



Date: March 15, 2013

To: Local Health Department & Other Indiana Food Regulatory Agencies

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Director, Food Protection Program

Subject: Guidance for the Implementation of the newly adopted
Indiana State Department of Health (ISDH) Rule 410 IAC 7-25
"On Farm Poultry Processor Exemption"
(Formerly House Enrolled Act (HEA) 1312)

Purpose

This document is to provide guidance to local health departments, other regulatory agencies and interested individuals regarding the implementation of the newly adopted ISDH Rule 410 IAC 7-25 "On Farm Poultry Processor Exemption"(Rule), formerly known as HEA 1312. A copy of the Rule is attached.

Background

HEA 1312 was enacted by the General Assembly during the 2012 legislative session as an enhancement to the previously adopted Indiana Code (IC) 16-42-5-29 which is commonly referred to as the "Home Based Vendor (HBV), Farmers' Market and Roadside Stand" law (HEA 1309). HEA 1312 required the Indiana State Department of Health (ISDH) to adopt rules that incorporated by reference 9 Code of Federal Regulations (CFR) 381.10(c), requiring raw poultry processed to be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10.

Discussion

The Rule incorporates by reference 9 CFR 381.10(c) to allow raw poultry slaughtered and processed on a farm for the purposes of conducting limited sales on the farm, at a farmer's market, or at a roadside stand and to require the raw poultry to be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10. The freezing requirement, which is not part of 9 CFR 381.10, was added into IC 16-42-5-29 by the Indiana Legislature and then subsequently added into the new Rule.

The ISDH Executive Board approved Rule 410 IAC 7-25 for final adoption on January 9, 2013, making the rule effective on March 16, 2013.

ISDH Rule 410 IAC 7-25 now allows for raw poultry to be slaughtered and processed on a farm for the purposes of conducting limited sales on the farm, at a farmer's market, and at a roadside

stand; however, there is still the need for inspection(s) of farmer's markets, even though there will be no routine inspections of the raw poultry processing operations. Compliance with IC 16-42-5-29 relating to labeling and complaint investigation, must be addressed at farmer's markets at roadside stands or at the farm.

Raw poultry must be frozen (should be 0°F but shall be below 28°F) at the point of sale and labeled in compliance with IC 16-42-5-29(b)(5) and 9 CFR 381.10. The intent of the law is to ensure that the poultry product is frozen prior to sale.

IC 16-42-5-29(b)(5) states that the label must contain the following:

- (A) The name and address of the producer of the food product.
- (B) The common or usual name of the food product.
- (C) The ingredients of the food product, in descending order by predominance by weight.
- (D) The net weight and volume of the food product by standard measure or numerical count.
- (E) The date on which the food product was processed.
- (F) The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the state department of health.

9 CFR 381.10 states the label must bear the producer's name, the producer's address, and the statement, Exempt P.L. 90-492. *Exempt P.L. 90-492 identifies the product as product produced under an exemption from the Act, Public Law 90-492.*

To be in compliance with the Rule, the labeling of the raw poultry must comply with both IC16-42-5-29 and 9 CFR 381.10.

The intent of the law was to allow farmers to slaughter and process their chickens; freeze the poultry product(s); and sell the poultry product(s). The intent was not to allow other processes, such as the addition of breading, spices or marinade. Processes, such as breading, addition of spices, or marinating of poultry products, is required to be conducted in a regulated food establishment under inspection. If poultry product(s) is found, while conducting an inspection of an HBV at a farmer's market and/or roadside stand, to have undergone any the aforementioned processes, the poultry product would be considered adulterated and should be removed from sale, since it would not have originated in a regulated facility. The ISDH and local health departments may visit a farm and review processing and inventory records to verify that the operation is operating within the 1,000 bird per year limit.

Consumer complaints concerning these raw poultry products, like a HBV and/or HBV food products, shall be forwarded to the ISDH Food Protection Program. The complaint investigation and/or follow-up will be coordinated between ISDH and the affected local health jurisdiction. Inspections of these operations are allowed if originating from a complaint.

Conclusion

As with the creation of HEA 1309, certain food operations were exempt from the definition of a food establishment. Individuals that process 1,000 birds or less are **now** exempt. Since these entities are not food establishments, the regulations used to regulate food establishments **do not apply**. Although the food establishment regulations do not apply, **the requirements addressed in 410 IAC 7-25 do**. As previously mentioned, the intent of the law was to allow the individual to slaughter, process, freeze and sell the poultry product. The law does not allow for the further processing of the poultry product, such as by the addition of breading, spices, and marinade.

The regulatory authority may examine the raw poultry **and product labeling when being offered for sale to ensure they are in fact in compliance with 410 IAC 7-25** to maintain their exemption.

Until the requirements of 410 IAC 7-25 become more widely known and understood by vendors & potential vendors, **it is reasonable to expect that Indiana food regulatory authorities should emphasize education on the new requirements over enforcement action.**

Food Protection Program representatives are available to assist you with any questions you may have about situations or questionable products that may be encountered.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Final Rule

LSA Document #12-431(F)

DIGEST

Adds 410 IAC 7-25 to incorporate by reference 9 CFR 381.10(c) to allow poultry products slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmer's market, or at a roadside stand and to require that poultry produced be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10. Effective 30 days after filing with the Publisher.

410 IAC 7-25

SECTION 1. 410 IAC 7-25 IS ADDED TO READ AS FOLLOWS:

Rule 25. On Farm Poultry Processor Exemption

410 IAC 7-25-1 Applicability

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 1. The definitions in this rule apply throughout this rule. (*Indiana State Department of Health; 410 IAC 7-25-1*)

410 IAC 7-25-2 "CFR" defined

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 2. "CFR" means the Code of Federal Regulations. (*Indiana State Department of Health; 410 IAC 7-25-2*)

410 IAC 7-25-3 "Department" defined

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 3. "Department" means the Indiana state department of health or its authorized representative. (*Indiana State Department of Health; 410 IAC 7-25-3*)

410 IAC 7-25-4 "Farm" defined

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 4. "Farm" means agricultural land and buildings including an area of land where crops are grown or animals are reared for commercial purposes, together with appropriate buildings. (*Indiana State Department of Health; 410 IAC 7-25-4*)

410 IAC 7-25-5 "Poultry" defined

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 5. "Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one (1) to about thirty (30) days of age), whether live or dead. (Indiana State Department of Health; 410 IAC 7-25-5)

410 IAC 7-25-6 Poultry exemption

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 6. Raw poultry that is raised, slaughtered, and processed on the farm and sold only on the farm, at a farmer's market, or a roadside stand is exempt from all other department regulations pertaining to food provided the farm complies with section 7 of this rule and 9 CFR 381.10(c)*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204. (Indiana State Department of Health; 410 IAC 7-25-6)**

410 IAC 7-25-7 Frozen raw poultry

Authority: IC 16-42-5-29

Affected: IC 16-42-5-29

Sec. 7. The raw poultry that is exempted by section 6 of this rule shall be frozen immediately after processing and remain in this state until sold. It should be kept at zero (0) degrees Fahrenheit, but shall be below twenty-eight (28) degrees Fahrenheit at all times with the product being rigid and hard to the touch. The raw poultry shall be labeled in compliance with the requirements of 9 CFR 381.10*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204. (Indiana State Department of Health; 410 IAC 7-25-7)**

9 CFR 381 Animal and Animal Products Inspection Regulation

§381.10 Exemptions for specified operations.

(a) The requirements of the Act and the regulations for inspection of the processing of poultry and poultry products shall not apply to:

(1) Any retail dealer with respect to poultry products sold in commerce directly to consumers in an individual retail store, if the only processing operation performed by such retail dealer is the cutting up of poultry products on the premises where such sales to consumers are made: *Provided*, That such operation is conducted under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are not adulterated: *And provided further*, That the poultry products sold in commerce are derived from poultry inspected and passed under the Act and such poultry products are not adulterated or misbranded at the time of sale (except that the official inspection legend shall not be used). (For the purposes of this subparagraph, a retail dealer is any person who sells poultry products directly to consumers as defined in paragraph (d)(2)(vi) of this section and whose sales of poultry products to household consumers constitute, in terms of dollar value, at least 75 percent of his total sales of poultry products.)

(2) The slaughter of poultry, and the processing of poultry products, by any person in any territory not organized with a legislative body, solely for distribution within such territory: *Provided*, That such poultry is sound and healthy and is slaughtered under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are not adulterated: *And provided further*, That the poultry products are not adulterated or misbranded when so distributed (except that the official inspection legend shall not be used).

(3) The slaughtering by any person of poultry of his own raising, and the processing by him and transportation in commerce of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees: *Provided*, That in lieu of complying with all the adulteration and misbranding provisions of the Act, such poultry is healthy and is slaughtered and processed under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are sound, clean, and fit for human food, and the shipping containers of such poultry products bear the producer's name and address and the statement "Exempted—P.L. 90-492."

(4) The custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation in commerce of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and the employees: *Provided*, That such custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food: *And provided further*, That in lieu of complying with all the adulteration and misbranding provisions of the Act, such poultry is healthy and is slaughtered and processed under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are sound, clean and fit for human food, and the shipping containers of such poultry products bear the owner's name and address and the statement "Exempted—P.L. 90-492."

(5) The slaughtering of sound and healthy poultry and processing of poultry products therefrom in any State or territory or the District of Columbia by any poultry producer on his own premises with respect to poultry raised on his premises, and the distribution by any person solely within

such jurisdiction of the poultry products derived from such operations: *Provided*, That (i) in lieu of complying with all the adulteration provisions of the Act, such poultry is slaughtered and otherwise processed and handled under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are sound, clean, and fit for human food when so distributed; (ii) such poultry products when so distributed, bear (in lieu of labeling that would otherwise be required) the producer's name and address and the statement "Exempted—P.L. 90-492" and such poultry products are not otherwise misbranded; (iii) such producer and distributor do not engage in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in this paragraph (a) (5) or (6) of this section; and (iv) neither such producer or distributor slaughters or processes the products of more poultry than allowed by paragraph (b) of this section.

(6) The slaughtering of sound and healthy poultry or the processing of poultry products of such poultry in any State or territory or the District of Columbia by any poultry producer or other person for distribution by him solely within such jurisdiction directly to household consumers, restaurants, hotels, and boardinghouses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers: *Provided*, That (i) in lieu of complying with all the adulteration provisions of the Act, such poultry is slaughtered and otherwise processed and handled under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are sound, clean, and fit for human food when distributed by such processor; (ii) such poultry products when so distributed bear (in lieu of labeling that would otherwise be required) the processor's name and address and the statement "Exempted—P.L. 90-492" and such poultry products are not otherwise misbranded; (iii) such processor does not engage in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in this paragraph (a) (6) or (5) of this section; and (iv) such processor does not exceed the volume limitation prescribed in paragraph (b) of this section.

(7) The operations and products of small enterprises (including poultry producers) not exempted under paragraphs (a) (1) through (6) of this section that are engaged in any State or territory or the District of Columbia in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof solely for distribution within such jurisdiction; *Provided*, That (i) such poultry is sound and healthy when slaughtered and is slaughtered and/or cut up and handled under such sanitary standards, practices and procedures as result in the preparation of poultry products that are not adulterated when so distributed; and (ii) when so distributed, such poultry products are not misbranded (except that the official inspection legend shall not be used).

(b) No person qualifies for any exemption specified in paragraph (a)(5), (6), or (7) of this section if, in the current calendar year, such person:

(1) Slaughters or processes the products of more than 20,000 poultry, or

(2) Slaughters or processes poultry products at a facility used for slaughtering or processing poultry products by any other person, except when the Administrator grants such exemption after determining, upon review of a person's application, that such an exemption will not impair effectuating the purposes of the Act.

(c) The provisions of the Act and the regulations do not apply to any poultry producer with respect to poultry, of his own raising on his own farm, which he slaughters if:

(1) Such producer slaughters not more than 1,000 poultry during the calendar year for which this exemption is being determined;

(2) Such poultry producer does not engage in buying or selling poultry products other than those produced from poultry raised on his own farm; and

(3) None of such poultry moves in “commerce” (as defined in §381.1).

(d)(1) The requirements of the Act and the regulations for inspection of the processing of poultry and poultry products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar-retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(2) For the purposes of paragraph (d)(1) of this section:

(i) Operations of types traditionally and usually conducted at retail stores and restaurants include any processing of poultry products except canning of poultry products and except slaughtering of poultry unless such slaughtering is conducted at a retail store with respect to live poultry purchased by the consumer at the retail store and processed by the retail store operator in accordance with the consumer's instructions.

(ii) A normal retail quantity is any quantity of a poultry product purchased by a household consumer from a retail supplier that in the aggregate does not exceed 75 pounds. A normal retail quantity sold by a retail supplier to other than a household consumer is any quantity that in the aggregate does not exceed 150 pounds.

(iii) A retail store is any place of business where:

(a) The sales of poultry products are made to consumers only;

(b) At least 75 percent, in terms of dollar value, of total sales of product represents sales to household consumers and the total dollar value of sales of product to consumers other than household consumers does not exceed the dollar limitation per calendar year set by the Administrator. This dollar limitation is a figure which will automatically be adjusted during the first quarter of each calendar year, upward or downward, whenever the Consumer Price Index, published by the Bureau of Labor Statistics, Department of Labor, indicates a change in the price of this same volume of product which exceeds \$500. Notice of the adjusted dollar limitation will be published in the FEDERAL REGISTER. ¹

¹ The dollar limitation currently in effect may be obtained by contacting Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3219.

(c) Only federally or State inspected and passed, or exempted (or, as provided in §381.223, State or local agency inspected and passed or exempted) poultry products are handled or used in the preparation of any poultry products;

(d) No sale of poultry products is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(e) The processing of poultry products for sale is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(iv) *Restaurants.* (a) A restaurant is any establishment where:

(1) Poultry products are processed only for sale or service in meals or as entrees directly to individual consumers at such establishments;

(2) Only federally inspected and passed, or exempted (or, as provided in §381.223, State or local agency inspected and passed or exempted) poultry products are handled or used in the preparation of any poultry products;

(3) No sale of poultry products is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(4) The processing of poultry products is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(b) The definition of a restaurant includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirements of this paragraph.

(c) For purposes of this paragraph, operations conducted as a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility (i.e., no further cooking or other preparation is needed, except that they may be reheated prior to serving if chilled during transportation), transported directly to a receiving restaurant by its own employees, without intervening transfer or storage, maintained in a safe, unadulterated condition during transportation, and served in meals or as entrees only to customers at restaurants, or through vending machines, owned or operated by the same person that owns or operates such facility, and which otherwise meets the requirement of this paragraph: *Provided*, That the requirements of §§381.175 through 381.178 of this subchapter apply to such facility. *Provided further*, That the exempted facility may be subject to inspection requirements under the Act for as long as the Administrator deems necessary if the Administrator determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products are rendered adulterated. When the Administrator has made such determination and subjected a restaurant central kitchen facility to such inspection requirements, the operator of such facility shall be afforded an opportunity to dispute the Administrator's determination in a hearing pursuant to rules of practice which will be adopted for this proceeding.

(v) A similar retail-type establishment is any establishment which is a combination retail store and restaurant; any delicatessen which meets the requirements for a retail store or restaurant as prescribed in paragraph (d)(2) (iii) or (iv) of this section; or other establishment as determined by the Administrator in specific cases.

(vi) A consumer is any household consumer, hotel, or restaurant, or similar institution as determined by the Administrator in specific cases.

(3) Whenever any complaint is received by the Administrator from any person alleging that any retail establishment or restaurant claiming exemption under this paragraph (d) in any designated State or organized territory listed in §381.221 that is also identified in §381.224 as a jurisdiction that does not have or is not exercising adequate authority with respect to recordkeeping requirements, has been operated in violation of the conditions prescribed in this paragraph (d) for such exemption, and the Administrator, upon investigation of the complaint, has reason to believe that any such violation has occurred, he shall so notify the operator of the retail establishment or restaurant and afford him reasonable opportunity to present his views informally with respect to the matter. Thereafter, if the Administrator determines that such a violation has occurred, and that a requirement that the operator keep records concerning the operations of the retail establishment or restaurant would effectuate the purposes of the Act, the Administrator shall order the operator to maintain complete, accurate, and legible records of his total monthly purchases and of his total monthly sales of poultry and poultry products. Such records shall separately show total sales to household consumers and total sales to other consumers, and shall be maintained for the period prescribed in §381.177. If the operator maintains copies of bills of lading, receiving and shipping invoices, warehouse receipts, or similar documents which give the information required herein, additional records are not required by this subparagraph.

(4) The adulteration and misbranding provisions of the Act and the regulations other than the requirement of the official inspection legend, apply to articles which are exempted from inspection under this paragraph (d).

(e)(1) The requirements of the Act and the regulations in this subchapter for inspection of the preparation of products do not apply to poultry pizzas containing poultry product ingredients which were prepared, inspected, and passed in a cured or cooked form as ready-to-eat (i.e., no further cooking or other preparation is needed) in compliance with the requirements of the Act and these regulations; and the poultry pizzas are to be served in public or private nonprofit institutions, provided that the poultry pizzas are ready to eat (i.e., no further cooking or other preparation is needed, except that they may be reheated prior to serving if chilled during transportation), transported directly to the receiving institution by employees of the preparing firm, receiving institution, or a food service management company contracted to conduct food service at the public or private nonprofit institution, without intervening transfer or storage.

(2) The definitions at Chapter 1, 1-102, except 1-102(z) and the provisions of Chapters 2 through 8, except sections 2-102 (a) and (b), 2-302(d), 2-403(a), 2-403(c), 2-404, 2-405, 2-407, 2-502 through 2-506, 2-508, 2-509, 4-105, 4-201(c), 4-208, 5-101(a), 5-103, 5-104, 5-202(c), 5-203, and 6-105, Part IV, of the Food and Drug Administration's Food Service Sanitation Manual (1976 Recommendations), DHEW Publication No. (FDA) 78-2081, which is incorporated by reference, shall apply to the facilities and operations of businesses claiming this exemption. (These materials are incorporated as they exist on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(3) Facilities and operations of businesses claiming this exemption shall also conform to the following requirements:

(i) *Manual cleaning and sanitizing.* (A) For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

(B) Drain boards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

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

(D) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

(1) Sinks shall be cleaned prior to use.

(2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

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

(4) Equipment and utensils shall be sanitized in the third compartment according to one of the methods prescribed in paragraph (e)(3)(i)(E) (1) through (4) of this section.

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

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

(2) Immersion for at least 1 minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 °F; or

(3) Immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75 °F; or

(4) Immersion in a clean solution containing any other chemical sanitizing agent allowed under [21 CFR 178.1010](#) that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 °F for 1 minute; or

(5) Treatment with steam free from materials or additives other than those specified in [21 CFR 173.310](#) in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(6) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under paragraph (e)(3)(i)(E)(4) of this section in the case of equipment too large to sanitize by immersion.

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

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

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

(3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(G) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under [21 CFR 178.1010](#) and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

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

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

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

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

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

(F) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a

prewashcycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

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

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

(2) The wash water shall be kept clean.

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

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

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

(6) Chemical sanitizers used shall meet the requirements of [21 CFR 178.1010](#).

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

(H) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the following temperatures:

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

Wash temperature 150 °F

Final rinse temperature 180 °F

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

Wash temperature 165 °F

Final rinse temperature 165 °F

(3) Single-tank, conveyor machine:

Wash temperature 160 °F

Final rinse temperature 180 °F

(4) Multitank, conveyor machine:

Wash temperature 150 °F

Pumped rinse temperature 160 °F

Final rinse temperature 180 °F

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

Wash temperature 140 °F

Final rinse temperature 180 °F

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

(iii) *Steam*. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in [21 CFR 173.310](#).

(4) For purposes of this paragraph, the term “private nonprofit institution” means “a corporation, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

(5) The Administrator may withdraw or modify the exemption set forth in §381.10(e)(1) for a particular establishment when he or she determines that such action is necessary to ensure food safety and public health. Before such action is taken, the owner or operator of the particular establishment shall be notified, in writing, of the reasons for the proposed action and shall be given an opportunity to respond, in writing, to the Administrator within 20 days after notification of the proposed action. The written notification shall be served on the owner or operator of the establishment in the manner prescribed in section 1.147(b) of the Department's Uniform Rules of Practice ([7 CFR 1.147\(b\)](#)). In those instances where there is conflict of any material fact, the owner or operator of the establishment, upon request, shall be afforded an opportunity for a hearing with respect to the disputed fact, in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal or modification shall become effective pending final determination in the proceeding when the Administrator determines that an imminent threat to food safety or public health exists, and that such action is, therefore, necessary to protect the public health, interest or safety. Such withdrawal or modification shall be effective upon oral or written notification, whichever is earlier, to the owner or operator of the particular establishment as promptly as circumstances permit. In the event of oral notification, written confirmation shall be given to the owner or operator of the establishment as promptly as circumstances permit. This withdrawal or modification shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

(6) The adulteration and misbranding provisions of the Act and the regulations apply to articles which are exempted from inspection under §381.10(e).

[37 FR 9706, May 16, 1972, as amended at 38 FR 16991, June 28, 1973; 45 FR 27922, Apr. 25, 1980; 46 FR 46288, Sept. 16, 1981; 48 FR 2959, Jan. 24, 1983; 51 FR 29909, Aug. 21, 1986; 53 FR 24679, June 30, 1988; 57 FR 34184, Aug. 3, 1992]

