

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 257. FOOD ESTBALISHMENTS**

1. DESCRIPTION:

310:257-1-2. Definitions [AMENDED] Modified language to remove Home Bakery Act, removed restrictions for homemade food item in food establishment definition. Added multi-seasonal license definition.

310:257-1-4. Exemptions [AMENDED] Clairified exemption as it related to Homemade Food Freedom Act (HB 1032).

310:257-3-3. Person in charge [AMENDED] Added language to allow for foods made under HB 1032.

310:257-5-2. Compliance with food law [AMENDED] Removed prohibition on madding foods at a private home. Added compliance with alcohol laws.

310:257-5-68. Other forms of information [AMENDED] Added requirement from law about placards in retail stores, and added a advisory requirement for menus if restaurants use homemade food items.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Modified language to allow for items made under HB 1032.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

310:257-1-2. Definitions [AMENDED] Persons affected would be operators that produce homemade food items and seasonal operators that sell snow-cones that also would like to sell hot beverages in the off season. Cost impact will allow for more unlicensed homemade food producers. Will also allow for longer operation of some seasonals.

310:257-1-4. Exemptions [AMENDED] Persons affected would be home food operators. Cost impact will be more unlicensed homemade food producers.

310:257-3-3. Person in charge [AMENDED] Persons affected would be home food operators and persons in charge at food establishments. Cost impact will be more unlicensed homemade food producers.

310:257-5-2. Compliance with food law [AMENDED] Persons affected would be home food operators or establishments selling alcohol. Cost impact will be more unlicensed homemade food producers.

310:257-5-68. Other forms of information [AMENDED] Persons affected would be retail establishments and restaurants. Cost impact would be for posting placards and adding notices to menus.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Persons affected would be home food operators. Cost impact will be more unlicensed homemade food producers.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

310:257-1-2. Definitions [AMENDED] Persons benefiting would be home food producers and seasonals that would like to operate during their off season. Value for home food producers would be no license fees, inspections, or regulations while being able to sell their products in more areas. Value for multi-seasonals would be more time to operate. Possible increase in food borne illness since home food establishments will not be inspected or regulated.

310:257-1-4. Exemptions [AMENDED] Persons benefiting would be home food producers. Value for home food producers would be no license fees, inspections, or regulations while being able to sell their products in more areas. Possible increase in food borne illness since home food establishments will not be inspected or regulated.

310:257-3-3. Person in charge [AMENDED] Persons benefiting would be home food producers. Value for home food producers would be no license fees, inspections, or regulations while being able to sell their products in more areas. Possible increase in food borne illness since home food establishments will not be inspected or regulated.

310:257-5-2. Compliance with food law [AMENDED] Persons benefiting would be home food producers. Value for home food producers would be no license fees, inspections, or regulations while being able to sell their products in more areas. Possible increase in food borne illness since home food establishments will not be inspected or regulated.

310:257-5-68. Other forms of information [AMENDED] Persons benefiting would be the consumer of homemade food items. Value of benefit is to know where their food products are coming from. Health outcomes would be a better-informed consumer.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Persons benefiting would be home food producers. Value for home food producers would be no license fees, inspections, or regulations while being able to sell their products in more areas. Possible increase in food borne illness since home food establishments will not be inspected or regulated.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

310:257-1-2. Definitions [AMENDED] Economic impact would be more small operators not having to purchase food licenses and more competition for brick and mortar food establishments. Economic impact of multi-seasonal establishments will be that they can earn more revenue for the owner. Cost of compliance is minimal since the home food producer is outside of the regulations of the Health Department. Only cost of compliance for the multi-seasonal is the license fee. No fee changes for home food producers, just exemptions from licensing. Multi-seasonal license field is established at the same rate as other year round establishments.

310:257-1-4. Exemptions [AMENDED] Economic impact would be more small operators not having to purchase food licenses and more competition for brick and mortar food establishments. Cost of compliance is minimal since the home food producer is outside of the regulations of the Health Department. No fee changes for home food producers, just exemptions from licensing.

310:257-3-3. Person in charge [AMENDED] Economic impact would be more small operators not having to purchase food licenses and more competition for brick and mortar food establishments. Cost of compliance is minimal since the home food producer is outside of the regulations of the Health Department. No fee changes for home food producers, just exemptions from licensing.

310:257-5-2. Compliance with food law [AMENDED] Economic impact would be more small operators not having to purchase food licenses and more competition for brick and mortar food establishments. Cost of compliance is minimal since the home food producer is outside of the regulations of the Health Department. Cost of compliance for alcohol laws will depend on ABLE rules. No fee changes for home food producers, just exemptions from licensing.

310:257-5-68. Other forms of information [AMENDED] Economic impact will be minimal for placards and menus. Cost of compliance is creation of placards and adding advisory to menu.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Economic impact would be more small operators not having to purchase food licenses and more competition for brick and mortar food establishments. Cost of compliance is minimal since the home food producer is outside of the regulations of the Health Department. No fee changes for home food producers, just exemptions from licensing.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

Cost of implementation for the agency is related to staff time for training, education, and answering questions. Other costs would be for development of educational materials. Benefits would be less enforcements on home based food operations.

6. IMPACT ON POLITICAL SUBDIVISIONS:

There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. ADVERSE EFFECT ON SMALL BUSINESS:

There is no major adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act. There will be some competition to brick and mortar stores from businesses that do not have to invest the same amount for licensing, space, and compliance.

8. EFFORTS TO MINIMIZE COSTS OF THE RULE:

There are no less costly means currently identified.

9. EFFECT ON PUBLIC HEALTH AND SAFETY:

310:257-1-2. Definitions [AMENDED] Possible increase in food borne illness due to home food producers not being inspected or regulated and with more options to sell their products.

310:257-1-4. Exemptions [AMENDED] Possible increase in food borne illness due to home food producers not being inspected or regulated and with more options to sell their products.

310:257-3-3. Person in charge [AMENDED] Possible increase in food borne illness due to home food producers not being inspected or regulated and with more options to sell their products.

310:257-5-2. Compliance with food law [AMENDED] Possible increase in food borne illness due to home food producers not being inspected or regulated and with more options to sell their products.

310:257-5-68. Other forms of information [AMENDED] Better informed consumer related to home food products being sold in retail settings and restaurants.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Possible increase in food borne illness due to home food producers not being inspected or regulated and with more options to sell their products.

10. DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:

none

11. PREPARATION AND MODIFICATION DATES:

This rule impact statement was prepared on September 11, 2021.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 257. FOOD ESTABLISHMENTS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 1. Purpose and Definitions

310:257-1-2. Definitions [AMENDED]

310:257-1-4. Exemptions [AMENDED]

Subchapter 3. Management and Personnel

310:257-3-3. Person in charge [AMENDED]

Subchapter 5. Food

310:257-5-2. Compliance with food law [AMENDED]

310:257-5-68. Other forms of information [AMENDED]

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED]

SUMMARY:

These rules added the provisions of HB 1772, which added a multi-seasonal license and HB 1032, the Homemade Food Freedom Act.

310:257-1-2. Definitions [AMENDED] References to the Home Bakery Act were removed. Food Establishment definition modified to allow for homemade food items. Multi-seasonal license defined.

310:257-1-4. Exemptions [AMENDED] Updated homemade foods to reflect HB 1032.

310:257-3-3. Person in charge [AMENDED] Added language to have food made under HB1032 provisions be considered an approved source.

310:257-5-2. Compliance with food law [AMENDED] Removed prohibition about homemade food. Added alcohol law compliance.

310:257-5-68. Other forms of information [AMENDED] Added a placard requirement listed in law and added an advisory for the menu of a restaurant that uses homemade food items.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food [AMENDED] Modified language to allow for HB1032 homemade items.

AUTHORITY:

Commissioner of Health, Title 63 O.S. § 1-104; Title 63 O.S. § 1-1118

COMMENT PERIOD:

November 15, 2021 through the close of the Department's normal business hours, 5 PM, on December 15, 2021. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on December 15, 2021, submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on December 15, 2021 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is January 7, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through the close of the Department's normal business hours, 5 PM, on December 15, 2021, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 257. FOOD ESTABLISHMENTS**

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

310:257-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. The American National Standards Institute - Conference for Food Protection (ANSI-CFP) Accreditation programs include but are not limited to: National Restaurant Association Solutions; LLC (ServeSafe); Prometric, Inc.; 360training.com; and National Registry of Food Safety Professionals.

(A) Accredited program refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline, and grievance procedures; and test development and administration.

(B) Accredited program does not refer to training functions or educational programs.

"Additive" as used in this Chapter shall have the same meaning for the following terms:

(A) **"Color additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 CFR, Part 70.

(B) **"Food additive"** has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 CFR, Part 170.

"Adulterated" means the definition in 63 O.S. Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical conditions, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

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

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific state of development after which it is removed from incubation before hatching.

"Beverage" means a liquid for drinking, including water.

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

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certified applicator" means any individual who is certified under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq. and/or by the Oklahoma State Department of Agriculture Food and Forestry as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

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

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

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

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

"Commingle" means to combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or to combine shucked shellfish from containers with different container codes or different shucking dates.

"Comminuted" means 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 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

"Commissary" means a facility used to maintain safe and sanitary operations for the cleaning and servicing of pushcarts, mobile retail units, or mobile food establishments; and for the storage of food and single service articles used in those units.

"Common dining area" means a central location in a group residence where people gather to eat at mealtime but does not apply to a kitchenette or dining area located within private living quarters.

"Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

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

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

"Cook/Chill" means the process of placing food, heated to a temperature as required in OAC 310:257-5-46 or OAC 310:257-5-48, and held at a temperature of 135°F or hotter, into an impermeable bag, then cooling the food to a temperature of 41°F or less as required under OAC 310:257-5-57.

"Co-Op" means an establishment meeting the requirements in the Cooperative Corporations Chapter at 18 O.S. §§ 421 et seq. and selling food products produced as described in the ~~Home Bakery Act of 2013~~ at 2 O.S. §§ 5-4.1 et seq.

"Core item" means a provision of this Chapter that is not designated as a priority item or priority foundation item and includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design or general maintenance.

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

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

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

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Customer self-service" means customer selection and packaging of a bulk food product from a product module.

"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.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Department" means the Oklahoma State Department of Health and a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under 63 O.S. § 101 et seq. and this Chapter, or an authorized agent thereof.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

"Drinking water" means water that meets criteria as specified in 40 CFR, Part 141 National Primary Drinking Water Regulations. It is traditionally known as "potable water." Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that are not Time Temperature Control for Safety Foods and dry goods such as single-service items.

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

"Easily movable" means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. Egg does not include a balut and it does not include reptile species such as alligator or an egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs. Egg product does not include food which contains eggs only in a relatively small proportion such as cake mixes.

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

"EPA" means the U.S. Environmental Protection Agency.

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

"Event or celebration" means an occasional scheduled social gathering, with a designated event organizer in charge, which is open to the general public, and that has been organized for a special occasion or purpose, having a limited time or serving a specific function.

"Exclude" means to prevent a person from working as a food employee or entering a food establishment as an employee.

"Farmers Hub" means a designated area as described under 2 O.S. Section 5-3A.1 et seq.

"Farmers Market" means a designated area in which farmers, growers, or producers from a defined region gather on a regularly scheduled basis to sell at retail Non-Time/Temperature Control for Safety farm food products and whole shell eggs to the public as described under 2 O.S. Section 5-3A.1 et seq.

"FDA" means the U.S. Food and Drug Administration.

"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.

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

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

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

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means an operation that stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite, commissary, or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) Food establishment includes: An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the Department; or an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.

(B) Food establishment does not include:

(i) Food processing plant; including those that are located on the premises of a food establishment;

(ii) A kitchen in a private home ~~if only food that is not Time/Temperature Control for Safety is prepared for sale or service at a function such as a religious or charitable organization's~~

~~bake sale 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;~~

~~(iii) An area where food that is prepared as specified in paragraph (B)(ii) of this definition is sold or offered for human consumption that meets exemptions listed at OAC 310:257-1-4;~~

~~(iv) A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed the number allowed by 63 O.S. §§ 1201 et seq., and breakfast is the only meal offered;~~

~~(v) A private home that receives catered or home-delivered food;~~

~~(vi) Incidental sales; or~~

~~(vii) A produce stand that offers only whole, uncut and unprocessed fresh fruits, melons, vegetables and legumes and/or whole uncracked and unprocessed tree nuts.~~

"Food establishment - fee exempt" means a food establishment that utilizes non-paid persons by a nonprofit, civic, charitable, or religious organization primarily for benevolent purposes.

(A) Fee exempt licensees shall comply with the applicable sections of these rules depending upon the type of operation involved; e.g., food service, retail food, combination, temporary, or mobile.

(B) Fee exempt licenses, except temporary licenses, shall not expire but shall remain in full force and effect until revoked, suspended, annulled, or withdrawn by the Commissioner in accordance with applicable law.

(C) A license is not required for a non-profit civic, charitable or religious organization, using non-paid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

"Game animal" means an animal, the products of which are food, that is not included in the definitions of 2 O.S. Section 6-183 et seq. (cattle, bison, sheep, swine and goats). Equines are not included due to the provisions of Title 2 O.S. Section 6-192 (prohibits the use of equine for food), 2 O.S. Section 6-251 et seq. (poultry, including any domestic bird whether live or dead), 2 O.S. Section 6-280.1 et seq. (domesticated rabbits whether live or dead), 2 O.S. Section 6-290.3 et seq. (exotic livestock including commercially raised livestock and including but not limited to animals of the families bovidae, cervidae, antilocapridae or in the definitions of fish in this Section).

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175 Pesticides classified for restricted use.

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

"HACCP" means Hazard Analysis Critical Control Point.

"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.

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for washing of the hands. Handwashing sink includes an automatic handwashing facility.

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

"Health practitioner" means a physician licensed to practice medicine, a nurse practitioner, physician assistant, or similar medical professional.

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

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

- (A) Immunocompromised; preschool age children or older adults; and
- (B) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

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

"Impermeable" means incapable of allowing liquids to pass through the covering.

"Incidental sale" means the sale of food on the premises where food is not a primary reason to frequent the establishment, but where prepackaged, non-Time/Temperature Control for Safety Food from an approved source is offered for purchase as a convenience to the customer, and no product is kept in back stock.

"Injected" means manipulating meat in which a solution has been introduced into its interior by processes which are referred to as "injecting," "pump marinating," or "stitch pumping."

"Intact Meat" means a cut of whole muscle(s) meat that has not undergone comminution, injection, mechanical tenderization or reconstruction.

"Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"License" means the document issued by the Department that authorizes a person to operate a food establishment.

"License holder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean, such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from a food specified above.

(A) Major food allergen does not include: Any highly refined oil derived from a food specified in Major Food Allergen definition and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, bison, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals.

"Mechanically tenderized" means meat manipulated with deep penetration by processes which may be referred to as: "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device. Mechanically tenderized does not include processes by which solutions are injected into meat. See the definition for injected.

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

"Misbranding" means the definition contained in 63 O.S. Section 1-1110.

"Mobile food establishment" means a facility that prepares food and is vehicle mounted (is Department of Transportation road approved, including wheels and axles), is readily moveable and remains at one physical address for no more than twelve (12) hours at one time.

"Mobile pushcart" means a non-self propelled food unit that can be manually moved by one (1) average adult person.

"Mobile retail food establishment" means a unit which sells packaged foods from a stationary display at a location that is away from the unit but still at the same physical address, such as a table at a fair or farmer's market, for no more than twelve (12) hours, provided the licensed unit is on premise and readily available for inspection and the food has been prepared in a facility that is regulated by the Good Manufacturing Practices in Title 21 of the CFR or regulated as a license holder pursuant to OAC 310:260, Good Manufacturing Practice Regulations, Oklahoma Department of Agriculture, Food and Forestry, the United States Department of Agriculture, or this Chapter. Mobile food establishments selling only prepackaged foods and engaging in no preparation are not required to pay a plan review fee.

"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.

"Multi-Seasonal food establishment" means a facility that is under one ownership, is open year-round, and that shall serve snow cones and hot beverages with use of liquid milk.

"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.

"OAC" means Oklahoma Administrative Code.

"Occasional" means not habitual; random, irregularly or infrequent and used for special, occasional social gatherings for an event or celebration acting in a specified capacity from time to time, that does not exceed more than four (4) times per year, unless approved by the Department.

"O.S." means Oklahoma Statute.

"Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer by a food employee upon consumer request.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of the inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. It may include items such as medicines; first aid supplies; other items such as cosmetics; and toiletries such as toothpaste and mouthwash.

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

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

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

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

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

- (A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (B) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
- (C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, ratites, guineas or squabs), whether live or dead, as defined in 9 CFR, Part 381 and any migratory waterfowl, game bird, such as pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR, Part 362.

"Premises" means:

- (A) The physical facility, its contents, and the contiguous land or property under the control of the license holder; or
- (B) The physical facility, its contents, and the land or property not under the control of the license holder, unless its facilities and contents are under the control of the license holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

"Priority item" means a provision in this Chapter the application of which contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazards. Priority item includes an item with a quantifiable measure to show control of hazards such as cooking, reheating, cooling or handwashing.

"Priority foundation item" means a provision in this Chapter whose application supports, facilitates, or enables one or more priority items. "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

"Ready-to-eat food" means

- (A) food that is in a form that is edible without additional preparation to achieve food safety, as specified under OAC 310:257-5-46(a)-(c) or OAC 310:257-5-47 or OAC 310:257-5-49, or is a raw or partially cooked animal food and the consumer is advised as specified under OAC 310:257-5-46(d)(1) and (3); or is prepared in accordance with a variance that is granted as specified under OAC 310:257-5-46(d)(4); and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes and
- (B) includes raw animal food that is cooked as specified under OAC 310:257-5-46 or OAC 310:257-5-47, or frozen as specified under OAC 310:257-5-49; raw fruits and vegetables that are washed as specified under OAC 310:257-5-27; fruits and vegetables that are cooked for hot holding, as specified under OAC 310:257-5-48; All Time/Temperature Control for Safety Food that is cooked to the temperature and time required for the specific food under OAC 310:257-5-46 through 310:257-5-48.1 and cooled as specified under OAC 310:257-5-57; Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed; substances derived from plants such as spices, seasonings, and sugar; a bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety; The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for

pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; dried meat and poultry products, such as jerky or beef sticks; and foods manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

"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;

(B) A process as specified in paragraph (A) of this definition that involves a food for which hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form;

(C) Reduced oxygen packaging includes 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;

(D) 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;

(E) 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

(F) Cook chill packaging, as described in OAC 310:257-5-64(d)(E); and

(G) Sous vide packaging, as described in OAC 310:257-5-64(d)(D).

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means a representative, such as an onsite inspector, of the Department.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Re-Service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"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; and unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR, Part 590.

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

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means:

(A) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(B) An additive that is used as specified in Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(C) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Seasonal food establishment" means a facility that is open no more than 180 consecutive days per physical address per year. The seasonal food establishment is limited to serving coffee and snow cones with use of liquid milk, individually packaged ice cream products, uncut raw fruits, uncut raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-Time/Temperature Control for Safety Foods. Seasonal food establishments selling only prepackaged foods and engaging in no preparation are not required to pay a plan review fee.

"Service animal" means an animal such as a guide dog, signal dog, or other animal as allowed by the ADA, individually trained to provide assistance to an individual with a disability. Service animals are working animals, not pets. The work or task an animal has been trained to provide must be directly related to the person's disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly, for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

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

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

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia coli* (STEC)" means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea) to hemolytic uremic syndrome (HUS—a type of kidney failure). Examples of serotypes of STEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; and *E. coli* O111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic *E. coli*) or as EHEC (Enterohemorrhagic *E. coli*). EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

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

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under OAC 310:257-7-1, OAC 310:257-7-13 and OAC 310:257-7-15 for multiuse utensils.

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

"Smooth" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel; A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Sous Vide" means a method of cooking 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.

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

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

"Tempered" means a mixture of hot and cold water between 100°F and 120°F.

"Temporary food establishment" means a food establishment where food is offered for sale or sold at retail from a fixed, temporary facility in conjunction with a single event or celebration not to exceed fourteen (14) consecutive days.

"Time/Temperature Control for Safety Food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(A) Time/Temperature Control for Safety Food includes:

- (i) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
- (ii) Except as specified (B)(iv) of this definition, a food that because of the interaction of its a_w and pH values is designated in the Product Assessment Required (PA) in Tables 1 or 2 of Appendix A of this Chapter:

(B) Time/Temperature Control for Safety Food does not include:

- (i) 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*;
- (ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (iii) A food that because of its a_w or pH value, or interaction of a_w and pH value, is designated as a non-TCS food as listed in Table 1 or 2 of Appendix A of this Chapter;
- (iv) A food that is designated as Product Assessment Required (PA) in Table 1 or 2 of Appendix A of this Chapter and has undergone a Product Assessment showing that the growth or toxin information of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
 - (I) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants or nutrients;
 - (II) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf-life and use, or temperature range of storage and use; or
 - (III) A combination of intrinsic and extrinsic factors; or
- (v) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with (B)(i) - (B)(iv) of this definition above, even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"USDA" means the U.S. Department of Agriculture.

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

"Variance" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Chapter, if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, key, or by electronic transaction, or by optional manual operation, dispenses unit servings of

food in bulk or in packages without the necessity of replenishing the device between each vending operation.

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

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

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

310:257-1-4. Exemptions

(a) The food establishment definition does not include a food processing plant; a facility that sells only commercially pre-packaged, non-Time/Temperature Control for Safety Foods, from an approved source, which are incidental to the business, and does not have food in storage; a kitchen in a private home that is in compliance with 2 O.S. 5-4.1 et seq if only Non Time/Temperature Control for Safety food is prepared for sale or service at a function such as a religious or charitable organization's bake sale; a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the number of available guest bedrooms does not exceed the number allowed by 63 O.S. §§ 1201 et seq. and breakfast is the only meal offered; a lodging facility that is serving food according to OAC 310:285-3-14, Lodging Establishments; a private home that receives catered or home-delivered food; ~~or~~ individual farmers' market vendors that are in compliance with the definition of a farmers' market and hold a food processors license from the Oklahoma Department of Health, small egg packer license, licensed by the Oklahoma Department of Agriculture, Food and Forestry ~~and/or~~; a produce stand that offers only whole, uncut and unprocessed fresh fruits, melons, vegetables and legumes and/or whole uncracked and unprocessed tree nuts; or other locations specifically exempted in law.

(b) Persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S. §§ 15-67 are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. § 1-1118(B)(3) in regards to licensure.

(2) The consumer shall be informed by a clearly visible placard, at least eight (8) inches by eleven

(11) inches, at the sales or service location, which states "This food is prepared in a kitchen that is not inspected by the Oklahoma Department of Health".

SUBCHAPTER 3. MANAGEMENT AND PERSONNEL

310:257-3-3. Person in charge

The person in charge shall ensure that:

(1) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters;

(2) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Chapter;

(4) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

(5) Employees are visibly observing foods as they are received to determine that they are from approved or lawful sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

(6) Employees are verifying that foods delivered to the food establishment during non-

operating hours are from approved or lawful sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented;

(7) Employees are properly cooking Time/Temperature Control for Safety Food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated;

(8) Employees are using proper methods to rapidly cool Time/Temperature Control for Safety Foods that are not held hot or are not for consumption within four (4) hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(9) Employees are properly maintaining the temperatures of Time/Temperature Control for Safety Foods during hot and cold holding through daily oversight of the employees' routine monitoring of food temperatures;

(10) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed that the food is not cooked sufficiently to ensure its safety;

(11) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

(12) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;

(13) Except when otherwise approved, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(14) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties;

(15) Food employees and conditional employees are informed, in a verifiable manner, of their responsibility to report, in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under OAC 310:257-3-4(a); and

(16) Written procedures and plans, where specified by this Chapter and as developed by the food establishment, are maintained and implemented as required.

SUBCHAPTER 5. FOOD

310:257-5-2. Compliance with food law

(a) Food shall be obtained from sources that comply with this Chapter.

~~(b) Food prepared in a private home shall not be used or offered for human consumption in a food establishment.~~

~~(b)~~ ~~(e)~~ Packaged food shall be labeled as specified in 21 CFR, Part 101 Food Labeling, 9 CFR, Part 317 Labeling, Marking Devices, and Containers, and 9 CFR, Part 381 Subpart N Labeling and Containers, and as specified in this chapter.

~~(c)~~ ~~(d)~~ Fish, other than those specified under OAC 310:257-5- 49(b), that are intended for consumption in their raw or undercooked form and allowed as specified under OAC 310:257-5-46(d)(1), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under OAC 310:257-5-49; or frozen on the premises as specified under OAC 310:257-5-49 and records are retained as specified under OAC 310:257-5-50.

~~(d)~~ ~~(e)~~ Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified under OAC 310:257-5-46(c) shall be:

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

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

(3) If individually cut in a food establishment:

(A) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in OAC 310:257-5-2 (e)(1) and (e)(2),

(B) Prepared so they remain intact, and

(C) If packaged for undercooking in a food establishment, labeled as specified in (e)(1) of this Section or identified as specified in (e)(2) of this Section.

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

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

(g) Alcohol sales and service may only be conducted as allowed by law.

310:257-5-68. Other forms of information

(a) If required by law, consumer warnings shall be provided.

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

(c) For homemade food products produced under 2 O.S. 5-4.1 et seq. that are to be sold in a food establishment, a disclosure that states: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens." shall be:

(1) Posted at the point of sale; or

(2) If used to produce another food product, cited on the menu.

310:257-5-70. Discarding or reconditioning unsafe, adulterated, or contaminated food

(a) A food that is unsafe, adulterated, or not honestly presented as specified under OAC 310:257-5-1 shall be discarded or reconditioned according to an approved procedure.

(b) Food that is not from ~~an approved a source as specified under OAC 310:257-5-2 through 310:257-5-8~~ approved by law shall be discarded.

(c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 310:257-3-5 shall be discarded.

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

(e) Food may be examined or sampled by the Department as often as necessary for enforcement of these rules and regulations. The Department may place an embargo on food in accordance with the provisions of Title 63 O.S. Section 1-1105.