

DIVISION 150
FOOD SANITATION RULES

Definitions and Administration

333-150-0000

Food Sanitation Rule

(1) Authority and Purpose.

(a) This rule is authorized by ORS 624.100.

(b) This rule establishes definitions, sets standards for management and personnel, food protection, and equipment and facilities, water supply, sewage disposal, provides for food establishment plan review, and employee restriction to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

(2) Incorporation by Reference. The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 is adopted and incorporated by reference.

(3) Deletions. The following sections, paragraphs or subparagraphs of the 1999 FDA Food Code are deleted in their entirety: 1-201.10(B)(36), 2-103.11(H), 3-201.16, 3-301.11(C), 3-401.11(D)(3), 4-301.12(C)(5), (D) and (E), 4-501.115, 4-603.16(B) and (C), 8-302.11, 8-302.14(E), 8-401.10(B), 8-401.20, 8-402.20(A)(3), 8-402.40, 8-406.11, and Annex 1 through 8.

(4) Additions and Amendments.

(a) Amend subparagraph 1-201.10(B)(1)(a) to read: "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 or approved by the Department of Human Services.

(b) Add a new subparagraph 1-201.10(B)(7.1) to read: "Catering" means the preparation of food in an approved food establishment and the transportation of such food for service and consumption at some other site.

(c) Add a new subparagraph 1-201.10(B)(9.1) to read: "Close" means to summarily stop the operation of a food establishment pursuant to ORS 624.085.

(d) Add a new subparagraph 1-201.10(B)(10.1) to read: "Code" shall have the same meaning as rule.

(e) Add a new subparagraph 1-201.10(B)(11.1) to read: "Combination Food Service Establishment" means any food establishment located within a single structure or at a single site, but which is engaged in activities which are subject to licensing or inspecting requirements of both the Department of Human Services and the Oregon Department of Agriculture, and the regulated activities are common to the same operator.

- (f) Add a new subparagraph 1-201.10(B)(12.1) to read: "Commissary" means a commissary catering establishment, restaurant, or any other place in which, food, beverage, ingredients, containers, or supplies are kept, handled, packaged, prepared or stored, and from which vending machines or mobile units are serviced.
- (g) Add a new subparagraph 1-201.10(B)(12.2) to read: "Complete Inspection" means any inspection conducted at the election of the licensing agency evaluating for all items on the inspection form.
- (h) Add a new subparagraph 1-201.10(B)(12.3) to read: "Condiments" means garnishes, toppings, or seasonings that are added to a food to enhance or compliment the flavor, such as diced onions, dice tomatoes, hot sauce, ketchup, mayonnaise, mustard, relish, salt, shredded cheese and sugar.
- (i) Add a new subparagraph 1-201.10(B)(18.1) to read: "Critical violations" means those items weighted zero (0), four (4) or (5) points on the Inspection Report or the Inspectional Guide.
- (j) Add a new subparagraph 1-201.10(B)(18.2) to read:
"Critical violations creating an imminent danger to public health" means those critical violations in which at least one of the following conditions exists:
- (a) Food and drink is spoiled, unwholesome, or contaminated with pathogenic or fecal organisms, toxic chemicals, insect or rodent parts or excreta, or other harmful substances or articles;
 - (b) Potentially hazardous foods have been kept at temperatures above 45 degrees F. and below 140 degrees F. for four (4) hours or more;
 - (c) Food employee has a reportable disease or medical condition under § 2-201.11.
- (k) Add a new subparagraph 1-201.10(B)(18.3) to read: "Critical violations creating a potential danger to public health" means all critical violations other than those that create an imminent danger to public health.
- (l) Add a new subparagraph 1-201.10(B)(18.4) to read:
"Critical violations creating a significantly increased risk for foodborne illness" include:
- (a) Potentially hazardous foods at improper temperatures.
 - (b) Cross contamination of raw to ready to eat foods.
 - (c) Poor personal hygiene and handwashing.
- (m) Add a new subparagraph 1-201.10(B)(18.5) to read: "Danger to public health" is a condition which is conducive to propagation or transmission of pathogenic organisms or, a chemical or physical hazard which presents a reasonably clear possibility that the public is exposed to physical suffering or illness.
- (n) Amend subparagraph 1-201.10(B)(25)(a) to read: "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, meat tenderizer, mixer, oven, reach-in refrigerator,

scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(o) Amend subparagraph 1-201.10(B)(31) to read:

Food Establishment

(a) "Food establishment" means an operation that prepares, packages, serves, stores, vends, or otherwise provides food for human consumption.

(b) "Food establishment" includes but is not limited to:

(i) Bars, bed and breakfast facilities, cafeterias if open to the public, catered feeding locations, caterers, coffee shops, commissaries, conveyance used to transport people, hospitals if open to the public, hotels, microbreweries, motels, private clubs if open to the public, restaurants, satellite sites, senior citizen centers, snack bars, taverns, vending locations, warehouses, or similar food facilities;

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

(iii) The premises of a fraternal, social, or religious organization where food is prepared for the public.

(iv) Except as specified in 1-201.10(B)(31)(c)(xiv), school food service that is provided by a private person, business, or organization; and that serve persons other than enrolled students, invited guests or staff.

(v) That relinquishes possession of food to a consumer directly through a restaurant takeout order.

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that offers only whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A private home where food is prepared or served for family and guests, and where the public is not invited.

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

(vi) An establishment licensed and inspected by the Oregon Department of Agriculture.

(vii) An establishment or organization that prepares or sells the following food items shall be exempt from licensure and the provisions of ORS 624.010 to 624.120, and 624.310 to 440:

(1) Candy, candied apples, cookies and non-potentially hazardous confections;

(2) Commercially prepackaged ice cream and frozen desserts;

(3) Commercially pickled products, jerky, nuts, nutmeats, popcorn, and prepackaged foods such as potato chips, pretzels, and crackers;

- (4) Unopened bottled and canned non-potentially hazardous beverages to include alcoholic beverages;
- (5) Coffee and tea, with non-potentially hazardous ingredients; and
- (6) Other food items as determined by the Department of Human Services.
- (viii) Private vehicles used for home deliveries.
- (ix) Personal chef who prepares food for an individual or private dinner party at the resident's home. The personal chef may purchase food from a grocery store, but shall not prepare food in advance at a location other than the resident's home. The personal chef may use his or her own equipment, utensils and spices.
- (x) Continental breakfast served by a tourist facility licensed under ORS 446 and that is limited to the following: individual containers of commercially prepared juices; commercially prepared non-potentially hazardous pastries; whole uncut fresh fruit with peel, coffee and tea with non-potentially hazardous ingredients.
- (xi) Except as specified in 1-201.10(B)(31)(b)(i), mobile food units that are operated by a market, are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.
- (xii) Except as specified in 1-201.10(B)(31)(b)(i), outdoor barbecues operated by a market that are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.
- (xiii) Food service that is provided by a state, county, or other governmental entity.
- (xiv) Except as specified in 1-201.10(B)(31)(b)(iv), school food service that is provided by a state, county, or other governmental entity; or is providing food to students, teachers, other school staff, and invited guests.
- (xv) Any person holding a "one-day, special retail beer or special retail wine license" for a private residence; or anyone who possesses a "temporary" license from the Oregon Liquor Control Commission who serves alcoholic beverages to the public, but serves only foods exempted under 1-201.10(B)(31)(c)(vii) and uses single-service articles.
- (xvi) A bed and breakfast facility with two or less rooms for rent on a daily basis.
- (p) Amend subparagraph 1-201.10(B)(32)(a) to read: "Food processing plant" means a commercial operation or a domestic kitchen licensed by the Oregon Department of Agriculture that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
- (q) Amend subparagraph 1-201.10(B)(41) to read: "Imminent health hazard" means the same as 1-201.10(B)(18.1).
- (r) Add subparagraph 1-201.10(B)(45.1) to read: "License" means the same as permit for the purposes of this rule.
- (s) Add subparagraph 1-201.10(B)(45.2) to read: "License holder" means the same as permit holder for the purposes of this rule.

(t) Add subparagraph 1-201.10(B)(46.1) to read: "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(u)[(t)] Add subparagraph 1-201.10(B)(49.1) to read: "Outdoor Barbecue" means an open-air preparation by a restaurant of food by cooking over an open fire utilizing either a permanent or portable grill, where the purpose of barbecuing is to impart a unique flavor to the food.

(v) Add subparagraph 1-201.10(B)(65.1) to read: "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is January 1 and March 31, 2nd Quarter is April 1 and June 30, 3rd Quarter is July 1 and September 30 and the 4th Quarter is October 1 and December 31.

(w)[(u)] Add subparagraph 1-201.10(B)(66.1) to read:
"Recheck Inspection" means

(a) An inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections;
or

(b) An inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness.
Recheck inspections may be conducted either on pre-announced dates or unannounced.

(x)[(v)] Add subparagraph 1-201.10(B)(69.1) to read: "Repeat violation" means a violation of a rule which is the same specific problem or process as indicated on the Food Service Inspection Report occurring in two consecutive semi-annual inspections.

(y)[(w)] Add subparagraph 1-201.10(B)(73.1) to read: "Semi-annual inspection" means an unannounced complete inspection conducted twice during the calendar year; one in each half of the year, but not less than 90 days or more than 270 days apart.

(z)[(x)] Amend subparagraph 1-201.10(B)(87) to read: "Temporary food establishment" means the same as ORS 624.010(6).

(aa)[(y)] Amend subparagraph 1-201.10(B)(89) to read: "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; food temperature measuring devices; trays used with highchairs; and probe-type price or identification tags used in contact with food.

(bb)[(z)] Add subparagraph 1-201.10(B)(92.1) to read: "Violation" means any condition which fails to meet a requirement of ORS Chapters 624 or this rule.

(cc)[(aa)] Add subparagraph 1-201.10(B)(92.2) to read: "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units, or commissaries are stored.

(dd)[(bb)] Amend section 2-102.11 to read: Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by compliance with this Code, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, a corporate training program approved by the Department of Human Services, or by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(ee)[(cc)] Adopt paragraphs 2-102.11(A) through (O) without changes.

(ff)[(dd)] Amend paragraph 2-301.12(A) to read:

Except as specified in ¶ (B) of this section and § 2-301.13, food employees shall clean their hands in a lavatory that is equipped as specified under § 5-202.12 by using a cleaning procedure of approximately 20 seconds that includes:

- (1) Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms for at least 10 to 15 seconds, followed by;
- (2) Thorough rinsing under clean, running water.

(gg)[(ee)] Amend section 2-301.13 to read:

(A) After defecating, contacting body fluids and discharges, or handling waste containing fecal matter, body fluids, or body discharges, and before beginning or returning to work, food employees shall wash their hands twice using the cleaning procedure specified in § 2-301.12.

(B) Except when one handwashing lavatory is allowed under ¶ 5-203.11(A), after using the toilet facility food employees shall wash their hands twice, first at a handwashing lavatory in the toilet facility and again at a handwashing lavatory in the food preparation area.

(hh)[(ff)] Amend section 2-301.16 to read:

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be used according to labeled directions and be applied to hands that are cleaned as specified under § 2-301.12.

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

(ii)[(gg)] Amend paragraph 2-402.11(A) to read: Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(jj)[(hh)] Amend paragraph 3-201.11(B) to read: Except as specified in ¶¶ (I) and (J) of this section, food prepared in a private home may not be used or offered for human consumption in a food establishment.

(kk)[(ii)] Add paragraph 3-201.11(G) to read: Game meat which has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.

(ll)[(jj)] Add paragraph 3-201.11(H) to read:

Except as required in [sections] ¶¶ 3-201.11(A) through (G) **of this section** and in accordance with ORS 624.035, any person, business or volunteer group may donate food to a benevolent organization that meets the requirements in ORS 624.015. The Internal Revenue Service (IRS) will issue a "letter of determination" that should be used as the basis for assessing compliance with benevolent status of ORS 624.015. The person, business or volunteer group making the donation shall inspect the food to ensure its fitness for human consumption and discard all food that is unwholesome. The following donated food items are approved for use by benevolent organizations:

(1) Commercially prepared foods, canned goods, and milk products, marine and freshwater fishery products or meat animals; i.e., cattle, sheep, goats, equine, swine, poultry or rabbits obtained from facilities licensed by the Oregon Department of Agriculture or the Department of Human Services according to ORS 603.616, and Chapters 621, 622, 624, 625 and 635;

(2) Home baked bread, rolls, pies, cakes, doughnuts or pastries not having perishable fillings, icings, toppings or glazes;

(3) Fresh fruit and produce from private gardens or commercial growers;

(4) Salvageable food which has lost the label or which has been subjected to possible damage due to accident, fire, flood, adverse weather or similar cause.

Reconditioning of salvageable food shall be conducted according to the 1984 Model Food Salvage Code recommended by the Association of Food and Drug Officials and U.S. Department of Health and Human Services;

(5) Other food as may be approved by the Department of Human Services upon prior notification by the donator or benevolent organization;

(6) Unless alternative language has been approved by the regulatory authority, a notice shall be posted in public view that says: "NOTICE: Food served at this location may not have been inspected by the health department."

(mm)[(kk)] Add paragraph 3-201.11(I) to read: Privately donated breads, rolls, pies, cakes, doughnuts or other pastries not having perishable fillings, icings, toppings or glazes may be used in temporary food establishments operated by

benevolent organizations for fund-raising events, provided they meet the requirements under 3-201.11(H)(6).

(nn)[(ll)] Add paragraph 3-201.11(J) to read: Food prepared in a private home that is licensed as a home processor by the Oregon Department of Agriculture.

(oo)[(mm)] Add subparagraph 3-201.17(A)(5) to read:

Except as specified in ¶¶ (A)(1) through (4) of this section,

(a) Game meat donated to a charitable organization shall be inspected by employees of the Oregon Department of Agriculture, Department of Fish and Wildlife, or State Police as provided for in ORS 619.095 may be served for human consumption by that charitable organization.

(b) As used in subparagraph (a) of this section:

(i) Charitable organization means the Adult and Family Services Division, State Office for Services to Children and Families, Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the Department of Fish and Wildlife.

(ii) Game meat includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

(pp)[(nn)] Add section 3-201.18 to read:

Outdoor Barbecuing.*

(A) Outdoor barbecuing by a food establishment shall be allowed as a part of the operation when conducted on the premise or in the immediate vicinity of the food establishment.

(B) Enclosure of an outdoor barbecue shall not be required unless necessary to protect food from contamination.

(qq)[(oo)] Amend section 3-301.11 to read:

(A) Food employees shall wash their hands as specified under §§ 2-301.12 and 2-301.13.

(B) Food employees shall minimize bare hand contact with food and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.^S

(rr)[(pp)] Amend paragraph 3-304.12(F) to read:

In a container of water if the container is cleaned at a frequency specified under subparagraph 4-602.11(D)(7); and

(1) The water is maintained at a temperature of 60°C (140°F) or above; or

(2) At 5°C (41°F) or less.

(ss)[(qq)] Add paragraph 3-304.15(E) to read: Effective March 1, 2003, the use of latex gloves in food service establishments is prohibited.

(tt)[(rr)] Add section 3-306.15 to read:

Outdoor Barbecue, Serving Consumers.

(A) Consumers may not serve themselves from an outdoor barbecue.

(B) The food employee may serve:

(1) An employee who brings a container or plate from the food establishment to the barbecue and who returns the food to the food establishment for further processing or service; or

(2) The consumer directly.

(C) Except for non-potentially hazardous condiments, such as hot sauces, ketchup, mayonnaise, mustard, pepper, relish, salt, and sugar, no other food may be served outside of the food establishment.

(uu)[(ss)] Add section 3-307.12 to read:

Protection from Contamination, Use of Private Vehicles for Food Deliveries.

(A) Private vehicles may be used for food deliveries if the food is packaged so that it is protected from contamination under Part 3-3, and adequate means are provided for maintaining proper food temperatures under § 3-501.16.

(B) Private vehicles shall not be used in any activity that is incompatible with safe and sanitary transportation of food.

(vv)[(tt)] Amend subparagraph 3-401.11(D)(2) to read: The consumer requests that the food be prepared in a raw, rare, or undercooked state.

(ww)[(uu)] Amend subparagraph 3-501.16(C)(2) to read: No later than January 1, 2007, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less.

(xx)[(vv)] Amend paragraph 3-501.17(F) to read:

Paragraphs (C) and (D) of this section do not apply to:

(1) Whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing;

(2) Hard cheeses that are manufactured with a moisture content not exceeding 39 percent as specified under 21 CFR 133.150 and meets the temperature requirements specified under ¶ 3-501.16(B). Examples include Asiago medium, Asiago old, Cheddar, Gruyere, Parmesan, Reggiano, Romano, and Sap sago.

(3) Semisoft cheeses containing more than 39 percent but less than 50 percent moisture as specified in 21 CFR 133.187 and meets the temperature requirements specified under ¶ 3-501.16(B). Examples include Asiago fresh and Soft, Blue, Brick, Caciocavallo Siciliano, Colby with not more than 40% moisture, Edam, Gorgonzola, Gouda, Limburger, Monterey, Monterey Jack, Muenster, Pasteurized process cheese, Provolone, Swiss and Emmentaler.

(4) Pasteurized process cheese manufactured according to 21 CFR 133.169, labeled as containing an acidifying agent and meets the temperature requirements specified under ¶ 3-501.16(B).

(5) Cheeses that are not exempt for date marking include soft cheeses. Examples include Brie, Camembert, Cottage, Ricotta, and Teleme.

(yy)[(ww)] Add section 3-502.11 to read: A food establishment shall obtain a variance from the regulatory authority as specified in § 8-103.10 and under § 8-103.11 before smoking food as a method of food preservation rather than as a method of flavor enhancement; curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; packaging food using a reduced oxygen packaging method except as specified under § 3-502.12 where a barrier to *Clostridium botulinum* in addition to refrigeration exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

(zz)[(xx)] Add section 3-502.13 to read:

Breading Requirements.

(A) When food is being breaded, the breading operations shall meet the requirements under § 3-501.16.

(B) In breading operations where the breading is done in batches:

(1) The used breading shall be sifting with a fine mesh sieve to remove meat fragments and all clumps of moist breading.

(2) The breading equipment or utensils shall be cleaned as specified under § 4-602.11.

(aaa)[(yy)] Amend section 3-603.11 to read: Except as specified in ¶¶ 3-401.11(C) and 3-801.11(D), the food establishment may offer or a consumer may request an animal food such as beef, eggs, fish, lamb, milk, or shellfish to be served in a ready-to-eat form that is raw, undercooked, or not otherwise processed to eliminate pathogens; or as a raw ingredient in another ready-to-eat food.

(bbb)[(zz)] Amend paragraph 4-501.16(B) to read:

(B) If a warewashing sink is used to launder wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under § 4-501.14.

(1) If wiping cloths are washed at the warewashing sink, they shall be washed in the wash compartment, and

(2) Sinks used to wash or thaw food shall be washed, rinsed, and sanitized both before and after use.

(ccc)[(aaa)] Amend subparagraph 4-602.11(D)(7) to read:

The utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues and in-use utensils are intermittently stored in a container of water in which the water is maintained at:

(a) 60°C (140°F) or more, or

(b) 5°C (41°F) or less.

(ddd)[(bbb)] Amend section 5-102.11 to read:

(A) Except as specified under § 5-102.12, water from a public water system shall meet 40 CFR 141-National Primary Drinking Water Regulations and OAR 333-061.

(B) For licensed food establishments that are not regulated under OAR 333-061, the following drinking water standards apply:

(1) Sampling frequency:

(a) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(b) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(ii) Inorganic Samples: One time sampling required for new facilities.

(2) MCL Violations: An item is not considered a violation until confirmed by second sample. Four repeat samples must begin to be taken within 48 hours for a sample result above the maximum contaminant level (MCL).

(a) Total coliform: Any positive total coliform sample must be reported to the Department or delegate agent within 24 hours.

(b) Fecal coliform: Any positive sample must be reported to the Department within 24 hours.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Department must be in place before serving public.

(c) Inorganic Samples: One time sampling required for new facilities. Not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(d) Nitrate: Sample annually

(i) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(ii) Public notification is required.

(iii) Bottled water must be provided to public upon request.

(e) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(3) Sample collection methods:

(a) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(b) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030(Table 1);

(ii) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level.

(iii) Test results: Sample results must be submitted to the Local Regulatory Authority by the 10th of the following month.

(c) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(4) Public Notice: Must be posted conspicuously on site and must include:

(a) A description of the violation or situation of concern;

(b) Corrective actions taken to improve water quality;

(c) Any potential adverse health effects;

(d) The population at risk;

(e) The alternative measures in place to provide safe drinking water.

(5) Surface Water Sources: New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2004. Facilities existing prior to January 1, 2004 in compliance with OAR 333-061-0032 may continue to operate.

(6) Plan Review: All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(eee)[(ccc)] Amend section 5-104.12 to read:

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(1) A supply of containers of commercially bottled drinking water;

- (2) One or more closed portable water containers;
 - (3) An enclosed vehicular water tank;
 - (4) An on-premises water storage tank; or
 - (5) Piping, tubing, or hoses connected to an adjacent approved source.
- (B) The regulatory authority may grant a temporary variance from requirements of Subparts 5-101, 5-102, and 5-103 by continuing or re-issuing previously issued permits where:

- (1) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;
- (2) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and
- (3) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.

(fff)[(ddd)] Amend paragraph 5-203.11(A) to read: Except as specified in ¶¶ (B) and (C) of this section, at least 1 handwashing lavatory or the number of handwashing lavatories necessary for their convenient use by employees in areas specified under § 5-204.11 shall be provided. Food establishments opened prior to July 1, 1965 are exempt from this requirement provided that employees can meet the requirements under §§ 2-301.12 and 2-301.13.

(ggg)[(eee)] Amend paragraph 5-203.11(C) to read:
An adequate number of handwashing stations shall be provided for each temporary food establishment to include:

- (1) A minimum of one enclosed container that has a minimum water capacity of five gallons;
- (2) A spigot that can be opened to provide a constant flow of water;
- (3) Soap;
- (4) Water;
- (5) Paper towels; and
- (6) A collection container for wastewater.

(hhh)[(fff)] Amend section 5-203.12 to read:

(A) Except as specified in (B) of this section, toilet facilities shall be installed according to ORS 455.010 through 455.895 (1998 Oregon Structure Specialty Code, 2000 Amendments) for the number of toilets.

(B) Food establishments with occupancy of 15 or less to include both employees and patrons may have only one toilet fixture and adjacent lavatory on the premises.

(iii)[(ggg)] Amend section 5-302.16 to read: A food grade hose shall be used for conveying drinking water from a water tank and shall be:

(jii)[(hhh)] Adopt paragraphs 5-302.16(A) through (E) as written.

(kkk)[(iii)] Amend section 6-402.11 to read:

(A) Except for (B) and (C) of this section, toilet rooms shall be conveniently located and accessible to employees during all hours of operation and shall be an integral part of the building.

(B) Toilet facilities for the customer are required only in establishments constructed or extensively remodeled after May 11, 1974,

(C) Food establishments limited to drive-in or handout service are not required to provide toilet rooms facilities for the customer.

(III)[(jjj)] Add paragraph 8-101.10(C) to read: Plans submitted shall be reviewed and commented on by a sanitarian registered in accordance with ORS 700.

(mmm) Amend section 8-103.10 to read:

(A) The Department may grant a variance from requirements of this Code as follows:

(1) Where it is demonstrated to the satisfaction of the Department that strict compliance with the rule would be highly burdensome or impractical due to special condition or cause;

(2) Where the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules; and

(3) Where such alternative measures are provided which in the opinion of the Department will provide adequate public health and safety protection.

(B) Such variance authority is not conferred upon any Local Public Health Authority notwithstanding contractual authority in administration and enforcement of the food service statutes and rules;

(C) The applicant must include all necessary information to support the variance request, which may include, but is not limited to, required testing, challenge data and research results;

(D) If a variance is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment;

(E) The Department will review variances at least triennially;

(F) Revocation or denial of the variance request shall be subject to the appeal process provided under ORS 183.

(nnn)[(kkk)] Amend subparagraph 8-201.13(A)(2) to read: A variance is required as specified under § 3-502.11, ¶ 4-204.110(B), or subparagraph 3-203.12(B)(2)(b); or

(ooo)[(lll)] Amend paragraph 8-302.14(A) to read: The name, mailing address, telephone, number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(ppp)[(mmm)] Amend paragraph 8-303.30(C) to read: Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS 183.

(qqq)[(nnn)] Amend subparagraph 8-304.11(G)(2) to read: The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of 12 consecutive months, or

(rrr)[(ooo)] Amend paragraph 8-304.11(H) to read: Upgrade or replace refrigeration equipment if the circumstances under subparagraphs (G)(1)-(3) of this section occurs first, or by no later than the time specified under ¶ 3-501.16(C);

(sss)[(ppp)] Amend paragraph 8-304.11(J) to read: Accept notices issued and served by the regulatory authority as may be authorized under ORS 183 and 624; and

(ttt)[(qqq)] Amend paragraph 8-304.11(K) to read: Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under ORS 183 and 624.

(uuu)[(rrr)] Amend paragraph 8-401.10(C) to read: For temporary food establishments:

(1) Except for Subparagraph (C)(2) of this section, the regulatory authority shall inspect at least once during the operation of a temporary food establishment.

(2) For benevolent temporary food establishments, the regulatory authority shall either:

(a) Inspect; or

(b) Provide a consultation.

(vvv)[(sss)] Amend paragraph 8-403.10(A) to read: (A) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and employee food safety cards; and

(www)[(ttt)] Amend section 8-403.20 to read: The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, and 8-405.11.

(xxx)[(uuu)] Amend paragraph 8-405.11(B) to read: Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the

regulatory authority may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct critical Code violations or HACCP plan deviations.

(yyy)[(vvv)] Amend paragraph 8-501.20(C) to read: (C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS 624.

(zzz)[(www)] Amend paragraph 8-501.30(C) to read: (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS 183.