

**MICHIGAN DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT
FOOD AND DAIRY DIVISION
P.O. Box 30017, Lansing, Michigan 48909**

**FOOD LAW
(Act 92 of 2000, as amended)**

Effective October 1, 2012

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Act 92 of 2000, FOOD LAW OF 2000, (289.1101-289.8111)

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AN ACT to codify the licensure and regulation of certain persons engaged in processing, manufacturing, production, packing, preparing, repacking, canning, preserving, freezing, fabricating, storing, selling, serving, or offering for sale food or drink for human consumption; to prescribe powers and duties of the department of agriculture; to provide for delegation of certain powers and duties to certain local units of government; to provide exemptions; to regulate the labeling, manufacture, distribution, and sale of food for protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of foods in violation of this act; to provide standards for food products and food establishments; to provide for enforcement of the act; to provide penalties and remedies for violation of the act; to provide for fees; to provide for promulgation of rules; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Chapter I

SHORT TITLE, SCOPE, DEFINITIONS

289.1101 Short title.

Sec. 1101. This act shall be known and may be cited as the "food law."

289.1103 Scope.

Sec. 1103. The provisions of this act regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any food for sale; and the sale, dispensing and giving of food, serving, and the supplying of food in the conduct of any food establishment.

289.1105 Definitions; A to C; unsafe substances, additives, or chemicals.

Sec. 1105. (1) As used in this act:

(a) "Adulterated" means food to which any of the following apply:

(i) It bears or contains any poisonous or deleterious substance that may render it injurious to health unless the substance is not an added substance and the quantity of that substance in the food does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subsection (2).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subsection (2).

(iv) It bears or contains any food additive considered unsafe within the meaning of subsection (2). However, if a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or limitation prescribed under subsection (2) and the raw agricultural commodity has been subjected to processing, the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subsection (2) and this subdivision, not considered unsafe if that residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(v) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 360b of the federal act, 21 USC 360b.

(vi) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or it is otherwise unfit for food.

(vii) It has been produced, prepared, packed, or held under unsanitary conditions in which it may have become contaminated with filth or in which it may have been rendered diseased, unwholesome, or injurious to health.

(viii) It is the product of a diseased animal or an animal that has died other than by slaughter or that has been fed uncooked garbage or uncooked offal from a slaughterhouse.

(ix) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

(x) A valuable constituent has been in whole or in part omitted or abstracted from the food; a substance has been substituted wholly or in part for the food; damage or inferiority has been concealed in any manner; or a substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(xi) It is confectionery and has partially or completely imbedded in it any nonnutritive object except if, as provided by rules, the object is of practical functional value to the confectionery product and

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would not render the product injurious or hazardous to health; it is confectionery and bears or contains any alcohol other than alcohol not in excess of 1/2 of 1% by volume derived solely from the use of flavoring extracts; or it is confectionery and bears or contains any nonnutritive substance except a nonnutritive substance such as harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin or any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on the confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this act. For the purpose of avoiding or resolving uncertainty as to the application of this subdivision, the director may issue rules allowing or prohibiting the use of particular nonnutritive substances.

(xii) It is or bears or contains any color additive that is unsafe within the meaning of subsection (2).

(xiii) It has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption under this act or a regulation or exemption under the federal act.

(xiv) It is bottled water that contains a substance at a level higher than allowed under this act.

(b) "Advertisement" means a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food.

(c) "Agricultural use operation" means a maple syrup production facility or similar food establishment that finishes a raw commodity and is integral to the agricultural production of, and is located at, a farm. An agricultural use operation is not considered a food processor or retail processing operation for purposes of personal or real property but must meet those same standards and licensing requirements as prescribed in this act.

(d) "Bed and breakfast" means a private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient tenants, and serves breakfasts, or other meals in the case of a bed and breakfast described in section 1107(t)(ii), at no extra cost to its transient tenants. A bed and breakfast is not a food service establishment if exempt under section 1107(t)(ii) or (iii).

(e) "Color additive" means a dye, pigment, or other substance that is made by a process of synthesis or similar artifice or is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or when added or applied to a food or any part of a food is capable alone or through reaction with other substances of imparting color to the food. Color additive does not include any material that is exempt or hereafter is exempted under the federal act. This subdivision does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth of other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest. Color includes black, white, and intermediate grays.

(f) "Consumer" means an individual who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processor, and does not offer the food for resale.

(g) "Contaminated with filth" means contaminated as a result of not being securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(h) "Continental breakfast" means the serving of only non-potentially-hazardous food such as a roll, pastry or doughnut, fruit juice, or hot beverage, but may also include individual portions of milk and other items incidental to those foods.

(i) "Core item" means a provision in the food code that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(j) "Cottage food operation" means a person who produces or packages cottage food products only in a kitchen of that person's primary domestic residence within this state.

(k) "Cottage food product" means a food that is not potentially hazardous food as that term is defined in the food code. Examples of cottage food product include, but are not limited to, jams, jellies, dried fruit, candy, cereal, granola, dry mixes, vinegar, dried herbs, and baked goods that do not require temperature control for safety. Cottage food product does not include any potentially hazardous food regulated under 21 CFR parts 113 and 114, examples of which include, but are not limited to, meat and poultry products; salsa; milk products; bottled water and other beverages; and home-produced ice products. Cottage food product also does not include canned low-acid fruits or acidified vegetables and other canned foods except for jams, jellies, and preserves as defined in 21 CFR part 150.

(2) Any added poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive is considered unsafe for the purpose of subsection (1)(a), unless there is in effect a

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federal regulation or exemption from regulation under the federal act, the federal meat inspection act, 21 USC 601 to 683, the poultry products inspection act, 21 USC 451 to 472, or another federal statute, or a rule limiting the quantity of the substance, and the use or intended use of the substance, and the use or intended use of the substance conforms to the terms prescribed by the federal regulation or exemption or the rule.

289.1107 Definitions; D to F.

Sec. 1107. As used in this act:

- (a) "Department" means the department of agriculture and rural development.
- (b) "Director" means the director of the department or his or her designee.
- (c) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include either of the following:
 - (i) A group or communal residential setting within any type of structure.
 - (ii) An outbuilding, shed, barn, or other similar structure.
- (d) "Egg" does not include a balut, which is an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.
- (e) "Evaluation" means a food safety audit, inspection, or food safety and sanitation assessment, whether announced or unannounced, that identifies violations or verifies compliance with this act and determines the degree of active control by food establishment operators over foodborne illness risk factors.
- (f) "Extended retail food establishment" means a retail grocery that does both of the following:
 - (i) Serves or provides an unpackaged food for immediate consumption.
 - (ii) Provides customer seating in the food service area.
- (g) "Fair" means a fair or exhibition operated and managed under 1929 PA 11, MCL 46.151 to 46.153, or held by an agricultural or horticultural society under 1855 PA 80, MCL 453.231 to 453.240.
- (h) "Fair concession" means a food concession, storage, preparation, or dispensing operation at a state or county fair.
- (i) "Farmers' market" means a public and recurring assembly of farmers or their representatives selling directly to consumer's food and products that the farmers have produced themselves. In addition, the market may include a variety of other vendors as determined by market management.
- (j) "Federal act" means the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 USC 301 to 399d.
- (k) "Festival" means an event, staged by a local community or local organization that centers on and celebrates a certain aspect of that community or organization. Festival includes, but is not limited to, a fair, art show, chili cook-off, car show, hot air balloon festival, religious festival, drama festival, or cultural festival.
- (l) "First receiver" means a person who receives eggs from a producer at any place of business and candles, grades, sorts, packs, or packages the eggs.
- (m) "Food" means articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.
- (n) "Food additive" means any substance, the intended use of which, directly or indirectly, results in or may be reasonably expected to result in its becoming a component or otherwise affecting the characteristics of any food if that substance is not generally recognized among experts as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. Food additive includes any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and includes any source of radiation intended for any use. Food additive does not include any of the following:
 - (i) A pesticide chemical in or on a raw agricultural commodity.
 - (ii) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.
 - (iii) A color additive.
 - (iv) Any substance used in accordance with a sanction or approval granted before the enactment of the food additives amendment of 1958, Public Law 85-929, pursuant to the federal act, the poultry products inspection act, 21 USC 451 to 472, or the federal meat inspection act, 21 USC 601 to 683.
- (o) "Food code" means food code, 2009 recommendations of the food and drug administration of the United States public health service that regulates the design, construction, management, and operation of certain food establishments.
- (p) "Food establishment" means an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, and a retail grocery. Food establishment does not include any of the following:
 - (i) A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.

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- (ii) An inpatient food operation located in a health facility or agency subject to licensure under article 17 of the public health code, MCL 333.20101 to 333.22260.
- (iii) A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.
- (q) "Food processor" means a food establishment that processes, manufactures, wholesales, packages, labels, or stores food. Food processor does not include a maple syrup producer. Processing is an act, such as canning, freezing, dehydrating, drying, distilling, extracting, preserving, grinding, crushing, milling, washing, trimming, packing, or otherwise preserving or changing the form of a food.
- (r) "Food safety and sanitation assessment" means judging or assessing specific food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risks for foodborne illness and required compliance with this act, accompanied by a report of findings.
- (s) "Food safety audit" means the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with this act, accompanied by a report of findings. Food safety audit includes checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by this act, accompanied by a report of findings.
- (t) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:
 - (i) A motel that serves continental breakfasts only.
 - (ii) A bed and breakfast that has 10 or fewer sleeping rooms for rent.
 - (iii) A bed and breakfast that has more than 10 sleeping rooms for rent, if the bed and breakfast serves continental breakfasts only.
 - (iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.
- (u) "Food warehouse" means a food establishment that stores or distributes food for wholesale.

289.1109 Definitions; G to P.

Sec. 1109. As used in this act:

- (a) "Guide for the control of molluscan shellfish" means section II, model ordinance, national shellfish sanitation program guide for the control of molluscan shellfish, 2009, recommendations of the U.S. department of health and human services, public health service, food and drug administration.
- (b) "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the national advisory committee on microbiological criteria for foods.
- (c) "Imminent or substantial hazard" means a condition at a food establishment that the director determines requires immediate action to prevent endangering the health of people.
- (d) "Inspection" means the checking or testing of observable practices against standards established in or adopted by this act, accompanied by a report of findings.
- (e) "Juice" means the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, purees of the edible portions of 1 or more fruits or vegetables, or any concentrates of such liquid or puree.
- (f) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article and includes a requirement imposed under this act that any word, statement, or other information appearing on the display also appear on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.
- (g) "Labeling" means all labels and other written, printed, or graphic matter upon an article, any of its containers or wrappers, or accompanying the article.
- (h) "License limitation" means an action by which the director imposes restrictions or conditions, or both, on a license of a food establishment.
- (i) "License holder" means the person who is legally responsible for the operation of a food establishment including the owner, the owner's agent, or other person operating under apparent authority of the owner and who possesses a valid license to operate a food establishment.
- (j) "Limited food processor" means a food processor that had in the preceding licensing year or is reasonably anticipated to have in the current licensing year \$25,000.00 or less in annual gross wholesale

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sales made or business done in wholesale sales. Only the food sales from the food processor operation shall be used in computing the annual gross sales under this subdivision.

(k) "Local health department" means that term as defined in section 1105 of the public health code, MCL 333.1105, and having those powers and duties as described in part 24 of the public health code, MCL 333.2401 to 333.2498.

(l) "Michigan bridge card" means the card used for the electronic benefit transfer system for food stamp distribution required under section 14h of the social welfare act, 1939 PA 280, MCL 400.14h.

(m) "Milk product" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk product does include dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, butter, and any other product derived from milk.

(n) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations permitted and exemptions for small packages established by rules.

(vi) Any word, statement, date, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations promulgated under the federal act or by rules, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the regulations or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in the food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules if its quality falls below the standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and that falls below the standard of fill of container applicable, unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and except under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the federal act.

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- (o) "Mobile food establishment" means a food establishment operating from a vehicle, including a watercraft, that returns to a mobile food establishment commissary for servicing and maintenance at least once every 24 hours.
- (p) "Mobile food establishment commissary" means an operation that is capable of servicing a mobile food establishment.
- (q) "Nonperishable food" means food that is not perishable food.
- (r) "Perishable food" means any food that the manufacturer, packer, or retailer, in conjunction with the department, determines to have a significant risk of spoilage, loss of value, or loss of palatability within 90 days of the date of packaging.
- (s) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.
- (t) "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with 1 or more other substances, is a pesticide within the meaning of the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.
- (u) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.
- (v) "Priority foundation item" means a provision in the food code whose application supports, facilitates, or enables 1 or more priority items. Priority foundation item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record-keeping, and labeling. A priority foundation item is an item that is denoted in the food code with a superscript Pf^{Pf}.
- (w) "Priority item" means a provision in the food code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury if there is no other provision that more directly controls the hazard. Priority item includes an item with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, or hand washing. A priority item is an item that is denoted in the food code with a superscript P^P.
- (x) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

289.1111 Definitions; R to W.

Sec. 1111. As used in this act:

- (a) "Raw agricultural commodity" means any food in its raw or natural state including fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.
- (b) "Regulatory authority" means the department, the local health department, or the authorized representative having jurisdiction over the food establishment.
- (c) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processor.
- (d) "Retail grocery" means an operation that sells or offers to sell food to consumers for off-premises consumption. Food for off-premises consumption does not include take-out food intended for immediate consumption.
- (e) "Rules" means administrative rules promulgated under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (f) "Shellfish dealer" means an interstate wholesaler handling shellfish.
- (g) "Shellfish dealer certification" means the issuance of a numbered certificate to a person indicating that the person is in compliance with the requirements of the guide for the control of molluscan shellfish and that the person has permission from the department to conduct 1 or more of the following shellfish activities, as defined in the guide for the control of molluscan shellfish:
 - (i) Shellstock shipper.
 - (ii) Shucker packer.
 - (iii) Repacker or reshipper.
- (h) "Smoked fish rules" means R 285.569.1 to 285.569.19 of the Michigan administrative code.
- (i) "Special transitory food unit" means a temporary food establishment that is licensed to operate throughout the state without the 14-day limits or a mobile food establishment that is not required to return to a commissary.
- (j) "Staple foods" does not include accessory foods such as coffee, tea, cocoa, soda, noncarbonated drinks such as sports drinks, punches, and flavored waters, candy, condiments, spices, hot foods, or foods ready to go or made to take out, such as prepared sandwiches or salads.
- (k) "Sulfiting agents" means any of the following:
 - (i) Sulfur dioxide.
 - (ii) Sodium sulfite.

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- (iii) Sodium bisulfite.
- (iv) Potassium bisulfite.
- (v) Sodium metabisulfite.
- (vi) Potassium metabisulfite.
- (l) "Temporary food establishment" means a food establishment which operates at a fixed location for a temporary period not to exceed 14 consecutive days.
- (m) "Temporary license" means a written authorization issued by the director to operate for a specified limited time period.
- (n) "Transient tenant" means a person who rents a room in a bed and breakfast for fewer than 30 consecutive days.
- (o) "Trimming" is an act of removing leaves, roots, and other extraneous materials in preparation for grading, sorting, and sale as a whole fruit or vegetable. Trimming does not remove the peel or core and does not further cut the whole fruit or vegetable.
- (p) "U.S. standards for shell eggs" means United States standards, grades, and weight classes for shell eggs, AMS 56 (July 20, 2000), United States department of agriculture.
- (q) "Vending machine" means a self-service device offered for public use that, upon activation by a coin, token, card, key, or paper currency, dispenses unit servings of food or beverages without the necessity of replenishing the device between each vending operation. Vending machine does not include any of the following:
 - (i) A device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk ball gum, nuts, and panned candies.
 - (ii) A water-dispensing machine that is registered under chapter IV.
- (r) "Vending machine location" means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated.
- (s) "Wholesale" means selling other than directly to consumers.
- (t) "Wild game" means animals from their natural state and not cultivated, domesticated, or tamed.

289.1113 Terms defined in act; meanings; use of terms "critical violation" and "noncritical violation."

Sec. 1113. (1) A term defined in the food code has the same meaning when used in this act, except as specifically defined in this act.

(2) The terms "critical violation" and "noncritical violation" shall not be used by a regulatory authority to classify violations of the food code.

289.1115 Repealed. 2007, Act 113, Eff. Apr. 1, 2008.

289.1117 Repealed. 2007, Act 113, Eff. Apr. 1, 2008.

289.1119 Rules; "act" and "establishment" defined.

Sec. 1119. (1) Except as rescinded, rules promulgated under public acts repealed by this act retain authorization under this act.

(2) Notwithstanding R 285.553.1 of the Michigan administrative code, the following terms have the following meanings for purposes of those rules:

- (a) "Act" means the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.
- (b) "Establishment" means any farm crop storage where food is handled, stored, or prepared and that is exempt from the requirements of section 7101.

289.1121 Authority and powers of director.

Sec. 1121. This act does not divest the director of any authority and powers available under part 24 of the public health code, MCL 333.2401 to 333.2498, for the enforcement of this act.

Chapter II POWERS AND DUTIES OF THE DEPARTMENT

289.2101 Powers and duties of director.

Sec. 2101. (1) The director shall provide for the administration and enforcement of this act. The director may delegate enforcement and administration of this act to certain local health departments in the manner provided for in chapter III.

(2) The director shall investigate complaints and initiate and conduct other investigations as he or she considers advisable to determine violations of this act.

(3) The director may promulgate rules for the enforcement and implementation of this act.

289.2105 Seizure or embargo of food without warrant; tag or marking as notice of adulterated or misbranded food; complaint; findings and order of court.

Sec. 2105. (1) When necessary for the enforcement of this act, the director may seize without formal warrant any food found to be sold, held for sale, or exposed for sale in violation of this act or rules promulgated under this act.

(2) If the director finds or has probable cause to believe that any food is adulterated or so misbranded as to be dangerous to public health or fraudulent, within the meaning of this act, he or she shall affix to the food a tag or other appropriate marking giving notice that the food is, or is suspected of being, adulterated or misbranded and has been seized or embargoed. A person shall not remove or dispose of the food tagged or marked as embargoed or seized, by sale or otherwise, until permission for removal or disposal is given by the director or a court of competent jurisdiction.

(3) If food seized or embargoed under subsection (1) or (2) is determined by the director to be adulterated or misbranded, he or she shall cause a petition to be filed in circuit court in whose jurisdiction the food is seized or embargoed for a complaint for condemnation of the food. Seized or embargoed food shall be destroyed at the expense of the claimant of the food, under the supervision of the director, and the court may order the payment of the costs and fees and storage and other proper expenses by the claimant of the food or his or her agents. However, if the court finds that adulteration or misbranding can be corrected by proper labeling or processing of the food, after entry of the order; payment of the costs, fees, and expenses; and execution of a good and sufficient bond conditioned that the food shall be so labeled or processed, the court may direct the food to be delivered to the claimant for labeling or processing under the supervision of the director. The claimant shall pay the expense of the supervision. The food shall be returned to the claimant of the food on the representation to the court by the director that the food is no longer in violation of this act and that the expenses of supervision have been paid. If the director determines that the food so seized or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

289.2107 Adulterated food as nuisance.

Sec. 2107. (1) If the director finds any adulterated food that the director declares to be a nuisance, the director shall immediately condemn, destroy, or in any other manner render the food unsaleable as human food.

(2) If adulterated or misbranded food is a nuisance, is dangerous to the public health, or is fraudulent and requires the director's supervision, or if the food establishment requests the supervision of the director for sorting, destruction, reconditioning, or other disposition, the food establishment that is in possession of the food at the time of the seizure or embargo is liable for the costs of such supervision.

289.2109 Destruction of seized food.

Sec. 2109. If storage of seized food is not possible without risk to the public health, the director shall order immediate destruction of the food to be accomplished without delay by the owner, operator, or person in charge of the food establishment. The food shall be destroyed as specified in the order for destruction.

289.2111 Inspection of food establishment by director; access; securing samples or specimens of food; examination of records; photographs or copies of records as evaluation; confidentiality.

Sec. 2111. (1) The director shall have free access at all reasonable hours to any food establishment, including a vehicle used to transport or hold food, for the purpose of evaluating that food establishment or vehicle to determine if any of the provisions of this act are being violated. The director may secure samples or specimens of any food after paying or offering to pay for such samples in order to determine whether any provision of this act is being violated.

(2) The director may examine the records of the food establishment to obtain pertinent information about food, supplies, and equipment purchased, received, or used by, or pertaining to, persons employed by the food establishment or location.

(3) The director may take photographs or copy records as part of an evaluation. When a food establishment identifies by written document or mark that a certain area or record contains visible trade secrets, the director shall identify any photographs of that area or record as being confidential and shall diligently protect the confidentiality.

289.2113 Order to cease food operations; resumption; reevaluation; hearing.

Sec. 2113. (1) The director may order immediate cessation of operation of a food establishment upon a determination that continued operation would create an imminent or substantial hazard to the public health.

(2) A food establishment ordered to cease food operations under subsection (1) shall not resume operations until the director determines, upon reevaluation, that the conditions responsible for the order to cease operations no longer exist. The director shall offer an opportunity for reevaluation upon request of the license holder of the establishment.

(3) If the director orders an immediate cessation of operation of a food establishment under subsection (1), the license holder may request an administrative hearing.

289.2115 Disease transmission by employee; investigations.

Sec. 2115. If the director has reasonable cause to suspect disease transmission by an employee of a food establishment, he or she may secure a morbidity history of the suspected employee and make other investigations as he or she considers necessary.

289.2117 Annual report; dissemination of information.

Sec. 2117. The department shall submit to the governor and the legislature an annual report summarizing all judgments, decrees, and court orders, which have been rendered by the department under this act, including the nature of the charge and the disposition thereof. The department may disseminate information regarding food as it considers necessary to protect the health of the consumer and the protection of the consumer against fraud. This section does not prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

289.2119 Rules; evaluation, consultation, and training support to local health departments; review; criteria.

Sec. 2119. (1) Notwithstanding section 12909(1) of the public health code, MCL 333.12909, the department may promulgate rules to prescribe criteria for food service programs by local health departments. The department in promulgating these rules shall seek the advice and counsel of local health departments and the food service industry.

(2) The department shall provide evaluation, consultation, and training support to local health departments delegated authority and responsibility to perform food service program activities under section 3105.

(3) The department shall periodically conduct comprehensive reviews of each local health department's food service program. The reviews shall be based on criteria developed by the department with input from local health departments and may include a review of 1 or more elements of the following:

(a) Compliance with this act by the food service establishments within the local health department jurisdiction.

(b) The competency and training of the food service evaluation personnel.

(c) Compliance with the delegated program activities and established program review criteria, including implementation of risk-based strategies.

289.2121 License limitations; notice; hearing.

Sec. 2121. (1) The director may issue a food establishment license with limitations. License limitations may be imposed based upon either of the following determinations:

(a) The site, facility, sewage disposal system, equipment, water supply, or the food supplies, protection, storage, preparation, display, service, or transportation facilities are not adequate to accommodate the proposed or existing menu or otherwise adequate to protect the public health.

(b) Food establishment personnel are not practicing proper food storage, preparation, handling, display, service, or transportation techniques.

(2) The director shall promptly notify a license holder of the imposition of a license limitation. The license holder shall be provided an opportunity for an administrative hearing on the issue of the imposition of the limitation.

289.2123 License limitations; reevaluation; removal of limitations and reinstatement of license.

Sec. 2123. (1) A person whose license has been limited by the director may, at any time, request a reevaluation of the food establishment for the purpose of removing the limitation and reinstating the full license.

(2) Based upon its reevaluation, if the director determines that the conditions for removal of the license limitation have been met, he or she shall remove the limitation and reinstate the full license.

289.2125 Fees.

Sec. 2125. (1) The department shall charge the following fees for the following services:

(a) A reissuance of a duplicate license, \$15.00.

(b) A free-sale letter, \$25.00 per letter in an order and \$5.00 per duplicate letter in the same order.

(c) An evaluation of a food establishment if the evaluation is a second reevaluation of a food establishment that has already been evaluated and found to have a priority item or priority foundation item violation or if the evaluation is performed at the request of the operator, \$60.00.

(d) A shellfish dealer's certificate, \$150.00 annually.

(e) A review and approval of training materials, \$60.00 per hour.

(f) A special transitory food unit plan review, \$197.00.

(g) A plan review as specified in section 8-201.11 of the food code, \$197.00.

(2) Fees collected under this section shall be deposited in the dairy and food safety fund created in section 4117 for enforcement of this act.

(3) The services referred to in subsection (1)(e) and (f) involve the formal review and approval procedure. The department may provide informal review or answer questions without charging a fee.

289.2127 Manager food safety training; conditions for requiring.

Sec. 2127. After a conference with the owner of a retail food establishment for a repeated failure to correct a priority item or priority foundation item violation, the director may require certain individuals to complete manager food safety training for that food establishment.

289.2129 Certification of managerial employee under program accredited by American national standards institute.

Sec. 2129. (1) All of the following food establishments shall employ a minimum of 1 managerial employee who is currently certified under a personnel certification program accredited by the American national standards institute, utilizing the conference for food protection standards:

- (a) A food service establishment that is not any of the following:
 - (i) Operating under a temporary food service establishment license.
 - (ii) A vending machine location.
- (b) An extended retail food establishment.
- (c) Operated within a retail grocery.

(2) An individual certified under subsection (1) shall be recognized with full faith and credit by the state and all local units of government throughout the state.

(3) The department may promulgate rules to do all of the following:

- (a) Develop requirements for retail food establishments to follow when employing certified food safety managers or personnel.
- (b) Set a reasonable date for compliance with the requirements under subdivision (a) taking into consideration existing local personnel certification requirements.
- (c) Establish certification fees necessary to implement, maintain, and track certified individuals directly or by contract. The department may annually adjust the schedule of fees to provide that the fee charged is sufficient to cover the cost of the certification tracking program.
- (d) Implement and enforce the requirements described in subdivision (a).

(4) The certification program developed by the American national standards institute, as it exists on April 1, 2008, is incorporated by reference. The department may adopt updates to the certification program accreditation standards in subsection (1) by rule.

(5) This section does not prohibit any local legislative body from implementing a food handler program, an employee health certification program, or a manager certification program, if it is not in conflict with this section.

289.2131 Definition and standard of identity; rules fixing and establishing.

Sec. 2131. (1) When the department determines such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate rules fixing and establishing for any food or class of food a reasonable definition, standard of identity, and reasonable standard of quality and fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall designate the optional ingredients that are required to be named on the label.

289.2132 Agreements with other states and federal government.

Sec. 2132. The department may enter into agreements with other states and the federal government to provide and accept food safety assistance, including the training of personnel. Any employee of the department assigned to food safety duties or training programs outside this state shall be considered to be working inside this state for purposes of compensation and any other employee benefits.

Chapter III
DELEGATION

289.3103 Definitions.

Sec. 3103. As used in this chapter:

- (a) "Certified health department" means a county, district, or city health department that meets the criteria for certification of health departments established by this act and that is authorized by the director to enforce this act for retail groceries, food processors, or fair concessions.
- (b) "Foodborne illness outbreak" means an incident where any of the following occur:
 - (i) Two or more persons, not of the same household, have ingested a common food and have a similar disease or similar symptoms or excrete the same pathogens, and there is a time, place, or person association between these persons.
 - (ii) There is a single case of suspected botulism, mushroom poisoning, paralytic shellfish poisoning, or other rare disease.
 - (iii) There is a case of a disease or poisoning that can be definitely related to ingestion of a food.
- (c) "Food service program" means the systematic activity of the department and a local health department for effective administration and enforcement of the food code and this act, including all of the following:
 - (i) Periodic evaluations of food service establishments, temporary food service establishments, vending machines, and vending machine locations for compliance with law.
 - (ii) Support of recommendations for licensure with appropriate records.
 - (iii) Review of plans and specifications for new and extensively remodeled establishments.
 - (iv) Educational activities.

- (v) Investigation of reports of foodborne illnesses.
- (vi) Other activities which may be necessary to ensure proper implementation of this act.

289.3105 Enforcement; delegation to local health department; exceptions.

Sec. 3105. (1) The department shall delegate the authority and responsibility for the enforcement of the requirements pertaining to food service establishments contained in this act and rules to local health departments meeting the program criteria provided for in this act and rules. The local health departments shall enforce this act and rules and may delegate enforcement authority under a plan of organization approved pursuant to section 2431 of the public health code, MCL 333.2431. If a food service program is discontinued or is revoked for failure to meet the program criteria, redelegation to a local health department by the director of the program is not required. Local health departments delegated authority under this chapter shall enforce this act and rules in the manner provided for in part 24 of the public health code, MCL 333.2401 to 333.2498, except that late fees under section 4113, administrative fines under section 5105, and criminal fines under section 5107 are specifically not delegated to the local health departments.

(2) If a food service establishment is a part of a retail grocery or food processor and the retail grocery and food processor are the predominant part of the food business as determined by the department, authority and responsibility pertaining to that establishment are not delegated under subsection (1).

(3) If a retail grocery or food processor is a part of a food service establishment but the food service establishment is the predominant part of the food business as determined by the department, the authority and responsibility for the entire establishment are delegated under subsection (1).

(4) Mobile and temporary food establishments and special transitory food units that are predominantly food service establishments as determined by the department are delegated to the local health departments under subsection (1). Mobile and temporary food establishments and special transitory food units that are predominantly retail groceries or food processors are not delegated under subsection (1).

289.3107 Enforcement; delegation to certified health department.

Sec. 3107. The director may delegate the authority and responsibility for the enforcement of the requirements pertaining to food processing plants, retail grocers, and food concessions contained in this act and any rules adopted under this act to any certified health department. The certified health departments shall enforce this act and any rules promulgated under this act.

289.3109 Local health departments as authorized agents.

Sec. 3109. Local health departments that are delegated authority by the director pursuant to this chapter are authorized agents of the director for the purpose of implementing and administering this act and rules promulgated under this act.

289.3111 Retention of authority under MCL 333.2401 to 333.2498.

Sec. 3111. The power and authority granted under part 24 of the public health code, MCL 333.2401 to 333.2498, shall be retained by local health department's delegated authority under this act.

289.3113 Compliance with applicable local laws; conflict.

Sec. 3113. A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under this act except to the extent necessary to carry out the responsibility of a local health department to implement licensing provisions of chapter IV. This chapter does not relieve the applicant for a license or a licensee from responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances not in conflict with this act.

289.3115 Review of license application by local health department; inspection of establishment or location; forward of approval or limitation to department.

Sec. 3115. (1) A local health department shall promptly review a license application for a food service establishment or vending machine location to determine if the application is complete and accurate. A local health department may return an incomplete or inaccurate application to a license applicant and request any additional information it considers necessary to assure completeness or accuracy of the application.

(2) After a local health department determines that an application is proper, complete, and accurate, it shall inspect the proposed or existing food service establishment or vending machine location to determine compliance with this act. The inspection shall be conducted by the local health department before it makes a recommendation to the department on the issuance of a license.

(3) A local health department shall forward its recommendation for approval of the license or approval with limitation of the license to the department.

289.3117 Hearing; enforcement procedure; availability.

Sec. 3117. A local health department may apply procedures for enforcement of this act that provide notice and opportunity for a hearing equivalent in effectiveness to and which protect the rights of the applicant or licensee comparable to the provisions of chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292. A local health department shall have a written enforcement procedure and shall make a copy of that procedure available to the public upon request.

289.3119 Additional license fees; collection; exemptions; adjustments; forwarding applications.

Sec. 3119. (1) Except as otherwise provided for in subsection (2), upon submission of an application, an applicant for a food service establishment license shall pay to the local health department having jurisdiction the required fees authorized by section 2444 of the public health code, MCL 333.2444, and an additional state license fee as follows:

- (a) Vending machine location fee \$ 3.00.
- (b) Temporary food service establishment..... \$ 3.00.
- (c) Food service establishment..... \$ 22.00.
- (d) Mobile food establishment commissary..... \$ 22.00.
- (e) Special transitory food unit..... \$ 35.00.

(2) When licensing a special transitory food unit, a local health department shall impose a fee of \$135.00, which includes the additional state license fee imposed under subsection (1) unless exempted under subsection (4) or (5).

(3) The state license fee required under subsection (1) shall be collected by the local health department at the time the license application is submitted. The state license fee is due and payable by the local health department to the state within 60 days after the fee is collected.

(4) A charitable, religious, fraternal, service, civic, or other nonprofit organization that has tax-exempt status under section 501(c)(3) of the internal revenue code, 26 USC 501, is exempt from paying additional state license fees imposed under this section except for the vending machine location license fee. This subsection does not restrict the ability of the governing board of a local health department or authority to fix, revoke, or amend fees as further authorized and described under section 2444 of the public health code, MCL 333.2444. An organization seeking an exemption under this subsection shall furnish to the department or a local health department evidence of its tax-exempt status.

(5) A veteran who has a waiver of a license fee under the circumstances described in 1921 PA 359, MCL 35.441 to 35.443, is exempt from paying the fees prescribed in this section.

(6) The department shall adjust on an annual basis the fees prescribed by subsections (1) and (2) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index but not to exceed 5%. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor or its successor. The adjustment shall be rounded to the nearest dollar to set each year's fee under this subsection, but the absolute value shall be carried over and used to calculate the next annual adjustment.

(7) The local health department shall forward the license applications to the department with appropriate recommendations.

289.3121 Evaluations; maintenance and retention of records.

Sec. 3121. (1) The department or a local health department shall conduct evaluations in compliance with this act.

(2) Records for all of the following shall be maintained by a local health department:

- (a) Applications for licensure.
- (b) Operation licenses.
- (c) Evaluation reports.
- (d) Pertinent correspondence.
- (e) Plans and specifications.
- (f) Administrative actions.
- (g) Other applicable information relating to the operation of each food service establishment.

(3) A local health department shall maintain a record of all consumer complaints, the ensuing investigation, and the result of the complaint.

(4) All department and local health department records shall be retained in accordance with the records retention schedule of the department.

289.3123 Evaluations; frequency.

Sec. 3123. (1) A compliance evaluation of each food service establishment shall be performed by the director at least once every 6 months or as required by a statewide department approved risk-based schedule. Risk-based schedules shall be developed in consultation with local health departments.

(2) A food service establishment which operates for 9 or fewer months each year shall be inspected at least once during the period of operation by the director or as prescribed in the department's risk-based schedule.

289.3125 Evaluations; reducing frequency; limitation.

Sec. 3125. (1) Subject to subsection (3), a local health department, with the approval of the director and based on criteria developed by the department in consultation with local health departments, may reduce the frequency of evaluations of individual food service establishments if the local health department determines that a reduced evaluation frequency will not adversely affect food safety practices within the food service establishment.

(2) A food service establishment which, upon investigation, is implicated in a foodborne illness outbreak or chemical intoxication shall be evaluated by the director for compliance within the next 12 months.

(3) A local health department shall not reduce the minimum frequency of evaluations of any food service establishment to less than that described in section 3123 unless approved by the department.

289.3127 Evaluation findings; report.

Sec. 3127. (1) The findings of an evaluation of a food service establishment shall be recorded on an evaluation report form approved by the department. A violation of a priority item or priority foundation item shall be designated as such on the form. A violation by a food establishment of section 12603 or 12905 of the public health code, MCL 333.12603 and 333.12905, is not a violation of a priority item or priority foundation item of this act or the food code.

(2) The evaluation report shall summarize findings relative to compliance with the requirements of this act. The report form shall be signed and dated by the director.

(3) Upon completion of the evaluation, a copy of the completed evaluation report form shall be furnished to the person in charge of the food service establishment. If the person in charge does not sign the report form acknowledging receipt, delivery of the report form to the person in charge shall be otherwise documented by the director.

289.3129 Foodborne diseases and poisonings; allegation; investigation; notice.

Sec. 3129. (1) A local health department shall investigate an allegation of foodborne diseases and poisonings or suspected foodborne diseases and poisonings connected with food service establishments within its jurisdiction and delegated authority and shall promptly make a report of its findings to the department.

(2) If an investigation indicates that a source of a foodborne disease or poisoning was from a food processing, food storage, or similar type of food establishment over which the department has legal jurisdiction or responsibility, the local health department shall immediately notify the director while the local health department is completing the investigation.

289.3131 Communications system; development; implementation; provisions; availability of information.

Sec. 3131. (1) A local health department shall develop and implement a communications system with other applicable governmental agencies, individuals, and organizations including, but not limited to, hospital emergency rooms and state and local police. The communications system shall provide the means to contact specific local health department employees and basic information necessary to initiate a foodborne illness outbreak investigation. The information provided in the communications system shall be updated annually.

(2) Procedures for investigating suspected foodborne illness outbreaks shall be implemented consistent with procedures contained in the publication entitled "Procedures to Investigate Foodborne Illness, 5th Ed.," prepared and published by the international association of food protection and incorporated by reference or an equivalent plan submitted to and approved by the department.

(3) All information gathered during the investigation which is not exempted from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, and shall be made available to the owner, operator, or his or her employees to minimize the possibility of reoccurrence of the foodborne illness and to assure compliance with the code and this act.

289.3133 Analysis of food samples; utilization of laboratories.

Sec. 3133. Laboratories capable of providing the necessary analyses of food samples shall be utilized by a local health department to assist in the conduct of a food service program.

289.3135 Certification of local health department; application; qualifications.

Sec. 3135. (1) The department shall make available to any local health department an application form to be completed as a request for certification. The application shall provide information needed to substantiate the request to become a certified health department.

(2) A local health department seeking certification shall have sufficient trained administrative, evaluation, and support personnel and sufficient equipment to enforce applicable laws and rules consistent with current state standards in all licensed establishments within its jurisdictional boundaries.

(3) A certified health department shall demonstrate to the department the ability to conduct evaluations and related activities in accordance with the department's electronic evaluation system within prescribed time limitations utilized by the department. Evaluation, investigation, and legal actions and related activities shall be reported to the department on forms furnished by the department.

(4) A certified health department must be capable of conducting necessary sampling and product surveillance equal to state standards.

289.3137 Reports made by certified health departments; review and evaluation; conduct of evaluation quality assurance program; report to department; findings of department review or evaluation.

Sec. 3137. (1) The department shall conduct a general review and evaluation of reports and related data made by certified health departments under this act as often as considered necessary by the department.

(2) An evaluation quality assurance program consisting of field evaluation of performed evaluations conducted by the certified health department shall be routinely conducted by the department at a ratio of approximately 1 per 100 evaluations made.

(3) A certified health department shall report annually to the department a summary of all inspections, investigations, samplings, legal actions, and any other actions of a significant nature on a form furnished by the department. This report shall be made annually on the basis of the state fiscal year.

(4) A review disclosing adverse findings shall be reported in writing by the department to the health officer of the certified health department within 30 days after the review under subsection (1) is completed.

289.3139 Notice of deficiencies; hearing; revocation of certification; reapplication.

Sec. 3139. (1) If a certified health department fails to meet the requirements established in this act or rules promulgated under this act, written notice of deficiencies shall be furnished to the health officer of that certified health department within 30 days after completion of the review under section 3137. This notice shall offer an opportunity to the health officer of the certified health department for a hearing with the director. If a hearing is not requested, certification issued under this chapter shall be revoked within 30 days following the notice to the health officer of the certified health department. If a hearing is held and deficiencies are not corrected within the time period specified in the hearing, certification shall be revoked within the time period specified in the hearing.

(2) If requested by the health officer of the certified health department in a written notice to the director, certification issued under this chapter shall be revoked within 30 days of receipt of the written notice.

(3) Revocation of certification issued under this chapter does not restrict a health department from reapplication for certification.

Chapter IV
LICENSING

289.4101 Food establishment license; scope.

Sec. 4101. (1) Except as provided in sections 4102 and 4105, a person shall not operate a food establishment unless licensed by the department as a food establishment.

(2) Separate areas for food service or preparation located in 1 building and actively operated under 1 management are considered to be 1 food establishment and only 1 license is required. The director may require separate licenses for these areas if managed separately even though under the same owner.

(3) Except as otherwise provided in this act, a city, county, or other local unit of government shall not adopt or enforce licensing ordinances or regulations for persons regulated under this act.

289.4102 Cottage food operation; exemption from licensing and evaluation provisions; requirements.

Sec. 4102. (1) A cottage food operation is exempt from the licensing and evaluation provisions of this act. This exemption does not include an exemption from the adulteration and other standard imposed in this section or under this act, or both, and does not limit the ability of the department to take appropriate enforcement action for applicable violations as described in section 5101. This subsection does not require a cottage food operation to meet the standards contained in 21 CFR part 110 or the food code.

(2) Cottage food products shall be prepackaged and properly labeled prior to sale.

(3) At a minimum, a cottage food operation shall place on the label of any food it produces or packages the following information:

(a) The name and address of the business of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen labeling as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements.

(g) The following statement printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been inspected by the Michigan department of agriculture and rural development."

(4) Cottage food products may be sold directly from the cottage food operation to the consumer only, and not by internet or mail order. Sales by consignment or at wholesale are prohibited.

- (5) The gross sales of cottage food products by a cottage food operation shall not exceed \$20,000.00 annually until December 31, 2017. After December 31, 2017, the gross sales of cottage food products by a cottage food operation shall not exceed \$25,000.00 annually. For the purposes of this subsection, gross sales shall be computed on the basis of the amount of gross sales within or at a particular domestic residence and shall not be computed on a per-person basis within or at that domestic residence. The department may request in writing documentation to verify the annual gross sales figure.
- (6) Cottage food products shall be stored only in the primary domestic residence.
- (7) An exemption under this section does not affect the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government.

289.4103 Application for license; submission; forms; information; mobile food establishment license; commissary service; forwarding recommendations to department; temporary license.

- Sec. 4103. (1) An applicant shall submit an application for a food establishment license at least 30 calendar days before the date planned for its opening or the change of ownership. For temporary food establishments applying less than 4 days from opening, the director may charge twice the applicable license fee to perform the licensing evaluation.
- (2) Application for the license under subsection (1) shall be submitted upon the forms approved by the department and shall contain the reasonable information required by the department to process the application.
 - (3) An application for a mobile food establishment license shall include all of the following information:
 - (a) The location and dates of the operation.
 - (b) The name and address of the commissary that will service the applicant.
 - (4) Within 10 days after a change in the servicing commissary, the mobile food establishment licensee shall submit an affidavit containing the name and address of the new commissary servicing the licensee.
 - (5) The local health department shall forward license recommendations to the department. Section 3119(7) does not apply.
 - (6) The director may issue a temporary food establishment license. The director, pursuant to uniformly applied department guidance, may decline to issue multiple temporary food establishment licenses for the same establishment within a given calendar year.

289.4105 Person, establishment, or organization exempt from licensure.

- Sec. 4105. (1) Except as otherwise provided for in subsection (2), a person, establishment, or organization that is 1 or more of the following is exempt from the licensure requirements under this act:
- (a) Subject to subsection (2), an establishment licensed under 1 of the following acts while conducting activities within the scope of that act:
 - (i) Grain dealers act, 1939 PA 141, MCL 285.61 to 285.88.
 - (ii) 1959 PA 228, MCL 286.371 to 286.379.
 - (iii) 1964 PA 158, MCL 290.451 to 290.466.
 - (iv) Grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540.
 - (v) Manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740.
 - (b) A person that is offering only whole uncut fresh fruits and vegetables directly to consumers.
 - (c) Consumers or nonprofit cooperatives of consumers in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, providing products from regulated sources only for their own use.
 - (d) Nonprofit cooperatives in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, who are growers selling unprocessed products of their own production or are producers selling unprocessed products of their own production from regulated sources.
 - (e) Retail outlets for the sale of prepackaged honey or maple syrup produced in Michigan if the outlet is operated by the producer and the processing facility is licensed under this act. Both retail outlets and processing facilities are exempt from licensure under this act for producers with gross sales of \$15,001.00 or less of honey or maple syrup. In such case, the honey and maple syrup shall have labeling substantially similar to that for cottage food products as described in section 4102(3).
 - (f) A temporary food establishment with no food preparation using only single-service articles and serving only non-potentially-hazardous food or beverage.
 - (g) A retail food establishment that does both of the following:
 - (i) Only sells prepackaged, non-potentially-hazardous foods.
 - (ii) Offers only an incidental amount of food, such as the sale of single-service packages.
 - (h) A mobile food establishment, such as an ice cream truck, that offers only prepackaged, single-serving frozen desserts.
 - (i) An event not open to the general public held by a nonprofit trade association representing food establishments, suppliers, or manufacturers where limited food preparation takes place for the purpose of advertising, displaying, promoting, and sampling prepared food.
 - (j) A commercial fishing guide service that serves lunch to a party of not more than 12 clients on or adjacent to a body of water, river, or stream while pursuing, catching, killing, taking, or attempting to take fish. As

used in this subparagraph, "commercial fishing guide service" means a service provided for a fee or other valuable consideration, regardless of whether the fee or other valuable consideration is paid directly or indirectly, to assist another person in pursuing, catching, killing, taking, or attempting to take fish.

(k) A person owning or operating a device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk gum, nuts, and panned candies.

(l) Feeding operations set up in response to an emergency or disaster.

(m) A person operating as a food warehouse or food processor, if the food warehouse or food processor contains or handles only uncut fruits or vegetables, or both, and meets all of the following criteria:

(i) The establishment is owned and operated by the person producing the fruits or vegetables, or both.

(ii) Activities at the establishment are limited to storing, grading, sorting, packing, washing, trimming, and refrigerating.

(iii) The fruits or vegetables, or both, are primarily from the person's own production, and the balance are products of the same genus or genera from other agricultural producers.

(iv) The food is not "potentially hazardous food (time/temperature control for safety food)" as defined in the food code.

(2) Notwithstanding subsection (1)(a), a person operating as or conducting activities the director considers to be a food establishment must be licensed in the appropriate category under this act.

(3) If food is prepared in a food service establishment licensed under this chapter and the food is transported from the food service establishment to a fixed temporary serving location, the serving location is not required to be separately licensed and is considered an extension of the food service establishment if no food preparation is conducted at the serving location and the food is transported and served by employees of the food service establishment.

(4) If prepackaged food is transported from a food establishment licensed under this chapter, to a sales location at a farmers' market, fair, or festival, the sales location is not required to be separately licensed and is considered an extension of the food establishment, if the food is transported and sold by employees of the food establishment.

289.4107 Food establishment license; qualifications.

Sec. 4107. To qualify for a food establishment license, an applicant shall do all of the following:

(a) Submit an application as required by section 4103.

(b) Be an owner of the food establishment or an officer of the legal entity owning the food establishment.

(c) Comply with the requirements of this act and rules promulgated under this act.

(d) Allow the director access to the proposed food establishment in order to determine compliance with the applicable requirements of this act and rules.

(e) Pay the applicable license fees at the time the application is submitted.

289.4109 Expiration of license; duration of temporary license.

Sec. 4109. A license, other than a license for a temporary food service establishment, expires at midnight on April 30 each year. The department may issue a temporary food license for a period not to exceed 14 days.

289.4111 License fees; food sanitation fees; initial application fee as nonrefundable; convenience fee.

Sec. 4111. (1) The department shall impose the following license fees for each year or portion of a year:

(a) Retail food establishment: \$67.00.

(b) Extended retail food establishment: \$172.00.

(c) Food processor: \$172.00.

(d) Limited food processor: \$67.00.

(e) Mobile food establishment: \$172.00.

(f) Temporary food establishment: \$25.00.

(g) Special transitory food unit: \$135.00.

(h) Mobile food establishment commissary: \$172.00.

(i) Food warehouse: \$67.00.

(j) Food service establishment: the amounts described in subsection (2).

(2) If a local health department no longer conducts a food service program, the department, in consultation with the commission of agriculture and rural development, shall set the food sanitation fees to be imposed for the department's services performed under subsection (1)(j). The fees imposed shall equal, as nearly as possible, 1/2 of the department's cost of providing the service. The department may impose the service fees for up to 12 months after the date of cessation by the local health department. After the 12-month period, the department shall collect the fees only in the amount provided by amendment of this act or as authorized pursuant to an appropriation.

(3) Any license fee paid on an initial application is nonrefundable.

(4) The department may charge a convenience fee and collect from the applicant any additional costs associated with the method of fee payment for the license or permit fees described in this chapter, not to exceed the costs to the department.

289.4113 Late fee; imposition; waiver; retention; use.

Sec. 4113. (1) The department shall impose, for a renewal application postmarked or delivered in person beginning May 1 of each year, a late fee of an additional \$10.00 for each business day the application is late. The late fee for a new application submitted after the establishment has opened for business is an additional \$10.00 for each business day the application is late. The total late fee shall not exceed \$100.00.

(2) The department shall not issue or renew a license until the fee and any late fee, reinspection fees, and fines have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this section except as allowed under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The department may waive the late fee for producers of maple syrup, honey, and other seasonal agricultural products if the license application is submitted not less than 30 days before the applicant engages in processing, packing, freezing, storing, selling, or offering for sale the food or drink described in this subsection.

(4) The late fee shall be retained by any certified health department or, in an area where there is no certified health department, by the department.

(5) The department shall use the late fee for the administration and enforcement of this act.

289.4114 Shellfish dealer; certification required.

Sec. 4114. (1) A person shall not act as a shellfish dealer unless the person has been certified as a shellfish dealer by the department. An application for shellfish dealer certification shall be submitted to the department on the forms approved by the department and shall contain the reasonable information required by the department to process the application. The applicant shall meet all of the following requirements:

(a) Be the owner of the shellfish dealer or an officer of the legal entity owning the shellfish dealer.

(b) Comply with the requirements of this act and rules.

(c) Allow the director access to the shellfish dealer and records as required to determine compliance with the applicable requirements of this act and rules.

(2) A shellfish dealer certification is valid from May 1 to April 30 of each year.

(3) Each shellfish dealer shall have and implement a HACCP plan and have a program of sanitation monitoring and record keeping in compliance with the guide for the control of molluscan shellfish.

289.4115 Bottled water; registration of brand; expiration; late fee.

Sec. 4115. (1) A water bottler or water dispensing machine owner shall register with the department each brand of bottled water with a unique declaration of identity before the sale or offering for sale of the water. The application for registration shall be made on a form prescribed by the department and shall include both of the following:

(a) The proposed label or placard for the water.

(b) For each year or portion of a year, a registration fee of \$25.00 for each brand of water with a unique declaration of identity and \$25.00 for each water dispensing machine.

(2) The registration required by subsection (1) expires annually on April 30 and shall be renewed 30 calendar days before expiration of the current registration.

(3) The department shall assess a late fee of \$25.00 for bottled water or water from a water dispensing machine that is sold or offered for sale without registration. A registration is not effective until the late fee is paid.

289.4116 Receipt of completed application; issuance of license within certain time period; report; "completed application" defined.

Sec. 4116. (1) Beginning the effective date of the amendatory act that added this subsection and notwithstanding any other provision of this act, the department shall issue an initial license not later than 90 days after the applicant files a completed application and shall issue a renewal license not later than 120 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The period regarding license issuance and renewal is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a license.

(2) If the department fails to issue or deny a license within the time required by this section to an establishment that is otherwise ready to operate and is prevented from operating, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(3) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with

agricultural and food issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

- (a) The number of initial and renewal applications the department received and completed within the appropriate time period described in subsection (1).
- (b) The number of applications denied.
- (c) The number of applicants not issued a license within the appropriate time period and the amount of money returned to licensees and registrants under subsection (2).

(4) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan. In the case of an initial application, completed application includes the completion of construction or renovation of any facility and the passing of a satisfactory evaluation.

289.4117 Dairy and food safety fund; credit of money collected; creation; investment; lapse; administration; consumer food safety education fund; industry food-safety education fund; creation; use and carrying forward of funds; "fee-exempt food establishment" defined.

Sec. 4117. (1) Except as provided in subsections (2) and (3), money collected under this chapter by the department shall be credited to the dairy and food safety fund that is created as a restricted fund within the state treasury. The state treasurer may receive money or other assets, from appropriations or from any other source, for deposit into the fund. The state treasurer shall direct the investment of the fund. The money in the fund shall not lapse to the general fund at the end of the fiscal year and shall carry over to the following fiscal years. The state treasurer shall credit to the fund interest and earnings from fund investments. The department shall administer the fund and shall expend money from the fund for the purpose of administering this act and enforcing the provisions of this act, the grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540, and the manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740. The department shall be the administrator of the fund for auditing purposes.

(2) A consumer food safety education fund is created as a revolving fund in the department of treasury. The consumer food safety education fund shall be administered by the department and funded by adding \$3.00 to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide statewide training and education to consumers on food safety. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(3) An industry food-safety education fund is created as a revolving fund in the department of treasury. The industry food-safety education fund shall be administered by the department and funded by adding \$2.00 to the fee for each food service establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide food safety training and education to food service establishment employees and agents of the director who enforce this act. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(4) As used in this section, "fee-exempt food establishment" means a food establishment exempt from all state and local food establishment license fees under section 3119(4) combined with an exemption from the local health department sanitation service fee under section 2444 of the public health code, MCL 333.2444.

289.4119 Posting and display of license; "conspicuous place" explained.

Sec. 4119. (1) Except as otherwise provided in subsection (2), a person licensed as a food establishment under this chapter shall keep a copy of the current license or temporary license furnished by the department posted and exposed in a conspicuous place for public inspection. A conspicuous place is the principal place where food business is transacted.

(2) In the case of vending machines, the name and address and telephone number of the current vending machine location operator shall be conspicuously displayed on each vending machine.

289.4121 Changes proposed by food establishment; notice.

Sec. 4121. Thirty days before a food establishment proposes either of the following changes, a licensee shall notify the regulatory authority having jurisdiction of that proposed change:

- (a) A change in the type of license even if the change would not result in the change of the regulatory authority having jurisdiction over the activity.
- (b) A change in the type of license that would result in the change of the regulatory authority having jurisdiction over the activity.

289.4123 Transfer of license; limitation.

Sec. 4123. (1) A food establishment license is not transferable as to the holder or the location.

(2) A shellfish dealer certificate is not transferable as to the holder or to the location.

(3) A bottled water registration is not transferable as to the holder or the location.

289.4125 Issuance of license; requirements; hearing; revocation or suspension of license; period of refusal to issue or reissue license; summary suspension.

Sec. 4125. (1) Before a food establishment license, bottled water registration, or shellfish dealer certificate is issued, the director shall determine if the applicant meets the minimum requirements of this act and rules.

(2) After an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a food establishment license, a registration for bottled water, or a shellfish dealer certificate issued under this act for failure to comply with requirements of this act or a rule. A person whose food establishment license, registration for bottled water, or shellfish dealer certificate is revoked or suspended shall discontinue the sale and offering for sale of food, the bottled water, or shellfish, respectively, until he or she complies with this act and the director issues a new registration or removes the suspension.

(3) If a person's food establishment license is revoked for egregious violations under section 5101(a), (b), (c), or (k), the director may refuse to issue or reissue a license to any establishment in which that person has ownership or management interest for a period of 2 years after the revocation.

(4) Based upon facts submitted by a person familiar with those facts or upon information and belief alleging that an imminent threat to the public health, safety, or welfare exists, the director may summarily suspend a license, registration, or certificate issued under this act. A person whose license, registration, or certificate has been summarily suspended under this section may petition the director to dissolve the order. Upon receipt of such a petition, the director shall immediately schedule a hearing to decide whether to grant or deny the petition to dissolve. The presiding officer shall grant the requested relief dissolving the summary suspension order unless sufficient evidence is presented that an imminent threat to the public health, safety, or welfare exists requiring emergency action and continuation of the director's summary suspension order.

289.4127 Summary suspension of license; petition for hearing; commencement of proceedings; reinstatement.

Sec. 4127. (1) After the regulatory authority receives a petition for a hearing from a license, registration, or certificate holder whose license, registration, or certificate is summarily suspended under section 4125, the proceedings shall be promptly commenced and determined as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(2) This section does not prevent the regulatory authority's immediate reinstatement of a license, registration, or certificate when the regulatory authority determines the public health hazard or nuisance no longer exists.

289.4129 Denial of license or registration; hearing; commencement; conduct.

Sec. 4129. (1) A license, registration, or certificate applicant may request a hearing regarding the regulatory authority's denial of a new or renewal license, registration, or certificate. A person desiring a hearing in response to a denial of a license, registration, or certificate shall submit a hearing request to the regulatory authority within 30 calendar days after the date of the denial.

(2) The regulatory authority shall afford a hearing within 30 days after receiving a written request for a hearing as specified in this section when the request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

(3) Hearings shall be conducted in an expeditious and impartial manner.

Chapter V
PROHIBITED ACTS AND PENALTIES

289.5101 Prohibited acts; violation.

Sec. 5101. (1) A person shall not do or cause to be done any of the following:

(a) Manufacture, sell, deliver, hold, or offer for sale adulterated or misbranded food.

(b) Adulterate or misbrand food.

(c) Receive in commerce food that is adulterated or misbranded and deliver or proffer the delivery of that food for pay or otherwise.

(d) Sell, deliver for sale, hold for sale, or offer for sale food unless that person holds a license issued under chapter IV.

(e) Disseminate a false advertisement concerning food or a food establishment.

(f) Refuse to permit entry or evaluation, or to permit the taking of a sample, as authorized by section 2111.

(g) Give a false guaranty or undertaking concerning food, unless in good-faith reliance on a guaranty or undertaking to the same effect signed by and containing the name and address of the person from whom the food was received.

(h) Remove or dispose of seized or embargoed food in violation of section 2105.

(i) Alter, mutilate, destroy, obliterate, or remove all or part of the label or do any other act with respect to a food while the food is held for sale resulting in the food being adulterated or misbranded.

(j) Forge, counterfeit, simulate, or falsely represent, or without proper authority use any mark, stamp, tag, label, or other identification device authorized or required by this act or rules.

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- (k) Permit filthy or unsanitary conditions to exist in a food establishment in which food intended for human consumption is manufactured, received, kept, stored, served, sold, or offered for sale.
 - (l) Falsely identify a country, state, or other place of origin of food on a label, tag, or other document with intent to deceive or defraud.
 - (m) Fail to establish or maintain any record or make any report required under this act or the federal act, or refuse to permit access to or verification or copying of any such required record.
 - (n) Interfere with the director in the conduct of his or her responsibilities under this act.
 - (o) Make a false statement, representation, or certification in any application, report, plan, or other document that is required to be maintained under this act or rules.
 - (p) Remove a tag, seal, or mark placed by the director.
 - (q) Operate without a license, registration, permit, or endorsement.
 - (r) Violate a provision of this act or a rule.
 - (s) Operate as a shellfish dealer without a shellfish dealer certificate.
 - (t) If the person is a food establishment, permit Michigan bridge card access to food assistance program benefits unless the food establishment's inventory records match redemption files for Michigan bridge card usage for food assistance program benefits and 1 or more of the following apply:
 - (i) The food for sale includes, on a continuous basis, at least 3 varieties of foods in each of the following 4 staple food groups and perishable foods in at least 2 of the groups:
 - (A) Meat, poultry, or fish.
 - (B) Bread or cereal.
 - (C) Vegetables or fruits.
 - (D) Dairy products.
 - (ii) At least 50% of the total dollar amount of all retail sales, including food and nonfood items, fuel, and services at the food establishment is from the sale of food in any of the 4 staple food groups.
- (2) Each day a violation of this section occurs is a separate violation of this section.

289.5103 Misleading labeling or advertisement; liability of disseminator of information.

Sec. 5103. (1) If a food is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then the determination of whether the labeling or advertisement is misleading shall take into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or fails to reveal facts material concerning consequences that may result from the use of that food under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. A label, labeling, or advertising in compliance with the federal act is not considered a violation of this act.

(2) A publisher, radio-broadcast licensee, agency, or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of false advertisement unless he or she has refused to provide, upon request of the director, the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency who caused the dissemination of the advertisement, or unless he or she has refused, upon the request of the director, to cease dissemination of the false advertisement.

289.5105 Administrative fines or costs.

Sec. 5105. (1) Upon finding that a person violated a provision of this act or a rule promulgated under this act, the department may impose an administrative fine of not more than \$500.00 for the first offense and not more than \$1,000.00 for a second or subsequent offense and the actual costs of the investigation of the violation. Each day of a continuing violation is not considered a separate violation of this act or a rule promulgated under this act. The department shall not impose upon any licensee or registrant administrative fines in the aggregate amount of more than \$4,000.00 per location for a firm with annual gross receipts of \$500,000.00 or less and \$8,000.00 per location for a firm with annual gross receipts of over \$500,000.00 during any 12-month period.

(2) Administrative fines and costs collected under this section shall be deposited into the dairy and food safety fund.

(3) This section does not require the department to issue an administrative fine for minor violations of this act if the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

(4) The department shall not impose administrative fines for violations of the food code other than priority items, priority foundation items, or repeated violations that remain uncorrected beyond the time frame for correction specified under or agreed to, specified, or approved by the director under section 8-405.11(A) or (B) or 8-406.11(A) or (B) of the food code. The department shall not impose an administrative fine for a core item violation of the food code unless the violation is not corrected within 30 calendar days after the evaluation.

289.5107 Violations; penalties; costs of investigation.

Sec. 5107. (1) Except as otherwise provided under this act, a person who violates any provision of this act or rules promulgated under this act is guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 or more than \$2,500.00 or by imprisonment for not more than 90 days, or both.

(2) Notwithstanding the other provisions of this act, a person who knowingly violates section 5101(1)(b) or (l) is guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$10,000.00 plus twice the amount of any economic benefit associated with the violation, or both.

(3) If a violation results in a conviction under this act, the court shall assess against the defendant the costs of the department's investigation. The assessment for costs of investigation shall be deposited into the dairy and food safety fund for the enforcement of this act.

289.5109 Report of violation as condition.

Sec. 5109. When a violation of section 5101(1)(k) occurs which is not suspected of threatening the safety of food intended for human consumption, the department shall provide a person owning or operating the food establishment a written report of the violation before subjecting persons to the penalties provided in this act.

289.5111 Jurisdiction of court; restraining order.

Sec. 5111. In addition to the remedies provided for in this act, the department may apply to the circuit court for, and the court shall have jurisdiction upon hearing and for cause shown, a temporary or permanent injunction restraining any person from violating any provision of this act or rules promulgated under this act irrespective of whether or not there exists an adequate remedy at law.

289.5113 Application of remedies.

Sec. 5113. The regulatory authority shall justly apply the remedies according to law and this act consistent with the licensee's right to due process.

289.5115 Decision or order; direct review.

Sec. 5115. When a license holder or registrant has exhausted all administrative remedies available under this act and is aggrieved by a final decision or order in a contested case, the decision or order is subject to direct review by the courts as provided by law.

Chapter VI
STANDARDS FOR FOOD ESTABLISHMENTS

289.6101 Incorporation by reference; changes or updates by rule; annexes.

Sec. 6101. (1) Chapters 1 through 8 of the food code are incorporated by reference except as amended and modified as follows:

(a) Where provisions of this act and rules specify different requirements.

(b) Section 3-401.14 is modified to read as follows:

"3-401.14 Non-Continuous Cooking of Raw Animal Foods.

Raw animal foods that are cooked using a non-continuous cooking process shall be:

(A) Subject to an initial heating process that is no longer than 60 minutes in duration;^P

(B) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.14(A);^P

(C) After cooling, held frozen or cold, as specified for potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.16(A)(2);^P

(D) Prior to sale or service, cooked using a process that heats all parts of the food to a time/temperature specified in paragraph 3-401.11(A);^P

(E) Cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.14(A) if not either hot held as specified under paragraph 3-501.16(A), served immediately, or held using time as a public health control as specified under section 3-501.19 after complete cooking;^P and

(F) Stored as follows:

(1) After initial heating but prior to cooking as specified under paragraph (D) of this section, separate from ready-to-eat foods as specified under paragraph 3-302.11;^{Pf} and

(2) After initial heating, but prior to complete cooking, marked or otherwise identified as foods that must be cooked as specified under paragraph (D) of this section prior to being offered for sale or service.^{Pf} The food may be identified in any effective manner provided that the marking system is disclosed to the regulatory authority upon request."

(c) Section 2-103.11(L) is modified to read as follows:

"Employees are properly trained in food safety as it relates to their assigned duties;^{Pf} and"

(2) The director, by rule, may adopt any changes or updates to the food code.

(3) The annexes of the food code are considered persuasive authority for interpretation of the food code.

289.6103 Plan review exemption.

Sec. 6103. (1) The following food establishments are exempt from the requirement for plan review and approval specified in section 8-201.11 of the food code:

- (a) A temporary food establishment.
- (b) A retail grocery.

(2) The plan review exemption for a retail grocery in subsection (1) does not apply to the operation of a food service establishment within a retail grocery. For purposes of this section, a deli within a retail grocery is not considered a food service establishment unless it provides seating for the customers.

289.6105 Plans and specifications; transmittal letter; fees; rejection.

Sec. 6105. (1) A person seeking approval of plans and specifications for a food establishment shall submit a transmittal letter with the plans and specifications. The letter shall identify and summarize the plans or projects and shall indicate the owner, operator, or designated agent.

(2) An applicant shall submit any required fees, as authorized by section 2444 of the public health code, MCL 333.2444, or this act.

(3) The director may reject the plans for a proposed food establishment if any of the information required by the food code is not included, is incomplete, or is inaccurate.

289.6107 Plans and specifications; review by director; revisions; approval; expiration; availability for inspection.

Sec. 6107. (1) The director shall review plans and specifications received under section 6105 as soon as practicable after receipt to determine their completeness and adequacy. If a submission of complete plans and specifications is not reviewed within 30 business days of receipt, the plans and specifications shall be considered to have been determined to be complete and adequate. Thereafter, construction may proceed without the director's authorization. Approval of the plans and specifications by operation of law does not relieve the license applicant or license holder from compliance with other provisions of this act.

(2) If the director determines that plans and specifications are incomplete or inadequate, or both, he or she shall notify the license applicant or license holder in writing and shall request the submission of revised plans and specifications with appropriate corrections or additions. The director shall not approve the plans and specifications until he or she determines that the plans and specifications are complete and adequate and that the food establishment is designed in accordance with the food code and this act.

(3) Upon a determination that the plans and specifications are complete and adequate, the director shall mark the plans and specifications showing approval and the date of approval, shall notify the license applicant or license holder in writing of the approval, and shall authorize construction, conversion, alteration, or remodeling of the food establishment.

(4) Approval of plans and specifications by the director and authorization for construction pursuant to the food code, this act, and rules expire if construction, conversion, alteration, or remodeling has not commenced within 1 year from the date of approval or has been interrupted for 1 year or more since the date of approval. A license applicant or license holder may apply in writing to the director for an extension of the approval and construction authorization before the approval expires. The request for extension shall identify the project for which the approval and construction authorization were originally granted and the reason for requesting the extension. The director may require modification of the plans and specifications to incorporate updated food safety practices or requirements, where applicable, unless the license applicant or license holder has entered into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the license applicant or license holder as determined by the director.

(5) The approved plans and specifications shall be kept on-site during construction and shall be available for inspection by the director.

289.6109 Plans and specifications; conditions to approval.

Sec. 6109. The director may attach any condition to an approval of plans and specifications granted under section 6107 that he or she considers necessary to assure proper construction, conversion, alteration, or remodeling of a food establishment or portion of the food establishment.

289.6111 Approved plans and specifications; submission of changes; as-built plans.

Sec. 6111. (1) A license applicant or license holder shall submit in writing to the director a change in approved plans and specifications. Written approval must be obtained before construction under the approved plans and specifications.

(2) Upon request of the director, a license applicant or license holder shall submit as-built plans, clearly showing the work as constructed.

289.6113 Rescission of construction authorization.

Sec. 6113. (1) The director may rescind his or her authorization for construction, conversion, alteration, or remodeling of a food establishment if he or she determines that the license applicant or license holder is not undertaking construction in accordance with approved plans and specifications. The director shall notify the license applicant or license holder before rescission of construction authorization, advise him or her of required corrective action, and afford him or her the opportunity to take any required corrective action.

(2) The director shall order the license applicant or license holder in writing to cease construction, alteration, conversion, or remodeling activities if the applicant or license holder does any of the following:

- (a) Fails to submit required plans and specifications for the construction, alteration, extensive remodeling, or conversion to use as a food establishment.
- (b) Fails to construct, alter, extensively remodel, or convert a food establishment in accordance with plans and specifications approved by the director.
- (c) Fails to take corrective action as required pursuant to this section.

289.6115 Preopening evaluation.

Sec. 6115. (1) After completion of the construction, alteration, conversion, or remodeling and before the opening of a food service establishment, the license applicant or license holder shall notify the director of the completion, shall submit an application for a license to operate the food service establishment, and shall arrange for a preopening evaluation.

(2) During the preopening evaluation, the director shall determine whether the food establishment was constructed, altered, converted, or remodeled in accordance with the approved plans and specifications.

(3) Local health departments may specify when requests for preopening inspections are to be submitted.

289.6117 Exhaust ventilation; design, construction, and installation.

Sec. 6117. Exhaust ventilation shall be designed, constructed, and installed in compliance with applicable state law.

289.6119 Repealed. 2002, Act 487, Imd. Eff. June 27, 2002.

289.6121 Repealed. 2002, Act 487, Imd. Eff. June 27, 2002.

289.6123 Repealed. 2002, Act 487, Imd. Eff. June 27, 2002.

289.6125 Ice bins and machines; connection with waste line.

Sec. 6125. The waste line from ice storage bins and ice machines shall not be directly connected with another waste line and shall be drained through an air gap.

289.6127 Repealed. 2009, Act 188, Eff. May 1, 2010.

289.6129 Consideration of risk-based evaluation methodology; evaluation report; priority items or priority foundation items; correction.

Sec. 6129. (1) The director shall consider the risk-based evaluation methodology as described in food code annex 5, section 4 A-H for conducting evaluations of food establishments.

(2) The completed evaluation report shall specify a period of time for correction of noted violations. The license holder shall correct the violations within the time specified in the report.

(3) All violations which are marked as priority items or priority foundation items on the evaluation report form shall be corrected immediately unless otherwise specified. The director shall confirm corrections within 30 days after the report is issued. However, if not more than 2 priority foundation item violations are noted and the director determines that the violations are not a risk to food safety, the director may confirm correction of the priority foundation item violations at the next routine evaluation.

289.6131 Mobile units with retention tanks; sanitary disposal of liquid waste.

Sec. 6131. (1) Each commissary where mobile units with retention tanks are serviced shall provide for the sanitary disposal of liquid waste.

(2) The local health department shall approve locations for the sanitary disposal of liquid waste.

289.6133 Mobile food establishment operating at fixed location; temporary license.

Sec. 6133. The director may license as a temporary food service establishment a mobile food establishment which does not return to a commissary or service base after 24 hours but continues to operate at a fixed location.

289.6135 Mobile food establishment; affixing name and address to vehicle; carrying copy of limitations; route schedule; decals.

Sec. 6135. (1) The name and address of the business operating a mobile food establishment shall be affixed to each side of the exterior of the vehicle in letters not less than 3 inches high and 3/8 of an inch wide and shall be in contrast to the vehicle background color. When more than 1 mobile food service establishment is operated by the same person, the director shall assign a number to each establishment.

(2) A copy of limitations attached to the license of a mobile food service establishment shall be carried on the mobile food service establishment at all times.

(3) If a mobile food establishment is operating on a regularly scheduled route, the director may require the license holder to provide a copy of the route schedule when the license is approved and every time the route schedule is changed.

(4) The director or the operator in the presence of the director shall affix 2 decals provided by the department on the mobile food establishment at the time the license is issued. The decals shall be conspicuously displayed on each side of the mobile food establishment so as to be visible when in transit and while serving the public.

289.6137 Special transitory food unit license; procedures; qualifications; noncompliance.

Sec. 6137. (1) To qualify for a special transitory food unit license, an applicant shall allow a review and receive approval of plans and specifications as specified in chapter VI. This review and approval must include the menu and standard operating procedures for the unit.

(2) A special transitory food unit license holder shall do all of the following:

(a) Keep a copy of the approved standard operating procedures in the unit and available for review upon evaluation by the director.

(b) Operate in compliance with standard operation procedures approved by the director.

(c) Before serving food within the jurisdiction of a local health department, notify the local health department in writing of each location in the jurisdiction at which food will be served and the dates and hours of service. The license holder shall mail the notice by first-class mail or deliver the notice not less than 4 business days before any food is served or prepared for serving within the jurisdiction of the local health department.

(d) While in operation, request and receive 2 evaluations per licensing year spaced generally over the span of the operating season. A local health department and the department shall charge a fee of \$90.00 for such an evaluation.

(e) Send a copy of all evaluation reports to the regulatory authority that approved the license within 30 days after receipt.

(3) If a license holder fails to comply with any of the requirements of this section or the food code, the food establishment is ineligible for licensure as a special transitory temporary food establishment for the following licensing year and must apply for temporary or other type of food establishment licenses.

289.6139 Sulfiting agents; prohibition.

Sec. 6139. A food service establishment shall not store on the premises or apply to any food prepared in the food service establishment sulfiting agents.

289.6140 Milk and milk products.

Sec. 6140. (1) Only pasteurized ingredients from a department-approved source shall be used for milk and milk products manufactured, sold, served, or prepared at a retail food establishment. Such ingredients include, but are not limited to, milk, milk solids, whey, nonfat dry milk, condensed milk, cream, skim milk, eggs, and egg products.

(2) Ingredients that may be subsequently added to milk or milk products are those flavorings or other ingredients that have been found to be safe and suitable and added in a manner to prevent contamination, including, but not limited to, the following:

(a) Ingredients permitted by a standard of identity for milk or milk products under the federal act or regulations.

(b) Fresh fruits and vegetables added to cultured milk and cultured milk products provided the resultant equilibrium pH level (4.6 or below when measured at 24 degrees Celsius (75 degrees Fahrenheit)) of the finished product is reached without undue delay and is maintained during the shelf life of the product.

(c) Ingredients subjected to prior heating sufficient to destroy pathogenic microorganisms such as roasted nuts or dried fruits.

(d) Ingredients having a water activity (Aw) value of 0.85 or less.

(e) Ingredients having a high acid content (pH level of 4.6 or below when measured at 24 degrees Celsius (75 degrees Fahrenheit)) or high alkalinity (pH level greater than 11 when measured at 24 degrees Celsius (75 degrees Fahrenheit)).

- (f) Dry sugars and salts.
 - (g) Flavor extracts having a high alcohol content.
 - (h) Safe and suitable bacterial cultures and enzymes.
 - (i) Other ingredients that have been found to be safe and suitable by the U.S. food and drug administration.
- (3) Retail food establishments that manufacture and wholesale milk and milk products must additionally be licensed pursuant to and meet requirements of the manufacturing milk law, 2001 PA 267, MCL 288.561 to 288.740, or the grade A milk law, 2001 PA 266, MCL 288.471 to 288.540.

289.6141 Antichoking techniques; display of poster.

Sec. 6141. (1) A food service establishment in which solid foods are sold and consumed on the premises shall prominently display a poster in the kitchen area of the food service establishment diagramming and explaining the antichoking techniques safe for both adults and children approved by the department for dislodging foreign obstacles caught in the throat of a choking person.

(2) This section does not impose a duty upon the owners or employees of a food service establishment to apply antichoking techniques.

289.6143 Preparation or service of wild game by nonprofit organization; requirements.

Sec. 6143. (1) A charitable, religious, fraternal, or other nonprofit organization that prepares or serves wild game in connection with its meetings or as part of a fund-raising event or that prepares or serves wild game to indigent persons free of charge is not required to obtain the wild game from a department-approved source.

(2) If a charitable, religious, fraternal, or other nonprofit organization prepares or serves wild game that is not from a department-approved source in connection with its meetings or a part of a fund-raising event or prepares or serves wild game that is not from a department-approved source to indigent persons free of charge, the organization shall post at the entrance to the dining area a sign bearing the following message: "The wild game served at this facility has not been subject to state or federal inspection." The words of the message shall be written or printed in letters not less than 3/4 of an inch high and 3/4 of an inch wide and readable.

289.6145 Repealed. 2002, Act 487, Imd. Eff. June 27, 2002.

289.6147 Disaster; cessation of operations; report; emergency plans as temporary alternative procedures.

Sec. 6147. If a food establishment is affected by fire, flooding, accidents, explosions, or other disaster that may create an imminent or substantial hazard and unless otherwise directed, all food operations shall cease and the licensee shall immediately report to the director the disaster and the effect of the disaster on the operation of the establishment. The department may recognize emergency plans that, if being followed, serve as a means to use temporary alternative procedures for continuity of operation.

289.6149 Definitions; satisfaction of section 3-603.11 of food code; statement; disclosures and reminders; text; exemptions.

Sec. 6149. (1) As used in this section:

- (a) "Publicly available" means accessible to consumers, without their having to request it, before their placing food orders or making their selections.
- (b) "Selection information" means whatever consumers read to make their order selections, such as menu, table tent, placard, chalkboard, or other written means.

(2) To satisfy section 3-603.11 of the food code, the food establishment may provide the following statement on selection information so that it is publicly available: "Ask your server about menu items that are cooked to order or served raw. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness."

(3) A statement used under subsection (2) may be tailored to be product specific if a food establishment either has a limited menu or offers only specific animal-derived foods in raw or undercooked, ready-to-eat form.

(4) The language for the menu items shall match the language used for the disclosure and the reminder. The disclosure and reminder may also be in additional languages.

(5) The text for disclosures and reminders shall meet the following requirements:

- (a) The text size for statements on handheld menus or table tents shall be visually equivalent to at least 11-point font size or may be visually equivalent to the font size of menu item descriptions.
- (b) Text color provides a clear contrast to background.

(6) Table tents, placards, or chalkboards that are used exclusively to list food items that are offered as daily, weekly, or temporary specials are exempt from the requirements of this section when those food items also appear in the primary selection information that contains the disclosures and reminders meeting the requirements of this section.

289.6150 Definitions; presence or lack of artificial trans fat; statement; language.

Sec. 6150. (1) As used in this section:

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- (a) "Artificial trans fat" means an unsaturated fat or fatty acid that is produced by the partial hydrogenation of plant oils and that contains 1 or more instances of atoms bonded in a trans configuration.
 - (b) "Publicly available" means accessible to consumers, without their having to request it, before placing their food orders or making their selections.
 - (c) "Selection information" means whatever consumers read to make their order selections, such as a menu, table tent, placard, chalkboard, or other written means.
- (2) A food service establishment may, but is not required to, provide on the selection information, so that it is publicly available, a statement regarding the presence or lack of artificial trans fat in any food served by the food service establishment.
- (3) A statement described in subsection (2) may be tailored to be product-specific if a food service establishment has a limited menu.
- (4) The text for a statement described in subsection (2) may be in more than 1 language and may meet the requirements of section 6149.

289.6151 Repealed. 2007, Act 113, Eff. Apr. 1, 2008.

Chapter VII FOOD AND PROCESSING STANDARDS

289.7101 Compliance with federal regulations; exception.

Sec. 7101. Subject to section 1119(2), a food processor and a food warehouse shall comply with 21 CFR part 110, except that refrigerated potentially hazardous food shall be stored at 4.4 degrees centigrade (40 degrees Fahrenheit) or below.

289.7103 Processing low-acid foods; requirements.

- Sec. 7103. (1) All thermally processed, low-acid foods that are packaged in hermetically sealed containers shall be processed in a licensed commercial food establishment.
- (2) All processors of acidified, low-acid foods packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 114.
- (3) All thermally processed, low-acid foods that are packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 113.
- (4) Hermetically sealed packages shall be handled to maintain product and container integrity.

289.7104 Control of molluscan shellfish.

- Sec. 7104. (1) @ .02 of chapter I and chapters II, VII, IX to XIV, and XVI of the guide for control of molluscan shellfish are incorporated by reference except to the extent provisions of this act and rules specify different requirements.
- (2) The director by rule may adopt any changes or updates to the guide for control of molluscan shellfish.
- (3) The annexes of the guide for the control of molluscan shellfish are considered persuasive authority for interpretation of the guide for the control of molluscan shellfish.

289.7105 Processor of seafood; waiver for processor of smoked fish.

Sec. 7105. All processors of seafood shall comply with regulations of the U.S. food and drug administration in 21 CFR part 123. The requirement that a processor of smoked fish comply with the smoked fish rules is waived if the processor demonstrates compliance with the federal regulation described in this section.

289.7106 Processors of juice; safe cider production.

- Sec. 7106. (1) All processors of juice shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 120.
- (2) An establishment that presses apple cider shall have at least 1 active employee currently certified under a program described in section 2129 or having completed a current course recognized by the department as pertinent to safe cider production.

289.7107 Bottled water; approval of source and water supply; maximum levels of substances; labeling of water dispensing machine.

- Sec. 7107. (1) Bottled water shall be obtained from a water supply approved by the department of environmental quality and in compliance with the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.
- (2) A copy of the current sanitary survey report from the department of environmental quality under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and the water sample results required under that act shall be available at the bottling plant for the director to demonstrate approval of the source and supply of the water.
- (3) Bottled water shall not contain any substance in excess of the maximum contaminant level adopted for drinking water under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(4) A water dispensing machine shall be clearly and conspicuously labeled with the declaration of identity of the product dispensed.

289.7109 Operation of bottled water plant or bottle water; compliance with federal regulations.

Sec. 7109. A person shall not operate a bottled water plant or bottle water for the purpose of sale or distribution in this state without first demonstrating to the department that the source, bottling facility, treatment and bottling practices comply with 21 CFR part 129, and product water meets the requirements of this chapter.

289.7111 Packaged food; compliance with federal regulations.

Sec. 7111. Packaged food shall comply with standard of identity requirements in 21 CFR parts 131 to 169 and the definitions and standards of identity or composition contained in 9 CFR part 319, and the general requirements in 21 CFR part 130 and subpart A of part 319 of title 9 of the Code of Federal Regulations except as modified or rejected by this act or rules promulgated under this act.

289.7112 Adoption of federal regulations.

Sec. 7112. (1) 21 CFR parts 1, 70, 73, 74, 81, 82, and 100 to 199, as set forth on the effective date of the amendatory act that added this section, are adopted by reference, except to the extent that provisions of this act and rules promulgated under this act specify different requirements.

(2) The director, by promulgation of a rule, may adopt any changes or updates to 21 CFR parts 1, 70, 73, 74, 81, 82, and 100 to 199.

289.7113 Definitions.

Sec. 7113. As used in this chapter:

- (a) "Added fat" means the addition of fat tissue originating from portions consisting of less than 12% muscle tissue in each portion.
- (b) "Added water" means greater moisture content than normally found in meat and, except for poultry, is determined by total moisture minus 4 times the percentage of protein. Added water may be in the form of water or ice.
- (c) "Artificial coloring" means coloring containing any dye or pigment which was manufactured by a process of synthesis or other similar artifice or by extraction of a natural dye or pigment from a plant or other material from which the dye or pigment was formed.
- (d) "Artificial flavoring" means any flavoring containing any sapid or aromatic constituent manufactured by synthesis or similar process.
- (e) "Binders" means food and nonfood substances used as an ingredient in comminuted meats for binding, stabilizing, thickening, or maintaining viscosity of the product.
- (f) "By-products or variety meats" means hearts, livers, brains, tongues, tripe, stomach, lungs, melts, eyes, weasand meats, head meat, cheek meat, salivary glands, udder, lips, ears, snouts, skin, feet, spleens, slaughterhouse by-products, spinal cords, cracklings or crackling meal, packinghouse by-products, food processor by-products, partially defatted fatty tissues, and partially defatted chopped meat.
- (g) "Candling" means the examination, in a partially darkened room or place, of the interior of an egg by twirling the egg before a bright light passing through an aperture in an opaque shield or by another approved method.
- (h) "Comminuted" means chopped, diced, flaked, ground, or otherwise reduced to minute particles.
- (i) "Extenders" means food substances used as an ingredient in comminuted meats primarily for replacement of meat ingredients.
- (j) "Fat" means the quantity of adipose tissue determined by chemical analysis.
- (k) "Fresh meat" means meat that has undergone no cooking, heating, or other processing except boning, cutting, comminuting, or freezing.
- (l) "Lamb" means meat derived from sheep less than 1 year of age.
- (m) "Meat" means the edible part of clean, sound striated muscle of cattle, swine, sheep, deer and other cervids, goat, turkey, duck, ratite, or chicken slaughtered in compliance with all applicable laws, with or without the accompanying and overlying fat, and sinew, nerve, gland, and blood vessels which normally accompany the muscle tissues and which are not separated from it in the process of dressing. Meat does not include specified risk materials.
- (n) "Shellfish" means all species of any of the following:
 - (i) Oyster, clams, or mussels whether shucked or in the shell, raw, including postharvest processed, frozen or unfrozen, or whole or in parts.
 - (ii) Scallops in any form, except when the final product form is the adductor muscle only.
- (o) "Skeletal meat" means the meat that is attached to a part of the skeleton, including head and cheek meat.
- (p) "Specified risk materials" means items, associated with the nervous system of beef cattle, that are prohibited from human food as defined in 9 CFR 310.22.

(q) "Veal" means meat derived from a calf not more than 1 year of age.

289.7114 Shell eggs.

Sec. 7114. (1) U.S. standards for shell eggs are adopted by reference.

(2) Eggs described by United States department of agriculture as black rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, stuck yolks, blood rings or embryos beyond blood ring stage, moldy eggs, musty eggs, bloody whites, crusted yolks, eggs with abnormal odors, and any eggs which contain wholly or in part a tainted, disease, filthy, decomposed, or putrid substance are eggs unfit for human food.

(3) A person shall not sell, offer, or expose for sale to the consumer or to the retail trade, or have in his or her possession with intent to sell to the consumer, or to the retail trade, any egg unfit for human food. Such an egg shall be broken out of the shell and denatured or destroyed by methods approved by the director so that it cannot be used for human food.

(4) The final determination of all grade and quality factors of an official sample of shell eggs from domesticated chickens shall be made by visual examination of the egg to determine cleanliness, soundness of shell, and exterior quality, and by candling or breaking to determine interior quality. The examination shall be made by a competent representative authorized by the director. The representative shall certify the results of the examination and his or her certificate shall be prima facie evidence of the facts certified to in any court where the certificate is offered in evidence.

(5) All eggs from domesticated chickens sold, offered, or exposed for sale, or advertised for sale by a retailer or wholesaler shall be marked as follows to conform to the following applicable size requirement:

(a) "Jumbo," if the eggs weigh at the rate of not less than 30 ounces per dozen, with no eggs below the rate of 29 ounces per dozen.

(b) "Extra large," if the eggs weigh at the rate of not less than 27 ounces per dozen, with no eggs below the rate of 26 ounces per dozen.

(c) "Large," if the eggs weigh at the rate of not less than 24 ounces per dozen, with no eggs below the rate of 23 ounces per dozen.

(d) "Medium," if the eggs weigh at the rate of not less than 21 ounces per dozen, with no eggs below the rate of 20 ounces per dozen.

(e) "Small," if the eggs weigh at the rate of not less than 18 ounces per dozen, with no eggs below the rate of 17 ounces per dozen.

(f) "Peewee," if the eggs weigh at the rate of not less than 15 ounces per dozen.

(6) All advertising of eggs shall include the correct unabbreviated size designation in describing eggs. The correct unabbreviated size designation shall also appear on the exterior of any container, open or closed, in which eggs are offered for sale to the retailer or the consumer.

(7) A person shall not by himself or herself or his or her agents sell, offer, or expose for sale, advertise, or in any manner represent for sale as strictly fresh, hennery, new laid, best, grade A, number 1, fancy, special, extra, selected, direct from the farm, or under any word, figures, symbols, or description of similar import, any eggs which are not fresh. An egg is not considered fresh unless it meets the standards of quality specified for the U.S. AA or A quality, or the equivalent, as designated in U.S. standards for shell eggs for individual eggs or in standards prescribed by the director by rule.

(8) All eggs from domesticated chickens sold, offered or exposed for sale, or advertised for sale by a retailer or wholesaler shall be labeled or marked to conform to one of the following grade requirements:

(a) Eggs that fully meet the specifications of U.S. AA quality or fresh fancy quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade AA or fresh fancy eggs, Michigan seal of quality eggs, grade A or grade B eggs.

(b) Eggs that fully meet the specifications of the U.S. A quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade A or grade B eggs.

(c) Eggs that fully meet the specifications of a U.S. B quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade B eggs.

(d) Eggs that do not meet the grade requirements of subdivision (a), (b), or (c) shall not be offered for sale or sold in the shell. Those eggs may be broken out of the shell at the grading plant or grading station or may be offered for sale or sold to an egg breaking plant.

(9) Eggs shall be held and transported at or below 45 degrees Fahrenheit ambient temperature beginning 36 hours after time of lay. If the eggs are to be processed as table eggs and are not processed for the ultimate consumer within 36 hours from the time of lay and, therefore, are held and transported as required at or below 45 degrees Fahrenheit ambient temperature, then the eggs may be held at room temperature for no more than 36 hours just prior to processing to allow an equilibration step to temper the eggs.

(10) This act does not apply to a person who meets all of the following requirements:

(a) Is directly responsible for producing eggs from fewer than 3,000 hens.

(b) Only sells eggs directly to consumers or first receivers.

(c) Only sells eggs in containers that each bear a label stating "packaged in a facility that has not been inspected by the department."

- (d) Does not sell eggs through the internet or by mail order or consignment.

289.7115 Sausage; contents; definitions.

Sec. 7115. Sausage consists only of skeletal meat either fresh, cured, salted, pickled, or smoked. Poultry sausage may contain accompanying skin in natural proportions. Sausage may contain the following:

- (a) Salt or spice, cure agents such as sodium or potassium nitrate or sodium or potassium nitrite, cure accelerators such as sodium erythorbate or ascorbic acid, all that comply with applicable regulations of the United States department of agriculture food safety inspection service or any other curing agents determined appropriate by the department or pursuant to rules promulgated under this act. As used in this subdivision, "curing agent" or "curing accelerator" means any substance added to meat to cause or enhance preservation of the meat product.
- (b) Added edible animal fat from the animals specified, eggs or egg products, chives, tomatoes, parsley, peppers, onions, garlic, celery, seasoning, or other natural flavoring, honey, syrup, sugar, pure refined dextrose, or subsequent cooking or smoking.
- (c) Not more than 3-1/2% by weight nonfat dry milk, dry whole milk, or calcium-reduced milk if it is declared in conjunction with the product name.
- (d) Fruits, vegetables, or nuts, or a combination thereof, if the name of the product is so qualified.
- (e) Not less than 12% protein. The protein content requirement shall not apply to pork sausage, breakfast sausage, or roasted sausage but the finished product shall contain not more than 50% of fat. Fresh sausage shall contain no added water, except to facilitate chopping or mixing and in an amount not to exceed 3% of the total ingredients. Cooked sausage shall not exceed 40% fat and added water.
- (f) Fresh and fresh frozen sausage, smoked and unsmoked dry sausage, may contain antioxidants such as butylated hydroxyanisole, butylated hydroxytoluene or propyl gallate, or a combination of these antioxidants, with or without citric acid, in amounts that comply with applicable regulations of the United States department of agriculture food safety inspection service. When such antioxidants are added, the label on the product shall declare the presence of antioxidants in the manner required by the United States department of agriculture food safety inspection service.
- (g) Sausage shall not contain any extenders, artificial flavors, artificial color, binders, excess added water or ice, boric acid or borates, sulphites, sulfur dioxide, sulphurous acid, or any other harmful preservative, by-products, or variety meats. Extenders necessary to produce low-fat products may be permitted as described in rules promulgated under this act. No other parts of the animal or any other substance excepting as above specified shall be permitted in sausage.
- (h) Harmless lactic acid bacterial starters may be used in an amount not to exceed 1/2 of 1%. When used, the harmless bacterial starter shall be included in the list of ingredients in the order of its predominance.
- (i) The following products are considered to be sausage, whether processed or inserted in either natural or artificial casings or other containers: wieners, bologna, ring bologna, knackwurst, bratwurst, roasted sausage, breakfast sausage, pork sausage, chicken sausage, turkey sausage, leona, beer salami, cooked salami, Polish sausage, minced luncheon, kielbasa, bockwurst, all varieties of dry or semi-dry sausage, and other meat food products prepared in sausage form and excluding loaves, liver products, headcheese, sulze, blood sausage, potato sausage, kishka, tongue sausage, and New York or New England pressed luncheon.
- (j) "Fresh pork sausage", "Polish sausage", "fresh kielbasa", and "fresh country-style sausage" are sausages prepared from fresh pork meat.
- (k) "Italian-style sausage" shall be uncured, unsmoked, and contain at least 85% meat or meat and fat with no more than 35% fat. Italian sausage contains fennel or anise and may contain red and green pepper, onion, and garlic. Italian sausage shall be prepared from fresh pork meat.
- (l) "Fresh beef sausage" is prepared with fresh beef meat and shall not contain more than 30% fat.
- (m) "Poultry sausage or poultry-meat sausage" shall be made from fresh poultry meat containing the natural proportions of light and dark meat unless otherwise designated. The name shall be identified by the species contained if the product contains all its meat from 1 species. It shall not contain more than 30% fat. Poultry-meat sausage shall not contain skin.
- (n) "Cervid sausage" shall be made from the meat of cervidae from approved sources. The name shall be identified by the species contained if the product contains all its meat from 1 species, such as "venison sausage" or "elk sausage." A person shall not offer for sale, sell, or expose for sale any other product described as cervid sausage. Fat of another species and approved source may be added to cervid sausage.
- (o) Sausage containing wild game and made on commercial order shall be labeled "not for sale". Wild game from more than 1 owner shall not be mixed into sausage unless a licensed processor butchered all the wild game. Processors shall reject any carcass that shows evidence of spoilage or contamination. Wild game and wild-game product and processing times shall be kept separate from other meat and meat processing, including, but not limited to, storage in separate or structurally-partitioned coolers. Food contact surfaces shall be thoroughly washed and sanitized after the processing of wild game and before the resumption of any other processing.

289.7117 Hamburger or ground beef; contents.

Sec. 7117. Hamburger or ground beef consists of fresh beef meat that has been comminuted and shall be identified as either hamburger or ground beef. Hamburger shall not contain more than 30% of fat. Ground beef shall meet the same requirements as hamburger except that it shall not contain more than 20% of fat. Monosodium glutamate may be added if declared. Hamburger may contain added beef fat, but ground beef shall not contain added fat. Ground beef and hamburger shall not contain added water or ice. Only ground beef may be qualified by the name of a particular cut of meat, such as "ground beef round" or "ground beef chuck". If so qualified, it shall consist entirely of meat from the particular meat cut and be certified as that specific cut by a method of certification as the director may establish by rule. Hamburger or ground beef shall not contain by-products or variety meats, binders, extenders, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal or any other substance except as otherwise provided in this subsection is permitted in hamburger or ground beef.

289.7119 Other comminuted meat food products; compliance with federal regulations.

Sec. 7119. Other comminuted meat food products, including nonspecific loaves and liver products, headcheese, blood sausage, kishka, tongue sausage, chili con carne with beans, or any other meat food products that may be allowed, shall be produced in compliance with applicable regulations of the United States department of agriculture food safety inspection service.

289.7121 Chili or chili con carne; contents.

Sec. 7121. Chili or chili con carne shall consist of not less than 40% of meat computed on the weight of the fresh meat and shall not contain by-products and variety meats except that head meat, cheek meat, and heart meat, exclusive of the heart cap, may be used to the extent of 25% of the meat ingredients with specific declaration on the label. The mixture may contain not more than 8%, individually or collectively, of cereal, vegetable starch, vegetable flour, soy flour, soy protein concentrate, isolated soy protein, dried milk, calcium reduced dry skim milk, nonfat dry milk solids, or seasoning. Chili con carne shall not contain binders, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal are permitted in chili con carne.

289.7123 Meat loaf; contents.

Sec. 7123. Meat loaf consists of comminuted meat, processed in the form of a loaf, containing not less than 65% meat. Meat loaf mix consists of meat loaf sold in bulk uncooked form. Meat loaf may contain salt, seasoning, sodium or potassium nitrate, ascorbic acid, or the salts thereof, sodium or potassium nitrite, cereal vegetables, vegetable protein, nonfat dry milk solids, soy flour, eggs or egg products, macaroni, cheese, condiments, nuts, fruits, or gelatin. Binders and extenders shall not exceed 12% of the product. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3% of the total ingredients. Meat loaf shall not contain by-products of variety meats, artificial flavors or color, vegetable coloring, chemical preservative, boric acid or borates, sulfur dioxide, sulphites, or sulphurous acid. No other substance is permitted in meat loaf or meat loaf mix, except as otherwise provided in this section.

289.7125 Ground lamb, chicken, turkey, and veal; contents.

Sec. 7125. Ground lamb, chicken, turkey, and veal shall not contain any added water or ice, artificial flavoring, by-products or variety meats, binders, extenders, artificial color, vegetable coloring, or chemical preservatives. No other parts of the animal or any other substance shall be permitted except as follows:

- (a) Ground lamb shall consist of comminuted fresh lamb meat, with or without added lamb fat, and shall not contain more than 25% fat.
- (b) Ground poultry shall consist of comminuted fresh poultry meat, with or without accompanying skin in natural proportions, with or without added poultry fat, and shall not contain more than 20% fat. The name shall be identified by the species contained in the product.
- (c) Ground poultry meat shall consist of comminuted fresh poultry meat, with or without added poultry fat, and shall not contain more than 15% fat. The name shall be identified by the species contained in the product.
- (d) Ground veal shall consist of comminuted fresh veal meat, with or without added veal fat, and shall not contain more than 20% fat.
- (e) Ground pork shall consist of comminuted fresh pork with or without the addition of pork fat as such and shall not contain more than 30% fat. Ground pork shall not contain extenders, binders, variety meats, by-products, added water or ice, artificial flavor or color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal or any other substance is permitted in ground pork.

289.7127 Meat pattie; contents.

Sec. 7127. "Meat pattie" is a product prepared in pattie form. "Meat pattie mix" is a product sold in bulk uncooked form. Meat patties and meat pattie mix are a mixture of fresh comminuted meat with or without the addition of fat and seasonings and containing not less than 65% meat. Binders and extenders may be used up to 12% of the finished product. Meat pattie and meat pattie mix shall not contain artificial color or flavor, by-products or variety meats, added water or ice, or more than 30% fat. Meat patties and meat pattie mix with fruits, vegetables, nuts, or mushrooms, either as a coating or ingredient, are permitted if labeled and advertised as "meat patties with _____", inserting the common or usual name of the addition.

289.7129 Food subject to standards; identification; common or usual name.

Sec. 7129. (1) If a food is subject to a standard established under this chapter, it shall be identified by the name required by that standard. If no standard applies, the product shall be identified by its common or usual name. If no common or usual name exists, the product shall be identified by an appropriately descriptive name that is not misleading and that accurately identifies or describes, in as simple and direct terms as possible, the basic nature of the food and its characterizing ingredients or properties. A product manufactured or sold under the provisions of this act, which is sold in closed or sealed packages shall bear a complete label. The label shall bear the true name of the product as defined in this act, an ingredient statement if the product contains more than 1 ingredient, the net weight of the product, and the name and address of the manufacturer.

(2) Products sold from bulk retail displays shall bear a sign or placard containing the true and approved name of the product. If the product contains more than 1 ingredient, an ingredient statement shall be placarded, posted, or otherwise available for the customer in written form.

(3) Meat products using antioxidants shall indicate on the label, or in the absence of a label an adjacent placard, their presence and purpose.

(4) Meat products containing monosodium glutamate, hydrolyzed vegetable protein, or any other source of monosodium glutamate shall indicate on the label or, in the absence of a label, an adjacent placard in its presence.

(5) The meat ingredients in a meat product that specifies 1 type of meat in its name, such as ham loaf, pork loaf, veal patties, or turkey sausage, shall be entirely from the species indicated in the product name. The meat in a meat product that specifies more than 1 type of meat in its name, such as beef and turkey sausage, shall be entirely from the types indicated, and shall contain at least 20% of each meat. A meat product that contains a type of meat consisting of less than 20% of that meat may be labeled as "(product) _____ added" or "product with _____", inserting the common name of that meat. Sausage labeled or advertised as all meat or all beef shall not contain any nonfat dry milk solids or dry whole milk.

(6) All required words and numbers shall be legible to potential customers.

289.7131 Federally inspected meats; preemption of state ingredient standards.

Sec. 7131. A person shall not sell or offer for sale a product that is not manufactured to the ingredient standards of this act unless the federal government legally preempts Michigan's ingredient standards. In that case, federally inspected meats not meeting the ingredient requirements of this act shall be identified as federally inspected on intact, sealed packaging from the federally inspected location.

289.7133 Artificial casings or containers; products considered as adulterated.

Sec. 7133. (1) All products manufactured under terms of this chapter may be sold in colored artificial casings or containers only if the products are in complete compliance with all applicable regulations of the United States department of agriculture. These products shall not be sold in colored natural casings.

(2) In addition to the requirements of section 1105(1)(a), any product manufactured under the terms of this chapter is adulterated if it is the product of an animal which has died otherwise than by slaughter.

289.7135 Experimental packs of food; temporary permits.

Sec. 7135. (1) Temporary permits granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under the conditions provided in such permits.

(2) The department may issue additional temporary permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded.

(3) Such temporary permits are subject to the terms and conditions the department may prescribe by rule.

289.7137 Food additives; limitation.

Sec. 7137. Food shall not contain unapproved food additives or additives that exceed amounts specified in 21 CFR parts 170 to 180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR parts 181 to 186, substances that exceed amounts established under applicable regulations of the United States department of agriculture food safety inspection service, or pesticide residues that exceed provisions specified in 40 CFR part 180.

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Chapter VIII
LABELING AND ADVERTISING

289.8101 Packaged food; label requirements.

Sec. 8101. Packaged food shall be labeled as specified in 21 CFR part 101, 9 CFR part 317, and subpart N of part 381 of title 9 of the Code of Federal Regulations, and as specified under sections 3-202.17 and 3-202.18 of the food code.

289.8103 Bulk displays of unpackaged food and drink; salad bar; sign requirements; placard.

Sec. 8103. (1) All bulk displays of unpackaged food and drink offered for sale at a retail food establishment, including salad bars, which contain a detectable amount of sulfiting agents shall be prominently placarded with a sign which is clearly visible to the customer and which declares either of the following statements:

(a) (NAME OF PRODUCT)

THIS PRODUCT CONTAINS A SULFITING AGENT. SULFITES MAY CAUSE AN ALLERGIC REACTION IN CERTAIN PERSONS, PARTICULARLY ASTHMATICS.

(b) (NAME OF PRODUCT) _____, the blank to be filled in with the name of the sulfiting agent, and if added as a preservative, a separate description of its function.

(2) All letters on the sign shall be of the same type style and color, not less than 1/4 inch in height, and of a color in clear contrast to the background. A smaller type size may be permitted if the department determines space is not available for the placard and the largest type size possible is used. If a retail establishment has multiple bins of sulfite-treated food which are segregated, 1 placard listing all of the applicable products is acceptable if it is placed at approximately eye level over the bins.

289.8105 Prohibited acts.

Sec. 8105. (1) A person shall not do any of the following:

(a) Make, publish, disseminate, circulate, or place before the public any advertisement containing any assertion, representation, or statement which is untrue, deceptive, or misleading or falsely represents the kind, classification, grade, or quality of meat.

(b) Use any term of quality without using or having for sale the quality of meat advertised or offered for sale.

(c) Designate or use any brand name of a company unless the meat so advertised or displayed for sale is of a quality which the use or designation of the brand name of such company would reasonably indicate.

(2) A person shall not advertise or display for sale any of the following:

(a) Any meat of the ovine species that is 2 years old or over as "yearling" or "lamb". Such meat shall be clearly designated "mutton."

(b) Any meat described by the use of words associated with grading terminology unless such meat advertised for sale actually bears the "USDA" federal stamp designating such grade or is of equal quality as the federal grade would designate.

(c) Any ham unless the advertisement or display states whether the ham is whole, bone-in, semi-boneless, or boneless.

(d) Any ham portion described by the use of the words "one-half" or "half ham" that has had a center slice removed.

(e) Any pork shoulder described as "ham".

(f) Any meat or meat product which has been branded or marked as imitation by a manufacturer or processor unless the advertisement or display clearly states that such meat or meat product is an imitation.

(3) A person shall not substitute in any sale any inferior or cheaper cut of meat without informing the purchaser that such substitution is being made.

(4) A person shall not keep or display any canned meats or canned meat products at a temperature exceeding 6° centigrade (41° Fahrenheit) if the label of such meats or meat products specifies that they shall be kept under refrigeration.

(5) Whenever it becomes necessary for the purposes of this act to procure a sample or samples of meat or meat products, the person in charge of the place where evaluation is made must permit the sample or samples to be obtained upon being tendered the advertised or offered price of the item being procured.

289.8107 Definitions; prepackaged perishable food; date; prohibited sales; advertisement of food sold after date; alteration of date prohibited; calculation of date; exceptions.

Sec. 8107. (1) As used in this section:

(a) "Date" means 1 of the following:

(i) For perishable food, the recommended last day of sale.

(ii) For nonperishable food, the recommended last day of sale or consumption, if any.

(b) "Prepackaged" means packaged prior to being displayed or offered for sale.

(2) A retail food establishment shall not sell or offer for sale a prepackaged perishable food unless the package bears a label with a date identified by month and day, except that bakery products with a shelf life of 7 days or less may be

dated with a day of the week or an abbreviation. A retail food establishment may sell or offer for sale a prepackaged nonperishable food with or without a label that bears a date.

(3) The date for prepackaged perishable food may be displayed with or without explanatory terms. If explanatory terms are used, the terms shall be limited to 1 of the following: "Sell by _____", "Sell before _____", "Last date of sale _____", "Recommended last date of sale _____", or "Recommended sale date _____". Other meaningful terms may be used if specifically approved by the department.

(4) A retail food establishment shall not sell or offer for sale any of the following foods under the following circumstances:

- (a) After the date, meat that has been removed from a federally inspected retail package.
- (b) After the date, nonperishable food or prepackaged perishable food unless the food is wholesome and sound and is clearly identified as having passed the date.
- (c) Nonperishable food that is no longer wholesome or sound.

(5) The retail or final seller is responsible for the proper advertisement of food sold after the date.

(6) A person who prepackages nonperishable food and chooses to label the food with a date or who prepackages perishable food shall do all of the following:

- (a) Establish a meaningful date that takes into consideration the food quality and characteristics of the food, its packaging, and customary conditions encountered in commercial channels.
- (b) If the date is the recommended last day of sale, allow a reasonable period after the date for consumption of the food without physical spoilage.
- (c) Keep a record of the method of determination of the date.

(7) A retailer who purchases prepackaged perishable food may, upon written agreement with the person prepackaging such food, determine, identify, and be responsible for the date that each package of such food bears on a label.

(8) The date shall not be altered. A person shall not rewrap or repackage a food, in its original form and texture, with a date on the package different from the original.

(9) If the date is the recommended last day of sale, the date shall be calculated to allow a reasonable period for the subsequent consumption of the food, but shall not allow for a period which would result in a health nuisance as described in section 2107.

(10) This section does not apply to fresh fruits and vegetables and frozen food and does not apply to milk and milk products dated in accordance with the grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540.

(11) The requirements of this section do not apply to any of the following:

- (a) An individually packaged food item that is a component of a larger food item if the larger food item is identified with a date the same as or earlier than the date of that component.
- (b) Perishable foods packaged under, and in compliance with, federal laws and regulations, if providing information equal to or greater than the information required by this section.
- (c) Smoked fish under the smoked fish rules.

289.8109 Foods sold or distributed from manufacturing, processing, packing, or repacking activity; identification.

Sec. 8109. All products that are sold or otherwise distributed from a manufacturing, processing, packing, or repacking activity shall be marked with a meaningful, visible, and legible code to enable positive lot identification and to facilitate, where necessary, the segregation of specific lots that may have become contaminated or are otherwise unfit for their intended use. Invisible coding is not considered meaningful coding. The coding format shall be provided to the department upon request. Coding records shall be retained for a period of time that exceeds the shelf life of the product or for 2 years, whichever is shorter.

289.8111 Vinegar; requirements and restrictions; definitions.

Sec. 8111. (1) A person shall not manufacture for sale, offer or expose for sale, sell or deliver, or have in his or her possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this chapter.

(2) The word "vinegar" as used in this section is limited to a water solution of acetic acid derived by the alcoholic and subsequent acetous fermentation of fruits, grain, vegetables, sugar, or syrups and if not distilled must carry in solution the extractive matter derived solely from the substances indicated on the label as its source.

(3) Vinegar shall not be sold or offered for sale as apple or cider vinegar which is not the legitimate product of pure apple juice. The term "cider vinegar" or "apple cider vinegar" as used in this section means vinegar derived by the alcoholic and subsequent acetous fermentation of the expressed juice of apples, the acidity, solids, and ash of which have been derived exclusively from apples and which contains not less than 4% of absolute acetic acid. Cider vinegar which, during the course of manufacture, has developed in excess of 4% acetic acid may be reduced to a strength of not less than 4%, and cider vinegar so reduced is not regarded as adulterated.

(4) Every manufacturer or producer of cider vinegar shall plainly label on the head of the cask, barrel, keg, or other container of such vinegar, his or her name, place of business, and the words "cider vinegar" or "apple cider vinegar". A person shall not mark or label as cider vinegar or apple cider vinegar any package containing that which is not cider vinegar. Any vinegar sold or offered for sale shall be marked or labeled plainly upon the package or container from

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which it is sold and also on the original package or container in which it is sold or delivered, in a manner that shows its true character and source.

(5) Vinegar sold or offered for sale as sugar vinegar shall be strictly and distinctly fermented from sucrose, molasses, refiner's syrup, or nutritive carbohydrate sweetener.

(6) Vinegar sold or offered for sale as malt vinegar shall be strictly and distinctly fermented from malted barley, cereals, or a concentrate of malted barley or cereals, which has been enzymatically converted by the malting process.

(7) Vinegar shall not be sold or offered for sale in which foreign substances, other than substances permitted under this act, drugs, or acids have been introduced. Vinegar shall not contain any artificial color except as permitted under this act. Vinegar shall contain not less than 4 grams of acetic acid per 100 cubic centimeters at 20° centigrade. If vinegar contains any artificial substance, except as permitted under this act, or contains less than the required amount of acidity, it shall be considered to be adulterated.

(8) Vinegar made by fermentation and oxidation of the juice of grapes or the acetous fermentation of wine, without the intervention of distillation, shall be labeled with the name of the fruit or substance from which the vinegar has been made.

(9) Vinegar made by acetous fermentation of dilute distilled ethyl alcohol shall be labeled "distilled vinegar", "white distilled vinegar", "distilled white vinegar", or "white vinegar". Vinegar, except flavored vinegar and blended vinegar, made in part from distilled vinegar shall be conspicuously labeled "distilled vinegar" and shall have the component vinegars declared in the ingredient statement.

(10) Flavored vinegar shall be labeled "_____ flavored vinegar". The space shall be filled in with the name of the characteristic flavor. All of the words in the name shall appear on a background of contrasting color. The flavor name shall be in letters at least 1/2 the size of the letters in the word "vinegar". The word "flavored" shall be in letters at least 1/2 the size of the letters in the flavor name.

(11) Blended vinegar shall be labeled "blended vinegar" or "_____ vinegar", the blank to be filled in with a name which accurately describes the nature or function of the vinegar. All of the words in the name shall be in letters on a background of contrasting color.

(12) As used in this section:

(a) "Blended vinegar" means the acetous fermentation of a blend of raw materials or a blend of 2 or more of the vinegars defined in this chapter but not including apple cider vinegar.

(b) "Flavored vinegar" means vinegar to which garlic, shallots, chili, tarragon, herbs, or spices, or the extract of any of those substances, is added to impart a characteristic flavor.