

CHAPTER 341

FOOD SERVICE ESTABLISHMENTS

341-1. Purpose

This chapter was promulgated to promote good public health and to establish sanitary regulations for Retail Food Establishments, Mobile Retail Food Establishments and Temporary Retail Food Establishments in Monroe County.

341-2. Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter:

"Adulterated" has the meaning set forth in IC 16-42-1 through 16-42-4.

"Closed" means fitted together snugly, leaving no openings large enough to permit the entrance of vermin.

"Commissary" means a registered catering establishment, restaurant or any other Retail Food Establishment in which food, containers or supplies are kept, handled, prepared or stored.

"Corrosion-Resistant Materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of use.

"Critical Item" means a violation of the 410IAC 7-24 Retail Food Establishment Sanitation Requirements that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation. Critical items will be denoted as such on the inspection form.

"Easily Cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

"Employee" means the permit/license holder, an individual having supervisory or management duties, person on the payroll, family member, volunteer person performing work under contractual agreement or any other person working in a Retail Food Establishment.

"Equipment" means items other than utensils used in the storage, preparation, display and transportation of food such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in

refrigerators and freezers, sinks, ice makers and similar items used in the operation of a Retail Food Establishment. This item does not include fork lift trucks or dollies.

"Food" means any 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.

"Food-Contact Surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food or other contaminants may drain, drip or splash back onto surfaces normally in contact with food.

"Foodborne Disease Outbreak" means an incident, in which:

- (A) two or more persons experience a similar illness after ingestion of a common food;
- (B) epidemiological analysis implicates the food as the source of the illness; or
- (C) a single case of illness from botulism or chemical poisoning.

"Food Processing Establishment" means a commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

"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. The HACCP Plan for a food establishment must be on file with the Health Department.

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

"Health Department" means the Monroe County Health Department, which is the full-time County Health Department established in Chapter 301 and includes the Monroe County Board of Health, the Monroe County Health Officer and authorized representatives of the Health Officer.

"Health Officer" means the County Health Officer or his/her duly authorized representative.

"Hermetically Sealed Container" means a container designed and intended to be secure against the entry of microorganisms and 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 to show that a product, practice,

circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness based on:

- (A) the number or potentially ill persons; and
- (B) the nature, severity, and duration of the anticipated illness.

"410 IAC 7-24" refers to the Indiana State Department of Health Retail Food Establishment Sanitation Requirements which is the state regulation governing retail food establishments.

"Kitchenware" means all multi-use utensils other than tableware.

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

"License" means the document issued by the Health Department which authorizes a person to operate a Retail Food Establishment, Mobile Retail Food Establishment, or a Temporary Retail Food Establishment.

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

"Misbranded" has the meaning provided in the Uniform Indiana Food, Drug and Cosmetic Act as amended.

"Mobile Retail Food Establishment" means any Retail Food Establishment without a fixed location which is capable of being readily moved intact from location to location that is wheeled, on skids, mounted on a vehicle, a marine vessel, pushcart or trailer.

"Multi-Market Retail Food Establishment" means a Retail Food Establishment, other than a Mobile Retail Food Establishment, that operates at local farmers markets in Monroe County. Multi-Market Retail Food Establishments may only be operated at the locations listed in the permit.

"New Retail Food Establishment" means an establishment which has not been previously issued a license; or a licensed Retail Food Establishment which has ceased operation for six (6) or more consecutive months or has changed ownership.

"Non-potential Hazardous Foods" means those foods with a water activity (A_w) value of 0.85 or less, a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75 degrees F., or foods for which laboratory evidence exists that demonstrates that rapid or progressive growth of infectious and toxigenic microorganisms or slower growth of *Clostridium botulinum*

cannot occur. Some examples include candies, cookies, commercial pastries, fresh uncut fruits and vegetables, and commercially prepared unopened hermetically sealed containers which do not require refrigeration.

"Packaged" means bottled, canned, cartoned, bagged or securely wrapped.

"Person" means any individual, partnership, corporation, association or other legal entity.

"Person In Charge" means the individual present in a Retail Food Establishment who is the supervisor of the Retail Food Establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

"Potentially Hazardous Food" means any food that is natural or synthetic and is in a form capable of supporting:

- (A) the rapid and progressive growth of infectious or toxigenic microorganisms; or
- (B) the growth and toxin production of *C. botulinum*.

Potentially hazardous foods include foods that are of animal origin that are raw or heat-treated; foods of plant origin that are heat treated or consist of raw seed sprouts; cut melons; and garlic and oil mixtures. The term includes foods with a water activity (Aw) value above 0.85 and foods with a pH level above 4.6 when measured at 75 degrees F.

"Reconstituted" means dehydrated food products recombined with water or other liquids.

"Regulatory Authority" means the state and/or local enforcement authority having jurisdiction over the Retail Food Establishment.

"Restricted Use Pesticide" means a pesticide product that contains the active ingredients specified in the US Code 40 CFR (Code of Federal Regulations) 152.175; that are classified for restricted use; and that are limited to use by, or under direct supervision of, a certified applicator.

"Retail Food Establishment" means an operation as follows that:

- (1) Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as the following:
 - (A) A restaurant.
 - (B) A satellite or catered feeding location.
 - (C) A catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people.
 - (D) A market.
 - (E) A grocery store.
 - (F) A convenience store.

- (G) A vending location.
 - (H) A conveyance used to transport people.
 - (I) An institution.
 - (J) A food bank.
 - (K) A commissary.
 - (L) A cottage industry.
 - (M) A hospice facility as defined in IC 16-25-11.
 - (N) A health care facility as defined in IC 16-21-2.
 - (O) A health facility as defined in 16-18-2.
 - (P) A child care facility as defined in IC 12-13-5, such as the following:
 - (i) Licensed child care centers licensed under 470 IAC 3-4.7.
 - (ii) Licensed child care institutions licensed under 470 IAC 3-11, 470 IAC 3-12, and 470 IAC 3-13.
 - (iii) Registered child care ministries registered under 470 IAC 3-4.5.
 - (Q) An assisted living facility as defined in IC 12-10-5.
 - (2) 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.
 - (b) The term includes the following:
 - (1) 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 regulatory authority.
 - (2) An operation that is conducted in a:
 - (A) mobile;
 - (B) stationary;
 - (C) temporary; or
 - (D) permanent;
- facility or location, where consumption is on or off the premises and regardless of whether there is a charge for the food.
- (c) The term does not include the following:
 - (1) An establishment that offers only prepackaged foods that are not potentially hazardous.
 - (2) A produce stand that offers only whole, uncut fresh fruits and vegetables.
 - (3) A food processing plant operated under IC 16-42-5.
 - (4) A private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4.
 - (5) An area where food that is prepared as specified in subdivision (4) is sold or offered for human consumption.
 - (6) A bed and breakfast establishment as defined and regulated under IC 16-41-37 and 410 IAC 7-15.5.
 - (7) A private home that receives catered or home-delivered food.
 - (8) A private home.

"Safe Materials" means:

- (A) articles 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) a food additive or color additive as defined in Section 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act and which are used as specified in Section 409 or 706 of the Act; or
- (C) other materials which are not food additives or color additives as defined in Section 201 (s) or (t) of the Federal Food Drug and Cosmetic Act and which are used in conformity with applicable regulations of the Food and Drug Administration; and
- (D) articles used in conformity with requirements of the Indiana Food, Drug and Cosmetic Act (IC 16-42-2-1 and IC 16-42-2-4). Other materials are safe only if they are used in conformity with all applicable laws and rules of the Indiana State Board of Health.
- (E) applied to potentially hazardous foods, means food temperatures of forty-one degrees (41°) Fahrenheit or below or one hundred thirty-five degrees (135°) Fahrenheit or above.

"Sanitize" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals on a clean surface that, when evaluated for efficacy, yields a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sewage" means the water-carried waste derived from ordinary living processes, including, but not limited to, human excreta and waste water derived from water closets, urinals, laundries, sinks, utensil-washing machines, bathing facilities or similar facilities or appliances.

"Single-Service Articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and similar articles intended for one-time, one-person use and then discarded. The term does not include "single use" articles such as Number 10 cans, aluminum pie pans, bread wrappers, and similar articles into which food has been packaged by the manufacturer.

"Tableware" means multi-use eating and drinking utensils, including flatware (knives, forks and spoons).

"Temporary Retail Food Establishment" means a Retail Food Establishment that operates at a fixed location for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition or similar transitory gathering.

"Utensil" means any food-contact implement used in the storage, preparation, transportation or dispensing of food.

"Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for use as human food.

341-3. Submission and Approval of Plans for Construction or Alteration of a Retail Food Establishment or Mobile Retail Food Establishment and Pre-Operational Inspection

- (A) Before a Retail Food Establishment, or portion thereof, except for a Temporary Retail Food Establishment or vending machine location, is constructed, altered, or remodeled or before an existing structure is converted to the use as a Retail Food Establishment, the owner, operator, or designated agent shall submit plans and specifications for the Retail Food Establishment to the local Health Department for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. A transmittal letter shall be submitted with the plans and specifications. This letter shall identify and summarize the plans or projects and shall indicate the owner, operator or designated agent. The Health Department shall approve the plans and specifications if they meet the requirements of this chapter. No Retail Food Establishment or Mobile Retail Food Establishment shall be constructed, remodeled or converted except in accordance with plans and specifications approved by the Health Department.
- (B) When plans and specifications required by section 341-3(A) of this chapter are to be submitted to the Health Department, the Health Department shall inspect the Retail Food Establishment or Mobile Retail Food Establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this chapter.
- (C) A fee for the review of such plans shall be assessed as specified in Chapter 310-4.

341-4. License: Requirements, Procedure for Issuance, Fees and Exemptions

- (A) It shall be unlawful for any person to operate a Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment in Monroe County if the person does not possess a valid license from the Health Department. A separate license shall be required for each Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment operated by any person. When separate areas for food service or preparation are located in one building and are operated by one owner, the establishment shall be considered as one establishment and only one license shall be required.
- (B) Only persons who comply with the applicable requirements of this chapter shall be entitled to receive and retain such a license. A license

shall be issued to any person upon application and only after inspection of the Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment and upon approval by the Health Department. No license, or renewal thereof, shall be denied or revoked on arbitrary or capricious grounds.

- (C) The license for a Retail Food Establishment shall be for a term of one (1) year, beginning March 1st and expiring on the last day of February of the calendar year and shall be renewed annually. Failure to pay the fee for the renewal of a license by the last day of February of the current calendar year shall result in the assessment of a delinquent fee against the Retail Food Establishment in the amount specified in Chapter 310-4. The delinquent fee shall be in addition to the annual fee.
- (D) The license for a Mobile Retail Food Establishment shall be for a term beginning the date of application to, and approval by, the Health Department and expiring on the last day of February of the following calendar year. The fee for the license, as specified in Chapter 310-4, shall be due and payable at the time of application to, and approval by, the Health Department. Each mobile unit shall be licensed and charged a fee.
- (E) The license for a Temporary Retail Food Establishment shall be for a term beginning the date of application to, and approval by, the Health Department and expire no later than fourteen (14) consecutive days after the date the establishment begins operating. The fee for the license, as specified in Chapter 310-4 shall be due and payable at the time of application to and approval by the Health Department.
- (F) Any license issued by the Health Department shall contain the name of the person to whom the license is granted, the address of the premises for which the license is issued, and any such pertinent data as may be required by the Health Department. The license shall be posted in a conspicuous place in the Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment.
- (G) A license is not transferable to another location or to another person. In the event of a change of ownership by conveyance, sale contract, lease or other means, the current license shall become void and a new license shall be required. A license shall not be issued to a Retail Food Establishment under new ownership until it is in full compliance with all applicable State and local laws.

In the event the Health Department is not notified of a change of ownership of a Retail Food Establishment, a license for the next year shall not be issued until:

- (1) the Retail Food Establishment is in full compliance with all applicable State and local laws; and

- (2) the past year's license is paid for in full, including delinquent fees in accordance with subsection (C).
- (H) No license shall be required and no license fee shall be paid for any Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment operated by any religious, educational, charitable or other non-profit organization exempted under the Indiana Gross Income Tax Law.

341-5. Sanitation and Education Requirements

- (A) All Retail Food Establishments, Mobile Retail Food Establishments, and Temporary Retail Food Establishments shall comply with the sanitation requirements specified by the Indiana State Board of Health as now provided in its Rule 410 IAC 7-24 or as the same may be changed or amended. This Rule and any changes or amendments to it that may be adopted or promulgated are incorporated by reference and made part of this section. Two (2) copies of this Rule are on file, in the office of the Auditor and in the Health Department for public inspection.

341-6. Sale, Examination and Condemnation of Unwholesome, Adulterated and Misbranded Food

- (A) It shall be unlawful for any person to sell, through a Retail Food Establishment, Mobile Retail Food Establishment or Temporary Retail Food Establishment, any food that is unwholesome, adulterated, or misbranded.
- (B) Samples of food may be taken and examined by the Health Department as often as may be necessary to determine freedom from contamination, adulteration or misbranding. The Health Department may, on written notice to the owner or operator, impound and forbid the sale of any food that is unwholesome, adulterated or misbranded, or that it has probable cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded. However, in the case of misbranding that can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the Health Department. The Health Department may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable article that in its opinion is unsound, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe.

341-7. Disease Control

- (A) No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food establishment, mobile retail food establishment or temporary retail food establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. If the person in charge of any retail food establishment, mobile retail food establishment or temporary retail food establishment has reason to believe that any employee has contracted any disease which can be transmitted by food, he/she shall notify the Health Department immediately.

- (B) When the Health Department has reason to believe there exists a possibility of transmission of infection from any retail food establishment employee, mobile retail food establishment employee or temporary retail food establishment employee, the Health Department is authorized to require any or all of the following measures:
 - (1) the immediate exclusion of the employee from all retail food establishments, mobile retail food establishments and temporary retail food establishments;

 - (2) the immediate closing of the retail food establishment, mobile retail food establishment or temporary retail food establishment concerned until no further danger of disease outbreak exists in the opinion of the Health Department; and/or

 - (3) adequate medical examination of the employee and of his/her associates with such laboratory examinations as may be indicated.

341-8. Retail Food Establishment and Mobile Retail Food Establishment: Inspection, Correction of Violations and Revocation of License

- (A) Each retail Food establishment will receive unannounced compliance inspections at a frequency determined by the Health Department using a risk-based analysis of the establishment. Each mobile retail food establishment shall be inspected by the Health Department at least once a year.

- (B) The person operating the retail food establishment, or mobile retail food establishment shall, upon the request of the Health Department, permit the Health Department access to all parts of such retail food establishment, or mobile retail food establishment and shall permit the Health Department to collect evidence and exhibits and to copy any or all records relative to the enforcement of this chapter.

- (C) If during the inspection of any retail food establishment or mobile retail food establishment the Health Department discovers the violation of any of the requirements in the provisions of this chapter, it shall issue a written order listing such violations to the owner or to the person in charge and shall fix a time within which the owner or the person in charge of such retail food establishment or mobile retail food establishment shall abate and remedy such violations. A copy of the written order shall be filed with the records of the Health Department.
- (D) If upon a second and final inspection the Health Department finds that such retail food establishment or mobile retail food establishment, person, or employee is violating any of the provisions of this chapter that were in violation on the previous inspection and concerning which a written order was issued:
 - (1) the Health Department may promptly issue a written order to the owner or to the person in charge of such retail food establishment or mobile retail food establishment to appear for an administrative hearing at a certain time and place, no later than ten (10) days from the date of final inspection, to show cause why a license issued under provisions of this chapter should not be revoked; or
 - (2) the Health Department shall furnish evidence of the violation(s) to the Monroe County Attorney, and he/she shall prosecute all persons violating the provisions of this chapter.
- (E) If at the administrative hearing the owner or person in charge should fail to show cause as to why his/her license should not be suspended or revoked, the Health Department shall suspend or revoke the license of such retail food establishment or mobile retail food establishment and shall promptly give written notice of such action to the owner or person in charge. The Health Department shall maintain a permanent record of its proceedings which shall be filed in the office of the Health Department.
- (F) Those establishments having their license suspended or revoked by the Health Department shall be placarded by the Health Department with an official notice to the effect that the establishment is closed by order of the Health Department. It shall be illegal to remove, damage or deface such notice prior to the establishment being allowed to resume operation by the Health Department.
- (G) All critical violations shall be corrected within the period of time specified by the Health Department, but in any event, not to exceed ten (10) days following an inspection. Within fifteen (15) days after the inspection the owner or person in charge of the retail food establishment or mobile retail food establishment may be required to submit a written

report to the Health Department stating the action taken to correct the critical items. Purchase orders or work contracts with a work completion date satisfactory to the Health Department may be accepted as interim corrective action.

341-9. Temporary Food Service Establishment: Inspection, Correction of Violations, Revocation of License and Penalty

- (A) The Health Department may inspect temporary retail food establishment for which a license is required under the provisions of this chapter.
- (B) If during the inspection of any temporary retail food establishment the Health Department discovers the violations of any of the requirements in the provisions of this chapter, it shall order the immediate correction of the violation(s).
- (C) The person operating the temporary retail food establishment shall, upon the request of the Health Department, permit the Health Department access to all parts of the temporary retail food establishment and shall permit the collecting of evidence and exhibits and the copying of any or all records relative to the enforcement of this chapter.
- (D) Upon failure of any person maintaining or operating a temporary retail food establishment to comply with any order of the Health Department, it shall be the duty of the Health Department to immediately revoke or suspend the license of such person and establishment and to forbid the further sale or serving of food therein. Any person continuing to sell or serve food in such temporary retail food establishment whose license has been revoked or suspended shall be subject to the penalties specified in Section 341-11.
- (E) Those establishments having their license suspended or revoked by the Health Department shall be placarded by the Health Department with an official notice to the effect that the establishment is closed by order of the Health Department. It shall be illegal to remove, damage or deface such notice prior to the establishment being allowed to resume operation by the Health Department.

341-10. Temporary Suspension of License

- (A) Any license issued under this chapter may be temporarily suspended by the Health Department without notice or hearing for a period not to exceed thirty (30) days for any of the following reasons:
 - (1) an imminent health hazard such as lack of refrigeration, sewage backup into the retail food establishment, loss of hot water supply, major rodent or insect infestation, or an extended power outage. The retail food establishment shall immediately cease

retail food operations. Operations shall not be resumed until authorized by the Health Department;

- (2) unsanitary or other conditions that in the Health Department's opinion endangers the public's health;
- (3) interference with the Health Department in the performance of its duties; and/or
- (4) undue harassment of Health Department inspectors in the performance of their duties.

Upon written application from the owner or from the person in charge, served upon the Health Department within fifteen (15) days after such suspension, the Health Department shall conduct a hearing upon the matter, after giving at least five (5) days written notice of the time, place and purpose thereof to the suspended owner or person in charge. Any such suspension order shall be issued by the Health Department, in writing, and served upon the owner or person in charge by leaving a copy at his/her usual place of business, or by delivery of registered or certified mail to such address.

- (B) Any person whose license has been suspended may at any time make application to the Health Department for the reinstatement of his/her license.

341-11. Penalties for Violations

- (A) A person who violates any of the provisions of this chapter commits an ordinance violation which:
 - (1) for the first violation is a Class C Ordinance Violation; and
 - (2) for the second or any subsequent violation is a Class B Ordinance Violation.
- (B) Each day of operation of a retail food establishment, mobile retail food establishment or temporary retail food establishment in violation of the provisions of this chapter, or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate such conditions as ordered by the Health Department, shall constitute a distinct and separate violation.
- (C) In addition to the penalties prescribed above, the department may seek injunctive relief and all the remedies available in a court of equity.
- (D) In addition to the penalties prescribed above, any person who violates any provision of this chapter shall be liable for the costs of litigation including, but not limited to, attorney fees, deposition fees, the costs of

expert witnesses, lab testing expenses and court costs.

341-12. Enforcement

This chapter shall be enforced by the Health Department, with the assistance of the Monroe County Attorney, or his/her appointed deputies, and, in appropriate cases, by the Monroe County Prosecuting Attorney.

[end of chapter]