



**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF FOOD SAFETY AND INSPECTION
10B AIRLINE DRIVE
ALBANY, NY 12235**

CIRCULAR 962

Rules and Regulations Relating to

RETAIL FOOD STORES

**Article 17 of the Agriculture and Markets Law
Part 271 of Title 1 of the Official Compilation
Of Codes, Rules and Regulations of the
State of New York**

Revised as of March, 2004

Official Compilation of Codes, Rules and Regulations of the State of New York

Chapter VI

(Article 17 Agriculture and Markets Law)

Part 271

RETAIL FOOD STORE SANITATION REGULATIONS

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SUBPART 271-1

GENERAL PROVISIONS

Section

271-1.1 Purpose

271-1.2 Definitions

Section 271-1.1 Purpose.

This Part shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

Section 271-1.2 Definitions.

For the purpose of this Part, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(a) *Bulk food* means processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, salad bars and potentially hazardous foods, except for raw, frozen, shell-on shrimp or lobster.

(b) *Bulk food display area* means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

(c) *Comminuted* means reduced in size by methods including chopping, flaking, grinding or mincing. Comminuted includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef and sausage; and a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

(d) *Corrosion-resistant materials* means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(e) *Easily cleanable* means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(f) *Employee* means the license holder, 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 food store.

(g) *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 store. This item does not include forklift trucks or dollies.

(h) *Especially vulnerable consumer* means a consumer who, due to age, health, physical condition or other reason, is at a significantly greater risk of illness than a member of the general population. Especially vulnerable consumer includes, but is not limited to, pregnant women, elderly persons, young children and immuno-compromised individuals.

(i) *Fish* means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(j) *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.

(k) *Food-contact surfaces* means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip or splash back onto surfaces normally in contact with food.

(l) *Food service establishment* means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption occurs on or off the premises, or whether or not there is a charge for the food. The term includes delicatessens that primarily offer prepared food in individual service portions; that is, over 50 percent of the dollar value of the business is classed as food service with a minor portion related to sales as a food store; food service operations where a distinct group mutually provides, prepares, serves and consumes the food such as a covered-dish supper limited to a congregation, club or fraternal organization; the location of food vending machines; and supply vehicles.

(m) *Game Animal* means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule or other equine in 9 CFR Subchapter A – Mandatory Meat Inspection, Part 301, as Poultry in 9 CFR Subchapter C – Mandatory Poultry Products Inspection, Part 381, or as fish. Game animal includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat and nonaquatic reptiles such as land snakes. Game animal does not include ratites such as ostrich, emu and rhea.

(n) *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.

(o) *Hazard* means a biological, chemical or physical property that may cause an unacceptable consumer health risk.

(p) *Hermetically sealed container* means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(q) *Packaged* means bottled, canned, cartoned, bagged or securely wrapped.

(r) *Person* includes any individual, partnership, corporation, association or other legal entity.

(s) *Person-in-charge* means the individual present in a retail food store who is the supervisor of the retail food store at the time of inspection.

(t) *Potentially hazardous food* means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: foods that have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less under standard conditions; food products in hermetically sealed containers commercially processed to prevent spoilage; air-cooled hard-boiled eggs with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable *Salmonellae*.

(u) *Product module* means a food contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

(v) *Ready-to-eat food* means food that is in a form that is edible without washing, cooking or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. Ready-to-eat food includes:

(1) Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food under Section 271-2;

(2) Raw, washed, cut fruits and vegetables;

(3) Whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks or shells are removed.

(w) *Reduced oxygen packaging* means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen. Reduced oxygen packaging includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging including sous vide.

(x) *Retail food store* means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods, roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments, or food and beverage vending machines.

(y) *Safe materials* means 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. If materials are food additives or color additives as defined in Section 198(7) or (10) of the Agriculture and Markets Law as used, they are safe only if they are used in conformity with regulations established pursuant to Section 409 or 706 of the Federal Food, Drug and Cosmetic Act. Other

materials are safe only if, as used, they are not food additives or color additives as defined in Section 198(7) or (10) of the Agriculture and Markets Law, and are used in conformity with all applicable regulations of the Department of Agriculture and Markets and the U.S. Food and Drug Administration.

(z) *Sanitization* means [effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on cleaned food-contact surfaces of utensils and equipment] the application of accumulative heat or chemicals on cleaned food-contact surfaces that when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

(aa) *Scheduled Process* means the process selected by an establishment operator as adequate for use under the conditions of manufacture for a food in achieving and maintaining a food that will not permit the growth of microorganisms which could cause food borne illness, and shall include controls of critical processing criteria established by a competent processing authority who has expert knowledge acquired through appropriate training and experience in the processing of potentially hazardous foods.

(bb) *Sealed* means free of cracks or other openings that permit the entry or passage of moisture.

(cc) *Servicing area* means a designated location or locations equipped for cleaning, sanitizing, drying or refilling product modules or for preparing food.

(dd) *Single-service articles* means items used by the retailer or consumer, such as cups, containers, lids and packaging materials, including bags and similar articles, intended for contact with food and designed for one-time use. The item 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.

(ee) *Transportation (transported)* means movement of food within the retail food store or delivery of food from that retail food store to another place while under the control of the person in charge.

(ff) *Utensil* means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

(gg) *Variance* means a written modification or waiver of a requirement of this Part granted by the Department upon its determination that a health hazard or insanitary condition will not result from the granting of such a modification or waiver.

(hh) *Warewashing* means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

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

SUBPART 271-2

FOOD SUPPLIES

Section

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Section 271-2.1 General.

Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. Food prepared in a home that is subject to regulation under Article 20-C of the Agriculture and Markets Law shall be subject to the current good manufacturing practices of Part 261 of this Title, unless exempted by said Article 20-C. Unpackaged bulk food, except baked goods, service delicatessen items and self-service salad bar items, should be labeled with either:

(a) The manufacturer's or processor's bulk container labeling plainly in view; or

(b) A counter card, sign or other appropriate device, bearing prominently and conspicuously the common name of the product, a list of ingredients in proper order of predominance, and a declaration of artificial color or flavor and chemical preservatives if contained in the product (including specific color declaration as required in Title 21 of the Code of Federal Regulations, Part 74, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402).

Section 271-2.2 Special requirements.

(a) Fluid milk and fluid milk products used or offered for sale shall comply with the Grade A standards promulgated by the Commissioner and set forth in Part 2 of this Title, and shall be maintained at a temperature of 45°F or less. Dry milk and milk products used or offered for sale shall be made from pasteurized milk and milk products. All cheese must be made from pasteurized milk or aged for not less than 60 days at a temperature not less than 35°F in accordance with Article 4, Section 67-b of the Agriculture and Markets Law.

(b) (1) Fresh and frozen shucked shell fish (oysters, clams or mussels) shall be received and/or repacked in clean, sanitary packages identified with the packer's and/or repacker's name, permit number prefixed with the initials of the state or foreign country that issued the permit, the date such shellfish were packed and/or repacked, the common name of the shellfish contained in the container, and the net weight or numerical count or standard measure of the shellfish contained in the container. The labels or containers may also include a shipper's or distributor's name and/or address, prefixed with either "distributed by" or "packed for". In such case, only the packer's permit number need be included on such label.

(2) Each original container of unshucked shellfish (oysters, clams or mussels) shall be identified by an attached tag, to be retained for a period of 90 days from the day such container is emptied, that states the name and address of the original shellfish processor, the common name of the shellfish, and the net weight or numerical count or standard measure of shellfish, and the permit number issued by the state or foreign shellfish control agency, where applicable.

(c) Only clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or offered for sale. All containers in which shell eggs are held shall identify the source of such eggs. Shell eggs that have not been specifically treated to destroy all viable Salmonellae shall be stored, displayed and transported where the ambient temperature is 45°F or less. Containers of shell eggs packaged for direct sale to consumers shall be labeled with the following safe handling instructions: "To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."

(d) Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

(e) All cured, salted or smoked fish products possessed, packed, processed, sold, offered or exposed for sale, or otherwise utilized shall meet the requirements set forth in 1 NYCRR Part 262 and shall be maintained at temperatures that do not exceed 38°F, except that:

(1) Cured, salted or smoked fish products that have a water phase salt level of at least 17 percent shall not require refrigeration; and

(2) Cured, salted or smoked fish products which contain a water phase salt level of at least 10 percent, a water activity of .85 or less, or a pH of 4.6 or less, may be held at refrigerated temperatures that do not exceed 45°F.

(f) Mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert prior to sale.

(g) If game animals are received for sale they shall be:

(1) Commercially raised for food and:

(i) Slaughtered in accordance with the provisions of Article 5-A of Agriculture and Markets Law, Licensing of Slaughterhouses; or

(ii) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or

(iii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and

(iv) Raised, slaughtered, and processed according to:

(a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and

(b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee.

(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo or bison) that are "inspected and approved" in accordance with 9 CFR 352 Voluntary Exotic Animal Program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 Rabbit Inspection Program;

(3) As allowed by law, for wild game animals that are live-caught:

(i) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, and

(ii) Slaughtered and processed according to:

(a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or

(4) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:

(i) Receive a postmortem examination by an approved veterinarian or veterinarian's designee, or

(ii) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(iii) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.

(5) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

(6) The requirements of this subdivision shall not apply to deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting and donated, possessed, prepared or served pursuant to section 11-0917 of the environmental conservation law.

Section 271-2.3 Food protection-general.

At all times, including while being stored, prepared, displayed, dispensed, packaged or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling, flooding, draining and overhead leakage or condensation, or other agents of public health significance. The temperature of potentially hazardous foods shall be 41°F (5°C) or less or 135°F (57°C) or greater, at all times, except as otherwise provided in this Part. Hermetically sealed packages shall be handled so as to maintain product and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have been returned to, or are being detained by, the retail food store because of spoilage, container damage or other public health considerations, shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the Department.

Section 271-2.4 Emergency occurrences.

The person in charge of a retail food store that is affected by a fire, flood, extended power outage or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the Department of Agriculture and Markets of the emergency.

Section 271-2.5 Food storage-general.

(a) Food packaged in an immediate closed container, once the container is opened in the retail food store prior to use or retail sale, shall be kept covered or otherwise protected from contamination. Food, whether raw or prepared, if removed from the immediate closed container in which it was originally packaged prior to use or retail sale, shall be stored in a clean, covered container, except during necessary periods of preparation. Whole and unprocessed fresh raw vegetables and fresh raw fruits shall be exempted from this requirement. Container covers shall be impervious and nonabsorbent. Primal cuts, quarters or slices of meat, or processed meat such as country hams, slab bacon, and smoked or cured sausages, may be hung uncovered on clean, sanitized hooks or placed on clean, sanitized metal racks in such a manner as to preclude contamination of any food products in storage.

(b) Containers of food shall be stored a minimum of six inches above the floor or stored on dollies, skids, racks or open-ended pallets, provided such equipment is easily movable, either by hand or with the use of pallet-moving equipment that is on the premises and used. Such storage areas shall be kept clean. Cased food packaged in cans, glass or other waterproof containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean.

(c) Food and containers of food shall not be stored under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(d) Packaged foods shall not be stored in contact with water or undrained ice.

(e) A food ingredient, such as flour, sugar, salt, baking powder, cooking oil or vinegar, that is not stored in the original package and is not readily identifiable on sight, shall be stored in a container identifying it by a common name. Labels or marking devices shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

(f) Toilet rooms and their vestibules, and garbage or mechanical rooms should not be used for the storage of food.

Section 271-2.6 Refrigerated/frozen storage.

(a) Refrigeration units or effectively insulated units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus 3°F (plus or minus 1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the air temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers, accurate to plus or minus 3°F (plus or minus 1°C) may be used in lieu of indicating thermometers. In lieu of a thermometer, portable refrigeration units which rely on contact with refrigerated surfaces rather than airflow shall have product temperature monitored at sufficient frequency to ensure proper temperature.

(b) Potentially hazardous frozen foods shall be kept frozen and shall be stored at an air temperature of 0°F (minus 18°C) or less except for defrost cycles and brief periods of loading or unloading.

(c) Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

Section 271-2.7 Hot storage.

(a) Hot food storage units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at the required temperature during storage. Each hot food storage unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus 3°F (plus or minus 1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers accurate to plus or minus 3°F (plus or minus 1°C) may be used in lieu of indicating thermometers where it is impractical to install thermometers on equipment such as heat lamps, calrod units or insulated food transport carriers, a food product thermometer shall be available and used to check internal food temperature.

(b) Potentially hazardous food to be transported shall be held at a temperature of 135°F (57°C) or greater unless maintained in accordance with the refrigerated storage requirements of this Part.

(c) Except during preparation, cooking, or cooling or when time is used as the public health control potentially hazardous food shall be maintained:

(1) At 135°F (57°C) or greater.

(2) At 41°F (5°C) or less, except as specified under (3) of this section and Section 271-2.2(a) and (e).

(3) Between 45°F (7°C) and 41°F (5°C) in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:

(i) The equipment is in place and in use in the food establishment; and

(ii) Within ten (10) years of the Department's adoption of these regulations, the equipment is upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less.

Section 271-2.8 Food preparation-general.

(a) Ready-to-eat food shall be prepared and served with no bare hand contact, unless such food will subsequently be heated to the minimum temperature required under Section 271-2.10 of this Part or greater for foods that were not previously heated or, for foods that are being heated for a second or subsequent time, to a temperature of 165°F (73.9°C) or greater. Convenient and suitable utensils and/or sanitary gloves shall be provided and used to prepare or serve food in order to eliminate bare hand contact and prevent contamination. Waxed paper napkins or equivalent barriers which prevent bare hand contact may also be used to serve food.

(b) The prohibition against bare hand contact shall not apply to raw agriculture products other than cut dessert fruits and vegetables, and any produce which is utilized in ready-to-eat food service areas, such as salad bars and deli counters.

Section 271-2.9 Raw fruits and raw vegetables.

Raw fruits and raw vegetables that will be cut or combined with other ingredients or will be otherwise processed into food products by the retail food store shall be thoroughly cleaned with potable water before being used.

Section 271-2.10 Cooking potentially hazardous foods.

(a) Except as specified under subdivisions (b), (c) and (d) of this section, raw animal foods such as eggs, fish, meat, poultry and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(1) 145°F (63°C) or greater for 15 seconds for:

(i) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service unless an individual consumer requests preparation of a shell egg or eggs or a food containing a shell egg or eggs in a style such as raw, poached or fried, which must be prepared at a temperature of 145°F (63°C) or less in order to comply with such request, and

(ii) Except as specified under paragraphs (2) and (3) of this subdivision and subdivision (b) of this section, fish, meat and pork including game animals commercially raised for food as specified under section 271-2.2 (g)(1) and game animals under a voluntary inspection program as specified under section 271-2.2 (g)(2).

(2) 155°F (68°C) or greater for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under section 271-2.2 (g)(1), and game animals under a voluntary inspection program as specified under section 271-2.2 (g)(2) and raw eggs that are not prepared as specified under Subparagraph (a)(1)(i) of this section:

Minimum	
Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
158 (70)	< 1 second (Instantaneous)

; or

(3) 165°F (74°C) or greater for 15 seconds for poultry, wild game animals as specified under section 271-2.2 (g)(3) & (4), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites and stuffing containing fish, meat, poultry or ratites.

(b) Whole beef roasts, corned beef roasts, pork roasts and cured pork roasts, such as ham, shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or Greater
Still Dry	350°F (177°C) or greater	250°F (121°C) or greater
Convection	325°F (163°C) or greater	250°F (121°C) or greater
High Humidity ¹	250°F (121°C) or less	250°F (121°C) or less

¹Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

; and

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Internal Temperature °F (°C)	Processing Time ¹ in Minutes	Internal Temperature °F (°C)	Processing Time ¹ in Minutes/Sec	Internal Temperature °F (°C)	Processing Time ¹ in Seconds
130 (54)	121	140 (60)	12	150 (66)	72 sec
131 (55)	97	141 (61)	10	151 (66)	58 sec
132 (56)	77	142 (61)	8	152 (67)	46 sec
133 (56)	62	143 (62)	6	153 (67)	37 sec
134 (57)	47	144 (62)	5	154 (68)	29 sec
135 (57)	37	145 (63)	4	155 (68)	23 sec
136 (58)	32	146 (63)	182 sec	156 (69)	19 sec
137 (58)	24	147 (64)	144 sec	157 (69)	15 sec
138 (59)	19	148 (64)	115 sec	158 (70)	0 sec
139 (60)	15	149 (65)	91 sec		

¹Holding time may include postoven heat rise.

(c) Subdivisions (a) and (b) of this section do not apply if the food is a raw animal food such as raw egg; raw fish; raw-marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat and soft cooked eggs that are served or offered for sale in a ready-to-eat form, and the consumer is informed that to ensure its safety, the food should be cooked as specified under Section 271-2.25.

(d) Subdivisions (a) and (b) of this section do not apply if the food is a raw or undercooked whole-muscle intact beef steak served or offered for sale in a ready-to-eat form if:

(1) The steak is labeled to indicate that it meets the definition of whole-muscle intact beef steak, as defined in section 271-1.2 (ii) of this Part; and

(2) The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

(e) Raw animal foods cooked in a microwave oven shall be:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) Covered to retain surface moisture;

(3) Heated to a temperature of not less than 165°F (74°C) in all parts of the food; and

(4) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(f) Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 135°F (57°C) or greater.

(g) Comminuted meat shall be cooked to heat all parts of the product to a temperature of not less than 158°F (69.4°C) except as specified under (a)(2) of this section, unless an individual consumer requests preparation of comminuted meat or a food containing comminuted meat in a style such as rare, which must be prepared at a temperature of less than 158°F (69.4°C) in order to comply with such request.

Section 271-2.11 Cooling.

(a) Cooked potentially hazardous food shall be cooled:

(1) Within 2 hours, from 135°F (57°C) to 70°F (21°C) or less; and

(2) Within 4 hours, from 70°F (21°C) to 41°F (5°C) or less, or to 45°F (7°C) or less as specified under Section 271-2.7.

(b) Potentially hazardous food shall be cooled within 4 hours to 41°F (5°C) or less, or to 45°F (7°C) or less as specified under Section 271-2.7 if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(c) Cooling shall be accomplished in accordance with the time and temperature criteria specified under this Section by using one or more of the following methods based on the type of food being cooled:

(1) Placing the food in shallow pans;

(2) Separating the food into smaller or thinner portions;

(3) Using rapid cooling equipment;

(4) Stirring the food in a container placed in an ice water bath;

(5) Using containers that facilitate heat transfer;

(6) Adding ice as an ingredient; or

(7) Other effective methods.

(d) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(1) Arranged in the equipment to provide maximum heat transfer through the container walls; and

(2) Loosely covered, or uncovered if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

Section 271-2.12 Bakery product fillings.

Custards, cream fillings and similar products, including synthetic fillings, shall meet the temperature requirements in Section 271-2.11 following preparation and be maintained at that temperature during storage, transportation, and display. Products with synthetic fillings may be excluded from this requirement if:

(a) The food, including the interface between the bakery product and its filling, has a pH level of 4.6 or below or a water activity value of 0.85 or less under standard conditions;

(b) It is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or

(c) Other scientific evidence is on file with the Department demonstrating that the specific product will not support the growth of pathogenic microorganisms. Bakery products with synthetic fillings, which meet the above criteria, may be labeled to state that refrigeration is not required.

Section 271-2.13 Reheating.

(a) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(b) Except as specified under (c) and (d) of this section, potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of not less than 165°F (74°C) for 15 seconds.

(c) Except as specified under (d) of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of not less than 165°F (74°C) and the food is rotated or stirred, covered and allowed to stand covered for 2 minutes after reheating.

(d) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the Department that has jurisdiction over the plant, shall be heated to a temperature of not less than 135°F (57°C) for hot holding.

(e) Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under Section 271-2.6 and 165°F (74°C) may not exceed 2 hours.

Section 271-2.14 Freezing.

(a) Except as specified in subdivision (b) of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

(1) -4°F (-20°C) or less for at least 168 hours (7 days) in a freezer; or

(2) -31°F (-35°C) or less for at least 15 hours in a blast freezer.

(b) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), and *Thunnus thynnus* (Bluefin tuna, Northern), or if they are species of fish recognized as not being susceptible to parasites of concern; the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under (a) of this section.

(c) Except as specified in subdivisions (b) and (d) of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for at least 90 calendar days beyond the time of service or sale of the fish.

(d) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under subdivision (a) of this section may substitute for the records specified under subdivision (c) of this section.

Section 271-2.15 Food product thermometers.

Metal stem-type numerically scaled indicating thermometers, accurate to plus or minus 2°F (plus or minus 1°C) shall be provided and used to assure attainment and maintenance of proper temperatures during preparation of all potentially hazardous foods.

Section 271-2.16 Thawing potentially hazardous foods.

Except as specified in subdivision (d) of this section potentially hazardous food shall be thawed:

(a) Under refrigeration that maintains the food temperature at 41°F (5°C) or less, or at 45°F (7°C) or less as specified under Section 271-2.6 or;

(b) Completely submerged under running water:

(1) At a water temperature of 70°F (21°C) or less;

(2) With sufficient water velocity to agitate and float off loose particles in an overflow; and

(3) For a period of time that does not allow thawed portions of ready-to-eat food to rise to 41°F (5°C) or greater, or 45°F (7°C) or greater as specified under Section 271-2.6; or

(4) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under Section 271-2.10 to be 41°F (5°C) or greater, or 45°F (7°C) or greater as specified under Section 271-2.6 for more than 4 hours including:

(i) The time the food is exposed to the running water and the time needed for preparation for cooking; or

(ii) The time it takes under refrigeration to lower the food temperature to 41°F (5°C) or less, or 45°F (7°C) or less as specified under Section 271-2.6;

(iii) As part of a cooking process if the food that is frozen is cooked as specified under Section 271.2.10; or

(iv) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(v) Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

Section 271-2.17 Food display---potentially hazardous foods.

(a) Potentially hazardous foods shall be held at a temperature of 45°F (7°C) or less, or at 41°F (5°C) as specified under Section 271-2.7 or at a temperature of 135°F (57°C) or greater during display.

(b) If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

(1) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;

(2) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;

(3) Any food described in paragraphs (1) and (2) of this subdivision which exceed the 4 hour limit shall be discarded; and

(4) Written procedures shall be maintained in the food establishment and made available to the Department upon request, that ensure compliance with:

(i) (1)-(3) of this section; and

(ii) Section 271-2.11 for food that is prepared, cooked and refrigerated before time is used as a public health control.

Section 271-2.18 Frozen foods.

Foods intended for sale in a frozen state shall be displayed in a frozen state, except for defrost cycles and brief periods of loading or unloading. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers specifications.

Section 271-2.19 Food display---general.

Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by being packaged by display cases, by covered containers for self-service or by similar protective equipment except as provided in Subpart 271-8 of this Part. All food shall be displayed above the floor in a manner that will protect the food from contamination. Hot or cold food units shall be provided to assure the maintenance of potentially hazardous food at the required temperature during display. Potentially hazardous food, except for raw, frozen shell-on shrimp or lobster, shall not be provided for consumer self-service except as provided in Section 271-8 of this Part. Bulk foods shall be dispensed only from product modules which are protected by close fitting, individual covers. Customer access to bulk food in product modules shall be limited and controlled to avoid the introduction of contaminants. Means considered suitable include but are not limited to:

(a) Providing a product module depth of no more than 18 inches; and

(b) Either locating product modules with access from the top so that there is at least 30 inches between the access point and the floor, or if the product module access point is less than 30 inches off the floor, providing access from the side of at an angle provided that when the product module is open, the cover extends across the surface of the product and provides overhead protection.

Section 271-2.20 Dispensing utensils.

Manual contact of bulk foods by the customer shall be avoided during dispensing by one of the following methods, and if manual contact is not prevented, food must be individually wrapped prior to display:

(a) Mechanical dispensing devices including gravity dispensers, pumps, extruders and augers; or

(b) Manual dispensing utensils including tongs, scoops, ladles, spatulas, single service wax paper or other appropriate single service items and manual dispensing utensils listed in this subdivision shall be protected against becoming contaminated and serving as vehicles for introducing contamination into bulk food. Means considered suitable include but are not limited to:

(1) Using a tether which is constructed of easily cleanable material, is of such length that the utensil cannot contact the floor, and is designed to prevent interference with the requirement for close fitting covers; and

(2) Storing the utensil in a sleeve or protective housing attached or adjacent to the display unit when not in use, or utilizing a utensil designed so that the handle cannot contact the product in the product module. Manual dispensing utensils shall be attached to the display unit by a tether of easily cleanable material of such length that the utensil cannot contact the floor. When not in use, the utensil must be stored in a sleeve or protective housing attached or adjacent to the display unit. Since it is not practical to store ladles and spatulas used in other than dry foods in sleeves or protective housings, they shall be stored in the food with handles extending to the outside of the product module. Handles shall not prevent lids from being self-closing.

Section 271-2.21 Food sample demonstrations and food promotions.

When food sample demonstrations and food promotions are authorized in the retail store, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this Part.

Section 271-2.22 Food transportation by retail food stores-general.

Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this code relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

Section 271-2.23 Specialized processing methods.

A food establishment shall obtain a variance from the Department before smoking or curing food; using a reduced oxygen method of packaging food except as specified under Section 271-2.24 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 Department to require a variance.

Section 271-2.24 Reduced Oxygen Packaging.

(a) A food establishment that packages food using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under Section 271-9.6(d) and that:

(1) Identifies the food to be packaged;

(2) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(i) Has an a_w of 0.91 or less,

(ii) Has a pH of 4.6 or less,

(iii) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR section 318.7, "Approval of substances for use in the preparation of products," and 9 CFR section 381.7, "Restrictions on the use of substances in poultry products," and is received in an intact package, or

- (iv) Is a food with a high level of competing organisms such as raw meat or raw poultry;
 - (v) Is a frozen food which does not meet the criteria of (i), (ii) or (iii) and is conspicuously labeled, “Important – Keep Frozen Until Use;”
 - (vi) Is a food which contains some other barrier which precludes the growth of *Clostridium botulinum*.
- (3) Specifies methods for maintaining food at 41°F (5°C) or less;
- (4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
- (i) Maintain the food at 41°F (5°C) or less, and
 - (ii) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
- (5) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer’s “sell by” or “use by” date, whichever occurs first;
- (6) Includes operational procedures that:
- (i) Prohibit contacting food with bare hands,
 - (ii) Identify a designated area and the method by which:
 - (a) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and
 - (b) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and
 - (iii) Delineate cleaning and sanitization procedures for food contact surfaces; and
- (7) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:
- (i) Concepts required for a safe operation,
 - (ii) Equipment and facilities, and
 - (iii) Procedures specified under Subparagraph (a)(6) of this section and Section 271-9.6(d).

(b) Except for fish that is frozen before, during and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

Section 271-2.25 Consumer advisory.

If a raw or undercooked animal food such as beef, eggs, fish, lamb, milk, pork, poultry or shellfish is offered in a ready-to-eat form as a deli, menu or other item; or as a raw ingredient in another ready-to-eat food, the establishment operator shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form.

Section 271-2.26 Bulk Foods.

(a) Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage. Loaves of bread which are displayed where they may be handled by customers shall be packaged to prevent contamination.

(b) Containers of bulk pet foods and bulk non-food items shall be effectively separated by a barrier or open space from product modules containing food items for human consumption.

(c) Bulk food returned to the store by the customer shall not be offered for resale.

(d) All carry-out containers for bulk foods shall be clean and of food grade material.

SUBPART 271-3

MANAGEMENT AND PERSONNEL

Section

271-3.1 Demonstration of Knowledge

271-3.2 Employee health-general

271-3.3 Personal cleanliness

271-3.4 Clothing

271-3.5 Employee practices

Section 271-3.1 Demonstration of Knowledge.

As required by Agriculture and Markets Law §251-z-3, the applicant for a food processing establishment license shall furnish the Commissioner with evidence of his or her experience and competency to operate the establishment. If at any time the Commissioner is not satisfied that the person-in-charge of the establishment is competent to operate the establishment, he or she may require that person to demonstrate such competency by successfully completing a food safety course approved by the Department. The course shall include instruction in the following subject areas:

(a) The relationship between the prevention of foodborne disease and the personal hygiene of food employees;

(b) The responsibility of the person-in-charge, or his or her designee for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

(c) The symptoms associated with the diseases that are transmissible through food;

(d) The significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

(e) The hazards involved in the consumption of raw or undercooked meat, poultry, eggs and fish;

(f) The required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs and fish;

(g) The required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

(h) The relationship between the prevention of foodborne illness and the management and control of the following:

- (1) Cross contamination,
 - (2) Hand contact with ready-to-eat foods,
 - (3) Handwashing, and
 - (4) Maintaining the food establishment in a clean condition and in good repair;
- (i) The relationship between food safety and equipment that is:
- (1) Sufficient in number and capacity, and
 - (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;
- (j) The correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;
- (k) The identification of the source of water used, and measures taken, to ensure that it remains protected from contamination, such as providing protection from backflow and precluding the creation of cross connections;
- (l) The identification of poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;
- (m) The identification of critical control points in the operation, from purchasing through sale or service that, when not controlled, may contribute to the transmission of foodborne illness and the steps that must be taken to ensure that the points are controlled in accordance with the requirements of these regulations;
- (n) The procedures necessary in order for the person-in-charge and food employees to comply with the schedule process, if such a process is required by the law, regulation or an agreement between the Department and the establishment; and
- (o) The responsibilities, rights, and authorities assigned by 1 NYCRR Part 271 to the:
- (1) Food employee,
 - (2) Person-in-charge, and
 - (3) the Department.

Section 271-3.2 Employee health---general.

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 affected with a boil, an infected wound or an acute respiratory infection, shall work in a retail food store 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.

Section 271-3.3 Personal cleanliness.

Employees engaged in food preparation and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating or using the toilet, before and after handling raw meat, raw poultry or raw seafood, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

Section 271-3.4 Clothing.

(a) Employees shall wear clean outer clothing.

(b) Employees shall use effective hair restraints where necessary to prevent the contamination of food or food-contact surfaces.

Section 271-3.5 Employee practices.

(a) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

(b) Employees shall consume food or use tobacco only in designated areas. Such designated areas must be located so that the eating or tobacco use of an employee does not result in contamination of food, equipment, or utensils.

SUBPART 271-4

EQUIPMENT AND UTENSIL

Section

- 271-4.1 Materials-general**
- 271-4.2 Solder**
- 271-4.3 Wood**
- 271-4.4 Plastics and rubber materials**
- 271-4.5 Cutting surfaces**
- 271-4.6 Single-service articles**
- 271-4.7 Design and fabrication-general**
- 271-4.8 Accessibility**
- 271-4.9 In-place cleaning**
- 271-4.10 Food product thermometers**
- 271-4.11 Nonfood-contact surfaces**
- 271-4.12 Ventilation hoods**
- 271-4.13 Maintenance of equipment and utensils**
- 271-4.14 Equipment installation and location-general**
- 271-4.15 Table-mounted equipment**
- 271-4.16 Floor-mounted equipment**
- 271-4.17 Aisles and working spaces**

Section 271-4.1 Materials---general.

Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion-resistant and shall be non-absorbent, and shall be smooth, easily cleanable and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food. Products modules and utensils shall be constructed of safe materials and shall be corrosion-resistant, non-absorbent, smooth and easily cleanable and durable under conditions of normal use.

Section 271-4.2 Solder.

Only dairy type solder (silver solder) with lead levels of 0.2% or less are acceptable on food-contact surfaces.

Section 271-4.3 Wood.

Hard maple or equivalent non-absorbent wood that meets the general requirements set forth in Section 271-4.1 of this Subpart may be used for cutting blocks, cutting boards and bakers' tables. Wood shall not be used as a food-contact surface under other circumstances, including in bulk food displays, except for contact with raw fruits, raw vegetables and nuts in the shell.

Section 271-4.4 Plastics and rubber materials.

Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, that are sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in Section 271-4.1 of this Subpart, are permitted for repeated use.

Section 271-4.5 Cutting surfaces.

Cutting surfaces subject to scratching and scoring must be resurfaced so as to be easily cleaned, or be discarded when these surfaces can no longer be effectively cleaned and sanitized.

Section 271-4.6 Single-service articles.

Single-service articles shall not be reused.

Section 271-4.7 Design and fabrication-general.

All equipment and utensils, including plastic ware shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping and crazing.

(a) Food-contact surfaces shall be easily cleanable, smooth and free of breaks, open seams, cracks, chips, pits and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning. Ordinary V-type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers, hot oil cooking equipment or hot oil filtering systems, such threads shall be minimized. Product modules, lids, dispensing units and utensils shall be designed and fabricated to meet the requirements for food-contact surfaces.

(b) Equipment containing bearings and gears requiring lubricants not made of safe materials shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces. Equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces shall be lubricated with materials meeting the requirements of Title 21 of the Code of Federal Regulations, Section 178.3570, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Sinks and drain boards shall be sloped to drain and be self-draining.

Section 271-4.8 Accessibility.

Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled;

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

Individual product modules shall be designed to be easily removable from the display unit for servicing unless the modules are so designed and fabricated that they can be effectively cleaned (and sanitized, when necessary) through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect bulk food or equipment in the adjoining display area.

Section 271-4.9 In-place cleaning.

Equipment intended for in-place cleaning shall be so designed and fabricated that:

- (a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen;
- (b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and
- (c) The system is self-draining or capable of being completely evacuated.

Section 271-4.10 Food product thermometers.

Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled and accurate to plus or minus 2°F (plus or minus 1°C).

Section 271-4.11 Nonfood-contact surfaces.

Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Surfaces of product module display units, tethers and all display equipment not intended for food contact, but which are exposed to splash, food debris or other soiling, shall be designed and fabricated to be smooth, cleanable, durable under conditions of normal use and free of unnecessary ledges, projections or crevices. Tethers shall be designed to be easily removable from the product module for cleaning. The materials for nonfood-contact surfaces shall be non-absorbent or made non-absorbent by being finished and sealed with a cleanable coating.

Section 271-4.12 Ventilation hoods.

Ventilation hoods and devices, where installed, shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease-extracting equipment shall be readily removable for cleaning and replacement, if not designed to be cleaned in place.

Section 271-4.13 Maintenance of equipment and utensils.

All equipment and utensils shall be maintained in good repair to comply with the requirements of this Part.

Section 271-4.14 Equipment installation and location---general.

Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, water lines that are leaking or on which condensed water has accumulated, open stairwells or other sources of contamination.

Section 271-4.15 Table-mounted equipment.

(a) Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and the adjacent areas.

(b) Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch clearance between the table or counter, except that if no part of the table under the equipment is more than 18 inches from cleaning access, the clearance space shall be three inches or more; or if no part of the table under the equipment is more than three inches from cleaning access, the clearance space shall be two inches or more.

(c) Equipment is portable within the meaning of subdivision (b) of this section if:

(1) It is small and light enough to be easily moved by one person;

(2) It has no utility connection, has a utility connection that disconnects quickly or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning; and

(3) It is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment, and:

(i) Does not exceed 80 pounds; or

(ii) Is equipped with a mechanical means of safely tilting the unit for cleaning.

Section 271-4.16 Floor-mounted equipment.

(a) Floor-mounted equipment, unless easily movable, shall be:

(1) Sealed to the floor; or

(2) Elevated on legs to provide at least a six-inch clearance between the floor and equipment, except that equipment may be elevated to provide at least a four-inch clearance between the floor and equipment if no part of the floor under the equipment is more than six inches from cleaning access.

(3) Display shelving units, display refrigeration units and display freezer units are exempt from the provisions of section paragraphs (1) and (2) of this section if they are installed so that the floor beneath the units can be cleaned.

(b) Equipment is easily movable if:

(1) It is mounted on wheels or casters; and

(2) It has no utility connection, has a utility connection that disconnects quickly or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

(c) Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch and, if exposed to seepage, the space shall be sealed.

Section 271-4.17 Aisles and working spaces.

Aisles and working spaces between units of equipment, and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks and open-ended pallets shall be positioned to provide accessibility to working areas.

SUBPART 271-5

CLEANING, SANITIZATION AND STORAGE OF EQUIPMENT AND UTENSILS

Section	
271-5.1	Cleaning frequency
271-5.2	Wiping cloths
271-5.3	Manual cleaning and sanitizing
271-5.4	Mechanical cleaning and sanitizing
271-5.5	Drying
271-5.6	Retail food stores without equipment and utensil cleaning facilities
271-5.7	Equipment and utensil handling and storage
271-5.8	Storage
271-5.9	Single-service articles
271-5.10	Prohibited storage areas

Section 271-5.1 Cleaning frequency.

(a) Utensils and food-contact surfaces of equipment shall be cleaned and sanitized:

(1) Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods, except where the succession of different raw animal food each requiring a higher cooking temperature, as specified in Section 271-2.10 of this Part;

(2) After any interruption of operations during which time contamination may have occurred; and

(3) After final use each working day.

(b) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food and amount of food particle accumulation.

(c) The food-contact surfaces of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once each day of use, except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all baking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.

(d) Nonfood-contact surfaces of equipment, including transport vehicles, shall be cleaned as often as necessary to keep the equipment free of accumulation of dust, dirt, food particles and other debris.

(e) Tongs, scoops, ladles, spatulas or other appropriate utensils and tethers used by customers shall be cleaned and sanitized at least daily or at more frequent intervals based on the type of food and amount of food particle accumulation or soiling.

(f) Product modules, lids and other equipment shall be cleaned prior to restocking, when soiled or at intervals on a schedule based on the type of food and amount of food particle accumulation.

(g) Food-contact surfaces shall be cleaned and sanitized immediately if contamination is observed or suspected.

Section 271-5.2 Wiping cloths.

(a) Cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be cleaned and rinsed frequently in one of the sanitizing solutions permitted in Section 271-5.3(h) of this Subpart and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(b) Cloths or sponges used for cleaning nonfood-contact surfaces of equipment shall be clean and rinsed as specified in subdivision (a) of this section and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(c) Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

Section 271-5.3 Manual cleaning and sanitizing.

Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

(a) For manual cleaning and sanitizing of equipment and utensils, a sink with two or three compartments shall be provided and used. Sink compartments shall be large enough to accommodate the immersion of most equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Where immersion in sinks is impracticable (e.g., because equipment is too large), equipment and utensils shall be cleaned and sanitized manually or by pressure spray methods.

(b) Drain boards or easily movable utensil tables of adequate size shall be provided for proper storage and handling of soiled utensils prior to cleaning and for cleaned utensils following sanitizing and shall be located so as not to interfere with proper use of the warewashing facilities.

(c) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

(d) The sinks shall be cleaned before use.

(e) When a three-compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:

(1) Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label;

(2) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and

(3) Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in Section 271-5.3(h)(1)-(5) of this Subpart.

(f) When a two-compartment sink is utilized for warewashing, one of the following two methods shall be used:

(1) Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label, and shall be sanitized in hot water in the second compartment in accordance with Section 271-5.3(h)(1) of this Subpart; or

(2) Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent-sanitizer solution that is kept clean and at a concentration indicated on the manufacturer's label, and shall be sanitized in the second compartment in hot water in accordance with Section 271-5.3(h)(1) of this Subpart or with a solution containing that same detergent-sanitizer in accordance with Section 271-5.3(h)(2)-(5) of this Subpart.

(g) When pressure spray methods are utilized for cleaning and sanitizing, the equipment and utensils shall be thoroughly flushed with a detergent-sanitizer solution until the article is free of visible food particles and soil. The detergent-sanitizer shall be used in accordance with the manufacturer's instructions and shall be of the type that does not require a potable water rinse when used according to those instructions.

(h) The food-contact surfaces of all equipment and utensils shall be sanitized by:

(1) Immersion for at least 1/2 minute in clean, hot water of a temperature of 170°F (77°C) or greater;

(2) Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of 75°F (24°C) or greater;

(3) Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine, having a pH range which the manufacturer has demonstrated to be effective and a temperature of 75°F (24°C) or greater;

(4) Immersion for at least one minute in a clean solution containing 200 parts per million in a quaternary ammonium compound and having a temperature of 75°F (24°C) or greater. The quaternary ammonium compound used shall have been compounded by the manufacturer to assure effectiveness in waters up to 500 parts per million hardness at use concentration;

(5) Immersion in a clean solution containing any other chemical sanitizing agent allowed under Title 21 of the Code of Federal Regulations, Section 178.1010, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of [at least] 75°F (24°C) or greater for one minute;

(6) Treatment with steam, free from materials or additives other than those specified in Title 21 of the Code of Federal Regulations, Section 173.310, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(7) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Section 271-5.3(h)(2), (3) and (5) of this Subpart in the case of equipment too large to sanitize by immersion.

(i) When hot water is used for sanitizing, the following equipment shall be provided and used:

(1) An integral heating device or fixture installed in, on or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of 170°F (77°C) or greater;

(2) A numerically scaled indicating thermometer, accurate to plus or minus 3°F (plus or minus 1°C) convenient to the sink for frequent checks of water temperature; and

(3) Utensil racks or baskets of such size and design to permit complete immersion of utensils and equipment in the hot water.

(j) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under Title 21 of the Code of Federal Regulations, Section 178.1010, as revised April 1, 2003, published by the Office of Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used.

Section 271-5.4 Mechanical cleaning and sanitizing.

Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils. Mechanical cleaning and sanitizing equipment and practices shall conform to the following requirements:

(a) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers and liquid sanitizer injectors, if any, shall be properly installed and maintained.

(b) The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4 inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(c) Machine or waterline mounted numerically scaled indicating thermometers, accurate to plus or minus 3°F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(d) Rinse water tanks shall be protected by baffles, curtains or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

(e) Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dish tables for the storage of clean utensils following sanitization.

(f) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

(g) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used, provided that:

(1) The temperature of the wash water shall not be less than 120°F;

(2) The wash water shall be kept clean;

(3) Chemicals added for sanitization purposes shall be automatically dispensed;

(4) Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration;

(5) The chemical sanitizing rinse water temperature shall not be less than 75°F nor less than the temperature specified by the machine's manufacturer;

(6) Chemical sanitizers used shall meet the requirements of Title 21 of Code of Federal Regulations, Section 178.1010, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; and

(7) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(h) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the temperature stated in Section 271-5.4(g) of this Subpart.

(1) Single-tank, stationary-rack, dual temperature machine:

Wash temperature	150°F
Final rinse temperature	180°F

(2) Single-tank, stationary-rack, single-temperature machine:

Wash temperature	165°F
Final rinse temperature	165°F

(3) Single-tank, conveyor machine:

Wash temperature	160°F
Final rinse temperature	180°F

(4) Multitank, conveyor machine:

Wash temperature	150°F
Pumped rinse temperature	160°F
Final rinse temperature	180°F

(5) Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

Wash temperature	140°F
Final rinse temperature	180°F

(i) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

Section 271-5.5 Drying.

Unless used immediately after sanitization, all equipment and utensils shall be air dried. Towel drying shall not be permitted.

Section 271-5.6 Retail food stores without equipment and utensil cleaning facilities.

Retail food stores that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables.

Section 271-5.7 Equipment and utensil handling and storage.

Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination.

Section 271-5.8 Storage.

(a) Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from splash, dust and other means of contamination. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall

not be placed under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(b) Utensils shall be air dried before being stored or shall be stored in a self-draining position.

(c) Stored utensils shall be covered or inverted wherever practical.

Section 271-5.9 Single-service articles.

(a) Single-service articles shall be stored in closed cartons or containers at least six inches above the floor or on easily movable dollies, skids, racks or open-ended pallets. Such storage shall protect the articles from contamination and shall not be located under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(b) Single-service articles shall be handled in a manner that prevents contamination of surfaces that may come in contact with food.

(c) Take-home containers (bags, cups, lids, etc.) provided in the display area for customer use shall be stored and dispensed in a sanitary manner.

Section 271-5.10 Prohibited storage areas.

Food equipment, utensils or single-service articles shall not be stored in locker rooms, toilet rooms or their vestibules, garbage rooms or mechanical rooms.

SUBPART 271-6

SANITARY FACILITIES AND CONTROLS

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Section 271-6.1 Water supply---general.

Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to 10 NYCRR Part 5 and 9 NYCRR Part 902. Except when used as specified in Section 271-6.7, water from a nonpublic water system shall be sampled and tested quarterly for microbiological contamination, annually for nitrate and once for nitrite in accordance with the requirements of the New York State Department of Health for a noncommunity water system, as set forth in 10 NYCRR section 5-1.52. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment.

Section 271-6.2 Water delivery.

All potable water not provided to the retail food store directly from the source by pipe shall be delivered in a bulk water transport system and shall be transferred to a closed water system. Both of these systems shall be constructed, maintained and operated according to 10 NYCRR Part 5.

Section 271-6.3 Water under pressure.

Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

Section 271-6.4 Steam.

Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in Title 21 of the Code of Federal Regulations, Section 173.310, as revised April 1, 2003, published by the Office of the Federal Register and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Section 271-6.5 Sewage---general.

All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained and operated according to 6 NYCRR Parts 750-757. Nonwater-carried sewage disposal facilities are prohibited, except as permitted by the Department of Agriculture and Markets.

Section 271-6.6 Plumbing---general.

Plumbing shall be sized, installed and maintained according to 9 NYCRR Part 902 and 10 NYCRR Part 14. There shall be no cross-connection between the potable water supply and any other system containing:

- (a) Water of unknown or questionable origin; or
- (b) Contaminating or polluting substances.

Section 271-6.7 Nonpotable water system.

A nonpotable water system is permitted for air conditioning, equipment cooling and fire protection. Nonpotable water shall not directly or indirectly contact food or equipment or utensils that contact food. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

Section 271-6.8 Backflow.

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixtures flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device.

Section 271-6.9 Grease traps.

Grease traps, if used, shall be installed and maintained according to 9 NYCRR 933.10.

Section 271-6.10 Garbage grinders.

Garbage grinders, if used, shall be installed and maintained according to 9 NYCRR 922.1-922.4.

Section 271-6.11 Drains.

Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. Inlet pipes (drain pipes) leading from such water sinks shall have a 1/4 inch or larger gap between the inlet pipe (drain pipe) and the receiving pipe or funnel. Where this is impractical, the inlet pipe may extend inside the receiving pipe provided the fit is loose enough to allow free overflow between the two fittings. When a warewashing machine is located within five feet of a trapped floor drain, the warewasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted by law.

Section 271-6.12 Toilet installation.

Toilet facilities shall be installed in each retail food store according to 9 NYCRR Part 901, shall be conveniently located and shall be accessible to employees at all times.

Section 271-6.13 Toilet design.

Toilets and urinals shall be designed to be easily cleanable.

Section 271-6.14 Toilet rooms.

Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing solid doors, except for louvers that may be necessary for ventilation systems.

Section 271-6.15 Toilet facility maintenance.

Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

Section 271-6.16 Handwashing facility installation.

Handwashing facilities shall be installed and located

- (a) in or immediately adjacent to toilet rooms or their vestibules, and
- (b) in food preparation and warewashing areas or in an otherwise readily accessible location for use by all employees working in these areas.

Sinks used for food preparation or for warewashing shall not be used for washing of hands or for any other purposes; provided, however, that such sinks may be used for other than food preparation or warewashing purposes in instances where such other use would not adversely affect public health and safety and has been approved by an authorized Department representative.

Section 271-6.17 Handwashing facility faucets.

Each handwashing facility shall be provided with hot water of at least 105°F (congruent to 40.5°C) and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing or

metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

Section 271-6.18 Handwashing supplies.

A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities. When sanitary paper towels or disposable towelettes are provided at the bulk food display area, easily cleanable waste receptacle(s) shall be conveniently provided in the display area.

Section 271-6.19 Handwashing facility maintenance.

Handwashing facilities, soap or detergent dispensers, hand-drying devices and all related facilities shall be kept clean and in good repair.

Section 271-6.20 Garbage and refuse containers.

(a) Garbage and refuse shall be held in durable, easily cleanable, insect-resistant and rodent-resistant containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers. Such bags and durable plastic garbage and refuse containers may be used for storage inside the retail food store.

(b) Containers used in food preparation and utensil washing areas shall be kept covered during nonworking hours and after they are filled.

(c) Containers stored outside the establishment, including dumpsters, compactors and compaction systems shall be easily cleanable, shall be provided with tightfitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be kept in place except during cleaning.

(d) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(e) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food equipment, utensils, or food preparation areas. Suitable facilities, detergent and hot water or steam shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be properly disposed of.

Section 271-6.21 Garbage and refuse storage.

(a) Garbage and refuse on the premises shall be stored in a manner to make them in-accessible to insects and rodents. Outside storage of nonrodent-resistant plastic containers, unprotected plastic bags, wet strength paper bags or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(b) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect and rodent resistant and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency.

(c) Outside storage areas or enclosures, if used, shall be kept clean and large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency. Garbage and refuse containers, dumpsters and compactor systems located outside, shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

Section 271-6.22 Garbage and refuse disposal.

(a) Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.

(b) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration in accordance with 6 NYCRR Parts 201, 219 and 222. Areas around incineration units shall be kept clean and orderly.

Section 271-6.23 Insect and rodent control.

Effective measures shall be utilized to minimize the entry, presence and propagation of rodents, flies, cockroaches or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

Section 271-6.24 Openings.

Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall be protected against the entry of insects by tightfitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing and screens for windows, skylights, transoms, intake and exhaust air ducts and other openings to the outside shall be tightfitting and free of breaks. Screening material shall be not less than 16 mesh to the inch.

SUBPART 271-7

CONSTRUCTION AND MAINTENANCE OF PHYSICAL FACILITIES

Section

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271-7.30 Animals

Section 271-7.1 Floor construction.

(a) Except as specified in Section 271-7.2 of this Subpart, floors and floor coverings of all food preparation, food storage and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl or plastic tile or tightfitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(b) Floors which are water-flushed, or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile or similar materials, and shall be graded to drain.

(c) In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile or similar flooring materials, or where water-flush cleaning methods are used, the junctures between walls and floors shall be covered and sealed. In all other cases, the juncture between walls and floors shall be covered so as not to present an open seam of more than 1/32 inch.

Section 271-7.2 Floor carpeting.

Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable and maintained in good repair. Carpeting shall not be used in food preparation and warewashing areas, in food storage areas or in toilet room areas where urinals or fixtures are located.

Section 271-7.3 Prohibited floor covering.

Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

Section 271-7.4 Mats and duckboards.

Mats and duckboards shall be of nonabsorbent, grease-resistant materials, and of such size, design and construction to facilitate cleaning, and shall be maintained in good repair. Single-use materials such as rolls of sanitary cardboard designed for such purpose may be used as mats, provided such materials are discarded and replaced as necessary to maintain proper sanitation.

Section 271-7.5 Utility line installation in floors.

Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

Section 271-7.6 Maintenance of walls and ceilings.

Walls and ceilings, including doors, windows, skylights and similar closures, shall be maintained in good repair.

Section 271-7.7 Construction of walls and ceilings.

The walls, wall coverings and ceilings of walk-in refrigeration units, food preparation areas, warewashing areas and toilet rooms and their vestibules shall be smooth, nonabsorbent and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth, easily cleanable surface.

Section 271-7.8 Exposed construction.

Studs, joists and rafters shall not be exposed in those areas listed in Section 271-7.7 of this Subpart. If exposed in other rooms or areas, they shall be finished to provide a cleanable surface.

Section 271-7.9 Utility line installation in walls and ceilings.

Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in Section 271-7.7 of this Subpart. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

Section 271-7.10 Attachments to walls and ceilings.

Light fixtures, vent covers, wall mounted fans, decorative materials and similar attachments to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

Section 271-7.11 Walls and ceiling covering material installation.

Wall and ceiling covering materials shall be attached and sealed in a manner to be easily cleanable.

Section 271-7.12 Cleaning physical facilities---general.

Cleaning of floors, walls and ceilings shall be done as often as necessary, but preferably during periods when the least amount of food is exposed, such as after closing. Only dustless methods of cleaning floors, walls and ceilings shall be used, such as vacuum cleaning, wet cleaning, treated dust mops or the use of dust-arresting sweeping compounds with brooms. Floors, mats, duckboards, walls, ceilings and attachments (e.g., light fixtures, vent covers, wall mounted fans and similar equipment), and decorative materials (e.g., signs and advertising materials) shall be kept clean.

Section 271-7.13 Cleaning service sinks.

At least one service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or warewashing facilities, or food preparation sinks shall not be used for this purpose.

Section 271-7.14 Lighting---general.

(a) Permanently fixed artificial light sources shall be installed to provide at least 20-foot candles (215 lux) of light on all food preparation surfaces and at warewashing work levels.

(b) Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor:

(1) At least 20-foot candles (215 lux) of light in sales areas, utensils and equipment storage areas, and in handwashing and toilet areas; and

(2) At least 10-foot candles (108 lux) of light in walk-in refrigeration units, dry food storage areas and in all other areas.

Section 271-7.15 Protective shielding from lighting.

(a) Lamps located over or within exposed food storage, food preparation and food display facilities, and facilities where utensils and equipment are cleaned and stored shall be shielded, coated or otherwise shatter resistant.

(b) Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 271-7.16 Ventilation---general.

All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create a harmful or unlawful discharge. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt and other contaminating materials.

Section 271-7.17 Dressing rooms and areas.

If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, food storage, food display, warewashing or storage of utensils and equipment.

Section 271-7.18 Locker areas.

Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may only be located in the designated dressing rooms or areas, or in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

Section 271-7.19 Poisonous or toxic materials.

Only those poisonous or toxic materials necessary and intended for the maintenance of the establishment, including the cleaning and sanitization of equipment and utensils and the control of insects and rodents, shall be present in retail food stores, except those items being stored or displayed for retail sale as described in Section 271-7.23 of this Subpart.

Section 271-7.20 Labeling of poisonous or toxic materials.

Containers of poisonous or toxic materials necessary for operational maintenance of the establishment shall be prominently and distinctly labeled. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents.

Section 271-7.21 Storage of poisonous toxic materials.

Poisonous or toxic materials necessary for the maintenance of the establishment consist of the following two categories:

(a) Insecticides and rodenticides; and

(b) Detergents, sanitizers, related cleaning or drying agents, and caustics, acids, polishes and other chemicals

Materials in each of these two categories shall be stored and located to be physically separated from each other; shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose; and, to preclude potential contamination, shall not be stored above or intermingled with food, food equipment, utensils or single-service articles, except that this latter requirement does not prohibit the convenient availability of detergent sanitizers or sanitizers at warewashing facilities.

Section 271-7.22 Use of poisonous or toxic materials.

(a) Sanitizers, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.

(b) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment or utensils, nor in a way other than in full compliance with the manufacturer's labeling. The application or use of pesticides shall be in compliance with Department of Environmental Conservation regulations.

Section 271-7.23 Storage and display of materials for retail sale.

Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitioning or dividers. These materials shall not be stored or displayed above food or single-service articles.

Section 271-7.24 First-aid supplies and personal medications.

Retail food store employees first-aid supplies and personal medications shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

Section 271-7.25 Premises---general.

(a) Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operation or maintenance of the establishment.

(b) The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

Section 271-7.26 Living areas.

No operation of a retail food store shall be conducted in any room used as living or sleeping quarters. Retail food store operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

Section 271-7.27 Laundry facilities.

(a) If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work clothes used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

(b) Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

Section 271-7.28 Storage of linens and work clothes.

(a) Clean work clothes and linens, including articles such as wiping cloths, shall be stored in a clean place and protected from contamination until used.

(b) Soiled work clothes and linens, including articles such as wiping cloths, shall be kept in nonabsorbent containers or washable laundry bags until removed for laundering and shall be stored to prevent contamination of food, food equipment and utensils.

Section 271-7.29 Cleaning equipment and storage.

Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment or linens, and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

Section 271-7.30 Animals.

(a) Live animals shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store. This exclusion does not apply to edible fish, crustacea, shellfish or fish in aquariums. Live or dead fish bait shall be stored separately from food or food products. Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons. Guide dogs accompanying blind persons or deaf persons shall be permitted in sales areas.

(b) While on duty, persons employed in the food operational areas of an establishment shall not care for or handle any pets or patrol/security dogs.

SUBPART 271-8

FOOD DISPLAY AND SERVICE AT SALAD BARS

Section

- 271-8.1 Food protection--potentially hazardous foods**
- 271-8.2 Display equipment**
- 271-8.3 Dispensing utensils**
- 271-8.4 Cleaning and sanitizing frequency**
- 271-8.5 Customer information**
- 271-8.6 Supervision**

Section 271-8.1 Food protection---Potentially hazardous foods.

(a) Potentially hazardous food shall be kept at a temperature of 41°F (5°C) or less or at a temperature of 135°F (57°C) or greater during display and service, except that rare roast beef shall be held for service at a temperature of 41°F (5°C) or less or 130°F (54°C) or greater on the first day of service only; thereafter it shall be held at 41°F (5°C) or less or 135°F (57°C) or greater. In the case of existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less, potentially hazardous food shall be kept at a temperature between 45°F (7°C) and 41°F (5°C) in accordance with section 271-2.7 of this Part. The foregoing temperature requirements shall apply except during necessary times of preparation or during a limited period of time while said food is being held for service, which time shall not exceed four hours. Potentially hazardous foods which have been held at temperatures other than those set forth above for more than four hours shall be discarded and shall not be recycled. Operators of retail establishments shall maintain, in a form acceptable to the commissioner, records identifying the times during which each potentially hazardous food has been displayed for sale at temperatures other than those set forth above. Such records shall be readily available to department personnel. Inserts in product modules or containers which have the effect of reducing the amount of product on display and thereby encouraging a more rapid product turnover time and enhancing proper temperature control may be utilized.

(b) The remaining portion of a depleted item may be placed on top of fresh product introduced to the display (topped off) provided the remaining of the depleted item remains wholesome and suitable for sale.

(c) Salad ingredients must be transported from the processing area to the display unit in covered containers.

(d) Raw fruits and vegetables shall be washed thoroughly before use.

(e) Condiments, seasonings and dressings for self-service use shall be provided in individual packages or from dispensers or containers protected in accordance with section 271-8.2 of this Subpart. Condiments provided for table or counter service shall be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided individual packaged or in pour-type dispensers.

(f) Ice used in display units must be from an approved source, potable and properly dispensed to prevent contamination and must be changed daily.

Section 271-8.2 Display equipment.

Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

(a) Food shields or sneeze guards must be of the canopy type and must completely cover the display/dispensing unit from above. Such shields shall be mounted so as to intercept a direct line between the customer's mouth and the food display area at the customer use position. Self-service soup displays shall be exempt from this requirement, provided the soup is displayed in a lidded container.

(b) Width of the salad bar unit should be restricted to limit reaching over food product. Food containers shall be no more than three deep from any serving access side.

(c) Display units containing potentially hazardous foods requiring refrigeration must be maintained so that all parts of such food are at a temperature of 41°F (5°C) or less. In the case of existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less, potentially hazardous food shall be kept at a temperature between 45°F (7°C) and 41°F (5°C) in accordance with section 271-2.7 of this Part.

Section 271-8.3 Dispensing utensils.

(a) To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to customers who serve themselves. Between uses during service, dispensing utensils shall be:

(1) Stored in the food with the dispensing utensil handle extended out of the food;

(2) Stored clean and dry;

(3) Stored in running water; or

(4) Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

(b) Serving utensils must be of such size and length as to minimize contamination of the food.

(c) The top of the serving container or product module shall be above the ice bed level.

(d) All tableware and consumer service containers must be stored in a manner that prevents contamination of surfaces which may come in contact with food or the mouth of the user. This includes but is not limited to multi-use utensils such as plates, knives, forks, spoons, cups and glasses, single-service items similar to those mentioned above and other containers used for the storage of take-out salads.

(e) Take-out containers are to be provided by the retail food store or food service establishment. Personal containers are not allowed.

Section 271-8.4 Cleaning and sanitizing frequency.

(a) Tongs, ladles, other utensils and product modules shall be cleaned and sanitized before being restocked with food product. If contamination is observed or suspected, food-contact surfaces shall be cleaned and sanitized immediately.

(b) While the salad bar is in operation, the floor area around it must be maintained in a clean condition using dustless methods. The food display/dispensing unit and attached/associated equipment must be maintained clean. Routine cleaning shall be conducted daily prior to stocking the unit. Spot cleaning shall be conducted as necessary.

Section 271-8.5 Customer information.

(a) The addition of sulfiting agents to food by a retailer is prohibited.

(b) When foods which have been treated with sulfiting agents by a manufacturer or grower are being offered for sale at retail, the customers must be notified by conspicuous, easily readable labels, signs, placards or menu statements at the display location.

(c) Customers shall be provided with information on the correct (sanitary) use of the salad bar.

Section 271-8.6 Supervision.

Each salad bar operation must have at least one person assigned to oversee its overall maintenance and operation in accordance with the provisions of this Subpart 271-8. This person shall be available in the area of the salad bar display unit.

SUBPART 271-9

COMPLIANCE AND ENFORCEMENT

Section

271-9.1 General

271-9.2 Modifications and Waivers

271-9.3 Documentation of Proposed Variance and Justification

271-9.4 Conformance with Approved Procedures

271-9.5 When a HACCP Plan is Required

271-9.6 Contents of a HACCP Plan

Section 271-9.1 General.

When the commissioner has reasonable cause to suspect possible disease transmitted by food from any retail food store employee, he may secure a morbidity history of the suspected employee, or make any other investigation as indicated and shall take appropriate action after consultation with the Commissioner of Health. The commissioner may require any or all of the following measures:

(a) The immediate exclusion of the employee from employment in retail food stores;

(b) The immediate closing of the retail food store concerned until, in his opinion, no further danger of disease outbreak exists;

(c) Restriction of the employee's services to some area of the establishment where there could be no danger of transmitting disease; and

(d) Adequate medical laboratory examination of the employee, of other employees, and of the body discharges of such employee.

Section 271-9.2 Modifications and Waivers.

The Department may grant a variance by modifying or waiving the requirements of this Part if in the opinion of the Department a health hazard or nuisance will not result from the variance. If a variance is granted, the Department shall retain the information specified under Section 271-9.3 in its records for the food establishment.

Section 271-9.3 Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this Part is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the food establishment includes:

- (a) A statement of the proposed variance of this Part requirement citing relevant section numbers;
- (b) An analysis of the rationale for how the potential public health hazards and insanitary conditions addressed by the relevant sections will be alternatively addressed by the proposal; and
- (c) A HACCP plan if required as specified under Section 271-2.23 or Section 271-2.24 that includes the information specified under Section 271-9.6 as it is relevant to the variance requested.

Section 271-9.4 Conformance with Approved Procedures.

If the Department grants a variance from any requirements of this Part, or a HACCP plan is otherwise required as specified under Section 271-9.5, the establishment operator shall:

- (a) Comply with the HACCP plans and procedures that are submitted as specified under Section 271-9.6 and approved as a basis for the modification or waiver; and
- (b) Maintain and provide to the Department, upon request, records specified under Section 271-9.6(d) and (e) 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, and
 - (4) Necessary corrective actions if there is failure at a critical control point.

Section 271-9.5 When a HACCP Plan is Required

(a) Before engaging in an activity that requires a HACCP Plan, an establishment operator shall submit to the Department, for review, a properly prepared HACCP Plan as specified under Section 271-9.6 and the relevant provisions of this Part if:

- (1) Submission of a HACCP Plan is required according to law;
 - (2) A variance is required as specified under Section 271-2.23 and Section 271-2.24; or
 - (3) The Department determines that a food preparation or processing method requires a variance based on a plan submittal or an inspectional finding.
- (b) An establishment operator shall have a properly prepared HACCP Plan as specified under Section 271-2.23.

Section 271-9.6 Contents of a HACCP Plan.

For a food establishment that is required under Section 271-9.5 to have a HACCP Plan, the plan and specifications shall indicate:

(a) A categorization of the types of potentially hazardous foods or other foods that are specified by the Department;

(b) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

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

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

(c) Food employee and supervisory training plan that addresses the food safety issues of concern;

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

(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;

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