

MEMORANDUM

City of Philadelphia
Date: 1/16/09

TO: Shelly Smith, City Solicitor
FROM: Jeanne Reedy, Administrative Services Director, Records Dept.
SUBJECT: Regulations Governing Establishments That Handle Food

The above Regulations promulgated by the Health Department were received in the Department of Records on 12/16/08 for filing and advertising. Inasmuch as there were no requests for hearings, these Regulations became effective midnight 1/15/09.

CC: Dr. Donald Schwarz, Health Commissioner
Dr. Palak Raval-Nelson, PhD., MPH

City of Philadelphia
Department of Public Health

Regulations Governing Establishments That Handle Food

Approved:

Board of Health
Law Department
Records Department

Section 1. The provisions of Subchapters A through G, and sections 46.1103 (Variances”), 46.1121 (“Facility and operating plans”), and 46.1122 (“HACCP plans”) of Chapter 46 (“Food Code”) of Title 7 of the Pennsylvania Code (Pa. Code), regulations of the Pennsylvania Department of Agriculture governing establishments that handle food for public consumption, are hereby incorporated in full, by reference, as the City of Philadelphia’s Regulations Governing Establishments That Handle Food, with the following additions, amendments and modifications.

Provisions of the Pennsylvania Food Code set forth for reference purposes are in regular type. Additions are in **Boldface** type. Words, phrases and provisions not adopted are in ~~Strikethrough~~.

CHAPTER 46. FOOD CODE

Subchapter A. PURPOSE AND DEFINITIONS.

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§46.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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Department -- ~~The Department of Agriculture of the Commonwealth.~~ **The Department of Public Health of The City of Philadelphia.**

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Food – An article used, or **intended to be used**, for food or drink by humans, including chewing gum and articles used for components of any articles. The term does not include medicines and drugs.

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Food Establishment --

(i) A retail food store and a room, building or place or portion thereof or vehicle or **stationary or movable stand, cart, basket, box or vending machine** maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food.

(ii) The term includes those portions of public eating and drinking licenses which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

(iii) The term does not include:

- (a) **railroad dining cars in transit; and**
- (b) **exclusively financial investment and brokerage transactions where food is not actually handled in the City.**

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Food facility -- A public or institutional eating or drinking place or, a retail food establishment or a food processing plant. ~~The term does not include the following:~~

- ~~(i) A food service facility provided by or at an organized camp or campground.~~
- ~~(ii) A food service facility provided by or at a school.~~
- ~~(iii) A food service facility at an institution such as a nursing home or hospital.~~
- ~~(iv) Any other food service facility that is not a public eating or drinking place.~~
- ~~(v) Food processing plants, warehousing establishments and other food establishments that comply with the following:~~
 - ~~(A) Are not retail food establishments.~~

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~~(B) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).~~

~~(C) Applicable Federal regulations.~~

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Food processing plant -- A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. ~~The term does not include a food facility.~~

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Institutional eating or drinking place -- A food service facility provided by or located at a school, camp, nursing home, hospital or similar institution.

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~~License - A grant to a licensee to operate a public eating or drinking place, as defined in the Public Eating and Drinking Places Law. A document issued by the City of Philadelphia which grants permission to operate a food establishment or food facility.~~

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Prepackaged food -- Food packaged in a manner that protects against adulteration at a location other than the retail or wholesale outlet at which it is sold and that is sold without alteration of such packaging.

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Subchapter B. MANAGEMENT AND PERSONNEL

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§ 46.102. Duties of the person in charge

The person in charge shall perform the following duties:

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(13) Ensure that at least one person with a valid Food Establishment Personnel Food Safety Certificate issued by the Department is on duty during all hours of operation.

(14) In the event of a fire, flood, power failure, water service shut-off or similar event that may result in food contamination, food spoilage or exposure of potentially hazardous food to unsafe storage temperatures, the person in charge shall immediately take necessary remedial action to prevent the adulteration of food. The person in charge shall immediately contact the Department to report such an occurrence. Upon receiving notice of the occurrence, the Department shall take such action deemed necessary to protect the public health.

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§ 46.103 Food Establishment Personnel Food Safety Certification

(a) **General Requirement.** No person shall operate a food establishment that handles, prepares or serves non-prepackaged potentially hazardous food who does not have present and in the employ of the food establishment at all hours of operation at least one (1) person with a valid Food Establishment Personnel Food Safety Certificate issued by the Department.

(b) **Exemptions.** Exemptions to this requirement are set forth in Section 6-301(9) of The Philadelphia Code.

(c) **Posting of the Certificate.** The operator of the food establishment shall post in a location conspicuous to the public in the food establishment the certificate of each certified employee who satisfies the requirement of subsection (a).

(d) **Safe Harbor.** A food establishment shall not be considered in violation of this section if:

(i) the operator or other person authorized by the operator of a food establishment notifies the Department in writing of non-compliance with any of the requirements of this section, which writing shall include and state reasons for non-compliance and steps being taken to timely comply; and

(ii) the Department determines that the establishment is taking all reasonable steps to timely comply.

(e) **Issuance of the Food Establishment Food Safety Certificate.** The Department shall issue a Food Establishment Personnel Food Safety Certificate to any person who submits the required application form supplied by the Department, pays the established fee, and provides documentation demonstrating that within five (5) years of the time of application the person has:

(i) successfully completed a food safety training program acceptable to the Department;

(ii) completed a food protection certification program of the Educational Testing Service for Occupational and Professional Assessments; or

(iii) received a certification or license from another regulatory agency for which the requirements are equal to or more stringent than the minimum requirements of the programs deemed acceptable by the Department.

(f) **Period of Certification.** Certification shall be valid for a period of five years beyond the date of completion of the safety program that qualifies the applicant for the certification.

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Subchapter C. FOOD.

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FOOD SOURCES

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§ 46.223 Custom Slaughtering or Processing

In addition to any other applicable requirements, game animals and other animals may only be custom slaughtered, processed or stored in compliance with the following:

(a) The Department must be notified annually of the establishment's intent to custom slaughter, process or store such animals;

(b) There shall be no cross contamination of food, equipment and food contact surfaces during storage and handling;

(c) Carcasses shall be processed at a separate time from the normal establishment operation;

(d) Equipment must be washed and sanitized immediately after processing game animals and before resuming regular activities of the establishment;

(e) After processing, there shall not be any visible dirt, filth, fecal matter or hair on the carcass;

(f) There must be an identifying tag on each carcass and each piece if quartered or divided, which tag(s) must have the owner's name, address and telephone phone number.

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Subchapter D. EQUIPMENT, UTENSILS AND LINENS

GENERAL STANDARD

§ 46.501. Acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program shall be deemed to comply with the applicable provisions of §§ 46.521 -- 46.523, 46.541 -- 46.544, 46.561 -- 46.563 and 46.581 -- 46.595. **All such equipment must be designed, constructed, installed and operated in accordance with the criteria of such accredited certification program. All equipment shall bear the appropriate testing agency mark, sticker, seal or certification in order to aid the licensee and Department in determination of approval. In addition, the manufacturer's name and model number shall appear on the equipment for identification.**

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§ 46.591. Warewashing machines.

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(f) **Conversion of warewashing machines. No warewashing machine shall be converted from hot water to chemical sanitization, or from chemical to hot water sanitization, unless such conversion is pursuant to ANSI-accredited sanitation standards.**

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§ 46.1121. Facility and operating plans.

(a) When plans are required. A food facility licensing applicant or food facility operator shall have plans and specifications reviewed by the Department or licenser and will submit these properly prepared plans and specifications ~~(as described in subsection (b)) to the Department or licenser for review and approval (using the~~

~~procedure described in § 1142 (relating to application procedure for appropriate license))~~ before any of the following :

- (1) The construction of a food facility.
- (2) The conversion of an existing structure for use as a food facility.
- (3) The remodeling of a food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of food facility or food operation if the Department or licenser determines that plans and specifications are necessary to ensure compliance with this chapter.
- (4) A change of ownership of a food facility.

(b) Exception. The requirements of this section shall not apply to establishments that offer for sale only prepackaged food, provided that:

- (1) food sales are not the principal enterprise of the establishment, and;**
- (2) less than 15% of the retail display area is used for food.**

~~(b)~~ **(c) Contents of the plans and specifications.** The plans and specifications for a food facility shall include (as required by the Department or licenser based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

- (1) Intended menu and consumer advisory intentions, if a consumer advisory is required under § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens).
- (2) Anticipated volume of food to be stored, prepared and sold or served.
- (3) Proposed layout **drawn to scale**, mechanical schematics, construction materials and finish schedules.
- (4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities and installation specifications.
- (5) Source of water supply, means of sewage disposal and refuse disposal.

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(6) An HACCP plan, if required under § 1122 (relating to HACCP plans).

(7) Any other information that may be required by the Department or ~~licensor~~ for the proper review of the proposed construction, conversion or modification of a food facility, and requested by the Department or ~~licensor~~ in writing.

(d) Applications form and fee. Plans and other materials submitted must be accompanied by a completed plan review application on a form provided by the Department and the fee required under The Philadelphia Code.

(e) Pre-Operational Inspection. Whenever plans and specifications are required pursuant to this section, the Department must conduct an inspection of the food establishment prior to the start of the food handling operation to determine compliance with the approved plans and specifications.

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Section 2. In addition to rules relating to administrative procedures incorporated pursuant to section 1, rules for administration and enforcement of these regulations are set forth in The Philadelphia Code.

Section 3. The "Regulations Governing Food Establishments" adopted by the Board of Health on September 10, 1996 (effective November 12, 1996) are hereby rescinded.

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