children or infants, which provides a full-day (more than four (4) but less than twenty-four (24) hours per day), part-day (up to four (4) hours per day), or before and after school child development program, including programs provided during school vacations as defined in Chapter 3 of Title 29 DCMR (Public Welfare).

**Child development home** – a child development program provided in a private residence for up to a total of five (5) children and infants, with no more than two (2) infants in the group as defined in Chapter 3 of Title 29 DCMR (Public Welfare).

**CIP** – cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over *equipment* surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine; but does not include the cleaning of *equipment* such as band saws, slicers, or mixers that are subjected to in place manual cleaning without the use of a CIP system.

**Code of Federal Regulations** – the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which is published annually by the U.S. Government Printing Office; and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

**Comminuted** – reduced in size by methods including chopping, flaking, grinding, or mincing, and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage, and a mixture of two (2) or more types of meat that have been reduced in size and combined, such as sausages made from two (2) or more meats.

**Community residential establishment** – a facility providing sheltered living arrangement for more than ten (10) individuals, not including the resident director or his/her family as further defined in Title 22 of the DCMR (Public Health and Medicine).

**Community residential home** – a facility providing sheltered living arrangement for no more than ten (10) individuals, not including the resident director or his/her family as further defined in Title 22 of the DCMR (Public Health and Medicine).

**Condemnation order** – an administrative restriction or exclusion on the use of specific *equipment*, utensils or linens.

**Confirmed disease outbreak** – a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

**Consumer** – a person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

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

**Crazing** – a mesh of fine cracks in a surface or coating made of glaze or enamel.

**Critical control point** – a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

**Critical limit** – 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.

**Department** – Department of Health.

**Depurates** – artificial means of decontaminating shellfish.

**Director** – the Director of the Department of Health or his or her designee.

**Drinking water** – water that meets 40 CFR Part 141 – National Primary Drinking Water Regulations and is traditionally known as potable water, including the term "water," except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

**Dry storage area** – a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

**Easily cleanable** – a characteristic of a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use; and includes a tiered application of these criteria to different situations in which varying degrees of cleanability are required such as the appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining or the need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

**Easily movable** – portable; mounted on casters, gliders or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility

connection that connects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

**Embargo order** – an administrative restriction or exclusion on the distribution of food or food products.

**Employee** – the license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

**EPA** – the United States Environmental Protection Agency.

**Equipment** – an article that is used in the operation of a food establishment, such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine but does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

**FDA** – the United States Food & Drug Administration.

**Federal Food Act** – the Federal Food, Drug and Cosmetic Act, approved June 25, 1938 (52 Stat. 1040; 21 U.S.C. 301 *et seq.*).

**Fish** – fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption including an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

**Food** – a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use, or for sale, in whole or in part for human consumption, or chewing gum.

**Foodborne disease outbreak** – the occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food.

**Food-contact surface** – a surface of equipment or a utensil with which food normally comes into contact or a surface of equipment or a utensil from which food may drain, drip, or splash into a food or onto a surface normally in contact with food.

**Food employee** – an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. This could include the owner, individual having supervisory or management duties, person on payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food establishment. In health care facilities, this includes those who set

up trays for patients to eat, feed or assist patients in eating, give oral medications or give mouth/denture care. In child development facilities, schools and long term care facilities, which are licensed food establishments, this includes those who prepare food for clients to eat, feed or assist clients in eating or give oral medications.

**Food establishment –**

- (a) An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption including but is not limited to the following:
  - (1) An operation that relinquishes possession of food directly to a consumer. Such operations include a restaurant, a grocery store, a convenience store, a bakery, a delicatessen, a caterer, a hotel or a bed & breakfast operation where food is provided, with the exceptions listed below;
  - (2) A satellite or catered feeding location;
  - (3) A catering operation where, the operation provides food directly to a conveyance used to transport people such as trains or airplanes;
  - (4) A market; a vending location; a conveyance used to transport people; or a food bank or an institution;
  - (5) An operation that relinquishes possession of food to a consumer, indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders or delivery service that is provided by common carriers;
  - (6) An element of the operation of an establishment, such as a motorized vehicle or cart or a central preparation facility that supplies vending locations or satellite feeding locations, unless the vending locations are authorized by the Council pursuant to An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District, approved January 26, 1887 (27 Stat. 368; D.C. Official Code § 1-303.01), or the feeding locations are licensed by the Mayor;
  - (7) A food operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption of the food is on or off the premises, regardless of whether there is a charge for the food;
  - (8) All employer-sponsored cafeterias or restaurants, schools, churches, community residential establishments, and similar facilities, and private clubs with the exceptions listed below;



- (9) An eating and drinking establishment operated on premises owned or held under lease by the government of the United States or the District of Columbia, or any federal or District of Columbia department or agency, irrespective of whether such establishments are operated by the United States or any federal or District of Columbia department or agency or by any other person, firm, association, or corporation, and also irrespective of whether such establishments are operated for profit or otherwise pursuant to An Act To Extend the health regulations of the District of Columbia to Government restaurants within the District of Columbia, approved December 20, 1944 (58 Stat. 826; D.C. Official Code § 7-2701); and
  - (10) A food processing plant.
- (b) But does not include:
- (1) An establishment that offers only prepackaged foods that are not potentially hazardous;
  - (2) A produce stand that only offers whole, uncut, fresh fruits and vegetables;
  - (3) An ordinary kitchen in a private home that prepares food for sale or service at a function such as a religious or charitable organization's bake sale where the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Department;
  - (4) An area where food that is prepared as specified in subparagraph (4) above is sold or offered for human consumption;
  - (5) A kitchen in a private home, including a child development home; a community residential home; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner-occupied, the number of available guest bedrooms do not exceed three (3), breakfast is the only meal offered, the number of guests served does not exceed nine (9), and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Department;
  - (6) A private home or other location that receives catered or home-delivered food;
  - (7) A private club, or a church, which serves occasional meals at not more than twenty-four (24) events during a twelve (12) month period; and
  - (8) United States Senate and House of Representative's restaurants pursuant to An Act To Extend the health regulations of the District of Columbia to Government restaurants

within the District of Columbia, approved December 20, 1944 (58 Stat. 826; D.C. Official Code § 7-2701).

**Food processing plant** – commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer, but does not include a food establishment.

**Food operation** – the premises, practices, and procedures associated with a specific type of activity within a food establishment.

**Game animal** – an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Subchapter A – Mandatory Meat Inspection, Part 301, as Poultry in 9 CFR Subchapter C – Mandatory Poultry Products Inspection, Part 381, or as fish as defined, and includes, but is not limited to, mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes but does not include ratites such as ostrich, emu, and rhea.

**General use pesticide** – a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

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

**Group residence** – a private or public housing corporation or institutional facility that provides living quarters and meals, including, but not limited to, a domicile for unrelated persons such as a retirement home or a long-term health care facility.

**HACCP Plan** – a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

**Hazard** – a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

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

**Highly susceptible population** – a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a child development facility.

**Imminent health hazard** – a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

**Injected** – manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

**Kitchenware** – food preparation and storage utensils.

**License** – a permit to authorize a person to operate a food establishment.

**Licensee** – a person who is legally responsible for the operation of the food establishment, such as the owner, the owner's agent, or other person, and who possesses a valid license issued by the Department of Consumer and Regulatory Affairs to operate a food establishment.

**Linens** – fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

**Mass gathering** – an actual or reasonably anticipated assembly of more than fifteen hundred (1,500) persons that will continue, or may reasonably be expected to continue, for more than eight (8) consecutive hours and that is held in an open space or temporary structure especially constructed, erected, or assembled for the gathering.

**Meat** – the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game that is offered for human consumption.

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

**Molluscan shellfish** – any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, but does not mean any scallop product that consists only of the shucked adductor muscle.

**Packaged** – bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant, but does not mean a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

**Person** – an association, a corporation, individual, partnership, trustee, government, or governmental subdivision or agency, or other legal entity.

**Personal care items** – items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person’s health, hygiene, or appearance, including medicines, first aid supplies, cosmetics, and toiletries, including toothpaste and mouthwash.

**Person in charge** – the individual present at a food establishment who is responsible for the food service operation.

**pH** – the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero (0) and seven (7) indicate acidity and values between seven (7) and fourteen (14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral.

**Physical facilities** – the structure and interior surfaces of a food establishment, including soap and towel dispensers and other accessories, light fixtures and heating or air conditioning system vents, and other attachments.

**Plumbing fixture** – a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

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

**Poisonous or toxic materials** – any of the following substances that are not intended for ingestion:

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

**Potentially hazardous food** – any of the following:

- (a) A food that is:

- (1) Natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms;
  - (2) Natural or synthetic and that requires temperature control because it is in a form capable of supporting the growth and toxin production of *Clostridium botulinum*;
  - (3) Natural or synthetic and that requires temperature control because it is in a form capable of supporting in raw shell eggs, the growth of *Salmonella enteritidis*;
  - (4) Of animal origin that is raw or heat-treated;
  - (5) Of plant origin that is heat-treated or consists of raw seed sprouts;
  - (6) Cut melons; or
  - (7) Garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified in section (a) of this definition.
- (b) Provided that the food is not:
- (1) An air-cooled hard-boiled egg with shell intact;
  - (2) A food with an  $a_w$  value of eighty-five hundredths (0.85) or less;
  - (3) A food with a pH level of four and sixth tenths (4.6) or below when measured at twenty- four degrees Celsius (24°C) or seventy-five degree Fahrenheit (75°F);
  - (4) A food, in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
  - (5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* cannot occur, such as a food that has an  $a_w$  and a pH that are above the levels specified in sections (f)(2) - (f)(3) of this definition, and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
  - (6) A food that does not support the growth of microorganisms as specified under section (a) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

**Poultry** – any dressed domesticated bird such as chickens, turkeys, ducks, geese, or guineas, as defined in 9 CFR 381 – Poultry Products Inspection Regulations, any dressed migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, as defined in 9 CFR 362 – Voluntary Poultry Inspection Program, but does not include ratites.

**Premises** – the physical facility, its contents, and the contiguous land or property under the control of the licensee, or the physical facility, its contents, and the land or property if the facilities and contents are under the control of the licensee and may impact food establishment personnel, facilities, or operations, if the food establishment is only a component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

**Primal cut** – a basic, major cut into which carcasses and sides of meat are separated, including, but not limited to, beef round, pork loin, lamb flank, or veal breast.

**Public water system** – means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year including any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

**Ready-to-eat food** – food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form including, but not limited to, potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

**Reduced oxygen packaging** – the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, twenty-one percent (21%) oxygen, and a process as specified in this definition that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in any of the following final packaged form and includes any of the following:

- (a) Vacuum packaging, in which air is removed from packaged food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide;
- (b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, and an increase in the proportion of other gases such as carbon dioxide or nitrogen; and

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

**Refuse** – solid waste not carried by water through the sewage system.

**Residential kitchen** – a kitchen in an owner-occupied home.

**Restricted egg** – has the meaning stated in 7 CFR 57.

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

**Risk factors** – improper practices or procedures, which have been identified by the Centers for Disease Control and Prevention (CDC), through epidemiological data as the most prevalent contributing factors of foodborne illness or injury. Risk factors include any of the following:

- (a) Poor personal hygiene;
- (b) Food from unsafe source;
- (c) Inadequate cooking;
- (d) Improper holding temperatures; and
- (e) Contaminated equipment.

**Safe material** – any of the following:

- (a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;
- (b) An additive that is used as specified in §409, Unsafe Food Additives or §706, When Color Additives Deemed Unsafe of the Federal Food Act; or
- (c) Any other material that is not an additive and that is used in conformity with applicable regulations of the United States Food and Drug Administration.

**Sanitization** – the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five (5) logs, which is equal to a ninety-nine and nine hundred - ninety-nine thousands of a percent (99.999%) reduction of representative disease microorganisms of public health importance.

**Scupper** – an opening in the wall of a building through which water can drain from a floor or a flat roof.

**Sealed** – free of cracks or other openings that allow the entry or passage of moisture.

**Service animal** – an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

**Servicing area** – an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and where food, food equipment, and supplies for the business are stored.

**Sewage** – liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**Shellfish control authority** – a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

**Shellstock** – raw, in-shell molluscan shellfish.

**Shucked shellfish** – molluscan shellfish that have one or both shells removed.

**Single-service articles** – tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use after which they are intended for discard.

**Single-use articles** – utensils and bulk food containers designed and constructed to be used once and discarded, including, but not limited to, wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils.

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

**Smooth** – any of the following:

- (a) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (one hundred (100) grit) number three (3) stainless steel;
- (b) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; or



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

**Snack** – any non-potentially hazardous foods and pre-packaged foods that do not require preparation.

**Table-mounted equipment** – equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

**Tableware** – eating, drinking, and serving utensils for table use, such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

**Temperature measuring device** – a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

**USDA** – the United States Department of Agriculture.

**Utensil** – a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food including kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; food temperature measuring devices; and probe-type price or identification tags used in contact with food.

**Vending machine** – a self-service device, that upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

**Vending machine location** – the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

**“V” type threads** – a non-sanitary, non-cleanable industrial thread.

**Warewashing** – the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

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