

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 258. UNATTENDED FOOD ESTABLISHMENTS**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Purpose and Definitions

310:258-1-2. Definitions [AMENDED]

Subchapter 3. Operations

310:258-3-4. Storing maintenance tools [AMENDED]

Subchapter 7. Food

310:258-7-6. Compliance with food law [AMENDED]

310:258-7-9. Milk products [AMENDED]

Subchapter 9. Equipment Construction

310:258-9-14. Microwave ovens [REVOKED]

Subchapter 13. Administration

310:258-13-1. Preventing health hazards, provision for conditions not addressed [AMENDED]

310:258-13-5. Preoperational inspections [AMENDED]

310:258-13-7. Unattended food establishment license fee [AMENDED]

310:258-13-8. Form of submission [AMENDED]

310:258-13-10. Contents of the application [AMENDED]

310:258-13-13. Denial of application for license, notice [AMENDED]

310:258-13-14. Responsibilities of the license holder [AMENDED]

310:258-13-18. Allowed at reasonable times after due notice [AMENDED]

310:258-13-19. Refusal, notification of right to access, and final request for access [AMENDED]

310:258-13-20. Refusal, reporting [AMENDED]

310:258-13-22. Documenting information and observations [AMENDED]

310:258-13-23. Issuing report and obtaining acknowledgment of receipt [AMENDED]

310:258-13-24. Refusal to sign acknowledgment [AMENDED]

310:258-13-26. Ceasing operations and reporting [AMENDED]

310:258-13-27. Resumption of operations [AMENDED]

310:258-13-28. Timely correction [NEW]

310:258-13-29. Documentation of correction [AMENDED]

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Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

GIST/ANALYSIS:

310:258-1-2. The current rule gives definitions used in this Chapter. The proposed rule includes grammatical corrections and removed definitions not applicable to a food venue that does not prepare food items.

310:258-3-4. The current rule describes how to store cleaning tools. The proposed rule includes grammatical corrections.

310:258-7-6. The current rule describes approved sources of food items. The proposed rule includes grammatical corrections and removal of language preventing home made food items.

310:258-7-9. The current rule set standards for milk and dairy products. The proposed rule includes grammatical corrections.

310:258-9-14. The current rule describes standards for microwave ovens. The proposed rule removes this section as cooking and reheating not allowed in this venue.

310:258-13-1. Preventing health hazards, provision for conditions not addressed [AMENDED] Clarifying language.

310:258-13-5. Preoperational inspections [AMENDED] Clarifying language.

310:258-13-7. The current rule sets licensure and renewal fees. The proposed rule includes grammatical corrections

310:258-13-8. Form of submission [AMENDED] Clarifying language.

310:258-13-10. Contents of the application [AMENDED] Clarifying language.

310:258-13-13. Denial of application for license, notice [AMENDED] Clarifying language.

310:258-13-14. Responsibilities of the license holder [AMENDED] Clarifying language.

310:258-13-18. Allowed at reasonable times after due notice [AMENDED] Clarifying language.

310:258-13-19. Refusal, notification of right to access, and final request for access [AMENDED] Clarifying language.

310:258-13-20. Refusal, reporting [AMENDED] Clarifying language.

310:258-13-22. Documenting information and observations [AMENDED] Clarifying language.

310:258-13-23. Issuing report and obtaining acknowledgment of receipt [AMENDED] Clarifying language.

310:258-13-24. Refusal to sign acknowledgment [AMENDED] Clarifying language.

310:258-13-26. Ceasing operations and reporting [AMENDED] Clarifying language.

310:258-13-27. Resumption of operations [AMENDED] Clarifying language.

310:258-13-28. There is no current rule. The proposed rule sets a standard correction timeframe for violations as ten (10) calendar days.

310:258-13-29. Documentation of correction [AMENDED] Clarifying language.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

310:258-1-2. Definitions

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

"Additive" means as used in this Chapter for the following terms:

(A) **"Color additive"** means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(t) and 21 CFR, Part 70.

(B) **"Food additive"** means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(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.

"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.

"Certified applicator" means any individual who is certified under the Federal Herbicide, Fungicide, and Rodenticide Act, U.S.C., Section 136(e)(1) 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.

"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.

"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.

"Community water system" means any public water supply system, which serves at least 15 service connections, used year round or regularly serves 25 customers per day.

"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 an unattended food establishment or food processing plant, and does not offer the food for resale.

"Controlled entry" means selective restriction or limitation of access to a place or location.

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

"Customer self-service" means customer selection of a prepackaged 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 leafy 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.

"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. ~~the Oklahoma Public Health Code 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.~~

"Dispensed beverage" means a beverage or ice that is dispensed in its unpackaged form from a machine.

"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.

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

"Equipment" means an article that is used in the operation of an unattended food establishment such as a freezer, reach-in refrigerator, ~~microwave oven~~, or temperature measuring device for ambient air. 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.

"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.

"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, food establishment, or unattended food establishments.

"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.~~

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

"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.

"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.

"Juice" means, when used in the context of food safety, 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.

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

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

"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 Federal Food, Drugs, and Cosmetics Act, 21 U.S.C. Section 343.

"Non-community water system" means any public water supply system, which serves an average of at least 25 individuals at least 60 days per year and is not a community water system.

"OAC" means Oklahoma Administrative Code.

"O.S." means Oklahoma Statute.

"Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food processing plant.

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

"Physical facilities" means the structure and interior surfaces of an unattended food establishment including accessories 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.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder or the contracted establishment.

"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.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR, Section 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.~~

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

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

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

"Single-use articles" means utensils and food containers designed and constructed to be used once and discarded.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the ambient air temperature within a cold holding unit.

"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. Time/Temperature Control for Safety Food includes: 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 that results in mixtures that do not support growth or toxin formation.

"Unattended food establishment" means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public.

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

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, 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.

SUBCHAPTER 3. OPERATIONS

310:258-3-4. Storing maintenance tools

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be: ~~Stored~~ stored so they do not contaminate food, equipment, utensils, and single-service articles.

SUBCHAPTER 7. FOOD

310:258-7-6. Compliance with food law

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

~~(b) An establishment may eat sell packaged foods prepared by a facility that is in compliance with OAC 310:260 (relating to good manufacturing practices), United States Department of Agriculture, or the Oklahoma Department of Agriculture Food and Forestry.~~

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

310:258-7-9. Milk products

(a) Food products listed below shall meet standards as ~~As specified in 2 O.S. Section 7-401 et seq., food products listed below shall in the case of:~~

(1) ~~Milk products shall be obtained pasteurized and comply with Grade A Standards;~~

~~(2) Frozen milk products, such as ice cream; and~~

~~(3)(2) Cheese.~~

(b) Milk products shall be obtained pasteurized and in compliance with Grade A Standards.

SUBCHAPTER 9. EQUIPMENT CONSTRUCTION

310:258-9-14. Microwave ovens [REVOKED]

~~(a) Microwave ovens shall meet the safety standards specified in 21 CFR, Section 1030.10 Microwave ovens.~~

~~(b) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.~~

SUBCHAPTER 13. ADMINISTRATION

310:258-13-1. Preventing health hazards, provision for conditions not addressed

(a) If necessary to protect against public health hazards or nuisances, the Department may impose specific requirements in addition to the requirements contained in this Chapter that are authorized by law.

(b) ~~The Department~~ regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the license applicant or license holder and a copy shall be maintained in the Department file for the unattended food establishment.

310:258-13-5. Preoperational inspections

The ~~Department~~ regulatory authority shall conduct one or more preoperational inspections to verify that the unattended food establishment is constructed and equipped in accordance with the approved plans and is in compliance with law and this Chapter.

310:258-13-7. Unattended food establishment license fee

- (a) The following are associated fees for unattended food establishments.
 - (1) Initial - \$150.00
 - (2) Renewal - \$100.00
 - (3) Late Renewal - \$125.00
- (b) Late renewal fees apply to any renewal application postmarked and ~~or~~ received thirty (30) days after the expiration date of the license.
- (c) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal fee. Thereafter, the establishment shall be required to pay the initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment and a new Plan Review and the initial license fee shall be required.

310:258-13-8. Form of submission

A person desiring to operate an unattended food establishment shall submit to the ~~Department~~ regulatory authority a written application for a license on a form provided by the Department.

310:258-13-10. Contents of the application

The application shall include:

- (1) The name, mailing address, telephone number, signature of the person applying for the license, and the name, mailing address, and location of the unattended food establishment;
- (2) Information specifying whether the unattended food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The Department shall issue a license to the applicant after:
 - (A) A properly completed application is received;
 - (B) The required fees are received;
 - (C) The plans, specifications, and information, if applicable, are reviewed; and
 - (D) A pre-licensing inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Chapter and meets the Department's criteria for a license; or any
 - (E) Other information required by the ~~Department~~ regulatory authority.

310:258-13-13. Denial of application for license, notice

If an application for a license to operate is denied, the ~~Department~~ regulatory authority shall provide the applicant with a notice that includes:

- (1) The specific reasons and Chapter citations for the license denial;
- (2) The actions, if any, that the applicant must take to qualify for a license; and
- (3) Advisement of the applicant's right of appeal.

310:258-13-14. Responsibilities of the license holder

Upon acceptance of the license issued by the Commissioner of Health, the license holder in order to retain the license shall:

- (1) Post the license in a prominent public location inside the unattended food establishment;
- (2) Comply with the provisions of this Chapter;
- (3) Immediately discontinue operations and notify the ~~Department~~ regulatory authority if an imminent health hazard may exist as specified under OAC 310:285-13-26;

- (4) Allow representatives of the Department access to the unattended food establishment;
- (5) Comply with directives of the Department regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Department in regard to the license holder's unattended food establishment or in response to community emergencies;
- (6) Accept notices issued and served by the Department according to law;
- (7) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- (8) If applicable, submit the annual renewal application and pay all renewal license and late fees.

310:258-13-18. Allowed at reasonable times after due notice

After the Department regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the Department regulatory authority to determine if the unattended food establishment is in compliance with this Chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this Chapter and to which the Department regulatory authority is entitled according to law.

310:258-13-19. Refusal, notification of right to access, and final request for access

If a person denies access to the Department regulatory authority, the Department regulatory authority shall:

- (1) Inform the person that:
 - (A) The license holder is required to allow access to the Department regulatory authority as specified under OAC 310:285-13-18 of this Chapter,
 - (B) The Department's regulatory authority's Access access is a condition of the acceptance and retention of an unattended food establishment license to operate as specified under OAC 310:285-11-14(4), and
 - (C) If access is denied, an order issued allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and
- (2) Make a final request for access.

310:258-13-20. Refusal, reporting

If after the Department regulatory authority presents credentials and provides notice as specified under OAC 310:285-13-18, explains the authority upon which access is requested, and makes a final request for access as specified in OAC 310:285-13-19, the person in charge continues to refuse access, the Department regulatory authority shall provide details of the denial of access on an inspection report form.

310:258-13-22. Documenting information and observations

The Department regulatory authority shall document on an inspection report form:

- (1) Administrative information about the unattended food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified, inspection date, and other information that may be required; and
- (2) Specific factual observations of violative conditions or other deviations from this Chapter that require correction by the license holder.

310:258-13-23. Issuing report and obtaining acknowledgment of receipt

At the conclusion of the inspection, the Department regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the license holder or to the person in charge, and request a signed acknowledgment of receipt.

310:258-13-24. Refusal to sign acknowledgment

The ~~Department~~ regulatory authority shall:

(1) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under OAC 310:285-13-23:

(A) An acknowledgment of receipt is not an agreement with findings,

(B) Refusal to sign an acknowledgment of receipt will not affect the license holder's obligation to correct the violations noted in the inspection report within the timeframes specified, and

(C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the unattended food establishment; and

(2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

310:258-13-26. Ceasing operations and reporting

A license holder shall immediately discontinue operations and notify the ~~Department~~ regulatory authority if an imminent health hazard exists because of an emergency such as a fire, flood, sewage backup, insufficient refrigerated food storage facilities available, substantial evidence or presence of a large number of insects or evidence of rodents contaminating food, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, interruption of electrical service for more than 4 hours, severe structural damage in the facility, gross unsanitary occurrence or condition, or other circumstance as determined by the Commissioner of Health, or his designee, that shall endanger public health.

310:258-13-27. Resumption of operations

If operations are discontinued as specified under OAC 310:285-13-26 or otherwise according to law, the license holder shall notify the ~~Department~~ regulatory authority before resuming operations.

310:285-13-28. Timely correction

(a) The license holder shall at the time of inspection correct any violation of this Chapter.

(b) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the license holder to correct a violation.

(c) If corrections are not made according to (a) or (b) of this section, then the facility is subject to enforcement action.

310:258-13-29. Documentation of correction

(a) After observing at the time of inspection a correction of a violation, the ~~Department~~ regulatory authority shall enter the violation and information about the corrective action on the inspection report.

(b) After receiving notification that the license holder has corrected a violation, or at the end of the specified period of time, the Department shall document the information and enter the report in the Department's records.

(c) In determining if a re-inspection is required, the Department shall count a violation number only once regardless of how many separate violations under the violation number are listed on the inspection sheet.