

(b) Plans and specifications may also be required by the enforcement agency if the agency determines that they are necessary to assure compliance with the requirements of this part, including, but not limited to, a menu change or change in the facility's method of operation.

(c) (1) All new school food facilities or school food facilities that undergo modernization or remodeling shall comply with all structural requirements of this part. Upon submission of plans by a school authority, the Office of the State Architect and the local enforcement agency shall review and approve all new and remodeled school facilities for compliance with all applicable requirements.

(2) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing public and private school cafeterias and licensed health care facilities shall be deemed to be in compliance with this part pending replacement or renovation.

(d) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing food facilities that were in compliance with the law in effect on June 30, 2007, shall be deemed to be in compliance with the law pending replacement or renovation. If a determination is made by the enforcement agency that a structural condition poses a public health hazard, the food facility shall remedy the deficiency to the satisfaction of the enforcement agency.

(e) The plans shall be approved or rejected within 20 working days after receipt by the enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the enforcement agency. Nothing in this section shall require that plans or specifications be prepared by someone other than the applicant.

114381.

(a) A food facility shall not be open for business without a valid permit.

(b) A permit shall be issued by the enforcement agency when investigation has determined that the proposed facility and its method of operation meets the specifications of the approved plans or conforms to the requirements of this part.

(c) A permit, once issued, is nontransferable. A permit shall be valid only for the person, location, type of food sales, or distribution activity and, unless suspended or revoked for cause, for the time period indicated.

(d) Any fee for the permit or registration or related services, including, but not limited to, the expenses of inspecting and impounding any utensil suspected of releasing lead or cadmium in violation of Section 108860 as authorized by Section 114393, review of HACCP plans, and alternative means of compliance shall be determined by the local governing body. Fees shall be sufficient to cover the actual expenses of administering and enforcing this part. The moneys collected as fees shall only be expended for the purpose of administering and enforcing this part.

(e) A permit shall be posted in a conspicuous place in the food facility or in the office of a vending machine business.

(f) Any person requesting the enforcement agency to undertake activity pursuant to Sections 114149.1 and 114419.3 shall pay the enforcement agency's costs incurred in undertaking the activity. The enforcement agency's services shall be assessed at the current hourly cost recovery rate.

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114381.1. In addition to the permit issued to each food facility participating in a community event or swap meet, a permit shall be obtained by the person or organization responsible for facilities that are shared by two or more food facilities.

(a) The permit application and site plan shall be submitted to the enforcement agency at least two weeks prior to operation of any food facility.

(b) The site plan shall show the proposed locations of the food facilities, restrooms, refuse containers, potable water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

114381.2. A permit application shall be submitted to the enforcement agency by each temporary food facility operator that includes all of the following:

(a) A site plan that indicates the proposed layout of equipment, food preparation tables, food storage, warewashing, and handwashing facilities.

(b) Details of the materials and methods used to construct the temporary food facility.

(c) All food products that will be handled and dispensed.

(d) The proposed procedures and methods of food preparation and handling.

(e) Procedures, methods, and schedules for cleaning utensils, equipment, and structures, and for the disposal of refuse.

(f) How food will be transported to and from a permanent food facility or other approved food facility and the temporary food facility, and steps taken to prevent contamination of foods.

(g) How potentially hazardous foods will be maintained at or below 41°F or at or above 135°F.

114387. Any person who operates a food facility shall obtain all necessary permits to conduct business, including, but not limited to, a permit issued by the enforcement agency. In addition to the penalties under Article 2 (commencing with Section 114390), violators who operate without the necessary permits shall be subject to closure of the food facility and a penalty not to exceed three times the cost of the permit.

Article 2. Enforcement

114390.

(a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility or any facility suspected of being a food facility, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and

enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

114393.

(a) Based upon inspection findings or other evidence, an enforcement officer may impound food, equipment, or utensils that are found to be, or suspected of being, unsanitary or in such disrepair that food, equipment, or utensils may become contaminated or adulterated, and inspect, impound, or inspect and impound any utensil that is suspected of releasing lead or cadmium in violation of Section 108860. The enforcement officer may attach a tag to the food, equipment, or utensils that shall be removed only by the enforcement officer following verification that the condition has been corrected.

(b) No food, equipment, or utensils impounded pursuant to subdivision (a) shall be used unless the impoundment has been released.

(c) Within 30 days, the enforcement agency that has impounded the food, equipment, or utensils pursuant to subdivision (a) shall commence proceedings to release the impounded materials or to seek administrative or legal remedy for its disposition.

114395. Except as otherwise provided in this part, any person who violates any provision of this part or regulation adopted pursuant to this part is guilty of a misdemeanor. Each offense shall be punished by a fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not exceeding six months, or by both fine and imprisonment.

114397. The owner, manager, or operator of any food facility is responsible for any violation by an employee of any provision of this part or any regulation adopted pursuant to this part. Each day the violation occurs shall be a separate and distinct offense.

114399. A violation of any provision of this part or regulation adopted pursuant to this part relating to facilities held in common or shared by more than one food facility shall be deemed a violation for which the owner, manager, or operator of each food facility is responsible.

Article 3. Permit Suspension or Revocation

114405.

(a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permit holder. If the

permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

114407. The hearing officer shall issue a written notice of decision to the permitholder within five working days following the hearing. In the event of a suspension or revocation, the notice shall specify the acts or omissions with which the permitholder is charged, and shall state the terms of the suspension or that the permit has been revoked.

114409.

(a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permitholder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

114411. The enforcement agency may, after providing opportunity for a hearing, modify, suspend, or revoke a permit for serious or repeated violations of any requirement of this part or for interference in the performance of the duty of the enforcement officer.

114413. A permit may be reinstated or a new permit issued if the enforcement agency determines that the conditions that prompted the suspension or revocation no longer exist.

Article 4. Variance

114417. The department may issue a variance for only the provisions set forth in Section 113936, if in the opinion of the department, the alternative practice or procedure is equivalent to the respective requirements of this part and the alternative practice or procedure does not result in a health hazard.

114417.1.

(a) Within 180 days after the effective date of this part, the department shall develop the form of application that an applicant for a variance must submit. The department may amend the form as it deems appropriate. The application shall contain, at a minimum, the following information:

(1) A detailed description of the requested variance, including citation to the relevant subdivisions specified in Section 113936.

(2) An analysis of the science-based rationale upon which the proposed alternate practice or procedure is based, to include, if and as appropriate, microbial challenge and process validation studies demonstrating how potential health hazards dealt with in those subdivisions that are relevant to the requested variance will be addressed.

(3) A description of the specific procedures, processes, monitoring steps, and other relevant protocols that will be implemented pursuant to the variance to address potential health hazards dealt with in those subdivisions specified in Section 113936 that are relevant to the requested variance.

(4) An HACCP plan, if required pursuant to Section 114419, that includes all applicable information relevant to the requested variance.

(b) An application for a variance shall be submitted to the department, and must be accompanied at the time of submission by the fees specified in subdivision (c).

(c) Each application for a variance shall be accompanied at the time of submission by payment of fees sufficient to pay the necessary costs of the department as specified in Section 113717. Any overpayment by the applicant in excess of the recovery rate and other costs incurred shall be repaid to the applicant within 30 calendar days after final action is taken by the department on the application.

114417.2.

(a) Upon receipt of an application for a variance, the department shall determine whether the application is substantially complete and in compliance with Section 114417.1. Within 45 calendar days after submission of a complete application that complies with Section 114417.1, the department shall determine whether the alternate practice or procedure described in the application is satisfactory and at least the equivalent of the requirements of this part relating to preventing a health hazard.

(b) In the event that the department grants the variance, it shall issue to the applicant a variance letter that shall include, but not be limited to, the information specified in Section 114417.3.

(c) The department shall transmit a copy of its variance letter to all local enforcement agencies.

114417.3. Each variance letter shall include, have attached to it, or reference each of the following:

(a) The information specified in Section 114417.1. That information may be presented verbatim, in summary form, or by means of attachment.

(b) Detailed findings by the department as to the nature and extent of the potential hazards, if any, that might be implicated with respect to the requirements specified in this part, and the manner in which the alternate practice or procedure specified in the variance will address those hazards.

(c) The specifics of any operating restrictions or requirements upon which the granting of the variance is conditioned.

(d) If appropriate, the particular events, locations, and operations for which the variance is granted.

114417.4. A variance letter shall be valid solely with respect to those food facilities, events, locations, and operations expressly set forth and only on the specific terms and conditions upon which the variance is granted. A variance granted by the department shall be binding on every local enforcement agency.

114417.5. The permit holder shall retain a copy of the variance letter on file at the food facility at all times and shall make it available for inspection by the enforcement officer.

114417.6. If the department grants a variance, or if an HACCP plan is required pursuant to Section 114419, the permit holder shall do both of the following:

(a) Comply with the HACCP plan and procedures that are submitted as specified in Sections 114419.1 and 114419.2 and approved as a condition for the granting of the variance.

(b) Maintain and provide to the enforcement agency, upon request, records specified under a HACCP plan, or otherwise pursuant to the variance letter, that demonstrate that the following are routinely employed:

- (1) Procedures for monitoring critical control points.
- (2) Monitoring of the critical control points.
- (3) Verification of the effectiveness of an operation or process.
- (4) Necessary corrective actions if there is a failure at a critical control point.

114417.7.

(a) The department may suspend or revoke a variance if either of the following occurs:

(1) The department determines that the variance poses a hazard due to changes in scientific knowledge or the nature and extent of any hazard that might result.

(2) There is a finding that the food facility is not complying with specific terms and conditions pursuant to which the variance was granted.

(b) The department may suspend or revoke a variance upon the grounds specified in this section only after giving the permit holder written notice of the proposed suspension or revocation, which shall include the specific reasons why the variance is proposed to be suspended or revoked. The permit holder shall be given an opportunity to be heard, in person, in writing, or through a representative, at least 24 hours before the variance can be suspended or revoked.

Article 5. HACCP Exemptions

114419.

(a) Food facilities may engage in any of the following activities only pursuant to an HACCP plan as specified in Section 114419.1:

(1) Smoking food as a method of food preservation rather than as a method of flavor enhancement.

(2) Curing food.

(3) 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.

(4) Operating a molluscan shellfish life support system display tank used to store and display shellfish that are offered for human consumption.

(5) Custom processing animals that are for personal use as food and not for sale or service in a food facility.

(6) Preparing food by another method that is determined by the enforcement agency to require an HACCP plan.

(b) Food facilities may engage in the following only pursuant to an HACCP plan that has been approved by the department:

(1) Using acidification or water activity to prevent the growth of *Clostridium botulinum*.

(2) Packaging potentially hazardous food using a reduced-oxygen packaging method as specified in Section 114057.1.

114419.1. For a food facility that is required under Section 114419 to have an HACCP plan, the plan and specifications shall indicate all of the following:

(a) A flow diagram of the specific food for which the HACCP plan is requested, identifying critical control points and providing information on the following:

(1) Ingredients, materials, and equipment used in the preparation of that food.

(2) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(b) A food employee and supervisory training plan that addresses the food safety issues of concern.

(c) A statement of standard operating procedures for the plan under consideration including clearly identifying the following:

(1) Each critical control point.

(2) The critical limits for each critical control point.

(3) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge.

(4) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(5) Action to be taken by the person in charge if the critical limits for each critical control point are not met.

(6) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed.

(d) Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

114419.2.

(a) Applicable HACCP training shall be provided and documented for food employees who work in the preparation of food for which an HACCP plan has been implemented. Training given to food employees shall be documented as to date, trainer, and subject.

(b) Verification of critical limits specified in an HACCP plan shall be conducted by a laboratory approved by the department prior to implementation of the HACCP plan. Documentation of laboratory verification shall be maintained with the HACCP plan for the duration of its implementation.

(c) No verification of the effectiveness of a critical limit shall be required if the critical limits used in the HACCP plan do not differ from the critical limits set forth in this part.

(d) The person operating a food facility pursuant to a HACCP plan shall designate at least one person to be responsible for verification of the HACCP plan. Training for the designated person

shall include the seven principles of HACCP and the contents of the HACCP plan as described in Section 114419.1. HACCP training records of the designated person shall be retained for the duration of employment, or a period of not less than two years, whichever is greater.

(e) Critical limit monitoring equipment shall be suitable for its intended purpose and shall be calibrated as specified by its manufacturer. The food facility shall maintain all calibration records for a period not less than two years.

114419.3.

(a) Except as specified in Section 114419, nothing in this section shall be deemed to require the enforcement agency to review or approve an HACCP plan.

(b) The enforcement agency shall collect fees sufficient only to cover the costs for review, inspections, and any laboratory samples taken.

(c) An HACCP plan may be disapproved if it does not comply with HACCP principles.

(d) The enforcement agency may suspend or revoke its approval of an HACCP plan without prior notice if the agency finds any of the following:

(1) The plan poses a public health risk due to changes in scientific knowledge or the hazards present.

(2) The food facility does not have the ability to follow its HACCP plan.

(3) The food facility does not consistently follow its HACCP plan.

(e) Within 30 days of written notice of suspension or revocation of approval, the food facility may request a hearing to present information as to why the HACCP plan suspension or revocation should not have taken place or to submit HACCP plan changes.

(f) The hearing shall be held within 15 working days of the receipt of a request for a hearing. Upon written request of the permit holder, the hearing officer may postpone any hearing date, if circumstances warrant that action.

(g) The hearing officer shall issue a written notice of decision within five working days following the hearing. If the decision is to suspend or revoke approval, the reason for suspension or revocation shall be included in the written decision.

114421.

(a) Each food facility that identifies a trade secret shall provide in writing to the enforcement agency the information they consider to be a trade secret.

(b) The enforcement agency shall treat as confidential, to the extent allowed by law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Section 114419.1.

114423. A microbial challenge study may be submitted to the enforcement agency for review for purposes of verifying that a food does not constitute a potentially hazardous food.

Article 6. Exemptions

114425. Raw duck that otherwise would be readily perishable shall be exempt from Section 113996 for a period not to exceed two hours, if the duck will subsequently be cooked at or above a temperature of 350°F for at least 60 minutes.

(a) Whole Chinese-style roast duck shall be exempt from Section 113996 for a period not to exceed four hours after the duck is prepared, if the methods used to prepare the food inhibit the

growth of microorganisms that can cause food infections or food intoxications. Nothing in this section shall be construed to supersede any provisions of this part, except the provisions specified in this section.

(b) For the purposes of this section, "Chinese-style roast duck" shall include, but not be limited to, Chinese-style barbecue duck, dry hung duck, and Peking duck. "Chinese-style roast duck" means duck which is prepared as follows:

- (1) The abdominal cavity is cleaned.
- (2) The duck is marinated.
- (3) The cavity is closed prior to cooking.
- (4) The duck is roasted at a temperature of 350°F or more for at least 60 minutes.

114427. The Mercado La Paloma, located at 3655 South Grand Avenue in Los Angeles, operated by Esperanza Community Housing Corporation, which is a public market open only on one side that meets the following criteria, shall be exempt from Section 114266:

(a) All facilities inside the Mercado La Paloma have overhead protection that extends over all food items.

(b) All facilities inside the Mercado La Paloma are enclosed on at least two sides.

(c) All facilities inside the Mercado La Paloma are under the constant and complete control of the operator.

(d) During periods of inoperation, food, utensils, and related items shall be stored so as to be adequately protected at all times from contamination, exposure to the elements, ingress of vermin, and temperature abuse.

(e) During all hours of operation, air curtains shall be in operation over all unclosed door openings to the outside to exclude flying pests.

114429.

(a) Notwithstanding Sections 113996 and 114343 and if permitted by federal law, a food facility may sell Korean rice cakes that have been at room temperature for no more than 24 hours.

(b) At the end of the operating day, Korean rice cakes that have been at room temperature for no more than 24 hours shall be destroyed in a manner approved by the enforcement agency.

(c) For purposes of this section, a "Korean rice cake" is defined as a confection that contains rice powder, salt, sugar, various edible seeds, oil, dried beans, nuts, dried fruits, and dried pumpkin. The ingredient shall not include any animal fats or any other products derived from animals.

(d) All manufacturers of Korean rice cakes shall place a label on the Korean rice cake as prescribed by Section 111223.

114429.5.

(a) Notwithstanding Sections 113996 and 114343, and if permitted by federal law, a food facility may sell Asian rice-based noodles that have been kept at room temperature for no more than four hours.

(b) Asian rice-based noodles that have been kept at room temperature shall be consumed or cooked within four hours of the date and time labeled on the product. Asian rice-based noodles that have been kept at room temperature shall be segregated for destruction from other Asian rice-based noodles in a manner approved by the local enforcement agency after four hours of the date and time labeled on the product.

(c) At the end of the operating day, Asian rice-based noodles that have been kept at room temperature for more than four hours shall be destroyed in a manner approved by the local enforcement agency.

(d)(1) For purposes of this section, an "Asian rice-based noodle" means a rice-based pasta that contains rice powder, water, wheat starch, vegetable cooking oil, and optional ingredients to modify the pH or water activity, or to provide a preservative effect. The ingredients shall not include any animal fats or any other products derived from animals. An Asian rice-based noodle is prepared by using a traditional method that includes cooking by steaming at not less than 130 degrees Fahrenheit, for not less than four minutes.

(2) If the Asian rice-based noodles maintain a pH of not more than 4.6, as measured at a temperature of 76 degrees Fahrenheit, a water activity of 0.85 or below, or have been determined by the department to be a nonpotentially hazardous food based on formulation and supporting laboratory documentation submitted to the department by the manufacturer, the restrictions provided in subdivisions (a) to (c), inclusive, shall not apply to the Asian rice-based noodles.

Article 7. Food Facility Food Donations

114432. Any food facility may donate food to a food bank or to any other nonprofit charitable organization for distribution to persons free of charge.

114433. No food facility that donates food as permitted by Section 114432 shall be subject to civil or criminal liability or penalty for violation of any laws, regulations, or ordinances regulating the labeling or packaging of the donated product or, with respect to any other laws, regulations, or ordinances, for a violation occurring after the time of the donation.

114434. The immunities provided in Section 114433 and by Section 1714.25 of the Civil Code are in addition to any other immunities provided by law, including those provided by Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code.

Article 8. Child Day Care Facilities, Community Care Facilities, and Residential Facilities for the Elderly

114437. If and when a specific appropriation is made available, the State Department of Social Services shall develop new regulations regarding food preparation provisions for child day care facilities, community care facilities, and residential care facilities for the elderly that would carry out the intent of this part to ensure the health and safety of individuals and that would not adversely affect those facilities that are safely operated. In developing proposed food preparation provisions for child day care facilities, the State Department of Social Services shall consult with the department and the State Department of Education.