



Long-Term Care Regulatory Provider Letter

Number: PL 2022-23
Title: Retail Food Code Chapter 228 Guidance and Clarification
Provider Types: Assisted Living Facility (ALF)
Date Issued: September 01, 2022

Subject and Purpose

This letter clarifies what requirements a facility must develop, maintain, and enforce for dietary policies and procedures that address food preparation and service. Requirements in this PL only apply to large facilities licensed for 17 or more residents.

A facility that is licensed for 17 or more residents must comply with 25 Texas Administrative Code (TAC) Chapter 228 (relating to Retail Food), including requirements to follow the US Federal Food Code identified in §228.1 and local health ordinances or requirements.

A facility that is licensed for fewer than 17 residents must have policies and procedures that describe the facility's food safety and sanitation requirements for all dietary services. Facilities can use the food code for suggestions in building policies and procedures.

Policy Details & Provider Responsibilities

Management and supervision of personnel

The person who has overall responsibility for food service and the management of food service personnel must be a certified food protection manager. The certified food protection manager must be able to demonstrate knowledge of foodborne disease prevention, application of the hazard analysis and critical control principles, and the requirements of [Chapter 2](#) of the Federal Food Code.

The Texas Department of State Health Services (DSHS) requires that all food employees complete an [accredited food handler training](#) course within 60 days of employment. A food employee is an individual working with un-packaged food, food equipment or utensils, or food-contact surfaces, such as kitchen staff and servers. All food employees will need to have a currently valid food handler certificate. DSHS provides the framework for accrediting food safety education and training programs for food handlers. Links to [Classroom](#), [Online](#), and [Private](#) training programs are provided on the DSHS [Licensing of Food Handler Training Programs web page](#).

Food preparation

Refrigerated, ready to eat food that is maintained for more than 24 hours must be clearly marked to indicate the date or day by which the food must be consumed or discarded when held at a temperature of 5°C (41°F) or less for a maximum of 7 days. The day the food container is opened, or the date food is prepared, must be counted as Day 1. The day or date marked must not exceed a manufacturer's "use-by" date if the manufacturer has one listed.

Food date marking

The Federal Food Code, section 3-501.17 includes an explanation of a date marking system which may include:

using a method approved by a regulatory authority for refrigerated, ready to eat food that is frequently rewrapped, such as lunchmeat or cheese, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in the federal food code;

marking the date or day the original container is opened in an ALF, with a procedure to discard the food on or before the last date or day by which the food must be consumed or discarded; or

using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to a regulatory authority upon request.

Discarding food

Food must be discarded if it:¹

- exceeds the temperature and time combination, excluding the time that the product is frozen;
- is in a container or package that does not bear a date or day; or
- is inappropriately marked with a date or day that exceeds a temperature and time combination as specified in 3-501.17(A) (figure 1).

Food Storage

A facilities food must be obtained from sources that comply with United States Department of Agriculture and the Federal Food Code. Food prepared in a private home may only be given directly to the resident it was originally prepared for.

Refrigerated food temperature for section D, Prevention of Food Contamination, of the Federal Food Code must be at a temperature of 5°C (41°F) or below when received from the suppliers.

Stored frozen foods must be maintained frozen. If the food is solid, it is at the correct temperature.

Frozen time/temperature for the safety of cooking food that is thawed to moderate the temperature must be held under refrigeration that maintains the food temperature at 5°C (41°F) or less.

There is a labeling exception² for containers that can be readily and unmistakably recognized in reusable food containers that hold food or

¹ FDA Food code Chapter 3, Sub-part 505, Temperature and Time Control, section 501.18

² FDA Food code Chapter 3, Sub-part 3-302, Preventing Food and Ingredient Contamination section 3-302.12.

food ingredients that have been removed from their original packages. Some examples are dry pasta, rice, salt, and sugar. The labels must be identified with the common name of the food.

Food must be protected from contamination by storing the food in a clean, dry location, where it is not exposed to splash, dust, or other contamination and is at least 15 cm (6 inches) above the floor.

Pest Control

Pesticides must meet the requirements specified in [40 CFR 152 Subpart I -Classification of Pesticides](#). Rodent bait must be contained in a covered, tamper-resistant bait station. Tracking powders for pest control and monitoring must not be used in an ALF. The ALF must be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests must be controlled to eliminate their presence.³

Background/History

A facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents.

These provisions of the Federal Food Code provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, industry manager knowledge, safe food, nontoxic and cleanable equipment, and acceptable levels of sanitation on food establishment premises.

Resources

Since 25 TAC Chapter 228 has adopted by reference the Federal Food Code 2017, a large ALF must use the state and federal rules in accordance with the requirements in Chapter 228. In the event there are differences between the TAC and Federal Food Code, the TAC takes precedence over the Food Code.

³ FDA Food code Chapter 6 Sub-part 6-501 Controlling Pests section 501.111.

Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.

Figure 1. Food Code Section 3-501.17

Food Code Section 3-501.17

Ready-to-Eat, Time/Temperature Control for Safety Food, Date Marking



Section 3-501.17 specifies ready-to-eat, time/temperature control for safety (TCS) food prepared in a food establishment and held longer than a 24 hour period shall be marked to indicate the date or day by which the food is to be consumed on the premises, sold, or discarded when held at a temperature of 5°C (41°F) or less for a maximum of 7 days. These time/temperature parameters are intended to help control for growth of *Listeria monocytogenes*.

The FDA Food Code does not specify a particular date marking label, nor does it specify that the time the food was prepared be captured on the label. However, section 3-501.17 provides parameters to work within and allows for flexibility in creating a system that works for each food establishment. An establishment can choose to be as precise as needed in date marking as long as the parameters set forth within section 3-501.17 are met. A date marking system may use calendar dates, days of the week, color-coded marks, or other effective means in order to comply with section 3-501.17. Examples of the date or day by which the food should be consumed, sold, or discarded based on the type of datemarking system used can be found below:

	Sunday March 25	Monday March 26	Tuesday March 27	Wednesday March 28	Thursday March 29	Friday March 30	Saturday March 31	Sunday April 1
Date Only								
Food is labeled: March 31	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Discard by midnight on Saturday, March 31 Day 7	
Day Only								
Food is labeled: Saturday	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Discard by midnight on Saturday Day 7	
Date and Time								
Food is labeled: April 1, 2018 10:00 pm		Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Discard by 10pm on Sunday, April 1, 2018 Day 7