

**SUFFOLK COUNTY SANITARY CODE**

**ARTICLE 13  
GENERAL FOOD REGULATIONS**

**SECTION**

**760-1300. Purpose; Scope; Definitions**

**ENFORCEMENT PROVISIONS**

**760-1301. Powers and Duties of Commissioner**

**760-1302. General Provisions**

**760-1303. Permit to Operate a Food Establishment Required; Issuance, Suspension, Revocation and Closure; Hearings; Service of Notice or Order**

**760-1304. Plan Review; Construction or Pre-operational Inspection**

**760-1305. Inspection of Food Establishments**

**760-1306. Food Establishments Located Outside the Jurisdiction of the Department**

**760-1307. Examination and Condemnation of Food**

**760-1308. Suspected Infections; Procedure**

**760-1309. Variances**

**760-1310. Reserved**

**760-1311. Preventing Health Hazards for Conditions not Addressed**

**760-1312. Postings/Notifications required by law**

**760-1313. Food Establishments Serving Highly Susceptible Populations**

**760-1314. Reserved**

**FOOD SUPPLIES**

**760-1315. Food Supplies; General**

760-1315.a Home-prepared food prohibited

760-1315.b Hermetically sealed food

760-1315.c Package or container

760-1315.d Reduced oxygen packaging safety plan

760-1315.e Unsafe, contaminated, or adulterated food

760-1315.f Honest presentation

760-1315.g Artificial trans fats prohibited

760-1315.h Bottled drinking water

760-1315.i Pre-packaged juice

760-1315.j Variance required

**760-1316. Milk and Milk Products**

760-1316.1 Compliance with 1NYCRR Part 2

760-1316.2 Quality standards

760-1316.3 Pasteurized milk requirements

760-1316.4 Original container

**760-1317. Deleted**

**760-1318. Shellfish**

- 760-1318.1 Shellfish plants, quality standards; shellfish from approved sources and free of antiseptics or preservatives
- 760-1318.2 Approved Interstate Shipper
- 760-1318.3 Shellfish tag requirement
- 760-1318.4 Shellfish tag retention
- 760-1318.5 Shellfish storage and transportation
- 760-1318.6 Shucked shellfish containers
- 760-1318.7 Shucked shellfish, original container

**760-1319. Fish, Smoked Fish, and other Seafood**

- 760-1319.1 Marine fish and crustaceans
- 760-1319.2 Wild fresh water fish and crustaceans
- 760-1319.3 Fish or crustaceans not harvested in New York State
- 760-1319.4 Quality Standards
- 760-1319.5 Fresh fish
- 760-1319.6 Frozen fish
- 760-1319.7 Fish storage
- 760-1319.8 Fish cleaning
- 760-1319.9 Coloring prohibited
- 760-1419.10 Smoked fish
- 760-1319.11 Parasite destruction

**760-1320. Meat and Meat Products**

- 760-1320.1 Processing and approval
- 760-1320.2 Coloring agents prohibited

**760-1321. Poultry and Poultry Products**

- 760-1321.1 Poultry inspection
- 760-1321.2 Shell eggs
- 760-1321.3 Liquid and frozen eggs, pasteurized eggs
- 760-1321.4 Shell egg containers labeled as to source; Safe food handling

**760-1322. Bakery Products**

- 760-1322.1 Manufacturing requirements
- 760-1322.2 Packaging and transportation
- 760-1322.3 Containers

**760-1323. Packaged Non-alcoholic Drinks**

- 760-1323.1 Sanitation requirements
- 760-1323.2 Ingredients
- 760-1323.3 Re-useable containers
- 760-1323.4 Labeling

**760-1324. Mushrooms**

**760-1325. Game Animals**

**760-1326. Reserved**

**760-1327. Reserved**

**760-1328. Reserved**

**760-1329. Reserved**

**FOOD PROTECTION**

**760-1330. Food Protection; General Provisions**

- 760-1330.1 Protection from contamination
- 760-1330.2 Labeling
- 760-1330.3 Temperature maintenance of temperature-controlled for safety (TCS) foods
- 760-1330.4 Date-marking temperature-controlled for safety (TCS) foods
- 760-1330.5 Disposition of date-marked temperature-controlled for safety (TCS) foods
- 760-1330.6 Time as a public health control
- 760-1330.7 Miscellaneous contamination sources

**760-1331. Bacteriological Standards; Temperature-controlled for safety (TCS) Foods**

- 760-1331.1 Microbiological standards
- 760-1331.2 Prohibition of fecal coliforms, pathogens, and their toxic byproducts in temperature-controlled for safety (TCS) foods

**760-1332. Temperatures**

- 760-1332.1 Refrigeration
- 760-1332.2 Thermometers
- 760-1332.3 Temperature-controlled for safety (TCS) foods
- 760-1332.4 Frozen food

**760-1333. Preparation**

- 760-1333.1 Thawing
- 760-1333.2 Shell eggs and foods containing shell eggs, consumer advisory
- 760-1333.3 Poultry thawing
- 760-1333.4 Prechilled ingredients; no bare hand contact
- 760-1333.5 Rapid cooling
- 760-1333.6 Reheating
- 760-1333.7 Custards, cream fillings, pies
- 760-1333.8 Required cooking temperatures
- 760-1333.9 Consumer advisory
- 760-1333.10 Reheating of precooked commercially processed food
- 760-1333.11 Microwave cooking and reheating
- 760-1333.12 Cooking fruits and vegetables for hot holding
- 760-1333.13 Washing raw fruits and vegetables
- 760-1333.14 Non-continuous cooking

**760-1334. Storage of Food**

- 760-1334.1 Container storage; shallow pans
- 760-1334.2 Food covered in storage; Direct storage on shelves prohibited
- 760-1334.3 Cross contamination prevention
- 760-1334.4 Storage by immersion prohibited
- 760-1334.5 Food protected from contamination in storage and transit
- 760-1334.6 Ice
- 760-1334.7 Hermetically sealed containers
- 760-1334.8 Cased food containers protected

**760-1335. Display and Service of Food**

- 760-1335.1 Counter-protective devices; food quantity limited
- 760-1335.2 Barriers to bare hand contact with food

- 760-1335.3 Ice dispensing
- 760-1335.4 Storage of serving utensils
- 760-1335.5 Self-service condiment dispensing
- 760-1335.6 Re-service of food
- 760-1335.7 Tableware storage and dispensing; self-service tableware

**760-1336. Transportation**

- 760-1336.1 Food protection during transportation
- 760-1336.2 Food transport equipment
- 760-1336.3 Food temperature logs

**760-1337. Poisonous and Toxic Materials**

- 760-1337.1 Restrictions on poisonous and toxic materials
- 760-1337.2 Identification and proper use
- 760-1337.3 Labeling of cleansers and sanitizers
- 760-1337.4 Storage cabinets; Separation of cleansers and poisons
- 760-1337.5 Proper use on food contact surfaces; Phenolic compounds prohibited
- 760-1337.6 Use of poisonous materials
- 760-1337.7 Storage of personal medications and first-aid supplies
- 760-1337.8 Pesticide labeling
- 760-1337.9 Pesticide application, restrictions

**760-1338. Reserved**

**760-1339. Reserved**

**PERSONNEL**

**760-1340. Health and Disease Control; Training**

- 760-1340.1 Ill employee; restrictions, reporting of illness
- 760-1340.2 Operator's responsibility to restrict, exclude, refuse to hire ill worker or carrier
- 760-1340.3 Operator's responsibility to notify the Commissioner
- 760-1340.4 Responsibilities of person in charge for exclusions, restrictions
- 760-1340.5 Removal of exclusions, restrictions
- 760-1340.6 Certified person in charge on site; recertification
- 760-1340.7 Commissioner's authority to require training
- 760-1340.8 Display of Food Manager's/Food Safety Certificate
- 760-1340.9 Revocation of Food Manager's Certificate
- 760-1340.10 Establishment of training standards
- 760-1340.11 Person in charge's demonstration of knowledge
- 760-1340.12 Self-inspection
- 760-1340.13 Training reciprocity
- 760-1340.14 Employees and other agents required to comply with Article 13
- 760-1340.15 Person in charge's responsibility for employee training

**760-1341. Cleanliness of Employees**

- 760-1341.1.a Apparel, cleanliness, personal hygiene
- 760-1341.1.b Hand washing
- 760-1341.1.c Use of single-use gloves
- 760-1341.1.d Fingernail maintenance

- 760-1341.1.e Hair restraints
- 760-1341.1.f Jewelry, fingernail polish, artificial nails
- 760-1341.1.g Tobacco use
- 760-1341.1.h Consumption of food and drink
- 760-1341.1.i Handling soiled tableware
- 760-1341.1.j Unnecessary traffic prohibited
- 760-1341.1.k Reuse of utensils used for tasting
- 760-1341.2 Hand sanitizers

**760-1342. Reserved**

**760-1343. Reserved**

**760-1344. Reserved**

## **FOOD EQUIPMENT AND UTENSILS**

### **760-1345. Design; Construction and Installation**

- 760-1345.1 Design and construction of equipment and utensils
- 760-1345.2 Installation to facilitate cleaning
- 760-1345.3 Conformance with other applicable codes and regulations
- 760-1345.4.a Construction and repair material must meet criteria
- 760-1345.4.b Material construction criteria defined
- 760-1345.4.c Solder requirements
- 760-1345.4.d Cutting boards, blocks, tables, work surfaces
- 760-1345.4.e Porous material prohibited as food contact surface
- 760-1345.4.f Approved food-grade plastic or rubber-like material
- 760-1345.4.g Permitted use of mollusk and crustacea shells
- 760-1345.5.a Design and fabrication of equipment, utensils, and food contact surfaces
- 760-1345.5.b Prohibition of “vee-type” threads
- 760-1345.5.c Use of lubricants
- 760-1345.5.d Self-draining requirement for sinks, dishtables, drainboards
- 760-1345.5.e Accessibility of food contact surfaces for cleaning and inspection
- 760-1345.5.f In place cleaning of food product lines
- 760-1345.5.g Ice equipment and utensils
- 760-1345.5.h Thermometers immersed in food
- 760-1345.5.i Non-food contact surfaces
- 760-1345.5.j Single-service articles
- 760-1345.6.a Equipment installation to facilitate cleaning
- 760-1345.6.b Portable food service equipment
- 760-1345.6.c Floor-mounted equipment
- 760-1345.6.d Aisles or working spaces between equipment
- 760-1345.6.e Pipes and electrical wiring
- 760-1345.6.f Prohibited food equipment locations
- 760-1345.7 Equipment installed prior to this Article

### **760-1346. Cleanliness and Sanitization**

- 760-1346.1 Requirement for clean equipment, utensils, tableware
- 760-1346.2 Cleaning and sanitizing of tableware
- 760-1346.3 Cleaning and sanitizing of kitchenware and food contact surfaces

- 760-1346.3.a-c Cross-contamination control
- 760-1346.4 Cleaning cooking surfaces of equipment, microwave ovens
- 760-1346.5 Cleaning and sanitizing of utensils and equipment
- 760-1346.6 Cleaning of non-food contact surfaces
- 760-1346.7 Protection from contamination after cleaning and sanitizing
- 760-1346.8 Sponges and wiping cloths; sanitizer test kit; dry cloths
- 760-1346.9 Required use of single-service articles
- 760-1346.10 Use, storage, handling and dispensing of single-service articles
- 760-1346.11 Adequate cleaning and sanitizing facilities; sanitizer on premises
- 760-1346.12 Conformance with surface contamination control standards
- 760-1346.13 Manual washing of kitchenware and equipment; three compartment sink requirements
- 760-1346.14.a-i Mechanical dishwashing facilities requirements
- 760-1346.14.j Handling of cleaned and sanitized equipment and utensils
- 760-1346.14.k Use, storage, handling, and dispensing of single-service articles

**760-1347. Reserved**

**760-1348. Reserved**

**760-1349. Reserved**

## **SANITARY FACILITIES AND CONTROLS**

### **760-1350. Water Supply**

- 760-1350.1 Water supply quality/source; Compliance with Subpart 5-1
- 760-1350.2 Off-site public water supply
- 760-1350.3 Minimum treatment
- 760-1350.4 Annual start-up procedures
- 760-1350.5 Monitoring requirements
- 760-1350.6 Report on water treatment
- 760-1350.7 Source protection
- 760-1350.8 Plan submission
- 760-1350.9 Minimum standards
- 760-1350.10 Connections prohibited
- 760-1350.11 Minimum pressure
- 760-1350.12 Interruptions, changes in source or treatment
- 760-1350.13 Hot and cold water under pressure, where required
- 760-1350.14 Hot water system under control of person in charge; independent of other demands

### **760-1351. Sewage Disposal**

#### **760-1352. Plumbing**

- 760-1352.1.a Conformance with state building construction code
- 760-1352.1.b Sized, installed, maintained; prevention of actual or potential contamination or insanitary condition
- 760-1352.1.c Indirect drainline connections
- 760-1352.1.d Interior grease trap
- 760-1352.2.a Prevention of backflow
- 760-1352.2.b Non-potable water system

- 760-1352.3.a Carbonated beverage dispensers
- 760-1352.3.b Lines conveying carbon dioxide or carbonated beverages

**760-1353. Toilet Facilities**

- 760-1353.1.a Employee toilet facilities
- 760-1353.1.b Toilet fixtures
- 760-1353.1.c Toilet rooms enclosed, self-closing doors
- 760-1353.1.d Toilet room ventilation, maintenance
- 760-1353.2.a Toilet facilities, clean, good repair, free of odors
- 760-1353.2.b Toilet tissue
- 760-1353.2.c Receptacles for waste and refuse
- 760-1353.2.d Covered receptacle for sanitary napkins
- 760-1353.2.e Hand washing signs posted
- 760-1353.3 Patron toilet facilities

**760-1354. Hand washing Facilities**

- 760-1354.1 Adequate facilities
- 760-1354.2 Other sinks restricted

**760-1355. Garbage and Refuse Disposal**

- 760-1355.1 Garbage containment and storage
- 760-1355.2 Cleaning facilities
- 760-1355.3 Garbage stored inaccessible to insects and rodents
- 760-1355.4 Garbage storage areas adequate, clean; containers stored on clean, smooth concrete
- 760-1355.5 Frequency of disposal; burning prohibited
- 760-1355.6 Adequate refuse containers
- 760-1355.7 Maintenance of refuse containers
- 760-1355.8 Refrigerated garbage facilities

**760-1356. Insect and Rodent Control**

- 760-1356.1 Effective control measures
- 760-1356.2 Use of insecticides or insecticide dispensing devices
- 760-1356.3 Tracking powder pesticides prohibited
- 760-1356.4 Non-toxic tracking powders
- 760-1356.5 Insecticide dispensing devices
- 760-1356.6 Insect electrocution devices
- 760-1356.7 Prompt removal of dead pests from control devices

**760-1357. Reserved**

**760-1358. Reserved**

**760-1359. Reserved**

**OTHER FACILITIES AND OPERATIONS**

**760-1360. Floors, Walls and Ceilings**

- 760-1360.1 Floors, walls, ceilings clean and good repair; construction and finish
- 760-1360.2.a Floor construction
- 760-1360.2.b Mats or duckboards
- 760-1360.2.c Carpeting
- 760-1360.2.d Sawdust, peanut hulls, similar materials

- 760-1360.2.e Floor drains required; direct connections of food equipment to sewer or waste lines prohibited
- 760-1360.3.a Wall surfaces
- 760-1360.3.b Wall coverings
- 760-1360.3.c Concrete blocks or masonry walls
- 760-1360.4 Ceilings
- 760-1360.5 Utility lines and pipes
- 760-1361. Cleaning**
  - 760-1361.1 Cleaning methods and scheduling
  - 760-1361.2 Storage of cleaning equipment and supplies
  - 760-1361.3 Service sink
- 760-1362. Premises, Exterior**
- 760-1363. Lighting**
  - 760-1363.1 Adequate lighting
  - 760-1363.2 Shielding of lighting from breakage
- 760-1364. Ventilation**
  - 760-1364.1 Room ventilation
  - 760-1364.2 Design of ventilation hoods and devices
  - 760-1364.3 Filters or grease extractors
  - 760-1364.4 Intake air ducts
  - 760-1364.5 Effective ventilation required
- 760-1365. Dressing Rooms and Lockers**
  - 760-1365.1 Facilities for storage of employees' clothing and personal belongings
  - 760-1365.2 Dressing rooms; lockers
  - 760-1365.3 Dressing rooms, lockers kept clean
- 760-1366. Miscellaneous**
  - 760-1366.1 Unnecessary articles prohibited
  - 760-1366.2.a Living or sleeping quarters prohibited in food operation areas
  - 760-1366.2.b Separation of living or sleeping quarters; requirements
  - 760-1366.3.a Laundry restricted to food operation items
  - 760-1366.3.b Location of laundry equipment
  - 760-1366.3.c Storage of soiled linens, coats, aprons
  - 760-1366.3.d Storage of laundered items
  - 760-1366.4 Live animals prohibited
  - 760-1366.4.a Conditions allowing live animals
- 760-1367. Reserved**
- 760-1368. Reserved**
- 760-1369. Reserved**

## **LIMITED FOOD SERVICE ESTABLISHMENTS**

- 760-1370. Limited Food Service Establishments**
  - 760-1370.1 Compliance with Article 13 and Adopted Standards
  - 760-1370.2 Mechanical refrigeration
  - 760-1370.3 Single-service restriction
  - 760-1370.4 Garbage and refuse

- 760-1370.5 Enclosed service area
- 760-1370.6 Food preparation restricted
- 760-1370.7 Potable water
- 760-1370.8 Single-use condiments
- 760-1370.9 Food labeling and dating
- 760-1370.10 Vehicle license and registration
- 760-1370.11 Permit holder identification
- 760-1370.12 Food sanitation training
- 760-1370.13 Commissary

**760-1371. Limited Food Establishment Commissary**

- 760-1371.1 Requirements
- 760-1371.2 Service log required

**760-1372. Reserved**

**760-1373. Reserved**

**760-1374. Reserved**

**760-1375. Reserved**

**760-1376. Reserved**

**760-1377. Reserved**

**760-1378. Reserved**

**760-1379. Reserved**

**760-1380. Vending Machine Operations**

- 760-1380.1 Vending of packaged food or beverage; Requirements
- 760-1380.2 Vending of unpackaged food or beverage; Requirements
- 760-1380.3 Vending machines connected to potable water supply; Requirements
- 760-1380.4 Automatic shutoff required
- 760-1380.5 Liquid food and beverage vending
- 760-1380.6 Doors, openings and connections
- 760-1380.7 Temperature-controlled for safety (TCS) foods, original containers
- 760-1380.8 Temperature-controlled for safety (TCS) foods, date marking
- 760-1380.9 Food storage and packaging
- 760-1380.10 Vending machines located outdoors; overhead protection

**760-1381. Reserved**

**760-1382. Reserved**

**760-1383. Reserved**

**760-1384. Reserved**

**760-1385. Reserved**

**760-1386. Reserved**

**760-1387. Reserved**

**760-1388. Reserved**

**760-1389. Reserved**

**760-1390. Temporary Food Service**

- 760-1390.1 Compliance with Article 13 and Adopted Standards
- 760-1390.2 Additional requirements
- 760-1390.3 Food service restrictions and prohibitions
- 760-1390.4 Ice
- 760-1390.5 Wet storage prohibited

- 760-1390.6 Food contact surfaces and equipment protected
- 760-1390.7 Equipment location, cleaning
- 760-1390.8 Water supply
- 760-1390.9 Hot water
- 760-1390.10 Waste disposal
- 760-1390.11 Toilet and hand washing facilities
- 760-1390.12 Floors
- 760-1390.13 Itinerary requirement

**Appendix A. Parasite Destruction**

**Appendix B. Postings and Notifications to Consumers**

**Appendix C. Reduced Oxygen Packaging, Criteria**

**Appendix D. Game Animals**

**Appendix E. Temperature-Controlled for Safety (TCS) Foods Exempted from Date Marking**

**Appendix F. Managing Removal, Adjustment or Retention of Food Worker Exclusions and Restrictions**

**ARTICLE 13**  
**GENERAL FOOD REGULATIONS**

**§760-1300. Purpose, Scope, Definitions**

1. The purpose of this Article is to protect public health by establishing safeguards for the control of food and the prevention of the consumption of unwholesome, adulterated or otherwise unfit food.

2. This Article is applicable to the production, preparation, processing, transportation, importation, service, storage, or sale of food for public or private consumption in the County of Suffolk, and its provisions are in addition to other applicable regulations in this Code and supplemental to Part 14 of the New York State Sanitary Code.

(a) Each person who operates a food establishment shall comply with those sections of this Article that pertain to his operation.

(b) This Article shall not apply to food prepared in a private home by members of the household for their own use. When a foodborne illness is reported in association with food prepared, stored or served in a private home, the investigation shall incorporate the principles of these regulations to determine contributing factors leading to the illness.

3. As used in this Article, the following words and terms shall have the indicated meaning:

A. **“Adequate”** shall mean sufficient to accomplish the purpose for which something is intended, and to such a degree that no unreasonable risk to health or safety is present. An item installed, maintained, designed and assembled, an activity conducted or act performed, in accordance with generally accepted standards, principles, or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Article, provided that the item, activity, or act also meets the standards of this Article.

B. **“Adulterated”** shall mean the condition of a food if:

(1) it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

(2) it bears or contains any poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established;

(3) it consists, in whole or in part, of any putrid, filthy or decomposed substance, or if it is otherwise unfit for human consumption;

(4) it has been processed, prepared, handled, displayed, packed, transferred or stored under any condition whereby it may have become contaminated with filth or been rendered injurious to health;

(5) it is, in whole or in part, the product of a diseased animal or an animal which has died other than by slaughter; or

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

C. **“Approved”** shall mean acceptable to the Department based on its determination as to conformance with appropriate standards and good public health practice.

D. **“Caterer”** means a person who prepares, furnishes, or prepares and furnishes food intended for individual portion service at the premises of the consumer whether such premises are temporary or permanent. A caterer is considered a food service establishment and is required to operate in conformance with this Article. This does not include individuals who are employed by a family to prepare meals exclusively within the family's private home for family consumption.

E. **“Closed”** shall mean fitted together tightly so as to prevent the entrance of insects, rodents and other vermin.

F. **“Commingle”** means (1) to combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or (2) to combine shucked shellfish from containers with different container codes or different shucking dates.

G. **“Comminuted”** shall mean 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, sausage, and a mixture of two or more types of meat that have been reduced in size and combined.

H. **“Commissary”** shall mean a catering establishment, restaurant, or any other place in which food, containers or supplies are kept, handled, prepared, packaged or stored and from which vending machines, mobile food units and/or any food operations available to the public are serviced.

I. **“Commissioner”** shall mean the Suffolk County Commissioner of Health Services of the Suffolk County health district.

J. **“Contamination”** means exposed to filth, toxic substances, manual contact during service or preparation if such food will not be subsequently cooked prior to service, rodent or insect contact or infestation, or any other condition which permits introduction of pathogenic microorganisms, viral particles, or foreign matter. Temperature-controlled for safety (TCS) foods held at temperatures between 41 degrees Fahrenheit (5 degrees Celsius) (41°F (5°C)) and 140 degrees Fahrenheit (60 degrees Celsius) (140°F (60°C)) for

a period of time exceeding that reasonably required for preparation are considered to be contaminated, unless a variance was approved by the Department in accordance with the provisions of §760-1309 of this Article. Contaminated foods are considered to be adulterated.

K. **“Corrosion resistant material”** shall mean a material which maintains its original surface characteristics under prolonged use.

L. **“Consumer notification in writing”** shall mean the use of written advisories, such as brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

M. **“Critical violation”** shall mean a violation of a provision of this Article that , if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

N. **“Cut leafy greens”** means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term “leafy greens” includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term “leafy greens” does not include herbs such as cilantro or parsley.

O. **“Department”** shall mean the Suffolk County Department of Health Services.

P. **“Easily cleanable”** shall mean readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.

Q. **“Equipment”** shall mean all stoves, ranges, hoods, meatblocks, tables, counters, refrigerators, sinks, warewashing machines, steamtables, and similar items other than utensils, used in the operation of a food establishment.

R. **“Exclude”** means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

S. **“Extended family residence”** means a multiple person residence where residents share kitchen facilities for preparation of their own meals or where residents may, as a service for gratis, prepare meals consumed by fellow residents that are typically eaten “family-style” in a common dining area.

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

U. **“Food”** shall mean any raw, cooked, or processed edible substances, beverages or ingredients, ice, and water used or intended for use or for sale in whole or in part for consumption.

V. **“Food contact surfaces”** shall mean those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain onto surfaces normally in contact with food.

W. **“Food employee”** shall mean any person working in a food establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food utensils or equipment.

X. **“Food Establishment”** or **“Food Service Establishment”** as used in this Article shall mean:

1. An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(a) Such as, but not limited to, a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; commissary; market; staffed or unstaffed vending location; conveyance used to transport people; institution; and

(b) That relinquishes possession of food to a consumer directly, or indirectly. Indirectly would include, but not be limited to, relinquishment through a delivery service such as home delivery of restaurant takeout orders or relinquishment from a commissary to another food establishment.

2. Food establishment includes, but is not limited to:

(a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; and

(b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

3. Food establishment does not include:

(a) An establishment that offers only prepackaged foods that are not temperature-controlled for safety (TCS), vending machines which dispense only commercially pre-packaged non-temperature-controlled for safety (TCS) foods, or operations providing only commercially prepared, pre-packaged frozen desserts;

- (b) locations where hot, non-temperature-controlled for safety (TCS) beverages and commercially prepared, adequately protected non-temperature-controlled for safety (TCS) snacks or pre-packaged beverages are offered as a customer courtesy;
- (c) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- (d) A food processing plant;
- (e) A kitchen in a private home where only food that is not temperature-controlled for safety (TCS) is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if 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;
- (f) An area where food that is prepared as specified in subparagraph (3)(e) of this definition is sold or offered for human consumption;
- (g) A food service operation where a distinct group mutually provides, prepares, serves and consumes the food such as a "covered-dish supper" limited to a congregation, club or fraternal organization;
- (h) A kitchen in a private home, where a small family day-care provider is operating; or where a bed-and-breakfast operation that prepares and offers food to guests is operating, but only if the home is owner occupied, the number of available guest bedrooms does not exceed 5, with a maximum guest occupancy of 10, breakfast is the only meal offered, 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 inspected for compliance with the requirements of this Article by the Department;
- (i) A private home that receives catered or home-delivered food;
- (j) A kitchen in a private home where food is prepared by members of the household for their own use, except when foodborne illness is reported or suspected;
- (k) A communal kitchen in an "extended family" residence;
- (l) A group residence licensed by an approved agency of New York State; or
- (m) A food establishment regulated by the New York State Department of Agriculture and Markets (NYSA&M) as mutually agreed by NYSA&M and this Department under the Memorandum of Understanding between the New York State Department of Health and the NYSA&M.

Y. **"Food-grade"** shall mean:

1. Any material intended for use as a food-contact surface, that is designed, fabricated and maintained in a manner such that it is, (a) non-toxic, (b) non-absorbent, (c) durable under normal use, (d) easily cleanable, (e) not affected by foods, cleaning compounds or other substances which may be found in the use environment and, (f) does not impart odor, color or taste, or introduce physical debris, toxic chemicals, harmful substances, or other contamination to the food, or;

2. Any food additive, food equipment lubricant or other similar substance used in a food processing or preparation environment, that is designed, manufactured and used such that it does not introduce physical debris, toxic chemicals, harmful substances, or other contamination to the food.

Z. **“Food processing establishment”** is a commercial establishment operated under license, permit or with the approval of an appropriate regulatory authority, where food is manufactured or packaged for human consumption at another establishment or place.

A(1). **“Food vending machine”** is a self-service device which when activated dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

B(1). **“Food vending machine commissary”** is a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

C(1). **“Food vending operation”** is the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending operation and all other appurtenances required and used to operate.

D(1). **“Game animal”** means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine, poultry, fish, shellfish, or ratites such as ostrich, emu, and rhea. Game animal includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

E(1). **“HACCP Plan”** means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

F(1). A **“hermetically sealed container”** is a container which is designed and intended to be secure against the entry of microorganisms and to maintain the safety and quality of its contents after processing.

G(1). **“Highly susceptible population”** means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or elderly and in a facility that provides health care or assisted living

services, such as a hospital or nursing home, or are obtaining food at a facility that provides nutritional or socialization services such as a senior center; or preschool age children in a facility that provides custodial care, such as a day care center.

H(1). An **“Imminent Health Hazard”** is any violation, combination of violations, condition or combination of conditions making it probable that the food or drink served to the public by the establishment or its continued operation can injure the health of the consumer or the public. Imminent health hazards include but are not limited to the conditions listed in paragraphs (1) and (2) of this definition.

1. Any of the following five violations are imminent health hazards against the public interest which require the Commissioner or his/her designated representative to order the establishment closed, the permit to operate suspended, and all service of food stopped immediately, if not corrected at the time of the inspection while the Commissioner or representative of the Commissioner is on the premises:

(a) food is present in the establishment from an unapproved or unknown source or which is or may be adulterated, contaminated or otherwise unfit for human consumption;

(b) temperature-controlled for safety (TCS) food is held for a period longer than that necessary for preparation or service at a temperature greater than 41°F (5°C) or less than 140°F (60°C) except when a variance has been obtained in accordance with the provisions of §760-1309 of this Article;

(c) temperature-controlled for safety (TCS) food exposed to consumer or other contamination is served again;

(d) toxic items are improperly labeled, stored or used;

(e) persons with disease or infection which can be transmitted by food or drink are not restricted to prevent food contamination within the food service establishment.

2. Any of the following three conditions (a-c below) are violations constituting imminent health hazards against the public interest which require the Commissioner or his/her designated representative to order the establishment closed, the permit to operate suspended, and all service of food stopped immediately:

(a) If an approved water supply under pressure and in full conformance with the requirements of §760-1350 of this Article is not provided to all areas of the food establishment where the Department deems it necessary for the safe and sanitary operation of the food establishment.

(1) the on-site potable water system serving the food service establishment contains contaminants in excess of the maximum contaminant levels

prescribed in applicable sections of Part 5 of the New York State Sanitary Code or § 760-1350 of this Article;

- i. use of an unapproved or contaminated water supply source;
- ii. treatment of the water supply, required for disinfection or removal of contaminants, is not continuous;
- iii. disinfection which is inadequate to destroy harmful microorganisms or to maintain a specified chlorine residual;
- iv. insufficient quantity of water to meet drinking, food preparation, culinary, or sanitary demands.

(b) any cross-connection or other fault in the potable water system which may permit contamination of the potable water supply is cause for an order for immediate closure and cessation of food service if it reasonably appears to the Commissioner or his/her designated representative that it can result in an imminent health hazard. In any case, all such cross-connections are to be corrected within a period of time set by the Commissioner or his/her designated representative, and in no case more than 30 days from the date of the inspection. If uncorrected within that time, the permit shall be suspended and the establishment ordered closed and food service stopped until all violations are corrected; or

(c) if sewage or liquid waste is not disposed of in an approved and sanitary manner, the Commissioner or his/her designated representative is to order closure and immediate cessation of all food service operations if such sewage or liquid waste contaminates any food, food storage area, food preparation area or area frequented by consumers or employees.

I(1). **“Injected”** means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as by processes which may be referred to as “injecting”, “pinning”, or “stitch pumping.”

J(1). **“Kitchenware”** shall mean all multi-use utensils other than tableware used in the storage, preparation, transfer, conveyance or service of food.

K(1). **“Limited Food Service Establishment”** means a food service establishment with a self-contained water supply and/or a self-contained sewage disposal system that is not connected to an approved water supply or an approved sewage disposal system at all times and operates in conjunction with an approved commissary.

L(1). **“Linens”** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

M(1). **“Major food allergen”** means (a) milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or (b) a food ingredient that contains protein derived from a food, as specified in subsection (a) of this definition.

N(1). **“Misbranded”** shall mean the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable federal, state or local labeling requirements.

O(1). **“Mobile food unit”** shall mean any food establishment which is readily movable from location to location and in which food or drink is stored, displayed, served, transported, or provided for the public with or without charge.

P(1). **“Molluscan shellfish”** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

Q(1). **“Non-continuous cooking”** means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. “Non-continuous cooking” does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

R(1). **“Packaged”** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. “Packaged” does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

S(1). **“Permit holder”** means the entity that (1) is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and (2) possesses a valid permit to operate a food establishment.

T(1). **“Permit issuing official”** shall mean the Suffolk County Commissioner of Health Services or the director of environmental health designated as an additional person authorized to issue the permits required by this Article.

U(1). **“Person”** shall mean an individual, or firm, estate, partnership, company, corporation, trustee, association, or any public or private entity.

V(1). **“Person in charge”** means the individual present at a food establishment who is responsible for the operation during periods of food preparation, food delivery, and food service and is required to be in possession of a valid food safety/food protection certificate issued by an authority approved by the Commissioner or his/her designated representative.

W(1). **“Potable water”** shall mean water used for human consumption, food preparation, hand washing, culinary, bathing or laundry purposes.

X(1). **“Ratite”** means a flightless bird such as an emu, ostrich, or rhea.

Y(1). **“Ready-to-eat food”** shall mean any food, including ice, and condiments or garnishes, that is served or prepared, or is intended to be served or prepared, without requiring subsequent heating to the minimum temperature required under §760-1333 of this Article.

Z(1). **“Reduced oxygen packaging”** means (a) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and (b) a process as specified in (a) of this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

**“Reduced oxygen packaging”** includes:

(a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

(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, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

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

(d) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

(e) Sous vide packaging, in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

A(2). **“Refuse”** means all putrescible and non-putrescible solid wastes not carried by water through the sewage system, including garbage, rubbish and offal.

B(2). **“Restrict”** means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

C(2). **“Safe temperature”**, as applied to temperature-controlled for safety (TCS) food, shall mean product temperature of 41°F (5°C), or below, and 140°F (60°C), or above.

D(2). **“Sanitization”** shall mean effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the Department as being effective in destroying microorganisms, including pathogens.

E(2). **“Sealed”** shall mean free of cracks or other openings which permit the entry or passage of moisture.

F(2). **“Service animal”** means an animal such as a guide dog, signal dog, or other animal individually trained, or in training to provide assistance to an individual with a disability, in accordance with the federal Americans with Disabilities Act, and applicable state and local laws.

G(2). **“Shellstock”** means raw, in-shell molluscan shellfish.

H(2). **“Shucked shellfish”** are molluscan shellfish removed from the shell or on a half-shell.

I(2). **“Single-service articles”** shall mean cups, containers, lids, or closures; plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks, and all similar articles which have been manufactured from clean, non-toxic materials and fulfill the requirements of the Federal Food Drug and Cosmetic Act, as amended, and are intended by the manufacturer for eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

J(2). A **“small family day care”** includes but is not limited to “Family Day Care Homes” and “Group Family Day Care Homes” as defined below:

(a) Family Day Care Homes are operated at a family residence for three to eight children up to 12 years of age.

(b) Group Family Day Care Homes are operated at a family residence for seven to fourteen children up to 12 years of age.

K(2). **“Substantially remodeled”** means when 25% or more of the equipment used in a food establishment kitchen, food preparation, food storage, or food service area is replaced, added, moved, altered, renovated, or removed. Percentages shall be based on the storage capacity of the equipment, the floor area of the equipment, or the cubic footage of the equipment, whichever is greater. Remodeling also includes changes in use or area such as the following:

- (a) Expansion of the seating capacity above 16, or the addition of any seating in an establishment lacking a patron toilet approved by the Department.
- (b) Conversion from single-service to multi-use tableware.
- (c) The addition of a new food service area, such as a bar, bakery, food preparation room, or barbecue area.
- (d) A change in the footprint or height of the building.

L(2). **“Tableware”** shall mean all multi-use eating and drinking utensils.

M(2). **“Temperature-controlled for safety (TCS) Food”**

1. Temperature-controlled for safety (TCS) food means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

- (a) The rapid and progressive growth of infectious or toxigenic microorganisms;
- (b) The growth of *Clostridium botulinum*; or
- (c) In raw shell eggs, the growth of *Salmonella enteritidis*.

2. Temperature-controlled for safety (TCS) food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that has been heat-treated or consists of raw seed sprouts; cut melons; cut tomatoes or mixtures of cut tomatoes; cut leafy greens; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph 1 of this definition.

3. Temperature-controlled for safety (TCS) food does not include:

- (a) An air-cooled hard-boiled egg with shell intact or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
- (b) A food with a water activity ( $a_w$ ) value of 0.85 or less;
- (c) A food with a pH level of 4.6 or below when measured at 75°F (24°C);
- (d) 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;
- (e) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *Salmonella*

*enteritidis* in eggs or *Clostridium botulinum* cannot occur, such as a food that has an  $a_w$  and a pH that are above the levels specified under Subparagraphs (3)(b) and (c) 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

(f) A food that does not support the growth of microorganisms as specified under subparagraph 1 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.

N(2). **“Temporary food service establishment”** means a place where food is prepared or handled and served to the public, with or without charge, and which operates at a fixed location in conjunction with a single event or celebration of not more than 14 days duration.

O(2). **“Utensil”** shall mean any tableware and kitchenware used in the storage, preparation, transfer or service of food.

P(2). **“Variance”** means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of the Code if, in the opinion of the Commissioner, a health hazard or nuisance will not result from the modification or waiver.

Q(2). **“Warewashing”** means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

R(2). **“Whole muscle-intact beef”** means whole beef muscle that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

S(2). **“Wholesome”** shall mean food in a sound condition, clean, free from adulteration and contamination and suitable for consumption.

### **§760-1301. Enforcement Provisions; Powers and Duties of Commissioner**

The Commissioner or the Commissioner's duly authorized representative shall have full power and authority;

- (a) To investigate all suspected food infections and food poisonings;
- (b) To investigate all consumer food complaints;
- (c) To inspect and supervise all food establishments in the county; and
- (d) To promulgate and establish standards to effect the purpose of this Article.

**§760-1302. General Provisions**

1. Any person who owns, operates, maintains or is in charge of a food establishment shall operate and maintain such establishment in a clean and sanitary condition, and in accordance with the requirements of this code, the state sanitary code, federal regulations, and the conditions of any permit issued under or pursuant thereto.
2. Any food establishment located outside of the county which is involved with the preparation, handling, bottling, packaging, distribution, sale or service of food within the county shall operate in accordance with the requirements of this code, the state sanitary code, and the conditions of any permit or regulations issued under or pursuant thereto.

**§760-1303. Permit to Operate a Food Establishment Required: Issuance, Suspension, Revocation and Closure; Hearings: Service of Notice of Order; Posting of Notice of Closure and Cessation of Food Operations; Reinstatement of Permits**

1. It shall be unlawful for any person to operate a food establishment within the County of Suffolk who does not possess a valid permit issued to him by the permit issuing official. Only a person who complies with the requirements of this Article shall be entitled to receive and retain such a permit. The Department may refuse to issue a permit based on the applicant's past history of non-compliance. Permits shall not be transferable from one person to another person or from one place to another place. A valid permit shall be prominently displayed to the public in every food establishment. Permits will be issued for a period of time not to exceed two years.
2. Any person desiring to operate a food establishment shall make written application for a permit on forms provided by the Department. Such application shall include the applicant's full name and post office address and whether such applicant is an individual, firm or corporation, and if partnership, the names of the partners, together with their addresses; acceptable documentation that demonstrates compliance with NYS Worker's Compensation Law; the location and the type of food establishment; and the signature of the applicant or applicants. If the application is for a temporary food establishment, it shall also include the inclusive dates of the proposed operation.
3. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment, or the date of assuming ownership of an existing food establishment whether or not the requirements of §760-1304 for the submission of plans apply.
4. Permits may be suspended by the Commissioner, after notice and an opportunity for a hearing, for failure of the holder to comply with the requirements of this Article, or with any lawful notice or order issued pursuant thereto.
5. Notwithstanding the other provisions of this Article, if the Commissioner or any duly authorized representative finds any imminent health hazards, insanitary or other

conditions in the operation of a food establishment, which constitute a danger to public health, and it appears prejudicial to the public interest to delay action pending a hearing, the Commissioner may serve an order upon the permit holder or person in charge citing such condition and specifying the corrective action to be taken and a time period of less than 15 days within which such action shall be taken; and such order may state that the permit is immediately suspended, and all food operations are to be discontinued forthwith and such food establishment operations are to be closed. Any person to whom such an order is issued shall comply immediately therewith but, as promptly as possible thereafter and within 15 days, the Commissioner shall provide such person an opportunity to be heard. Such hearing does not stay the restriction or exclusion of employees specified in §760-1308, an embargo or hold order specified in §760-1307.2, or the imposition of a summary permit suspension specified in this section.

6. In any case in which the Commissioner shall have taken closure action pursuant to the provisions of this section, the Commissioner or any duly authorized representative shall conspicuously post a suitable notice or placard at all entrances of the food establishment, stating the existence of such order and his authority therefore. No person shall interfere with or obstruct the Commissioner or any duly authorized representative from posting such notice or placard, nor shall any person conceal, mutilate, or remove any such notice or placard except by permission of the Commissioner or any duly authorized representative. In the event that any such notice or placard is concealed, mutilated or removed it shall be the duty of the permit holder or person in charge of such food establishment to immediately notify the Commissioner of such fact.

7. The Commissioner shall publish notice of such order of closure and cessation along with the reason for such order in the official newspapers of the County. Except where the Commissioner has commenced a permit revocation proceeding pursuant to the provisions of this section, any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Following receipt of a statement, signed by the applicant that the conditions which caused the suspension of the permit have been corrected, the Commissioner or any duly authorized representative shall within 10 days make a reinspection. If the Commissioner or any duly authorized representative finds the establishment to be in compliance with the requirements of this Article, the permit shall be reinstated.

8. For serious, repeated or persistent violations of any of the requirements of this Article, or for interference with the Department's representative in the performance of its duties, after notice and an opportunity for a hearing has been provided by the Commissioner, the permit may be revoked.

9. The hearings provided for in this section shall be conducted by the Commissioner or the Commissioner's duly authorized representative at a time and place designated by him. Except as otherwise provided for in this section, all notices of hearing served pursuant to the provisions of this Article shall be in writing and contain a statement setting forth the grounds therefore and be served at least 15 days prior to the date of the hearing. Based upon the record of such hearing, the Commissioner may sustain, modify, or rescind any

official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the Commissioner.

- a. A person who receives a notice of hearing provided for in this section or in Articles 2 or 3 of the Suffolk County Sanitary Code and elects to respond to the notice shall file a response to notice as specified in subsection 760-1303.11 within 7 calendar days after service.

10. Service of notices of hearing or orders shall be made by personal service or by registered or certified mail. Where service, whether by personal service or by registered or certified mail, is made upon an infant, incompetent, partnership, corporation, governmental subdivision, board or Commissioner, it shall be made upon the person or persons designated to receive personal service by Article 3 of the New York Civil Practice Law and Rules.

11. A response to a hearing notice as specified in §760-1303.9 shall be in written form 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; and may also contain
- c. A statement of defense, mitigation, or explanation concerning any allegation of fact; and
- d. A request to the Department for a settlement of the proceeding by consent agreement, if the Department will provide this opportunity.
- e. A statement indicating whether the presence of witnesses for the Department is required; and
- f. The name and address of the respondent's or requester's legal counsel, if any.

**§760-1304. Plan Review; Construction or Pre-Operational Inspection**

1.
  - a. When a food establishment is hereafter constructed or substantially remodeled or when an existing structure is converted for use as a food establishment, properly prepared plans and specifications for such construction, remodeling, or alteration showing the layout, equipment arrangement, construction materials and finishes in all interior and exterior areas, the size and type of all equipment, lighting, ventilation, toilet facilities, locker rooms and all other facilities applicable to the food operation including plumbing, water supply and sewage disposal, shall be submitted to the Department for review and approval before construction is started.
  - b. All construction, remodeling, or alterations shall be done in accordance with the approved plans.
  - c. Plans and specifications shall be accompanied by an application on a form provided by the Department and shall indicate structures and land use adjacent to the food establishment.

d. Plans shall be prepared by a qualified person or, when required by the Education Law of the State of New York, by a registered architect or professional engineer, or as may be required by local building codes or ordinances.

2. When a food establishment is hereafter constructed or substantially remodeled, or when an existing structure is converted for use as a food establishment, a final construction or pre-operational inspection shall be requested by the owner or operator and conducted by the Department prior to the opening of the establishment to determine compliance with previously approved plans and all applicable requirements of this Article.

**§760-1305. Inspection of Food Establishments; Access; Inspection of Records; Issuance of Notices; Service of Notices**

1. The Commissioner or any authorized representative shall inspect each food establishment located within his jurisdiction and shall make as many additional inspections and reinspections as are necessary for the enforcement of this Article.

2. The Commissioner or any authorized representative is to be permitted access for purposes of inspection at all times while the food service establishment is in operation, whether or not the establishment is open to the public. Refusal of admittance, after proper identification, is cause for action to obtain permit revocation and an order to close. The Department's representative shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used, and persons employed. There shall be a responsible person in charge in the food establishment at all reasonable hours who is familiar with its food operations and the provisions of this Article.

3. a. Whenever the Commissioner or any duly authorized representative makes an inspection of a food establishment, the Department's findings shall be recorded on an inspection report form provided for this purpose, and a copy of such inspection report form shall be furnished to the permit holder or person in charge. Such form may incorporate a scoring system, established by the Department, which may be used as a basis for regulatory action.

b. The last record of inspection by a representative of the Department shall be retained on the premises until the next inspection and shall be available for review by any patron upon request. A notice indicating the availability of this report shall be prominently displayed to the public.

4. Whenever the Commissioner or any duly authorized representative makes an inspection of a food establishment and discovers that any of the requirements of the Article have been violated, the Commissioner or any duly authorized representative shall notify the permit holder or person in charge of such violations by delivering to him a

copy of the inspection report or other written notice. In such notification, the Commissioner or any duly authorized representative shall:

- a. Set forth specific violations found.
  - b. Establish a specific and reasonable period of time for the correction of the violations that have been found, except that, any violation deemed by the Commissioner or any duly authorized representative to be an imminent health hazard or a risk factor associated with foodborne illness shall be corrected at the time of inspection.
  - c. State that failure to comply with any notice issued in accordance with the provisions of this Article may result in immediate suspension of the permit.
  - d. State that an opportunity for a reconsideration of any notice or inspection finding will be provided if a written request for such reconsideration is filed with the Commissioner within the period of time established in the notice for correction.
5. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report or other notice has been delivered to the permit holder or person in charge, or such notice has been otherwise served in accordance with the requirements of Article 2, §760-210 of the Suffolk County Sanitary Code. A copy of such notice shall be filed with the records of the Department.

**§760-1306. Food Establishments Located Outside the Jurisdiction of the Department**

1. Food from food establishments outside the jurisdiction of the Department may be sold within the area of the jurisdiction if such food establishments conform to the provisions of this Article, or to substantially equivalent provisions.
2. To determine the extent of compliance with such provisions, the Department may accept and rely upon reports from responsible authorities in other jurisdictions.

**§760-1307. Examination and Condemnation of Food**

1. The Commissioner or any duly authorized representative may take without payment a sample of any food, ingredients, containers, or any substance used in connection with the manufacture, storage, processing, preparation or serving of food for examination as often as he may consider necessary for the purpose of investigation with respect to the unwholesomeness of such food, ingredients, containers, substance or operating procedure.
2. The Commissioner or any duly authorized representative may, upon written notice to the owner or person in charge, place an embargo on:

- a. Any food which he determines, or has reason to believe to be adulterated, misbranded, or unwholesome, or otherwise unfit for human consumption.
  - b. Any food equipment which the Commissioner determines, or has probable cause to believe, will result in adulterated, unwholesome, or contaminated food if used to process, hold, or serve food.
  - c. Under a hold order, food shall be suitably sorted and stored.
3. It shall be unlawful for any person to remove or alter an embargo order, notice, or tag placed on food by the Department, and neither such food, nor the containers thereof, shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Department, except by order of a court of competent jurisdiction.
  4. The permit holder, or person in charge, shall have the opportunity to a hearing within fifteen calendar days after the date of order of embargo. On the basis of evidence produced at such hearing, the Commissioner may vacate the hold order, or may, by written order, direct the permit holder, or person in charge of the food which was placed under the hold order, to bring it into compliance with the provisions of this Article, or to denature or destroy such food.
  5. Samples for the determination of adulteration, misbranding or unwholesomeness, if taken by the permit holder and/or Department, shall be examined in accordance with methods acceptable to the Department.
  6. When the Commissioner has reason to believe that food from any food establishment outside the County may be a source of food infection, or may be operating under regulations not substantially equivalent to those of this ordinance, the Commissioner or any duly authorized representative may inspect such sources.
  7. The presence of any food, drink, or raw material in any part of the food establishment shall be prima facie evidence of its intended use as human food.
  8. The Department may consider the presence of any food equipment on the premises prima facie evidence of its intended use in the production or service of food for human consumption.

**§760-1308. Suspected Infections; Procedure**

When the Commissioner or any duly authorized representative has reasonable cause to suspect the possibility of disease transmission from any food establishment employee or procedure, the Commissioner or any duly authorized representative shall secure a medical history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Commissioner may require any or all of the following measures:

- a. The immediate exclusion of the employee from all food establishments;

- b. The immediate closure of the food establishment concerned until, in the opinion of the Department, no further danger of disease transmission exists;
- c. Restriction of the employee's services to some areas of the establishment where there would be no danger of transmitting disease; and
- d. Adequate medical and laboratory examinations of the employee, of other employees, and of his, or their bodily discharges.

**§760-1309. Variances**

- 1. The Commissioner or his/her designated representative may grant a variance by modifying or waiving the requirements of this Article, except those related to permits and inspections, if in the opinion of the Department a health hazard or nuisance will not result from the variance. If a variance is granted, the Department shall retain the information specified in §760-1309.2 in its records for the food establishment.
- 2. Before a variance from a requirement of this Code is approved by the Department, the information that shall be provided by the person requesting the variance and retained in the Department's file on the food establishment includes:
  - a. A statement of the proposed variance of the Code requirement citing relevant Code section numbers;
  - b. An analysis of the rationale for how the potential public health hazards addressed by the relevant Code sections will be alternatively addressed by the proposal; and
  - c. A HACCP Plan that includes the information specified in §8-201.14 of the FDA Food Code ("Contents of a HACCP Plan") as it is relevant to the variance requested.
- 3. Variances are specific to the condition addressed and apply only to the stated condition. Variances are not transferable.
- 4. Violation of the HACCP Plan governing the variance(s) is grounds for revocation of the variance(s).
- 5. Variance(s) will expire when the permit to operate is suspended or terminated.

**§760-1310. Reserved.**

**§760-1311. Preventing Health Hazards for Conditions not Addressed.**

1. If necessary to protect against public health hazards or nuisances, the Department may impose specific requirements as authorized by law in addition to the requirements contained in this Article.
2. The Department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the Department's file for the food establishment.
3. Equipment and facilities shall be installed and maintained in conformance with Title 19 NYCRR Chapter XXXIII and any additional local requirements. Actual and potential violations of Title 19 NYCRR Chapter XXXIII and other local requirements will be referred to the agency of statutory jurisdiction.

**§760-1312. Postings/Notifications Required by Law**

It is the responsibility of the permit holder to ensure that postings or notifications to the public required by public health law, statute, or regulation are present in the establishment as specified in that law, statute, or regulation. Posting requirements are listed in Appendix B.

**§760-1313. Food Establishments Serving a Highly Susceptible Population**

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:
  - a. For the purpose of this subsection only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice must be pasteurized. Prepackaged juice or a prepackaged beverage containing juice that bears a warning label stating "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." may not be served or offered for sale; and
  - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP Plan approved by the Department that achieves a 5-log reduction (99.999%) of the most resistant microorganisms of public health significance.
2. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:
  - a. Foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, and

- b. Except as specified in subsection 5 of this section, recipes in which more than one egg is broken and the eggs are combined;
3. The following foods may not be served or offered for sale in a ready-to-eat form:
- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare,
  - b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and
  - c. Raw seed sprouts.
4. Time only, as the public health control as specified under §760-1330.6, may not be used for raw eggs.
5. Subsection 2.b of this section does not apply if:
- a. The raw eggs are combined immediately before cooking for one *consumer's serving at a single meal, cooked as specified under subsection 760-1333.2*, and served immediately, such as an omelet, soufflé, or scrambled eggs;
  - b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
  - c. The preparation of the food is conducted under a HACCP Plan that:
    - (1) Identifies the food to be prepared,
    - (2) Includes specifications and practices that ensure:
      - i. *Salmonella enteritidis* growth is controlled before and after cooking, and
      - ii. *Salmonella enteritidis* is destroyed by cooking the eggs according to the temperature and time specified in subsection 760-1333.2,
      - iii. Contains the information specified in §8-201.14 of the FDA Food Code (“Contents of a HACCP Plan”).

**§760-1314. Reserved**

**§760-1315. Food Supplies: General**

Food shall be from sources approved or considered satisfactory by the Department and facilities, methods, practices and controls used in the manufacture, processing, packing or holding of food shall be in conformance with applicable federal and state regulations and requirements of this Article, and free of unapproved food (or color) additives or food (or color) additives (or pesticide residues) that exceed limits specified in federal regulations. Packaged food shall comply with standard of identity and composition requirements specified in federal regulations. In addition to the foregoing:

- a. The use of home-prepared food is prohibited.
- b. Hermetically sealed foods shall be processed in approved commercial food processing establishments, and shall conform to the criteria for wholesomeness established by this Article.
- c. No food or drink shall be manufactured, prepared, stored, transported, distributed, sold or given away in any package or container showing evidence of leaking, swelling, pronounced dents, corrosion or otherwise of such condition as may render the product unwholesome or exposed to adulteration or potential contaminants. Upon receipt, temperature-controlled for safety (TCS) food shall be free of evidence of previous temperature abuse.
  - (1) Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.
- d. A food service establishment which packages foods using a reduced oxygen packaging method, including vacuum packaging, sous vide, cook-chill, modified atmosphere packaging, and controlled atmosphere packaging, is required to submit a safety plan meeting the requirements specified in Appendix C of this Article to the permit-issuing authority and receive its approval prior to commencing operation.
- e. Food that is unsafe, adulterated, not from an approved source, or ready-to-eat food that has been contaminated by hand contact, bodily discharges or may have been contaminated by an excluded or restricted employee, shall be discarded.
- f. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer, or misrepresent the true appearance, color, or quality of the food. Food not meeting these criteria shall be reconditioned by approved procedure or discarded.

- (1) A food employee may not:

- a. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or
  - b. Except for grapes, serve or sell food that is treated with sulfiting agents before receipt by the food establishment.
  
- g. No foods containing artificial trans fat shall be stored, distributed, held for service, used in the preparation of any menu item or served in any food service establishment, except food that is being served directly to patrons in a manufacturer's sealed package.
  
- h. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with federal regulations.
  
- i. Pre-packaged juice shall:
  - (1) Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and
  - (2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in federal regulations.
  
- j. A food establishment shall obtain a variance from the Commissioner or his/her designated representative as specified in §760-1309 before:
  - (1) Smoking food as a method of food preservation rather than as a method of flavor enhancement;
  - (2) Curing food;
  - (3) Using food additives or adding components such as vinegar:
    - a. As a method of food preservation rather than as a method of flavor enhancement, or
    - b. To render a food so that it is not a temperature-controlled for safety (TCS) food;
  - (4) Preparing food by another method that is determined by the Department to require a variance or scheduled process; or
  - (5) Sprouting seeds or beans.

**§760-1316. Milk and Milk Products**

1. Milk and milk products produced, processed, prepared, transported, stored, sold or delivered for consumption in the County of Suffolk shall comply with the requirements of the New York State Department of Agriculture and Markets regulations 1NYCRR Part 2 and with this Article.
  
2. Manufactured milk products, including but not limited to cheese, butter and dry milk, shall meet the standards of quality established by applicable federal, state and local laws, rules and regulations. Dry milk and milk products may be reconstituted in the establishment if used for cooking purposes only.

3. Only pasteurized milk or milk products may be sold, offered for sale, delivered, given away, or served in a food establishment.

4. Milk and milk products for drinking purposes shall be purchased and served from the original, unopened, individual container in which they were packaged at the milk plant, or shall be served from an approved bulk milk dispenser. A bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head. Milk, cream, half and half and other hot beverage lighteners shall be stored, handled and served in a manner acceptable to the Department.

**§760-1317. Deleted**

**§760-1318. Shellfish**

1. Shellfish plants and fresh or frozen shellstock including oysters, clams, scallops and mussels shall meet the standards of quality established for such products by applicable federal laws and regulations of the New York State Department of Environmental Conservation and by this Article. No food establishment shall have in its possession shellfish taken from any unapproved or excluded sources, or from unauthorized suppliers, or shellfish containing antiseptics or preservatives. Shellfish that are recreationally caught may not be received for sale or service.

a. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

2. If the source of shellstock is outside the state, it shall be one which appears on the current federal Food and Drug Administration "Interstate Certified Shellfish Shippers' List."

3. Shellfish shall be identified with a suitable tag showing the name and address of the original shell-stock processor, shucker-packer, or repacker, the foreign, intrastate, and interstate certification number issued according to law, the date shipped, the type and quantity of shellfish received and the area of harvest. The tag shall also contain the following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

4. Shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

a. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

- (1) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
- (2) If shellstock are removed from their tagged or labeled container:
  - a. Preserving source identification by using a record keeping system as specified under Subsection 4.a.(1) above, and
  - b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container before being ordered by the consumer.
4. Shellfish are temperature-controlled for safety (TCS) food and shall be stored and transported according to the Code requirements for temperature-controlled for safety (TCS) food.
6. Fresh and frozen shucked shellfish shall be packed in non-returnable containers identified with a legible label that identifies the name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish, and the “sell by” date or date shucked.
7. Shucked shellfish shall be kept in the original container until used.

**§760-1319. Fish and Other Seafood**

1. When food service establishments purchase food fish or crustaceans harvested in New York State’s marine waters, they shall be from the following sources:
  - (a) A dealer with a valid food fish and crustacean dealers license issued by the New York State Department of Environmental Conservation; or
  - (b) A commercial fisherman with a valid commercial fish license, commercial lobster license, or commercial crab license issued by the New York State Department of Environmental Conservation. If marine food fish or crustaceans are purchased directly from a licensed commercial fisherman, the food service establishment must obtain a record of the sale that includes the license number of the harvester and retain the record for a period of not less than three years.
2. Food service establishments may only purchase wild caught New York State freshwater fish where not prohibited by New York State Department of Environmental Conservation current management regulations.
3. Purchase of food fish or crustaceans not harvested in New York State waters shall comply with applicable laws and regulations.

4. Fish plants and fresh, frozen, or smoked fish, eel and edible crustacea including lobster, crab, scallops and shrimp shall meet the standards of quality established for such products by applicable federal, state regulations and by this Article.
5. Fresh raw fish shall be of high quality and exhibit firm elastic flesh, a fresh mild odor, bright and full eyes, and shiny bright skin.
6. Frozen raw fish shall exhibit solidly frozen flesh with no browning or discoloration, little or no odor, and no signs of dehydrated or dried-out flesh.
7. Whole fish shall be kept in ice or refrigerated from the time they are received until prepared for cooking or storage.
8. After gutting or filleting, fish shall be cleaned under a flow of clean potable water, and stored under mechanical refrigeration.
9. The use of any coloring matter on fish is prohibited.
10. Refrigerated, unfrozen smoked fish and smoked fish products shall be maintained at a temperature of 38°F (3°C) or less during delivery to the food service establishment, during refrigerated storage, and except for brief time periods for preparation until served to the consumer.
  - a. Frozen smoked fish and smoked fish products shall remain frozen until thawed at refrigeration temperatures and maintained at 38°F (3°C) or below after thawing as described in §760-1333.1. Food service establishments shall not re-freeze thawed smoked fish or smoked fish products.
  - b. No food service establishment shall produce, package, sell, offer for sale any smoked fish or smoked fish products packaged so that oxygen is reduced or excluded, unless the product has been produced by a pre-approved process as described in §760-1315.d of this Article and designed to ensure that after packaging a temperature and time sufficient to destroy all spores of *Clostridium botulinum* is achieved in a package that also prevents subsequent bacterial contamination.
11. Parasite Destruction.
  - a. For fish, other than molluscan shellfish, that are thoroughly cooked to 145°F (63°C) as required in §760-1333.8 of this Article prior to service or sale, the cooking process is adequate to destroy parasites.
    - (1) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under §§760-1319.11.b.(1) & (2) of this subsection.

b. For fish, other than molluscan shellfish, that have been identified as reasonably likely to contain a parasite hazard and that are intended for service or sale as a raw, raw-marinated, partially cooked, or marinated-partially cooked product, the fish shall be frozen using one of the following freezing time and temperature combinations to destroy parasites prior to service or sale:

- (1) Frozen and stored at -4°F (-20°C) or below for seven (7) days (total time) in a freezer, or
- (2) Frozen at -31°F (-35°C) or below until solid and then stored in a freezer at -31°F (-35°C) or below for 15 hours, or
- (3) Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of 24 hours.

c. If any species listed as reasonably likely to contain a parasite hazard in Appendix A or the current Edition of the FDA Fish and Fisheries Products Hazards and Control Guide are received fresh or unfrozen and that species is intended for service or sale in a raw, raw-marinated, partially cooked, or marinated-partially cooked form, the food service establishment must freeze the product as described in §§760-1319.11.b.(1), (2) and (3) to destroy parasites and keep records documenting freezing time and temperature prior to service or sale.

d. If any species listed as reasonably likely to contain a parasite hazard in Appendix A or the current Edition of the FDA Fish and Fisheries Products Hazards and Control Guide is received in a frozen or previously frozen form and that species is intended for service or sale in a raw, raw-marinated, partially cooked, or marinated-partially cooked form, the food service establishment must obtain documentation from their supplier demonstrating that the product has been frozen as described in §§760-1319.11.b.(1), (2) and (3) to destroy parasites or freeze the product in their establishment as described in §§760-1319.11.b.(1), (2) and (3) to destroy parasites prior to service or sale.

### **§760-1320. Meat; Horse Meat; Game and Meat Products**

1. Meat and meat products including horse meat and game intended for human consumption shall be processed in an establishment under the supervision of the United States Department of Agriculture or the State Meat Inspection Service and marked, stamped or branded as having been inspected for wholesomeness and passed by the authorized representative of such agency. In addition, all meat and meat products shall comply with the applicable provisions of this Article.
2. The use of any matter which imparts color to meat or to casings is prohibited, unless such complies with the provisions of the federal and state laws and the rules and regulations promulgated pursuant thereto.

**§760-1321. Poultry and Poultry Products; Shell, Liquid, Frozen Eggs**

1. Poultry and poultry products, including game birds, shall be identified as having been inspected and passed under a federal or state regulatory program and shall meet the provisions of this Article.
2. Shell eggs shall meet federal and state grading regulations. In addition:
  - a. Shell eggs shall be received and stored at 41°F (5°C) or below.
  - b. The sale of leakers and smashed eggs for human consumption is prohibited.
3. Shell eggs, liquid eggs, and frozen eggs shall be considered temperature-controlled for safety (TCS) foods. Pasteurized eggs and egg products must meet standards established by law.
4. All containers in which shell eggs are received in a food service establishment must identify the source and must be labeled with the notation “SAFE HANDLING INSTRUCTIONS” and the following language “To prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook food containing shell eggs thoroughly.”

**§760-1322. Bakery Products**

1. Bakery products shall be manufactured under clean and sanitary conditions using clean and sanitary fixtures, furnishings, machinery, apparatus, equipment, implements, utensils and receptacles, wholesome ingredients, and prepared, handled, transported and displayed in accordance with federal and state laws and regulations and applicable provisions of this Article.
2. Bakery products shall be wrapped or packaged in clean sanitary wrappers, bags, liners, boxes or other suitable containers in order to avoid possible contamination. No pie carrying cases fabricated of wood, fiber board, plywood or similar pervious material, which cannot be readily washed and sanitized, shall be used for transporting unpackaged pies or other bakery products.
3. Vehicles, boxes, baskets and other receptacles, in which bakery products are contained, shall be kept clean and covered or otherwise protected.

**§760-1323. Packaged Non-Alcoholic Drinks**

1. Sanitation requirements set forth in this Article and in 1NYCRR Part 2 of the New York State Department of Agriculture and Markets regulations relating to milk sanitation shall apply to plants processing non-dairy packaged drinks.

2. Ingredients entering into this product, and the finished product, shall be clean and unadulterated.
3. Re-usable containers shall be filled only if mechanically cleaned and sanitized immediately preceding the filling operation.
4. Products labeled to show the name and address of the distributor instead of the name and address of the processor shall be further labeled to show a code number assigned to the processing plant and filed with the Department.

**§760-1324. Mushrooms**

1. Mushrooms in food service establishments must be obtained from one of the following sources:
  - a. Cultivated mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
  - b. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

**§760-1325. Game Animals**

1. If game animals are received for sale or service they shall be commercially raised for food and slaughtered and processed according to the applicable laws governing meat and poultry, or under a voluntary inspection program administered by USDA for game animals such as exotic animals or rabbits that are “inspected and certified” by the New York State Department of Agriculture and Markets. All specific requirements pertaining to game animals listed in Appendix D of this Article must be met. The requirements of this subparagraph do not apply to deer or big game taken by lawful hunting, that is donated, in accordance with Public Health Law §225, to a charitable or not-for-profit organization for preparation and service, without cost, to the poor or needy.
2. A game animal listed as endangered or threatened may not be received for sale or service.

**§760-1326. Reserved**

**§760-1327. Reserved**

**§760-1328. Reserved**

**§760-1329. Reserved**

**§760-1330. Food Protection; General Provisions**

1. Food, including ice, shall be protected from contamination during processing, handling, packaging, storage, preparation, display and service, dispensing by a vending machine, and while in transit. Foods not meeting the requirements of this Article shall be disposed of in a manner approved by the Department.

2. Food shall be properly labeled or otherwise identifiable.

a. Food packaged in a food establishment shall be labeled in accordance with applicable state and federal laws.

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

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

3. Temperature-controlled for safety (TCS) foods, except as herein provided, shall be kept at all times under appropriate heat treatment or properly refrigerated in order to prevent the growth of pathogenic organisms.

4. Date Marking Temperature-Controlled for Safety (TCS) Foods

a. Except when packaging food using a reduced oxygen packaging (ROP) method as specified under §760-1315.d of this Article, and except as specified in paragraph (e) of this section, refrigerated, ready-to-eat, temperature-controlled for safety (TCS) food that is:

1. Prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of 7 days (the day of preparation shall be counted as Day 1); or,

2. Prepared and packaged by a food processing establishment shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in paragraph a. of this section, and:

(a) the day the original container is opened in the food establishment shall be counted as day 1; and,

(b) the day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

- b. A refrigerated, ready-to-eat, temperature-controlled for safety (TCS) ingredient or a portion of a refrigerated, ready-to-eat, temperature-controlled for safety (TCS) food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first prepared ingredient.
- c. A date marking system that meets the criteria stated in paragraph a. of this section may include:
  - 1. Using a method approved by the Commissioner or his/her designated representative for refrigerated, ready-to-eat temperature-controlled for safety (TCS) food that is frequently rewrapped, such as lunch meat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;
  - 2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph a.1 of this section;
  - 3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under paragraph a.2 of this section; or,
  - 4. Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.
- d. Paragraph a. of this section does not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
- e. Paragraph a.2 of this section does not apply to foods listed in Appendix E of this Article that are prepared and packaged by a food processing establishment inspected by a regulatory authority.
- 5. A food specified in §760-1330.4.a.1 or §760-1330.4.a.2 shall be discarded if it:
  - a. Exceeds the temperature and time combination specified in §760-1330.4.a.1, except time that the product is frozen;
  - b. Is in a container or package that does not bear a date or day; or
  - c. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in §760-1330.4.a.1.
- 6. Time as a Public Health Control
  - a. Except as specified under paragraph (c) of this section, if time without temperature control is used as the public health control for a working supply of temperature-controlled for safety food before cooking, or for ready-to-eat

temperature-controlled for safety (TCS) food that is displayed or held for sale or service:

- (1) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the Commissioner or the Commissioner's duly authorized representative upon request that specify:
  - (a) Methods of compliance with subsections b(1) - (3) of this section; and
  - (b) Methods of compliance with §760-1333.5 for food that is prepared, cooked, and refrigerated before time is used as a public health control.
- b. If time/temperature control is used as the public health control up to a maximum of 4 hours:
  - (1) The food shall have an initial temperature of 41°F (5°C) or less when removed from cold holding temperature control, or 140°F (60°C) or greater when removed from hot holding temperature control;
  - (2) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;
  - (3) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; and
  - (4) The food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded.
- c. A food establishment that serves a highly susceptible population may not use time as specified under paragraphs (a) or (b) of this section as the public health control for raw eggs.

7. Food shall be protected from contamination that may result from a factor or source not specified in this Article.

#### **§760-1331. Bacteriological Standards; Temperature-controlled for safety (TCS) Foods**

1. The Commissioner may establish microbiological standards for temperature-controlled for safety (TCS) foods.
2. No person shall manufacture, produce, pack, possess, sell, offer for sale, deliver or give away any temperature-controlled for safety (TCS) food of the name or type designated pursuant to provisions of this section, if such food contains fecal coliforms, salmonellae, shigellae, or other pathogenic microorganisms or their toxic products.

#### **§760-1332. Temperature**

1. A sufficient number of refrigerators, hot food storage facilities, well-maintained and accurate thermometers and accurate operating temperature controls shall be provided in each area of the food establishment, for the purpose of keeping, transporting, or storing food at a temperature required by the Department. Ice may not be used in lieu of

mechanical refrigeration to maintain required temperatures of temperature-controlled for safety (TCS) foods in storage, display, or service unless approved.

2. Hot and cold food storage facilities shall be provided with an accurate indicating thermometer, maintained in good repair with an increment scale accurate to plus or minus 2°F (1°C). For hot food storage the thermometer shall register the temperature in the coldest part of the facility, and for cold storage the thermometer shall register the temperature of the warmest part of the facility in which temperature-controlled for safety (TCS) food is stored. The thermometer shall be of such type and so situated that it may be readily observed for temperature determination. Zone-type thermometers without increment scales shall not be acceptable. Metal stem-type, numerically scaled, indicating thermometers, thermocouples, or thermistors, maintained in good repair and accurate to plus or minus 2°F (1°C) shall be provided and used by employees to monitor food temperatures for compliance with the requirements of this Article.

3. Temperature-controlled for safety (TCS) food shall be received and maintained at or below 41°F (5°C), or at or above 140°F (60°C) except as otherwise provided in this Article and during necessary times of preparation.

a. Roast beef cooked to 130°F (55°C) can be held at 130°F (55 °C) (instead of 140°F (60 °C) on the day cooked.

b. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

4. Frozen food shall be received and maintained at 0°F (-18°C) or lower except when being thawed for preparation and use.

### **§760-1333. Preparation**

1. Temperature-controlled for safety (TCS) frozen food shall be thawed at 41°F (5°C), or below, or under potable running water at or below 70°F (21°C) with sufficient water velocity necessary to agitate or dislodge loose particles into the overflow, or quick thawed as part of the cooking process.

2. Unless the consumer is notified in writing of the increased health risk associated with the consumption of uncooked or undercooked eggs, pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or bearnaise sauce, mayonnaise, eggnog, ice cream, egg-fortified beverages, and other foods containing shell eggs that are not:

a. Cooked to 145°F (63°C) or above for 15 seconds if broken and prepared in response to a consumer's order and for immediate service; or

b. Cooked to 155°F (68°C).

3. Whole frozen poultry or poultry breasts, must be completely thawed prior to conventional cooking, except for a single portion intended for service to an individual consumer.
4. With the exception of a single portion prepared for immediate service to an individual consumer, temperature-controlled for safety (TCS) foods which are to be served without further cooking, such as salads, sandwiches, filled pastry products and other mixed foods containing temperature-controlled for safety (TCS) food ingredients shall be prepared from ingredients pre-chilled to 41°F (5°C) before mixing, using cleaned and sanitized containers and utensils and without bare hand contact.
5. All hot temperature-controlled for safety (TCS) food that is to be cooled shall be placed in approved refrigeration in shallow pans or contained in such quantities as will insure rapid cooling from 140°F (60°C) to 70°F (21°C) within 2 hours, and from 70°F (21°C) to 41°F (5°C) or less within 4 additional hours. Food containers in which food is being cooled may be left uncovered or partially covered to facilitate heat transfer from the surface of the food, protected from overhead contamination during the cooling period, and arranged in the cooling equipment to provide maximum heat transfer through the container walls.
6. Unless prepared for immediate service in response to an individual consumer order, the entire mass of all precooked, refrigerated temperature-controlled for safety (TCS) food that is to be reheated shall be heated within 2 hours so that all parts of the food reach a temperature of at least 165°F (74°C) or above for 15 seconds, and held at or above 140°F (60°C) until served.
7. Completed custard-filled, cream-filled pastries, pies or similar bakery products, including synthetics, shall, unless served immediately following preparation, be refrigerated at or below 41°F (5°C) until served unless otherwise approved by the Commissioner.
8. Unless the requirements in §760-1333.14 are met, all parts of temperature-controlled for safety (TCS) foods requiring cooking are to be heated with no interruption of the cooking process to at least 145°F (63°C) for 15 seconds, except:
  - a. Poultry, wild game animals as specified in §760-1325, stuffed meats, stuffed fish, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing meat, fish, game animals, or ratites are to be heated so all parts are at least 165°F (74°C);
  - b. Pork and food containing pork is to be heated so all parts of the food are at least 150°F (66°C); and
  - c. Whole-muscle, intact beef (roasts and steaks) are to be heated to an internal temperature of at least 130°F (54°C), unless otherwise ordered by the consumer.

d. Except for foods specified in paragraph a. of this section, all parts of ground meat or food containing ground meat are to be heated to at least 158°F (70°C), unless a consumer requests preparation of a single order of ground meat or food containing ground meat which must be prepared at a temperature less than 158°F (70°C) in order to comply with the request, and the consumer advisory requirements of §760-1333.9 are met.

e. Ratites are to be heated to at least 158°F (70°C).

f. Commercially raised game animals are to be heated to 155°F (68°C). Wild game animals, where allowed by §760-1325.2 of this Article, are to be heated to 165°F (74°C).

9. When food of animal origin such as beef, eggs, fish, lamb, pork, poultry, ratites, game animals or shellfish is served raw or not cooked to temperatures prescribed by this Article, or is a raw ingredient in another ready-to-eat food, the consumer is to be notified by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form; except,

a. Unmarinated beef steaks that meet the definition of “whole-muscle, intact beef” may be served without a consumer advisory if cooked on the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces, if:

(1) obtained packaged and labeled as “whole-muscle, intact beef steaks” from a food processing plant; or,

(2) cut in the establishment from beef labeled at a food processing plant as meeting the definition of “whole-muscle, intact beef”, prepared to remain intact, and individually packaged and labeled as “whole-muscle, intact beef steak.”

b. Raw or undercooked food of animal origin shall not be served to a highly susceptible population, and may not be offered for sale or service by consumer selection from a children’s menu.

10. Precooked temperature-controlled for safety (TCS) foods from commercially processed hermetically sealed containers and precooked temperature-controlled for safety (TCS) foods in intact packages from commercial food processing establishments that are to be heated for the first time within the food service establishment must be heated to 140°F (60°C) within two hours and held above 140°F (60°C) until served.

11. Raw animal foods cooked in a microwave oven and temperature-controlled for safety (TCS) food reheated in a microwave oven for hot holding shall be:

- a. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- b. Covered to retain surface moisture;
- c. Heated to a temperature of at least 165°F (74°C) in all parts of the food; and
- d. Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

12. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 140°F (60°C).

13. Raw fruits and vegetables shall be washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruit and vegetable washing products approved for use on foods must meet the requirements specified in federal regulations and must be used in accordance with manufacturers' specifications.

- a. Before washing in potable water, raw fruits and vegetables shall be separated from ready-to-eat food.

14. Raw animal foods that are cooked using a non-continuous cooking process shall be:

- a. Subject to an initial heating process that is no longer than sixty minutes in duration;
- b. Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked temperature-controlled for safety (TCS) food under §760-1333.5;
- c. After cooling, held frozen or cold, as specified for temperature-controlled for safety (TCS) food under §760-1332.3;
- d. Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least 165°F (74°C) for 15 seconds;
- e. Cooled according to the time and temperature parameters specified for cooked temperature-controlled for safety (TCS) food under §760-1333.5 if not either hot held as specified under §760-1332.3 or served immediately; and,
- f. Prepared and stored according to written procedures that:
  - (1) Have obtained prior approval from the Commissioner or his/her designated representative;

- (2) Are maintained in the food establishment and are available to the Commissioner or his/her designated representative upon request;
- (3) Describe how the requirements specified under paragraphs a. - e. of this section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;
- (4) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under paragraph d. of this section prior to being offered for sale or service; and,
- (5) Describe how the foods, after initial heating but prior to cooking as specified under paragraph d. of this section, are to be separated from ready-to-eat foods as specified under §760-1334.3.

**§760-1334. Storage of Food**

1. Containers of food shall be stored at least six inches above the floor on clean racks, dollies, or other clean surfaces, in such a manner as to be protected from splash or other contamination. Temperature-controlled for safety (TCS) foods, such as broths, gravies, high protein salads, sauces, and cream type dressings shall be stored in a shallow pan or small container when refrigerated.
  - a. Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.
2. Containers of prepared food stored in refrigerated units shall be covered in such a manner as to be protected from overhead contamination. Storage of raw or prepared foods directly on refrigerator shelves is prohibited.
3. Food not subject to further cooking before serving shall be stored in such a manner as to be protected against contamination from food requiring washing or further cooking.
4. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
  - a. Unpackaged food may not be stored in direct contact with undrained ice except as follows:
    - (1) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

- (2) Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in refrigerated storage awaiting preparation, display, service, or sale.
5. Food shall not be stored under soil, waste or other sewer lines, under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed, under open stairwells, in toilet rooms, locker rooms, dressing rooms, garbage rooms, mechanical rooms, or other sources of possible contamination. When out buildings or structures are used to store food (other than cased food in waterproof containers), effective overhead protection or other approved method(s) shall be provided to protect food in transit.
6. Ice for human consumption shall be made from potable water, protected from contamination, and handled in a sanitary manner.
  - a. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.
7. Hermetically sealed containers of food shall be cleaned of visible soil before opening.
8. Food containers that are received packaged together in a case or overwrap shall be protected from cuts when the case or overwrap is opened.

**§760-1335. Display and Service of Food**

1. Where open food or drink is placed on display in all types of food operations, including smorgasbords, buffets and cafeterias, it shall be protected against contamination from consumers and other sources by effective, easily cleanable, counter-protector devices, cabinets, display cases, containers, or other similar type of protective equipment. Self-service openings in counter guards shall be so designed and arranged as to protect food or drink from unnecessary manual contact by consumers. The quantity of food displayed shall be for immediate needs only. Suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or other dispensing equipment shall be provided for each food container at all self-service areas to prevent bare hand contact with ready-to-eat food.
  - a. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This paragraph does not apply to:
    - (1) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;
    - (2) Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients;

- (3) Raw, frozen, shell-on shrimp, or lobster.
    - b. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.
2. Food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.
  - a. An adequate supply of suitable utensils, single-use gloves or dispensing equipment as specified in §760-1335.2 above, shall be kept conveniently located in the food service and preparation areas of the food service establishment.
  - b. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.
3. Ice for consumer use shall be dispensed only with scoops, tongs, or approved ice-dispensing equipment. Self-service ice shall be dispensed through automatic self-service dispensing equipment.
4. Serving utensils shall be stored to prevent contamination of food contact surfaces. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:
  - a. Except as specified under paragraph (b) of this section, in the food with their handles above the top of the food and the container;
  - b. In food that is not temperature-controlled for safety (TCS), with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
  - c. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified in §760-1346 of this Article;
  - d. In a container of water if the water is maintained at a temperature of at least 140°F (60°C) and the container is cleaned at a frequency specified in §760-1346 of this Article.
  - e. Dispensing scoops, spoons, and dippers used in serving frozen desserts shall be stored, between uses, either in an approved running water dipper-well or in a manner approved by the Department.
5. Sugar, condiments, seasonings, and dressings for self-service usage shall be provided only in approved closed dispensers or in individual single-service packages.

6. Unused food that has been served to a customer shall not be served again, except that, wrapped or otherwise protected wholesome non-temperature-controlled for safety (TCS) food may be re-served.

7. Tableware for self-service consumer use shall be dispensed in a manner that protects the tableware from contamination. If additional food is obtained by consumers at self-service display and serving equipment, clean tableware shall be used, except that cups and glasses may be reused if refilling is a contamination-free process.

### **§760-1336. Transportation**

1. During transportation, including transportation to another location for service, vending or catering operations, food is to meet the requirements of this Article relating to food protection, temperature, handling and storage. Food, utensils, equipment and tableware are to be protected from contamination during transportation by use of covered containers, complete wrappings or packaging. Original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken.

2. Except when otherwise approved by the Department, vehicles used for the transportation of temperature-controlled for safety (TCS) foods shall be equipped with insulation and mechanical refrigeration systems capable of maintaining a product temperature of 41°F (5°C), or lower, and of 0°F (-18°C) or lower if transporting frozen food. When hot temperature-controlled for safety (TCS) foods are transported, approved transport equipment capable of maintaining product temperatures of 140°F (60°C) or above shall be used.

3. When temperature-controlled for safety (TCS) food is transported, food temperature logs shall be maintained indicating the temperature at which the food was loaded into the transport equipment and the time of delivery. The Department may also require the log to include the temperature of the food at the service location immediately prior to service.

### **§760-1337. Poisonous and Toxic Materials**

1. Only such poisonous and toxic materials, lawfully permitted under federal, state and local regulations, as are required to maintain sanitary conditions, including pest control, sanitization, chemical drying agents, and boiler water additives may be stored or used in food establishments.

a. Chemical sanitizers, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to food-contact surfaces shall meet tolerance exemptions as specified in federal regulations. Chemical drying agents used in conjunction with sanitizing shall contain only components that are generally recognized as safe for use in food or for the intended use, or are approved for use as a drying agent under applicable federal regulations and approvals.

2. Such poisonous or toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate food, food contact surfaces, water, or constitute a hazard to employees or customers.
3. Containers of poisonous and toxic materials used for cleaning and sanitizing shall be prominently and distinctively marked or labeled for easy identification as to contents. A container previously used to store poisonous or toxic materials may not be used to store, transport or dispense food.
  - a. Working containers used for storing such materials taken from bulk supplies shall be clearly and individually identified with the common name of the material.
4. When not in use, poisonous and toxic materials shall be stored in cabinets which are used for no other purpose, or in a place which is outside the food storage, preparation, display, and cleaned equipment and utensils storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides, or other poisonous materials.
5. Bactericides, cleaning compounds, or other compounds, intended for use on food-contact surfaces, shall not be used in such manner as to leave a toxic residue on such surfaces, nor to constitute a hazard to employees. Phenolic compounds shall not be used for sanitizing utensils or equipment.
6. Poisonous materials shall not be used in any way as to contaminate food, equipment, or utensils, nor to constitute other hazards to employees or consumers.
7. The storage of personal medications shall be restricted from food preparation and service areas. First-aid supplies shall be restricted to designated locations.
  - a. Medicines belonging to employees or to children in a child care center that require refrigeration and are stored in a food refrigerator shall be:
    - (1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and
    - (2) Located so they are inaccessible to children.
8. Insecticides and rodenticides shall be kept, clearly labeled, in the original containers. Those in powder form shall have a distinctive color.
9. Insecticide spraying shall be prohibited in food preparation and service areas while food is being processed, prepared and/or served or where unprotected food or clean utensils and containers are displayed or stored.

**§760-1338. Reserved**

**§760-1339. Reserved**

**§760-1340. Personnel, Health, and Disease Control; Training**

1. No person who is infected with any disease specified in Part 2.50 of the New York State Sanitary Code that is transmissible through food, water, utensil or equipment; or who is a carrier of such disease; or who has suppurating lesions on arms, hands, face or other exposed parts of the body; or who is suffering from periods of vomiting or diarrhea or persistent coughing or sneezing shall handle food, water, utensils, equipment, clean linens, or single-service items in any food establishment.

a. The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice, and if the employee or applicant:

1) Is diagnosed with an illness due to:

a) *Salmonella enterica*, serovar *Typhi* (*S. Typhi*),

b) *Shigella* spp.,

c) Enterohemorrhagic or shiga toxin-producing *E. coli*,

d) Hepatitis A virus,

e) Norovirus, or

2) Has a symptom caused by illness, infection or other source that is associated with acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, sore throat with fever, or

3) Has a lesion containing pus such as a boil or infected wound that is open or draining and is on the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover, or a similar lesion on exposed portions of the arms or other parts of the body, unless the lesion is protected by an impermeable cover.

4) Had a past illness from *S.Typhi* within the past three months,

5) Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with;

- a) *Shigella* spp. within the past 3 days of the last exposure;
- b) Enterohemorrhagic or Shiga toxin-producing *E.coli* within the past 3 days of the last exposure; or,
- c) Hepatitis A virus within the past 30 days of the last exposure; or,
- d) *S. typhi* within the past 14 days of the last exposure; or,
- e) Norovirus within the past 48 hours of the last exposure; or,
- f) Lives in the same household as, and has knowledge about, a person who is diagnosed with a disease caused by *S. typhi* within the past 14 days of the last exposure, *Shigella* spp., Enterohemorrhagic or Shiga toxin-producing *E. coli* within the past 3 days of the last exposure, Norovirus within the past 72 hours of the last exposure, or Hepatitis A virus within the past 30 days of the last exposure or attends or works in a setting where there is a confirmed disease caused by the aforementioned agents.

2. The operator, manager or person in charge of a food establishment shall not permit any such person as specified in subsection (1) of this section to handle food, water, utensils, equipment, clean linens, or single-service items, nor shall he employ anyone with any disease transmissible through food, water, utensils, equipment, clean linens, or single-service items or suspected of being a carrier of such disease or any person who refuses a physical examination when so directed by the Department.

3. If the operator, manager or person in charge of a food establishment suspects that an employee has contracted such disease or has become a carrier of such disease as specified in subsection 1.a.1(a) – (e) of this section, or is jaundiced he shall immediately notify the Commissioner or his/her designated representative.

4. The person-in-charge shall exclude a food employee from a food establishment if infected with such disease or who has become a carrier of such disease as specified in Part 2.50 of the New York State Sanitary Code or subsection 1.a.1(a) – (e) of this section, or who is jaundiced, and in accordance with the following:

- a. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:
  - (1) Symptomatic with vomiting or diarrhea; or
  - (2) Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., or enterohemorrhagic or Shiga toxin-producing *E. coli*.
- b. Exclude a food employee who is:
  - (1) jaundiced and the onset of jaundice occurred within the last 7 calendar days, unless the food employee provides to the person in charge written medical

documentation from a health practitioner specifying that the jaundice is not caused by Hepatitis A virus or other fecal-orally transmitted infection;  
(2) diagnosed with an infection from Hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within 7 calendar days of the onset of jaundice; or  
(3) diagnosed with an infection from Hepatitis A virus without developing symptoms.

- c. Exclude a food employee who is diagnosed with an infection from *S. Typhi*, or reports a previous infection with *S. Typhi* within the past 3 months as specified under subsection 1340.1.a(4).
- d. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic, exclude the food employee.
- e. If a food employee is diagnosed with an infection from non-typhoidal *Salmonella* spp. or *Shigella* spp. and is asymptomatic, exclude the food employee.
- f. If a food employee is diagnosed with an infection from enterohemorrhagic or Shiga toxin-producing *E. coli*, and is asymptomatic, exclude the food employee.
- g. If a food employee is ill with symptoms of acute onset of sore throat with fever, exclude the food employee.
- h. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under subsection 1340.1.a(3), exclude the food employee.
- i. If a food employee is exposed to a foodborne pathogen as specified under subsection 1340.1.a(5), restrict the food employee.

#### 5. Removal, Adjustment or Retention of Exclusions and Restrictions.

- a. A food employee, excluded as specified under §760-1340.4 of this Article, may return to work only after the requirements in Appendix F of this Article have been met, and obtaining approval from the Commissioner or his/her designated representative.
- b. A food employee, excluded as specified in §760-1340.4.a(1) may return to work:
  - (1) When free of the symptoms specified in §760-1340.1.a(2) for at least 24 hours, or
  - (2) After providing to the Commissioner or his/her designated representative written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the gastrointestinal symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.
- c. The Commissioner or his/her designated representative shall be consulted to determine if employees with jaundice of unknown origin may return to work.

d. The person in charge shall maintain records pertaining to exclusion, restriction and reinstatement of ill employees. These records shall include the name of the excluded/restricted employee(s), the duties of the employee(s), the date(s) of exclusion(s)/restriction(s), the nature of the exclusion(s)/restriction(s), the date(s) of removal of exclusion(s)/restriction(s), and other employee information allowed by law and requested by the Department to facilitate a foodborne illness investigation.

6. There shall be a designated person in charge of the food establishment who holds a valid food safety/food protection certificate issued by an authority approved by the Commissioner during all hours of operation. No food establishment shall employ a person in charge of its operation unless such person holds a valid food safety/food protection certificate issued by an authority approved by the Commissioner. In the case of an owner-operated establishment, the owner must be so certified. Recertification shall be required every three years.

7. Wherever deemed necessary, the Commissioner shall require the attendance and satisfactory completion of food safety instruction approved by the Department, of any owner and/or employee of a food establishment.

8. A valid food safety/food protection certificate issued by an authority approved by the Commissioner shall be prominently displayed to the public in every food service establishment.

9. A Food Manager's Certificate issued by the Commissioner may be revoked at any time after due notice and opportunity for a hearing for failure to operate the food establishment in compliance with this Article.

10. The Commissioner may establish training standards which qualify a responsible person to operate a food service establishment in compliance with the requirements of this Article.

11. Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the Department knowledge of foodborne disease prevention, knowledge of foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction, application of the Hazard Analysis Critical Control Point principles, and the requirements of this Article. The person in charge shall demonstrate this knowledge by full compliance at all times with sections and subsections of this Article that govern critical violations, substantial compliance with all other sections and subsections of this Article, and by possession of a valid food safety/food protection certificate issued by an authority approved by the Commissioner.

12. The Commissioner may certify and require, in accordance with standards established by him, a qualified person to be responsible for self-inspection and maintaining compliance with the requirements of this Article.

13. The Commissioner may establish criteria for recognition of alternative food safety/food protection training.

14. The person in charge of the food establishment shall ensure that employees and others entering the establishment for business purposes, such as delivery, maintenance and pesticide applicators comply with applicable provisions of this Article.

15. The person in charge shall ensure that all employees are properly trained in food safety as it relates to their assigned duties.

**§760-1341. Cleanliness of Employees; Clothing, Hand Washing; Fingernails, Hair Restraints, Cosmetics and Jewelry, Tobacco, Eating and Drinking, Handling Soiled Utensils and Busing Tables, Restriction of Traffic**

1. The following requirements shall be applicable to employees of food establishments:

a. Employees shall wear clean outer garments and footwear; maintain a high standard of personal cleanliness; and conform to hygienic practices while on duty.

b. Employees shall wash their hands and exposed areas of the arms thoroughly with soap and warm water in an acceptable hand washing facility before starting work and as often thereafter as may be necessary to remove soil and contamination. Employees shall wash hands thoroughly after using the toilet, using tobacco, sneezing, coughing, using a handkerchief or disposable tissue, eating, drinking, after caring for or handling an animal that may be present as specified in §760-1366.4 or otherwise soiling their hands, and before returning to work after leaving their work area. Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped with hand soap and hand drying facilities by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers. The use of a nailbrush is recommended.

c. When used, single-use gloves shall be used for only one food task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the food task. Single-use gloves that are otherwise in good repair shall be discarded and replaced at least once each hour when in continuous use. When re-gloving is required, employees shall wash hands thoroughly before re-gloving and resuming work.

(1) Slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in this Article.

(a) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and

nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

(2) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as specified in this Article.

d. Employees shall keep fingernails clean and neatly trimmed.

e. Employees involved in food service, food preparation, and utensil washing shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

f. While preparing food and while engaged in food service, food employees may not wear jewelry including medical information jewelry on their arms and hands. This part does not apply to a plain ring such as a wedding band. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

g. Employees shall not use tobacco in any form while engaged in food preparation or service, or while in equipment or utensil washing areas. The use of tobacco will be restricted to designated areas, acceptable to the Commissioner, where no contamination hazard will result.

h. The consumption of food and drink by food service establishment employees shall be restricted to dining areas or other designated areas acceptable to the Commissioner, except:

(1) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, and exposed food, clean equipment, utensils and linens, and unwrapped single-service and single-use articles.

i. All food establishment employees shall exercise proper sanitary techniques in handling soiled tableware during and after clearing of tables and counters.

j. Unnecessary traffic through food preparation and utensil washing areas is prohibited. Traffic by customers through food preparation, food service, food storage, utensil washing, or food equipment areas is prohibited. The presence of unsupervised individuals in these areas is prohibited.

k. A food employee may not use a utensil more than once to taste food that is to be sold or served.

2. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be applied only to hands that are cleaned as specified under 1.b. of this subsection and shall contain active

antimicrobial ingredients that do not leave harmful residues or toxic chemicals on the hands or foods.

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

**§760-1342. Reserved**

**§760-1343. Reserved**

**§760-1344. Reserved**

**§760-1345. Food Equipment and Utensils; Design, Materials, Fabrication, Construction and Installation**

1. Equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be in good repair or shall be discarded; and the food contact surfaces of such equipment and utensils shall, in addition, be easily accessible for cleaning, nontoxic, corrosion resistant, relatively nonabsorbent and shall conform to approved design and construction standards.
2. Equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment shall be located and installed in a way that prevents food contamination and facilitates cleaning of the equipment and the establishment. Aisles or working spaces between equipment, and between equipment and walls, shall be unobstructed, and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.
3. Equipment shall be installed in conformance with state and local plumbing, electrical and fire protection regulations. Microwave ovens shall meet the safety standards specified in federal law.
4.
  - a. Only such materials, including food grade plastics, which meet the following criteria shall be used in the construction and repair of equipment and utensils.
    - b. Materials shall be nontoxic, corrosive resistant to foods and to cleaning compounds or such other substances as may be found in the use environment, nonabsorbent, durable under normal use, smooth and easily cleanable. They shall not impart odors, color or taste to, nor contribute to the adulteration of food and shall maintain their original properties under repeated use. Painted food contact surfaces shall be prohibited.
      - (1) Ceramic, china, and crystal utensils that are used in contact with food shall be lead-free. Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.
      - (2) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing

installed between a backflow prevention device and a carbonator. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(3) Galvanized metal may not be used for utensils or food contact surfaces of equipment that are used in contact with acidic food.

- c. If soft solder or hard solder (silver solder) is used, it shall be of such formulation as to be nontoxic under use conditions, corrosion resistant, consistent with good industrial practice in the refining of their constituent elements, and free of cadmium, antimony, bismuth, or other toxic materials. Soft solder shall contain at least 50 percent tin; solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface. Other solders may be acceptable if shown to be nontoxic under normal use conditions.
  - d. Hard maple or equivalent non-absorbent material meeting the above criteria may be used for cutting blocks and boards, baker's tables and work surfaces and shall be maintained in a smooth, cleanable condition.
  - e. Canvas or other porous materials, other than for single-service use, shall be prohibited as a food contact surface. Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods, and the linens and napkins are replaced each time the container is refilled for a new consumer.
  - f. Food-grade plastic or rubber and rubber-like materials which are relatively inert, resistant to scratching, scoring, decomposition, crazing, chipping, and distortion under normal use conditions; of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods; and which meet the other criteria described in this Article shall be permitted for use.
    - (1) Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.
  - g. If mollusk and crustacea shells are used as serving containers, they must be filled as part of the preparation procedure when first opened. Mollusk and crustacea shells may not be used more than once as serving containers. Further reuse of such shells for food service is prohibited. Mollusk and crustacea shells shall be kept refrigerated if the preparation process causes the shells to remain above 41°F (5°C) for two hours or more.
5. a. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under normal use conditions and operation. They shall be resistant to denting, buckling, pitting, chipping, crazing and excessive wear. Food contact

surfaces shall be smooth, free of breaks, open seams, cracks, chips, pits, and similar imperfections and free of difficult-to-clean internal corners and crevices. Cast iron may be acceptable as a food contact surface for grills, griddles and skillets and other heated surfaces.

- (1) A cover or lid for equipment shall overlap the opening and be sloped to drain.
- (2) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (0.2 inches).
- (3) Except as specified under paragraph (4) of this subsection, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.
- (4) If a watertight joint is not provided:
  - i. The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
  - ii. The opening shall be flanged as specified under paragraph (2) of this subsection.
- (5) Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice intended for human consumption.
- (6) If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

b. No “Vee” type threads shall be used in food contact zones.

c. Only food grade lubricants shall be used on equipment designed to receive lubrication of bearings in the food contact zone. Bearings and gears requiring non-food grade lubricants shall be outside the food contact zone and construction of these shall be such that the lubricant cannot leak, drip, or be forced into the food zone. Equipment shall be reassembled so that food contact surfaces are not contaminated.

d. Sinks, dishtables, and drainboards shall be constructed to be self-draining.

e. Food contact surfaces shall be accessible for cleaning and inspection: without being disassembled, or by disassembling without the use of tools, or by easy disassembling with the use of only simple tools such as a mallet, pliers, screwdriver or an open-end or Allen wrench kept available near the equipment.

- (1) Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.
- (2) Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

- a. Removable by one of the methods specified under §760-1345.5.e or capable of being rotated open; and
    - b. Removable or capable of being rotated open without unlocking equipment doors.
  - f. Food product lines intended for in place cleaning shall be so designed and fabricated that:
    - (1) cleaning and sanitizing solutions can be circulated thoroughly;
    - (2) cleaning and sanitizing solutions will contact all interior surfaces;
    - (3) the system is self-draining or completely evacuated.
  - g. Equipment and utensils used in the manufacture, dispensing, and storage of ice shall be designed and fabricated as to comply with the design and construction requirements of this Article.
  - h. Thermometers or temperature measuring devices intended to be immersed into food or food cooking mediums shall be of an approved metal type and shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy. Such devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.
  - i. Surfaces of equipment not intended for contact with food, but which are exposed to splash, food debris, or otherwise require frequent cleaning, shall be reasonably smooth, washable, free of unnecessary ledges, projections, or crevices; readily accessible for cleaning; and of such material and in such repair as to be readily maintained in a clean and sanitary condition.
  - j. Single-service articles shall be made from nontoxic materials. All paper, plastics, foil adhesives, and other components of containers shall be free from deleterious substances and shall comply with requirements of the federal Food, Drug and Cosmetic Act.
6. a. Equipment which is placed on tables or counters, unless portable, shall be sealed thereto or mounted on legs or feet at least four inches high, and shall be so installed as to facilitate the cleaning of the equipment and adjacent areas.
- b. Portable food service equipment shall be easily movable and have either no utility connection, or a quick disconnect, or a flex connection line of sufficient length to permit the unit to be moved for easy cleaning.
- c. Floor-mounted equipment, unless readily movable, shall be sealed to the floor or installed on raised platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or settling underneath, between or behind such equipment in spaces which are not fully open for cleaning and inspection; or such equipment shall be elevated at least six inches above the floor

with the exception of vertically mounted floor mixers where the space between the lowest horizontal member of the floor must be at least four inches and the area to be cleaned must not exceed six inches from each side to the center. The space between adjoining units and between the unit and adjacent walls shall be closed, or sealed if exposed to seepage, unless sufficient space is provided for ease of cleaning between and behind such equipment.

d. Pipes and electrical wiring used as utility service lines or connections to equipment shall be kept to a minimum and shall be installed in such a manner as not to obstruct or prevent normal cleaning methods. Installation of utility service lines or connections shall be made in compliance with federal, state and local laws and regulations.

e. Food equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles shall not be located or stored in locker rooms, in toilet rooms, in garbage rooms, in mechanical rooms, under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed, under open stairwells, directly under exposed soil, waste or sewer lines or under other sources of possible contamination.

7. Equipment which was installed in a food establishment prior to the effective date of this Article and which does not meet fully all of the material, design and fabrication requirements of this section may be deemed acceptable for that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic. Such equipment shall be so located and installed as to enable reasonable compliance with all of the requirements of this section pertaining to equipment installation and food protection.

#### **§760-1346. Cleanliness and Sanitization**

1. No food equipment, utensil or item of tableware which is not clean shall be used to process, prepare, hold, display or serve food.
2. Tableware shall be thoroughly cleaned and sanitized after each usage.
3. Kitchenware and food contact surfaces of equipment, including food temperature measuring devices, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drinks and all food storage utensils, shall be thoroughly cleaned and sanitized:
  - a. After each use, and following any interruption of operations during which contamination of the food contact surfaces is likely to have occurred; and,
  - b. Before each use with different types of raw animal food; and,

- c. Each time there is a change from working with raw foods to ready-to-eat foods or between raw fruits and vegetables and temperature-controlled for safety (TCS) foods.
4. The cooking surfaces of grills, skillets and similar devices shall be cleaned at least once daily and shall be free of encrusted grease and other soil. Microwave oven cavities, doors and seals shall be cleaned daily.
5. Utensils and food contact surfaces of equipment used in the processing, preparation, service display, or storage of temperature-controlled for safety (TCS) food shall be thoroughly cleaned and sanitized prior to use. Where equipment and utensils are used for the preparation of temperature-controlled for safety (TCS) food on a continuous production line basis, the food contact surfaces of such equipment and utensils shall be cleaned and sanitized immediately before use and at intervals throughout the day on a schedule acceptable to the Department.
  - a. Equipment food contact surfaces and utensils used in the preparation of raw shell eggs shall be cleaned and sanitized at least hourly.
6. Non-food contact surfaces of equipment shall be cleaned at such intervals as to be free of accumulations of dust, dirt, food particles, and other debris.
7. After being cleaned and sanitized and until use, all food contact surfaces of equipment and utensils shall be protected from contamination.
8. The use of sponges and wiping cloths shall be restricted. Sponges and cloths used by food service personnel for wiping spills on food contact surfaces shall be clean, and such cloths used for wiping food contact surfaces shall be used for no other purpose. Sponges and cloths used for wiping counter and table surfaces shall be clean and used for no other purpose. Such sponges and cloths shall be stored between uses in a chlorine solution of at least 50 parts per million of available chlorine (or other approved sanitizer with a bactericidal effect equivalent to at least 50 parts per million of available chlorine). A suitable sanitizer test kit shall be available and used. Wet wiping cloths shall be laundered daily. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. Dry cloths used for nonfood wiping purposes, such as for moving hot equipment, shall be a distinctly different color than moist wiping cloths.
9. Food establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.
10. All single-service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once.

11. Adequate facilities shall be provided for cleaning, and sanitizing multi-use utensils and equipment. A warewashing machine, the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths, and drainboards or other equipment used to substitute for drainboards shall be cleaned before use, and throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function, and if used, at least every 24 hours. An adequate supply of an approved sanitizer shall be on-premises during all hours of operation.

12. Multi-use eating, drinking, cooking and storing utensils and equipment shall be cleaned, rinsed out, and, when required, be sanitized in accordance with prescribed methods approved by the Department and shall conform to surface contamination control standards established by such authority.

a. Effective washing methods shall remove or completely loosen soils from equipment food-contact surfaces and utensils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

b. The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

13. A three compartment sink shall be provided in every food service establishment and used for manual cleaning and sanitization of kitchenware and equipment, or in lieu thereof, by such other method as shall be satisfactory to the Department. The installation of a mechanical dishwasher does not negate the necessity for the installation of an adequate three compartment sink.

a. Sinks used for manual cleaning and rinsing and sanitizing operations shall be of adequate length, width and depth to permit the complete immersion of the largest items of equipment and utensils. These sinks are to be equipped with suitable drainboards of adequate size and used for soiled items prior to washing and for clean items following sanitization. Drainboards are to be self-draining and to be located and constructed so that they do not interfere with the proper use of dishwashing facilities. Use of easily movable bus tables for the storage of soiled items or the use of easily movable drainracks for the storage of clean items following sanitization is acceptable.

b. Each compartment of such sinks shall be supplied with potable hot and cold running water. The temperature of hot water shall be a minimum of 140°F (60°C).

c. Kitchenware and equipment not requiring sanitization shall be washed mechanically or in a sink having not less than two compartments with drainboard.

d. When hot water is used as the sanitizing agent in manual operations, the following facilities shall be provided and used:

(1) An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of heating and maintaining the hot water sanitizing rinse temperature of not less than 170°F (77°C).

(2) An indicating thermometer accurate to plus or minus 2°F (1°C) and maintained in good repair, convenient to the manual sink operations to permit frequent checks of the hot water temperature.

(3) Dish baskets of such size and design to contain and permit complete immersion of the tableware, kitchenware, and equipment in the hot water sanitizing rinse. Either dish table or drainboards, of adequate size for proper handling of soiled utensils prior to washing and for cleaned utensils following rinsing or sanitization, shall be provided, and shall be so located or constructed as not to interfere with the proper use of dishwashing facilities.

e. Sinks shall be cleaned thoroughly prior to usage. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

f. When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions which is kept clean, and then shall be rinsed free of soap and abrasives.

(1) The temperature of the hot soap solution in manual warewashing equipment shall be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.

g. Equipment, utensils and food contact surfaces requiring sanitization shall be sanitized by one of the following methods:

(1) Immersion for at least one half minute in hot water at a temperature of at least 170°F (77°C).

(2) Immersion for at least 7 seconds in a clean solution containing at least 50 parts per million but not more than 200 parts per million of available chlorine at a pH less than 10 and water temperature of at least 100°F (38°C) or a pH less than 8 and water temperature of at least 75°F (24°C); a suitable chlorine test kit shall be available and used.

(3) Immersion for at least 30 seconds in a clean solution containing any other chemical sanitizing agent acceptable to the permit-issuing official that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite at a temperature of at least 75°F (24°C) for one minute, and shall be used in accordance with the instructions for use on the EPA approved manufacturer's label. Suitable chemical field test kits are to be present in the establishment and used to assure adequate chemical concentrations to achieve sanitization.

- i. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(4) Equipment too large to treat by methods above may be treated with steam of culinary quality, in the case of equipment in which steam can be confined, or by rinsing, spraying, or by swabbing with a solution of at least 50 parts per million, but not more than 200 parts per million, of available chlorine.

- h. Cleaned and sanitized utensils and equipment shall be air dried.

14. Adequate mechanical dishwashing facilities shall be provided and conveniently located in all food establishments where food is served for on-premises consumption and wherever multi-use eating and drinking utensils are used, and in such existing food establishments as deemed necessary by the Commissioner, subject to the following requirements:

- a. Dishwashing machines (spray type or immersion) shall be properly installed, operated in accordance with the machine's data plate and other manufacturer's instructions, and maintained in good repair. The flow pressure of spray type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch on the water line adjacent to the machine. Water pressure measuring devices shall display pressures in increments of 1 pound per square inch or less, shall be accurate to plus or minus 2 pounds per square inch, and maintained in good repair. A 6.4 millimeter or ¼ inch Iron Pipe Size (IPS) valve shall be provided immediately upstream from the control valve to permit checking the flow pressure of the final rinse water. Rinse water shall be so protected by baffles, or other effective means, as to minimize the entry of wash water into the rinse water.

- b. Conveyors and cycles in dishwashing machines shall be accurately regulated, as outlined in the manufacturer's specifications, to assure proper washing, rinsing and sanitizing and shall be acceptable to the Department. An easily readable

thermometer, accurate to plus or minus 2°F (1°C), shall be provided in each tank of the dishwashing machine to indicate the temperature of the water. In addition, a thermometer of equal accuracy shall be provided to indicate the temperature of the final rinse water as it enters the manifold. Such thermometers shall be maintained in good repair and be accurate within the intended range of use.

c. A warewashing machine shall be equipped to automatically dispense detergents, wetting agents and sanitizers, and must incorporate a visual means to verify that detergents and sanitizers are delivered, or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles. Automatic detergent and sanitizer dispensers shall be properly installed and maintained in good repair.

1. The wash compartment of a mechanical warewashing machine shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

d. Drainboards shall be of adequate size for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitization and shall be so located or constructed as not to interfere with the proper use of the dishwashing equipment.

e. When chemicals are relied upon for sanitization they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of the equipment and utensils. Suitable chemical test kits are to be present in the establishment and used to assure adequate chemical concentrations to achieve sanitization in machines using chemicals.

f. Any other type of machine, device or facilities may be acceptable for cleaning or sanitizing equipment and utensils, if it can be demonstrated that such machine, device, or facilities will thoroughly clean equipment and utensils, and provide effective bactericidal treatment as demonstrated by an average plate count per utensil surface examined, of not more than 100 colonies and free from coliform organisms.

g. The dishwashing machine shall be thoroughly cleaned following usage. During operation, the machine shall be properly maintained in a satisfactory condition. Prior to cleaning, equipment and utensils shall be preflushed or prescraped and when necessary presoaked to remove gross food particles and soil. Following preflushing, prescraping or presoaking, equipment and utensils shall be placed in racks, trays, baskets, or on conveyors in such a manner that food contact surfaces are subject to unobstructed application of wash and rinse waters, and to permit free draining.

h. Wash water shall be kept clean. Wash water temperature shall not be less than 140°F (60°C) for single tank, stationary rack, door type chemical sanitizing machines and spray type chemical sanitizing glass washers. When chemicals are relied upon for sanitization, the sanitizing rinse temperature shall not be less than 75°F (24°C) or as otherwise specified by the manufacturer and the sanitizing chemicals automatically dispensed into the final rinse water in a quantity sufficient to provide the required sanitizing solution concentration.

i. When sanitizing with hot water, wash and pumped rinse waters shall be kept clean. Equipment food contact surfaces and utensils shall achieve a surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator. Wash and pumped rinse temperatures shall be measured in the respective tanks and final rinse temperature shall be measured at the manifold. The following water temperatures shall be maintained:

(1) Single tank, stationary rack or immersion units (dual temperature).

(a) Wash temperature 150°F (66°C).

(b) Final rinse temperature 180°F - 195°F (82°C - 91°C).

(2) Single tank, stationary rack (single temperature).

(a) Wash temperature 165°F (74°C).

(b) Final rinse temperature 165°F (74°C).

(3) Single tank conveyor.

(a) Wash temperature 160°F (71°C).

(b) Final rinse temperature 180°F - 195°F (82°C - 91°C).

(4) Multiple tank conveyor.

(a) Wash temperature 150°F (66°C).

(b) Pumped rinse temperature 160°F (71°C).

(c) Final rinse temperature 180°F - 195°F (82°C - 91°C).

j. (1) Food contact surfaces of cleaned and sanitized utensils and equipment shall be handled in such a manner as to be protected from contamination.

(2) Spoons, knives, and forks shall be picked up and touched only by their handles. Cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or mouth contact surfaces.

(a) Except as specified in paragraph (b) of this subsection, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

- (b) Preset tableware may be exposed if:
  - i. Unused settings are removed when a consumer is seated; or
  - ii. Settings not removed when a consumer is seated are cleaned and sanitized before further use.

(3) Utensils and equipment shall be stored above the floor in a clean, dry location. Suitable space and facilities shall be provided for such storage so that food contact surfaces are protected from splash, dust, and other contamination. Food equipment and utensils shall not be stored or located under waste or sewer lines or non-potable water lines.

(4) Utensils and equipment shall be air dried before being stored, or shall be stored in a self-draining position on suitably located hooks or racks. Utensils and equipment shall not be rinsed before air drying or use unless the rinse is applied directly from a mechanical warewashing machine that is properly maintained, and only after the utensils and equipment have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose label instructions call for rinsing off the sanitizer after it has been applied in a commercial warewashing machine. Stored utensils shall be covered or inverted. Facilities for the storage of flatware shall be provided and shall be designed and maintained to present the handle to the employee or consumer.

- k. (1) Single-service articles shall be stored above the floor on clean shelves or racks and in closed containers or cartons and shall be protected from contamination.

(2) Such articles shall be handled and dispensed in such a manner as to prevent contamination of surfaces which may come into contact with food or with the mouth of the user.

(3) Single-service articles shall be used only once.

**§760-1347. Reserved**

**§760-1348. Reserved**

**§760-1349. Reserved**

**§760-1350. Water Supply**

1. All on-site food service establishment potable water supplies shall comply with the provisions of this section. Water supplies meeting the definition of a public water system as defined in Subpart 5-1 of Part 5 of the New York State Sanitary Code shall comply with the applicable requirements of Subpart 5-1.
2. The permit-issuing official may require a food service establishment operator to implement the annual start-up procedure contained in subsection 4 of this section.

3. Minimum treatment for a water source shall be:

- a. Minimum treatment for a ground water source shall be disinfection by chlorination or other disinfection methods acceptable to the permit issuing official unless a disinfection waiver has been issued based upon a satisfactory history of microbiological water quality and all sources of the water supply are properly located, constructed and effectively protected and maintained.
- b. For facilities utilizing disinfection by chlorination, the free chlorine residual disinfection concentration in the water distribution system shall be at least 0.2 milligrams per liter (mg/l).
- c. Minimum treatment for surface water sources or ground water sources directly influenced by surface water shall be filtration and disinfection techniques, approved by the permit issuing official, capable of 99.9 percent removal and/or inactivation of giardia cysts and 99.99 percent removal and/or inactivation of viruses.

4. Annual start-up. The food service establishment operator must ensure that each year the following actions have been taken 15 days prior to the utilization of the facility's water supply. The following applies to each on-site potable water system that is not subject to continuous water use and, when required by the permit-issuing official, to each food service establishment's potable water supply distribution system that is not subject to continuous water use which receives water from an off-site public water system:

- a. The food establishment's water supply system shall be disinfected by:
  - (1) Completely filling the water supply system to remove all air pockets, flushing the system to remove particulates, and filling the system with potable water. The potable water shall then be chlorinated by feeding liquid hypochlorite at a constant rate such that the water will not have less than a 25 mg/l free chlorine residual throughout the food service establishment's water system. After a 24-hour holding period there must be a free chlorine residual of not less than 10 mg/l throughout the food service establishment's water system; or
  - (2) Using a disinfection method the State Commissioner of Health has determined in writing to be of comparable effectiveness.
- b. The water supply system shall be flushed and for facilities utilizing disinfection by chlorination, free chlorine residual disinfection concentrations shall be measured for the two days immediately following the completion of the main disinfection, as prescribed in Subsection 4.a of this section, at representative points in the distribution system, to ensure chlorine residuals of not less than 0.2 mg/l.

c. Total Coliform samples shall be collected in accordance with subsection 5.a of this section following the two day flushing and chlorine monitoring period prescribed by subsection 4.b of this section and when a free chlorine residual of not more than 4.0 mg/l is present.

5. Monitoring requirements. Samples shall be collected at representative points in the distribution system and analyzed at a laboratory certified by the New York State Department of Health as follows:

a. At least one sample collected for Total Coliform analysis from each water source prior to opening for the operating season and at least one additional sample collected from each water source during the operating season. For those food service establishments operating more than a calendar quarter, Total Coliform samples shall be collected for each calendar quarter the food service establishment is in operation (or more frequently, as required by the Permit Issuing Official). When a water supply serving a food service establishment is operated continuously year-round with Total Coliform analysis performed quarterly, the Total Coliform analysis prior to the opening is not required.

b. Additional monitoring parameters and frequencies may be required pursuant to Subpart 5-1 of Part 5 of the New York State Sanitary Code when determined by the permit-issuing official as necessary to evaluate water quality.

c. The food service establishment operator must report sample results that are positive for Total Coliform or *Escherichia coli* to the permit-issuing official as soon as possible, but no later than 24 hours of being notified by the laboratory. Preoperational water analysis reports must be submitted to the permit-issuing official prior to permit issuance. All other water analysis reports required to be made by this subpart or requested or ordered by the permit-issuing official shall be submitted to the permit-issuing official within 10 days after the end of each month in which samples were collected or as otherwise directed by the permit-issuing official.

6. Report on water treatment. At facilities where water treatment is required, accurate and complete water treatment operation reports shall be maintained daily and submitted to the permit-issuing official within 10 days after the end of each month of operation. Reports must be made on forms provided or approved by the Department.

7. Source protection. All potable water sources and distribution systems shall be designed, located, constructed and maintained to provide protection against contamination or pollution. All pumps, piping fixtures and appurtenances shall be adequately installed and maintained to protect against contamination of any water source.

a. A water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

8. Submission of plans; prior approval. A plan for proposed new or modified potable water supply systems shall be submitted to the permit-issuing official at least 30 days prior to beginning construction. No construction of new or modified potable water supply systems shall commence until plans and specifications have been submitted to and approved by the permit-issuing official. Construction shall be in accordance with the approved plans.

9. Minimum standards. Potable water shall be adequate in quantity and quality and shall be readily available.

10. Connections prohibited. There shall be no physical connection between the potable water supply and any non-potable water supply. Any fixture, installation or equipment which is subject to back-siphonage shall be adequately installed and maintained to protect against contamination of the water source(s) or distribution system.

11. A minimum pressure of 20 pounds per square inch, at peak demand, shall be maintained in all parts of the water distribution system.

12. Interruptions, changes in sources or treatments. Any incident or condition which affects the quantity or quality of the on-site potable water supply shall be reported to the permit-issuing official within 24 hours of occurrence. There shall be no changes made to the source or method of treatment of a potable water supply, either temporary or permanent, without first receiving approval from the permit-issuing official. An adequate supply of potable water must be provided and maintained during all times of operation.

13. Hot and cold running water under pressure shall be provided to all areas in the food establishment where the Department deems it necessary for the safe and sanitary operation of such food establishment.

14. The hot water supply shall be adequate to meet the demands of the food service establishment.

a. The hot water system serving the food service establishment shall be dedicated only to the demands of food service and shall be independent of all other demands, such as residential apartments, space heating, showers, etc. unless otherwise approved during the plan review process.

b. The hot water system serving the food service establishment shall be under the control of the person in charge.

#### **§760-1351. Sewage Disposal**

All sewage, including liquid wastes, shall be disposed of in a public sewer, an individual sewage disposal system that is sized, constructed, maintained and operated according to Article 6 of the Suffolk County Sanitary Code and applicable local laws, or in the absence thereof, in a manner satisfactory to the Department.

**§760-1352. Plumbing**

1. a. The minimum requirements of the Codes of the State of New York applicable to plumbing shall be met.
  - b. Plumbing shall be so sized, installed, and maintained as to carry adequate quantities of water to required locations throughout the establishment; as to prevent contamination of the water supply; as to properly convey sewage and liquid wastes from the establishment to the sewer, or sewage disposal system; and so that it does not constitute an actual or potential source of contamination of food, equipment or utensils or create an insanitary condition or nuisance. Liquid waste drain lines may not pass through food storage equipment, including ice machines or ice storage bins.
    - (1) Plumbing fixtures such as hand washing sinks, toilets and urinals shall be cleaned as often as necessary to keep them clean.
    - (2) A water filter, screen, and other water conditioning device installed on water lines shall be designed and located to facilitate disassembly for periodic service and cleaning. A water filter element shall be of the replaceable type.
    - (3) A device such as a water treatment device or backflow preventer shall be located so that it may be readily serviced and maintained, and scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.
  - c. A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.
    - (1) All such plumbing fixtures, including each basin of a sink used for warewashing or for food preparation, shall be provided with a separate air gap that shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).
    - (2) A warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 meters (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.
  - d. Interior grease traps, when approved by the Suffolk County Office of Wastewater Management or a local sewer agency, shall be installed and located as to be easily accessible for cleaning.

2. a. The potable water system and equipment connected thereto shall be installed in such a manner as to preclude the possibility of backflow of a solid, liquid or gas contaminant into the water supply system by providing an air gap as specified in §760-1352.1.c(1) or installing an approved backflow prevention device as specified in §760-1352.3 A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.  
  
b. The piping of any nonpotable water system shall be adequately and durably identified by using distinctive yellow colored paint. Such piping shall not be connected to any potable water system or food equipment and shall not have outlets in food preparation areas or in areas accessible to the public.
3. a. Carbonated beverage dispensers connected to a water supply system are to be equipped with an air gap at the water inlet, or a dual check valve with intermediate vent preceded by a screen of not less than 100 mesh to 1 inch (100 mesh to 25.4 mm) installed upstream from the carbonator, and vented to discharge carbon dioxide gas to atmosphere that provides positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. All water contact surfaces downstream from this protective device are to be of materials, e.g. copper, that will not produce toxic substances when exposed to carbon dioxide or carbonated water.  
  
b. All lines conveying carbon dioxide gas or carbonated beverages shall be constructed of stainless steel, food grade plastic or other material that will not produce toxic substances when exposed to carbon dioxide or carbonated water.

**§760-1353. Toilet Facilities**

1. a. Each food establishment shall be provided with adequate, conveniently located, and properly installed toilet facilities for its employees, accessible at all times from the interior of the establishment.  
  
b. Toilet fixtures shall be of sanitary design and readily cleanable and installed in accordance with applicable state and local laws and regulations.  
  
c. Toilet rooms shall be completely enclosed and shall have tight fitting, self-closing doors.  
  
d. Toilet rooms shall be provided with mechanical ventilation constructed, operated and maintained in accordance with generally accepted good practice.
2. a. Toilet facilities, including the toilet room and fixtures, shall be kept clean and in good repair and free from objectionable odors.

- b. A supply of toilet tissue shall be provided at each toilet at all times.
  - c. Easily cleanable receptacles shall be provided for waste paper and other refuse.
  - d. A toilet room used by females shall be provided with a covered receptacle for feminine hygiene items.
  - e. Employee hand washing signs shall be posted in each toilet room area.
3. Adequate toilet and hand washing facilities, accessible from the interior of the establishment without entering food equipment, food preparation, food service, food storage, or utensil washing areas, shall be provided for patrons where food is served for on-premises consumption. Establishments with only seasonal outdoor seating may provide patron toilet facilities accessible directly from the outdoor seating area.

**§760-1354. Hand Washing Facilities**

1. Adequate hand washing facilities must be provided in or immediately adjacent to toilet rooms and in food preparation areas and food service areas, used only for hand washing, and located as to permit convenient and expeditious use. These must be kept clean and equipped with hot and cold running water, dispensed with a mixing faucet at a temperature of at least 100°F (38°C), hand cleansing liquid or powdered soap in suitable dispensers, and approved sanitary towels or other approved hand drying devices. The use of hand washing facilities in which the hot and cold water is delivered through separate faucets may be continued until such time as these facilities are relocated or replaced.

- a. A self-closing, slow-closing, or metering faucet, when supplied, shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
- b. A steam mixing valve may not be used at a hand washing sink.

2. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the hand washing aids and devices required for a hand washing lavatory unless approved by the Department.

**§760-1355. Garbage and Refuse Disposal**

1. All garbage and refuse containing food wastes shall, prior to disposal, be kept in durable, leakproof, nonabsorbent containers or compactors which shall be kept covered with tight fitting lids when filled or stored, or not in continuous use. Drains in receptacles and waste handling units for garbage and refuse shall have drain plugs in place. Rooms, enclosures, areas and containers, including dumpsters and other commercial containers shall be properly constructed and adequate in size for the storage of all food waste, refuse, recyclables and returnables accumulating on the premises, and shall be located

separately from food, equipment, utensils, linens, and single-service and single-use articles, and so that a public health hazard or nuisance is not created.

2. Cleaning facilities shall be provided, and each container, compactor room or area used shall be maintained in a clean condition, inside and outside, and kept free from encrustations, soil and vermin. Wastewater from such cleaning operations shall be disposed of as sewage.

a. Suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse.

3. Stored garbage and refuse shall be inaccessible to insects and rodents. Outside storage of plastic bags or wet strength paper bags containing garbage or refuse is prohibited unless they are stored in nonabsorbent, leakproof containers with tight fitting lids.

4. Outside storage areas or enclosures, shall be adequate in size and shall be clean and not constitute a nuisance. Such areas shall be constructed in accordance with local laws and codes and shall be curbed and graded in order to drain, collect and dispose of liquid waste that results from the garbage and refuse and from cleaning the area and waste receptacles. Containers, compactors and dumpsters shall be stored on a smooth concrete slab or other relatively nonabsorbent surface, maintained in good repair and kept clean.

5. All garbage and refuse shall be removed from the premises at a frequency so as to prevent a nuisance or other conditions that attract or harbor insects or rodents. Garbage and refuse shall be removed from the premises by way of portable receptacles and/or transport vehicles that are constructed and operated in compliance with all local laws and codes. Burning of garbage or refuse on the premises is prohibited, except in an approved and properly operated incinerator.

6. Adequate garbage and refuse containers are to be made available for customer use to dispose of refuse, wrapping materials, single-service items, and uneaten food resulting from the operation of the establishment.

7. The operator or person in charge is responsible to maintain, empty, and clean all garbage and refuse containers furnished as part of the operation.

8. The Department may require the installation of refrigerated garbage and refuse facilities in new or existing food establishments.

#### **§760-1356. Insect and Rodent Control**

1. Effective measures shall be taken to protect against the entrance into the establishment and the breeding or presence on the premises of insects, rodents, and other pests. These measures shall include:

- a. Routinely inspecting incoming shipments of food and supplies;
- b. Routinely inspecting the premises for evidence of pests;
- c. Using methods, if pests are found, such as trapping devices or other approved means of pest control; and
- d. Eliminating harborage conditions;
- e. Protecting outer openings of the food establishment against the entry of insects and rodents by filling or closing holes and other gaps along floors, walls, and ceilings; closed, tight-fitting windows; and solid, self-closing, tight-fitting doors.

(1) Subsection 760-1356.1.e of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(2) Exterior doors used as exits need not be self-closing if they are solid and tight-fitting; designated for use only when an emergency exists by the fire protection authority that has jurisdiction over the food establishment; and limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(3) Except as specified in subsection 760-1356.1.e(1) and subsection 760-1356.1.e(4) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under subsection 760-1356.1.e, the openings shall be protected against the entry of insects and rodents by 16 mesh to 1 inch (25.4 mm) screens; properly designed and installed air curtains to control flying insects; or other effective means.

(4) Subsection 760-1356.1.e(3) does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

- 2. Rodent bait shall be contained in a covered, tamper-resistant bait station.
- 3. A tracking powder pesticide may not be used in a food establishment.
- 4. If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.
- 5. The use of any insecticide or insecticide dispensing device shall conform to §760-1337 of this Article and to the following requirements:

- a. The insecticide shall be safe and not harmful to humans under conditions intended for use.
  - b. Anyone using insecticides must be certified as a “commercial applicator” by the New York State Department of Environmental Conservation.
  - c. The use of the insecticide shall not result in contamination of food, food containers or food contact surfaces.
  - d. Certified performance data acceptable to the Department for all automatic insecticide dispensing devices by a reputable testing laboratory shall be furnished prior to the use of such device within the county.
  - e. Under no circumstances shall the use of an insecticide be permitted in place of or as a substitute for proper sanitation.
  - f. The use of an insecticide or insecticide dispensing device contrary to the provisions of this Article is prohibited.
6. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device and shall be installed so that:
- a. The devices are not located over food preparation areas or equipment, and;
  - b. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
7. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

**§760-1357. Reserved**

**§760-1358. Reserved**

**§760-1359. Reserved**

**§760-1360. Floors, Walls and Ceilings**

1. All floors, walls and ceilings in food establishments, including doors, windows, skylights and similar closures and attached equipment such as light fixtures, vent covers, wall mounted fans and decorative materials, shall be kept clean and in good repair. All wall and floor junctures shall be coved and closed to no larger than 1/32 inch (1 mm). Studs, joints and rafters and metal framework shall not be left exposed in food preparation or utensil washing areas, except as permitted by the Department in temporary food establishments. If left exposed in other parts of the establishment, they shall be finished as to provide an easily cleanable surface. Perimeter walls and roofs of a food

establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

2.
  - a. The floor surfaces in food storage and preparation areas, utensil washing areas, dressing or locker rooms, toilet rooms and hand washing areas shall be of smooth, nonabsorbent materials, so constructed as to be easily cleanable, such as terrazzo, ceramic tile, concrete with surface bond material or durable grades of slip resistant linoleum or vinyl.
  - b. Mats or duckboards, if used, shall be of such design, size and construction as to be cleanable, removable for cleaning and shall be kept clean.
  - c. Properly installed carpeting that is of woven construction and easily cleanable is permitted as a floor covering in public areas of food establishments, such as vestibules, dining rooms, powder rooms, hallways and lobbies.
  - d. The use of sawdust, wood shavings, peanut hulls and similar materials on floors shall be prohibited in food preparation areas unless otherwise approved by the Commissioner or his/her designated representative.
  - e. Properly plumbed floor drains shall be provided in all rooms where floors are subjected to flooding type cleaning or where normal operations release or discharge water or other liquid waste on the floor and such floors shall be graded to drain to the floor drain and the floor and wall junctures shall be coved and sealed. The drains from refrigerators, cooking kettles, hot or cold food tables, or similar equipment shall not be directly connected to a sewer or waste line.
3.
  - a. All walls or rooms or areas in which food is prepared, or utensils or hands are washed, and walls in toilet rooms shall be easily cleanable, light colored and shall have nonabsorbent washable surfaces.
  - b. Wall covering material such as sheet metal, linoleum, vinyl, and similar coverings shall be attached and sealed to the wall so as to leave no open spaces or cracks which would permit accumulations of grease or debris or provide harborage for insects, rodents or vermin.
  - c. Concrete blocks or other masonry used in wall construction shall be finished and sealed so as to provide a cleanable surface.
4. Materials used on ceilings in areas exposed to grease and water shall be finished so as to provide a nonabsorbent, easily cleanable surface.
5. Utility service lines and pipes may not be unnecessarily exposed. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings. Exposed horizontal utility service lines and pipes may not be installed on the floor.

**§760-1361. Cleaning**

1. Appropriate cleaning methods that minimize the dispersal of dust shall be used, and where sweeping is necessary, push type brooms and dust arresting sweeping compounds shall be employed. Such cleaning, except emergency floor cleaning, shall be performed during those periods when the least amount of food is exposed, such as after closing or between meal rush hours, care being taken to prevent contaminating food or cleaned equipment.

a. A food establishment shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

2. Cleaning equipment and supplies shall be maintained and stored in such a manner as not to contaminate food, utensils or food equipment.

3. At least one service sink or one curbed cleaning facility equipped with hot and cold running water and a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste. The use of hand washing or utensil, equipment or food preparation sinks, toilets or urinals, or an outside storm drain or ground surface for this purpose is prohibited.

a. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment or supplies.

**§760-1362. Premises, Exterior**

The walking and driving surfaces of exterior areas of food establishments shall be maintained so as to facilitate maintenance and to minimize dust, and premise areas shall be maintained in such a manner as to prevent conditions conducive to the creation of a nuisance.

**§760-1363. Lighting**

1. Areas in which food is prepared or stored or where utensils are washed, and all hand washing areas, dressing or locker rooms, toilet rooms, and garbage and refuse storage areas shall be provided with adequate lighting and shall be well lighted when in use. At least 50 foot candles of light shall be required on working surfaces and at least 30 foot candles of light shall be provided on all other surfaces and equipment. During all clean-up activities at least 20 foot candles of light at a distance of 30 inches from the floor shall be provided in the areas being cleaned, and upon or around equipment being cleaned.

2. Light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; food equipment, utensils, and linens; or unwrapped single-service and single-use articles.

**§760-1364. Ventilation**

1. Rooms in which food is prepared or served or utensils are washed, dressing or locker rooms, toilet rooms, and garbage and refuse storage areas shall be well ventilated.
2. Ventilation hood systems and devices shall be sufficient in number and capacity, and designed and maintained to prevent grease or condensate from dripping into food or onto food preparation surfaces or collecting on walls and ceilings.
3. Filters or grease extractors, where used, shall be readily removable or accessible for cleaning or replacement and shall be kept clean.
4. Heating, ventilating, and air conditioning systems shall be designed, installed and maintained so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.
5. Rooms, areas and equipment from which aerosols, objectionable odors, or noxious fumes or vapors may originate, shall be effectively vented to the outside air and in such manner as to prevent the creation of a nuisance.

**§760-1365. Dressing Rooms and Lockers**

1. Adequate facilities shall be provided for the proper storage of employees' clothing and personal belongings.
2. Where employees change clothes within the food establishment, one or more dressing rooms or designated dressing areas shall be provided for this purpose.
  - a. Such designated areas shall be located outside of the food preparation, storage and serving areas, and the utensil washing and storage areas.
  - b. Designated areas shall be equipped with adequate lockers and lockers or other suitable facilities shall be provided in dressing rooms.
3. Dressing rooms and lockers shall be kept clean.

**§760-1366. Miscellaneous**

1. Only articles considered necessary to the routine operation and maintenance of the food operation shall be permitted in the food establishment. The premises shall be free of litter.

2.
  - a. None of the operations connected with a food establishment shall be conducted in any rooms used as living or sleeping quarters.
  - b. A solid tight fitting partition and self-closing door, if needed, shall be provided between any food operation and living or sleeping quarters. Such living or sleeping quarters shall be equipped with separate toilet facilities, containing a lavatory and a shower or tub, for personal hygiene and shall meet the requirements of Title 19 NYCRR, Chapter XXXIII, “New York State Uniform Fire Prevention and Building Code”, and any additional local requirements.
3.
  - a. Laundry facilities, if provided on the premises, shall be used only for laundering items used in the operation of the food establishment.
    - (1) Linens shall be mechanically washed, except, in food establishments in which only wiping cloths are laundered, the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing sink that is cleaned as specified in §760-1346.11.
  - b. If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
  - c. Soiled linens, coats, and aprons shall be kept in suitable containers until removed for laundering.
  - d. Laundered cloths, uniforms, aprons, and napkins shall be stored in a clean place and protected from contamination until used.
    - (1) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.
    - (2) Cloth gloves used as specified in §760-1341.1.c(2) of this Article shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.
    - (3) Linens and napkins that are used as specified under §760-1345.4.e of this Article and cloth napkins shall be laundered between each use.
4. Except as specified in 4.a. and 4.b. below, live animals shall not be allowed on the premises of a food establishment.
  - a. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

(1) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems; except,

(a) Molluscan shellfish life support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs in outside fenced areas;

(3) In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a safety hazard will not result from the presence or activities of the service animal;

(4) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.

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

**§760-1367. Reserved**

**§760-1368. Reserved**

**§760-1369. Reserved**

**§760-1370. Mobile Food Units and Other Limited Food Establishments; Food Protection, Storage, and Display, Single-Service Articles, Garbage, Cleaning and Servicing, Preparation, Potable Water, Condiments, Identification of Food Servings, Display of License, and Identification of Vehicle.**

1. Mobile food establishments and other Limited Food Establishments shall comply with all applicable provisions of this Article and adopted standards for the administration of this section. The Department may augment such requirements when needed to assure the service of safe food; prohibit the sale of certain temperature-controlled for safety (TCS) foods; and modify specific requirements for physical facilities when, in its opinion, no imminent health hazard will result.

2. Adequate mechanical refrigeration shall be provided for the safe storage and display of temperature-controlled for safety (TCS) foods to be served cold or until heated for service.

3. Unless otherwise approved by the Department, Limited Food Establishments shall be restricted to the use of single-service articles for service to the consumer.
4. Garbage and refuse shall be properly stored and removed as frequently as necessary to prevent a nuisance and shall be disposed of in a manner acceptable to the Department.
5. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.
6.
  - a. A Limited Food Establishment shall not engage in food preparation or cooking operations unless specifically approved by the Department.
  - b. In the absence of such approval, Limited Food Establishments shall handle only completely wrapped or packaged food which has been manufactured, processed, prepared and packaged in individual servings at an approved food establishment and transported and stored in accordance with the provisions of this Article; provided, however, that non-temperature-controlled for safety (TCS) beverages may be dispensed from covered urns or other protected containers approved by the Department.
7. Potable water shall be obtained only from an approved source and transferred to and on the Limited Food Establishment in a sanitary manner.
8. Prefilled individual single-service containers shall be provided for condiments such as sugar, mustard, ketchup, salt, pepper and relish.
9. All prepackaged individual servings of food shall be identified as to place of preparation and packaging, and last date of permitted sale. For temperature-controlled for safety (TCS) foods, the last day of permitted sale shall be the date of preparation, unless otherwise approved by the Department.
10. The operator of a mobile food establishment shall possess a current motor vehicle license. A valid vehicle registration is required for all mobile units.
11. The name and address of the person to whom the permit has been issued shall be displayed on or be clearly visible from the outside of the vehicle, adjacent to the area of the vehicle from which the food is served.
12. Wherever deemed necessary, the Commissioner or his/her designated representative shall require the attendance and satisfactory completion of food safety instruction approved by the Department, of any owner and/or employee of a mobile or other Limited Food Establishment.
13. Limited Food Establishments shall operate in conjunction with a commissary approved by the Department.

**§760-1371. Limited Food Establishment Commissary**

1. A Limited Food Establishment commissary shall comply with the requirements of Article 13 of the Suffolk County Sanitary Code and Part 14 of the New York State Sanitary Code not specifically stated in this section and shall be constructed, equipped and maintained so that:

- a. the interior of the building is clean, free from rodents and insects, odors, pooled water, garbage, debris and unnecessary materials and equipment;
- b. when interior areas are provided for vehicle cleaning, there is adequate space in the building to permit access for cleaning of the largest mobile unit, separate from storage areas for food, ingredients, equipment, tableware and utensils;
  - (i) such an area shall be physically separated from all food operations, and shall be provided with potable water and approved facilities for the drainage and disposal of liquid wastes and the storage of solid wastes.
- c. acceptable cleaning and sanitizing facilities are provided, including storage for cleaned equipment and utensils which protects them from contamination;
- d. lighting is not less than 30 foot candles at working surfaces in food handling and equipment cleaning areas;
- e. toilet and adjacent hand washing facilities are readily available to all employees of mobile units and the commissary, with hand washing signs posted at each hand washing facility, together with lockers for clothing and personal possessions;
- f. storage facilities are constructed and maintained to prevent contamination of all materials and supplies, including mixes, flavors, syrups, edibles, single-service items;
- g. a supply of hot and cold potable water under pressure is available whenever needed in quantities required for sanitation and other operations;
- h. all plumbing is constructed and installed in a manner to protect the water supply, food, equipment and utensils from contamination;
- i. all waste, sewage and waste water is disposed of in a system accepted by the permit issuing official without contamination of the premises; and
- j. the entire premises is operated and maintained in a sanitary condition, does not create a nuisance, and is not a potential source of contamination.

2. The operator shall maintain a log of all limited/mobile food establishments serviced, showing business name, address and phone number, permit-issuing department and permit number.

**§760-1372. Reserved**

**§760-1373. Reserved**

**§760-1374. Reserved**

**§760-1375. Reserved**

**§760-1376. Reserved**

**§760-1377. Reserved**

**§760-1378. Reserved**

**§760-1379. Reserved**

**§760-1380. Vending Machine Operations**

1. No person shall operate a food vending machine for the sale of packaged food or beverages in closed bottles or containers unless:

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

b. the machine is designed and constructed so as not to become a hazard to children or others while in use or under foreseeable conditions of abuse; temperature-controlled for safety (TCS) foods shall be kept at or below 41°F (5°C) or at or above 140°F (60°C);

c. the machine and the surrounding area are kept clean and sanitary.

2. No person shall operate a food vending machine for the sale of unpackaged food or for the sale of beverages other than in closed bottles or containers unless the requirements of §760-1380.1 are met and, in addition, the device is free from lead, cadmium or any other substance which may be so affected by the food or beverage as to form dangerous or deleterious compounds, or as to render food or beverage which comes in contact with such substance unwholesome or detrimental to health, or to impart odor, color or taste to the food.

3. When the food vending machine is connected to a water supply system, it shall be designed and constructed to prevent contamination of the water supply system. Devices which dispense carbonated beverages shall be equipped with an air gap at the water inlet, and a protective device to vent any leaking carbon dioxide to the atmosphere, or any other protective device approved by the Department which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. The water supply contact surfaces in devices which dispense carbonated beverages, from the protective device downstream including the protective device itself, shall not have any copper or copper lined components in contact with the water supply or

the beverage and any other components including any ice making and dispensing apparatus.

4. A machine vending temperature-controlled for safety food shall have an automatic control that prevents the machine from vending food:

a. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in §760-1332.3; and

(1) If a condition specified under subsection a. of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in §760-1332.3.

b. When the automatic shutoff within a machine vending temperature-controlled for safety food is activated:

(1) In a refrigerated vending machine, the ambient air temperature may not exceed 41°F (5°C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(2) In a hot holding vending machine, the ambient air temperature may not be less than 140°F (60°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

5. a. Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

b. Vending machines that dispense liquid food in bulk shall be:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

c. Shutoff devices specified under subparagraph b.(2) of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

6. a. Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1/16 inch or 1.5 millimeters by:

- (1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1/16 inch or 1.5 millimeters. Screening of 12 or more mesh to 1 inch (2.5 centimeters) meets this requirement;
- (2) Being effectively gasketed;
- (3) Having interface surfaces that are at least 1/2 inch or 13 millimeters wide;
- or
- (4) Jambs or surfaces used to form an L-shaped entry path to the interface.

b. Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1/16 inch or 1.5 millimeters.

c. A refuse receptacle may not be located within a vending machine.

7. Temperature-controlled for safety (TCS) food shall be dispensed in individual, original containers or wrappers in which it was packaged at the food vending machine commissary or food processing establishment. Temperature-controlled for safety (TCS) food shall not be dispensed from bulk supplies.

8. Temperature-controlled for safety (TCS) ready-to-eat foods dispensed from vending machines shall be clearly marked with the date by which the food must be consumed or discarded. That date shall be no more than seven days from the date of preparation (or removal from original packaging for commercially prepared products) if held below 41°F (5°C).

a. Refrigerated, ready-to-eat, temperature-controlled for safety (TCS) food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in §1330.4.a.1.

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

10. If located outside, a vending machine shall be provided with overhead protection.

**§760-1381. Reserved**

**§760-1382. Reserved**

**§760-1383. Reserved**

**§760-1384. Reserved**

**§760-1385. Reserved**

**§760-1386. Reserved**

**§760-1387. Reserved**

**§760-1388. Reserved**

**§760-1389. Reserved**

**§760-1390. Temporary Food Service.**

1. A temporary food establishment shall comply with all provisions of this Article applicable to its operation and adopted standards for the administration of this section. Permits for temporary food establishments shall be issued for a period of time not to exceed 14 days.
2. The Department may augment such requirements when needed to assure safe food.
3. When the Department determines that no imminent hazard to the public health will result, temporary food establishments which do not fully meet the requirements of this Article may be permitted to operate when food preparation and service are restricted and deviations from full compliance are covered by the additional or modified requirements as set forth below:
  - a. The preparation of temperature-controlled for safety (TCS) food, such as cream-filled pastries, custards, including synthetics and similar products, and meat, poultry, eggs and fish in the form of salads, or sandwiches, shall be prohibited, unless specifically approved by the Department.
  - b. This prohibition shall not apply to hamburgers, frankfurters, and other food which, prior to service, requires only limited preparation, such as seasoning and cooking; nor to any temperature-controlled for safety (TCS) food which is obtained in individual servings, is stored in approved facilities which maintain such food at safe temperatures, and is served directly in the individual original container in which it was packaged at an approved commercial food establishment.
4.
  - a. Ice which will be consumed, or which will come into contact with food, shall be obtained from an approved source only in chipped, crushed, or cubed form and dispensed in an approved manner.
  - b. Such ice shall be obtained in single-use plastic or wet strength paper bags which are filled and sealed at the point of manufacture and shall be held therein until used.
  - c. Ice chests and ice tables shall be equipped with an open drain.
5. Wet storage of packaged food and beverage shall be prohibited.
6. Food contact surfaces of food preparation equipment such as grills, stoves, and worktables shall be protected from contamination by consumers and other contaminating factors. Where necessary, effective shields for such equipment shall be provided.
7. Equipment shall be properly located and installed to facilitate cleaning the establishment and to prevent food contamination.

8. Adequate supply of water from an approved source shall be available for cleaning and hand washing in the establishment.
9. Heating facilities located on the premises and capable of producing an ample supply of hot water for such purpose shall be provided.
10. Liquid waste shall be disposed of in a manner which conforms to applicable state and local requirements so as not to create a public health hazard or nuisance.
11. Toilet facilities equipped with suitable hand sinks, an adequate supply of warm or tempered running water, soap and single-service towels from dispensers shall be made readily available to food employees and shall be located within 300 feet of all food vending facilities. Hand washing signs shall be posted.
12. Floors shall be maintained in a clean and dry condition and shall be surfaced in a manner satisfactory to the Department.
13. Operators of temporary food service establishments shall submit to the Department, as part of the application for a permit, an itinerary for all temporary events in which they participated for two weeks prior to the proposed event, and indicating all locations at which they intend to vend food or beverage for the two-week period after the proposed event. The itinerary shall include:
  - a. The address of the event.
  - b. The event organizer's name, address, and phone number.
  - c. The dates and times during which the applicant vended food or beverage, or, for future events, the dates and times the applicant intends to vend food or beverage.
  - d. An emergency contact number (if available) by which the Department can contact the applicant before, during, or after the event.
  - e. A complete menu of foods and beverages prepared, handled, dispensed, or stored at events during the two weeks prior to the proposed event, during the proposed event, and a similar listing for events at which the applicant plans to operate in the two weeks after the proposed event.
  - f. A list of employees and their duties at each event covering the two-weeks prior to the proposed event, during the proposed event, and for the two weeks after the proposed event.

## **Appendix A. Parasite Destruction**

Fish species currently identified as reasonably likely to contain the parasite hazard in the 2011 Edition of the FDA Fish and Fisheries Products Hazards and Controls Guide include the following: Sea Bass (all species), Capelin and roe, Chilean Sea Bass or Patagonian toothfish, Cobia, Cod (all species), Corvina (all species), Eelpout (all species), Flounder or Fluke (all species wild and aquacultured if fresh fish or plankton are used as feed), Grouper (all species), Gag, Halibut (all species wild and aquacultured if fresh fish or plankton is used as feed), Herring (all species), Hind (all species), Hogfish, Jacks (all species), Jewfish, Jobfish, Kahawai, Mackerel (all species), Monkfish, Mullet (all species), Ocean perch, Octopus, Plaice (all species), Pollock (all species), Rockfish (all species), Sablefish, Salmon and roe (all species wild ocean caught and aquacultured if fresh fish or plankton are used as food), Scad (all species), Sea trout, Crimson and Cardinal Snapper, Sole (all species), Sprat or Brisling, Squid, Thornyhead, Tomcod, Tonguesole, Trevally, Rainbow or Steelhead Trout (wild only), Skipjack Tuna, Black Skipjack Tuna, Longtail Tuna, Slender Tuna, Bullet Tuna, Frigate Tuna, Spotted Tunny, Little Tunny, Turbot (all species), Wenchman, and Wolffish.

## **Appendix B. Postings and Notifications to Consumers**

The following postings and notifications as required by this Article, Part 14 of the New York State Sanitary Code, Public Health Law of the State of New York, and Local Laws of the County of Suffolk are required in food service establishments:

1. First Aid for Choking (poster)
2. Consumer menu advisory regarding consumption of raw and undercooked foods
3. Nutrition Labeling Information when nutrient content claims are made
4. Notice that the last inspection is available to customers on request
5. Alcohol consumption warning
6. Smoking Prohibited signs, as per the NYS Clean Indoor Air Act and Suffolk County Code, Chapter 754
7. Permit to Operate a Food Service Establishment
8. Food Manager/Food Safety Certificate(s)
9. Employee hand washing signs in toilet rooms
10. Notice to patrons that resuscitation equipment is available
11. Caloric content information on chain restaurant menus

### **Appendix C. Reduced Oxygen Packaging, Criteria.**

(A) A food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* and/or *Listeria monocytogenes* are identified as microbiological hazards in the final packaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of *C. botulinum* and/or the growth of *L. monocytogenes*.

(B) A food establishment that packages food using a reduced oxygen packaging method and *C. botulinum* and/or *L. monocytogenes* are identified as microbiological hazards in the final packaged form shall have a HACCP plan that contains the information specified under §8-201.14 of the FDA Food Code and that:

(1) Identifies the food to be packaged;

(2) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* and/or *L. monocytogenes* because it complies with one of the following:

(a) Has a water activity value of 0.91 or less,

(b) Has a pH of 4.6 or less,

(c) Is a meat or poultry product cured at a food processing plant regulated by the U.S.D.A. using substances specified in 9 CFR 318.7 Approval of substances for use in the preparation of products and 9 CFR 381.147 Restrictions on the use of substances in poultry products and is received in an intact package, or

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

(3) Specifies methods for maintaining food at 41° F (5° C) or below;

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

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

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

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

(6) Includes operational procedures that:

(a) Prohibit contacting food with bare hands,

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

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

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

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

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

(a) Concepts required for a safe operation,

(b) Equipment and facilities, and

(c) Procedures specified under Subsection (B)(6) of this Appendix and §8-201.14 “Contents of a HACCP Plan” of the FDA Food Code.

(C) Except for fish that is frozen, before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

(D) Except as specified under paragraph (C) of this Appendix, a food establishment that packages food using a cook-chill or sous vide process shall:

(1) Implement a HACCP plan that contains the information as specified under subsection (B)(6) of this Appendix and §8-201.14 “Contents of a HACCP Plan” of the FDA Food Code

(2) Ensure the food is:

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

(b) Cooked to heat all parts of the food to a temperature and for a time as specified under §760-1333 of this Article,

(c) Protected from contamination before and after cooking,

(d) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 140°F (57°C),

(e) Cooled to 41°F (5°C) in the sealed package or bag as specified under §760-1333.5 of this Article and:

- (i) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within 30 days after the date of packaging;
- (ii) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C), removed from refrigeration equipment that maintains a 34°F (1°C) food temperature and then held at 41°F (5°C) or less for no more than 72 hours, at which time the food must be consumed or discarded;
- (iii) Cooled to 38°F (3°C) or less within 24 hours of reaching 41°F (5°C) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded; or,
- (iv) Held frozen with no shelf life restriction while frozen until consumed or used.

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

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

(h) Labeled with the product name and the date packaged; and

(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

- (i) Make such records available to the Commissioner or his/her designated representative upon request, and
- (ii) Hold such records for at least 6 months; and

(4) Implement written operational procedures as specified under subsection (B)(6) of this Appendix and a training program as specified under subsection (B)(7) of this Appendix.

## **Appendix D. Game Animals**

(A) If game animals are received for sale or service they shall be:

(1) Commercially raised for food and:

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

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

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

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

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

(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Voluntary Exotic Animal Program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 Rabbit Inspection Program;

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

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

(b) Slaughtered and processed according to:

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

(ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need

for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or

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

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

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

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

(B) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

## **Appendix E. Temperature-Controlled for Safety (TCS) Foods Exempted from Date Marking**

The following foods, prepared and packaged by a food processing establishment inspected by a regulatory authority, are exempted from compliance with §760-1330.5 of this Article:

(A) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food.

(B) Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and Related Cheese Products, such as cheddar, gruyere, parmesan and reggiano, and romano.

(C) Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and Related Cheese Products, such as blue, edam, gorgonzola, gouda, and Monterey jack.

(D) Cultured dairy products as defined in 21 CFR 131 Milk and Cream, such as yogurt, sour cream, and buttermilk.

(E) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified Foods.

(F) Shelf stable, dry fermented sausages, such as pepperoni and genoa salami that are not labeled “Keep Refrigerated” as specified in 9 CFR 317 Labeling, Marking Devices, and Containers, and which retain the original casing on the product.

(G) Shelf stable salt-cured products such as prosciutto and parma (ham) that are not labeled “Keep Refrigerated” as specified in 9 CFR 317 Labeling, Marking Devices, and Containers.

## **Appendix F. Managing Removal, Adjustment or Retention of Food Worker Exclusions and Restrictions**

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

(A) Except when a food employee is diagnosed with an infection from Hepatitis A virus or *Salmonella Typhi*:

- (1) Reinstatement a food employee who was excluded as specified under subsection 1340.4.a(1) of this Article if the food employee:
  - (a) Is asymptomatic for at least 24 hours; or
  - (b) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.
- (2) If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subsection 1340.4.a(2) of this Article, retain the exclusion for the food employee until the conditions for reinstatement as specified under subsections (D)(1) or (2) of this Appendix are met.
- (3) If a food employee was diagnosed with an infection from *Shigella* spp. and excluded as specified under subsection 1340.4.a(2) of this Article, retain the exclusion for the food employee until the conditions for reinstatement as specified under subsection (E)(1) of this Appendix is met.
- (4) If a food employee was diagnosed with an infection from enterohemorrhagic or Shiga toxin-producing *Escherichia coli* and excluded as specified under subsection 1340.4.a(2) of this Article, retain the exclusion for the food employee until the conditions for reinstatement as specified under subsection (F)(1) of this Appendix is met.

(B) Reinstatement a food employee who was excluded as specified under subsection 1340.4.b of this Article if the person in charge obtains approval from the Commissioner or his/her designated representative and one of the following conditions is met;

- (1) The food employee has been jaundiced for more than 7 calendar days;
- (2) The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; or
- (3) The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection.

(C) Reinstatement a food employee who was excluded as specified under subsection 1340.4.c of this Article if:

- (1) The food employee conforms to the requirements for the control of Typhoid contained in 10 NYCRR Part 2.28(b); and
- (2) The person in charge obtains approval from the Commissioner or his/her designated representative; and

(3) The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from *S. Typhi* infection.

(D) Reinstate a food employee who was excluded as specified under subsection 1340.4.a(2) or 1340.4.d of this Article if the person in charge obtains approval from the Commissioner or his/her designated representative and one of the following conditions is met:

- (1) The food employee was excluded after symptoms of vomiting or diarrhea resolved, and more than 72 hours have passed since the food employee became asymptomatic; or
- (2) The food employee was excluded and did not develop symptoms and more than 72 hours have passed since the food employee was diagnosed.

(E) Reinstate a food employee who was excluded as specified under subsection 1340.4.a(2) or 1340.4.e of this Article if the person in charge obtains approval from the Commissioner and the following condition is met:

- (1) The excluded food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a non-typhoidal *Salmonella* spp. or *Shigella* spp. infection based on test results showing 2 consecutive negative stool specimen cultures that are taken:
  - (a) Not earlier than 48 hours after discontinuance of antibiotics, and
  - (b) At least 24 hours apart;

(F) Reinstate a food employee who was excluded as specified under subsection 1340.4.a(2) or 1340.4.f of this Article if the person in charge obtains approval from the Commissioner and the following condition is met:

- (1) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from enterohemorrhagic or Shiga toxin-producing *Escherichia coli* based on test results that show 2 consecutive negative stool specimen cultures that are taken:
  - (a) Not earlier than 48 hours after discontinuance of antibiotics; and
  - (b) At least 24 hours apart;

(G) Reinstate a food employee who was excluded as specified under subsection 1340.4.g of this Article if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee has received antibiotic therapy for *Streptococcus pyogenes* infection for a minimum of 48 hours.

(H) Reinstate a food employee who was excluded as specified under subsection 1340.4.h of this Article if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

- (1) An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;

- (2) An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or
- (3) A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.

(I) Reinstate a food employee who was restricted as specified under subsection 1340.4.i of this Article and was exposed to one of the following pathogens as specified under subsection 1340.4.1.a(5) of this Article:

- (1) Norovirus and one of the following conditions is met:
  - (a) More than 72 hours have passed since the last day the food employee was potentially exposed; or
  - (b) More than 72 hours have passed since the food employee's household contact became asymptomatic.
- (2) *Shigella* spp. or enterohemorrhagic or Shiga toxin-producing *Escherichia coli* and one of the following conditions is met:
  - (a) More than 3 calendar days have passed since the last day the food employee was potentially exposed; or
  - (b) More than 3 calendar days have passed since the food employee's household contact became asymptomatic.
- (3) *S. Typhi* and one of the following conditions is met:
  - (a) More than 14 calendar days have passed since the last day the food employee was potentially exposed; or
  - (b) More than 14 calendar days have passed since the food employee's household contact became asymptomatic.
- (4) Hepatitis A virus and one of the following conditions is met:
  - (a) The food employee is immune to Hepatitis A virus infection because of a prior illness from Hepatitis A;
  - (b) The food employee is immune to Hepatitis A virus infection because of vaccination against Hepatitis A;
  - (c) The food employee is immune to Hepatitis A virus infection because of IgG administration;
  - (d) More than 30 calendar days have passed since the last day the food employee was potentially exposed; or
  - (e) More than 30 calendar days have passed since the food employee's household contact became jaundiced.

(Adopted 11/5/1975; Amended 3/13/1987, 12/10/2003, 6/27/2007, 10/28/2009, 3/18/2015)