



*Territory of Guam*  
*Territorio Guam*

OFFICE OF THE GOVERNOR  
OFISINAN I MAGA LAHI  
AGANA, GUAM 96910 U.S.A.

11/2/89

DEC 30 1988

The Honorable Franklin J.A. Quitugua  
Speaker, Nineteenth Guam Legislature  
Post Office Box CB-1  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 930, which I have signed into law this date as Public Law 19-41.

Sincerely,

*Joseph F. Ada*  
JOSEPH F. ADA  
Governor

Attachment

RECEIPT ACKNOWLEDGED

By

*F. J. A. Quitugua*  
(Signature)

(Print Name)

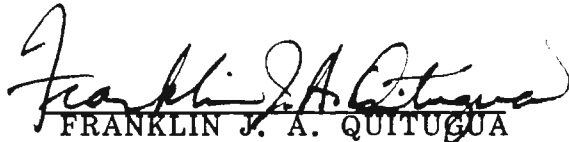
*SPEAKER'S OFFICE*  
(Department)

Date *12/30/88* Time *7:39 PM*

NINETEENTH GUAM LEGISLATURE  
1988 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 930 (LS) "AN ACT TO ADD A NEW SUBSECTION (f) THROUGH (n) TO SECTION 40120 OF THE GOVERNMENT CODE RELATIVE TO REQUIRING THAT CERTAIN FOOD, DRUG AND CONSUMER COMMODITIES BE MARKED WITH EXPIRATION DATE IF SUCH BE RECOMMENDED BY THE MANUFACTURE OR DISTRIBUTOR, AND OTHER INFORMATION, AND FOR OTHER PURPOSES," was on the 19th day of December, 1988, duly and regularly passed.

  
FRANKLIN J. A. QUITUGUA  
Speaker

Attested:

  
A. J. SONNY SHELTON  
Senator and Acting Legislative Secretary

-----  
This Act was received by the Governor this 19 day of Dec, 1988,  
at 10:15 o'clock 7.m.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: DEC 30 1988

Public Law No. 19-41

NINETEENTH GUAM LEGISLATURE  
SECOND REGULAR SESSION

**Bill No. 930 (LS)**  
(As amended by the Committee on  
Energy, Utilities and Consumer Protection)

**Introduced by:**

**D. Parkinson**  
H. Dierking  
E. Arriola  
M. Bordallo  
F. Gutierrez  
M. Hartsock  
P. Lujan  
F. Quitugua  
T. Nelson  
J. San Agustin  
F. Santos  
S. Shelton  
G. Bamba  
E. Duenas  
E. Espaldon  
M. Manibusan  
J. Miles  
J. Rivera  
M. Ruth

AN ACT TO ADD A NEW SUBSECTION (f) THROUGH (n) TO SECTION 40120 OF THE GOVERNMENT CODE RELATIVE TO REQUIRING THAT CERTAIN FOOD, DRUG AND CONSUMER COMMODITIES BE MARKED WITH EXPIRATION DATE IF SUCH BE RECOMMENDED BY THE MANUFACTURE OR DISTRIBUTOR, AND OTHER INFORMATION, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new subsection (f) is added to 10 GCA 40120 to read as follows:

"(f) Any food, drug or consumer commodity for which the manufacturer or distributor has established or recommended a pull date or other date by which the food, drug or consumer commodity should be used shall:

- (1) Have the pull date, "best if used by" date, expiration date or other date by which the food, drug or consumer commodity should be used, clearly marked on the packaging or labeling. Color coding may be used if the meanings of the color codes are clearly and plainly displayed in close proximity to the consumer commodities. Any product with a date on it shall be clearly marked as to whether the date is the date of packaging, the pull date, the expiration date, or some other date.
  - (2) Any outdated food, drug or consumer commodity which is still fit for human consumption and which is more than two days outdated, may be sold, displayed in a retail store or offered for sale only if the item is still fit for human consumption and each package is clearly marked with the word "Outdated" or "Expired Merchandise" or such other words of similar meaning as may be approved by regulations promulgated by the Director of the Department of Public Health.
  - (3) Notwithstanding any provision of law, all fresh or frozen packaged meat, fresh eggs, bread, fresh milk and fresh dairy products and ice cream, and such other food, drug and consumer commodity designated by the Director of the Department of Public Health and Social Services shall have a clearly designated expiration date on each package offered for retail sale. Notwithstanding any other provision of law, in lieu of stamping any required labels whatsoever on individual eggs, such information may instead be stamped on each egg carton if the eggs are packed in individual cartons of twelve (12) eggs or less.
    - (g) Any dented or damaged package or can of consumer products shall clearly be marked "Damaged".
-

(h) Any fresh or frozen meat or poultry products which have had water added shall be clearly labeled "Water added". Any meat products which have been previously given a United States Department of Agriculture grade or category shall have the grade or category clearly marked on each package of meat offered for sale, whether or not later repackaged.

(i) It shall be unlawful to sell any rusty canned goods or goods with rusty metal lids, unless the rust can be removed by rubbing with a cotton cloth.

(j) It shall be a misdemeanor for any person to sell or offer for sale any food, drug or consumer commodity which is not clearly labeled and marked in English or Chamorro as herein provided for in this Chapter.

(k) In addition to criminal penalties for the violation of this Section, the Director of Public Health and Social Services shall, by rules and regulations to be established seize and destroy all food, drug, or consumer products which are displayed or offered for sale which are not properly marked or labeled in the English or Chamorro languages, and shall pursuant to regulations, impose civil penalties and fines not exceeding Five Hundred Dollars (\$500) for each failure to properly label or mark products in English or Chamorro languages as provided by this

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Chapter, and may, pursuant to regulation, and close repeated offenders; shall

(1) In addition to any other penalties provided for by law, each violation of this Section shall be counted as at least one or more demerits as the conditions dictate, in determining demerit points in the issuance of sanitary permits or renewals thereof as provided for in 10 GCA Chapter 21. For purposes of this subsection, a minimum of one (1) demerit point must be given for each different inventory item found in violation of this Section, but exactly identical items found in violation may be counted as one violation.

(m) Any seller of food, drugs and consumer commodities found to have more than twenty (20) different products displayed or offered for sale which do not comply with the provisions of this Section shall be immediately closed in the same manner as an unsanitary establishment pursuant to the provisions of 10 GCA Chapter 21.

(n) The Director of the Department of Public Health and Social Services shall promulgate rules and regulations to implement this Section pursuant to the Administrative Adjudication Act.

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**SENATOR DON PARKINSON**  
19th GUAM LEGISLATURE  
163 CHALAN SANTO PAPA STREET  
AGANA, GUAM 96910

December 18, 1988

Honorable Franklin Quitugua  
Speaker, 19th Guam Legislature  
163 Chalan Santo Papa  
P.O. Box CB-1  
Agana, Guam 96910

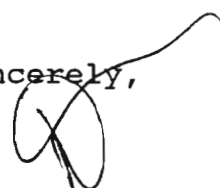
Dear Speaker:

The Committee on Energy, Utilities and Consumer Protection wishes to report out its findings and recommendations on Bill No. 930: An act to add a new Subsection (f) to Section 40120 of the Government Code relative to requiring that all food, drug and consumer commodities be marked with expiration date, and other information, and for other purposes.

The Committee voting record is as follows:

AYES	<u>11</u>
NAYS	<u>0</u>
ABSTENTIONS (Not Voting)	<u>0</u> <u>1</u>
REPORT OUT	<u>0</u>
OFF-ISLAND	<u>0</u>

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely,  


Senator Don Parkinson  
Chairman, Committee on Energy,  
Utilities and Consumer  
Protection

**SENATOR DON PARKINSON**  
 19th GUAM LEGISLATURE  
 163 CHALAN SANTO PAPA STREET  
 AGANA, GUAM 96910

COMMITTEE ON ENERGY, UTILITIES AND  
 CONSUMER PROTECTION

Voting Sheet on Bill No. 930: (As amended by the Committee on Energy, Utilities and Consumer Protection) An Act to Add a New Subsection (f) to Section 40120 of the Government Code Relative to requiring that all food, drug and Consumer Commodities be marked with expiration date, and other information, and for other purposes.

<u>COMMITTEE MEMBERS</u>	<u>AYE</u>	<u>NAYE</u>	<u>ABSTAIN</u>	<u>COMMENTS</u>
Sen. Don Parkinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. A.J. Sonny Shelton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Franklin Gutierrez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Herminia Dierking	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Madeleine Bordallo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Marilyn Manibusan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Martha Ruth	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Marcia Hartsock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Jerry Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. George Bamba	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sen. Jim Miles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Spkr. Franklin Quitugua	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	



REPORT OF THE COMMITTEE ON ENERGY,  
UTILITIES AND CONSUMER PROTECTION  
ON BILL NO. 930 AS AMENDED BY THE  
COMMITTEE ON ENERGY, UTILITIES AND  
CONSUMER PROTECTION.

PREFACE

The Committee on Energy, Utilities and Consumer Protection conducted a public hearing on Monday, July 25, 1988 at 10:00 a.m. in the Legislative Session Hall on Bill No. 930: An act to add a new Subsection (f) to Section 40120 of the Government Code relative to requiring that all food, drug and consumer commodities be marked with expiration date, and other information, and for other purposes. The Committee members present at the public hearing were: Senator Parkinson, Chairman; Senator Shelton, Co-Chairman, Senator Bamba, Senator Hartsock and Senator Ruth.

TESTIMONY

Appearing before the Committee to testify were Mrs. Irene Batty, Antonia Cruz, and Frances Portodo all employees of Senator Don Parkinson. They testified that the groceries were purchased the morning of July 25, 1988 before the public hearing. The groceries purchased were found to be spoiled, damaged, leaking etc. Mrs. Batty purchased the groceries at Donald's Mart in Dededo; Ms. Cruz at Bunny's Market in Barrigada; and Ms. Portodo at Payless Supermarket in Tamuning (Old Pedros Market). All three testified that the groceries purchased were unmarked for outdated or damaged items and were not segregated from other items. The groceries were not healthy enough to take home to feed families. According to Mrs. Batty the stores were selected randomly however, they were the same stores which groceries were purchased at the time Senator Parkinson introduced Bill No. 930.

Also testifying on behalf of the Department of Public Health and Social Services is Mr. Vicente Quitariano, Administrator of the Division of Environmental Health and Mr. Gregory Blas, Environmental Health Specialist. Their written testimony stated the following:

1) The imposition required on U.S. manufacturers who do not use an 'established or recommended' pull date is not realistic and may hinder the commerce on Guam. In addition

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the pull dates and expiration dates in general are arbitrary and do not reflect loss of product quality.

2) The 'use by' dates only reflect the manufacturers guarantee of freshness and doesn't imply an immediate loss of quality. The responsibility does not lie on the manufacturer after the expired date.

3) The determining of an expiration date of a product is a very difficult task at which presently there are no guidelines available to follow.

4) The terminology for 'rusty' must first be identified in order for restrictions to be placed upon. However, the weather conditions on Guam does not allow for such a cut and dry application.

5) Improperly labeled products and equating it to unsanitary conditions is not realistic. The products should be moved from the shelves and not be sold until the approved labels are properly affixed to each product. The policy of the Division of Environmental Health for these products is: a) return the products to the country of origin; b) recondition (relabel) the products in order to be brought into compliance; or, c) confiscate and condemn the products.

6) The requirement of an absolute expiration date and other items mentioned earlier will be extremely difficult to enforce because the inconsistency of power service affects the shelf life of any product under refrigeration or frozen storage. The humidity and climate all add to the fluctuating storage conditions which affect the quality and condition of the products.

The floor was opened for questions and discussions for Mr. Quitoriano and Mr. Blas. Senator Bamba asked whether the food displayed on the table is of any violation to the Department of Public Health's regulations? Mr. Quitoriano replied that some of the products appear to be in violation but he questioned the date of the purchase. Senator Bamba continued by emphasizing that some of the products were purchased from the same stores as the first time and that these types of food products are still being sold therefore, how often do inspections occur, is there a schedule for inspections, and do the inspectors have the power or the authority to order store owners to remove food products immediately? Mr. Quitoriano responded that the products purchased should be removed, there is a set schedule and procedures for the inspections however, in the event violations occurred then a re-inspections occurs within 5-10 days after the first inspections. It is also the responsibility of the inspector to remove food products immediately if any violation occurred. (See Exhibit 'H')

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Exhibit "B" Written testimony submitted by Eloise R. Baza, President of the Guam Chamber of Commerce.

Exhibit "C" Written testimony submitted by MVP Enterprises.

Exhibit "D" Written testimony submitted by Ed Hawkins, General Manager, Safeway Markets.

Exhibit "E" Receipts from PayLess Market, Bunny Market and Donald's Mart.

Exhibit "F" Written testimony submitted by Leticia V. Espaldon, M.D., Administrator, Division of Environmental Health, Department of Public Health and Social Services.

Exhibit "G" Written testimony submitted by Vicente D. Quitoriano, R.S., Administrator, Division of Environmental Health, Department of Public Health and Social Services.

Exhibit "H" Written testimony submitted by Leticia V. Espaldon, M.D., Director of Public Health and Social Services.

NINETEENTH GUAM LEGISLATURE  
SECOND REGULAR SESSION

**Bill No. 930 (LS)**  
(As amended by the Committee on  
Energy, Utilities and Consumer Protection)

**Introduced by:**

**D. Parkinson**  
H. Dierking  
E. Arriola  
M. Bordallo  
F. Gutierrez  
M. Hartsock  
P. Lujan  
F. Quitugua  
T. Nelson  
J. San Agustin  
F. Santos  
S. Shelton  
G. Bamba  
E. Duenas  
E. Espaldon  
M. Manibusan  
J. Miles  
J. Rivera  
M. Ruth

AN ACT TO ADD A NEW SUBSECTION (f) THROUGH (n) TO  
SECTION 40120 OF THE GOVERNMENT CODE RELATIVE TO  
REQUIRING THAT CERTAIN FOOD, DRUG AND CONSUMER  
COMMODITIES BE MARKED WITH EXPIRATION DATE IF SUCH  
BE RECOMMENDED BY THE MANUFACTURE OR DISTRIBUTOR,  
AND OTHER INFORMATION, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new subsection (f) is added to 10 GCA  
40120 to read as follows:

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which the manufacturer or distributor has established  
or recommended a pull date or other date by which the  
food, drug or consumer commodity should be used shall:

- (1) Have the pull date, "best if used by" date, expiration date or other date by which the food, drug or consumer commodity should be used, clearly marked on the packaging or labeling. Color coding may be used if the meanings of the color codes are clearly and plainly displayed in close proximity to the consumer commodities. Any product with a date on it shall be clearly marked as to whether the date is the date of packaging, the pull date, the expiration date, or some other date.
  - (2) Any outdated food, drug or consumer commodity which is still fit for human consumption and which is more than two days outdated, may be sold, displayed in a retail store or offered for sale only if the item is still fit for human consumption and each package is clearly marked with the word "Outdated" or "Expired Merchandise" or such other words of similar meaning as may be approved by regulations promulgated by the Director of the Department of Public Health.
  - (3) Notwithstanding any provision of law, all fresh or frozen packaged meat, fresh eggs, bread, fresh milk and fresh dairy products and ice cream, and such other food, drug and consumer commodity designated by the Director of the Department of Public Health and Social Services shall have a clearly designated expiration date on each package offered for retail sale. Notwithstanding any other provision of law, in lieu of stamping any required labels whatsoever on individual eggs, such information may instead be stamped on each egg carton if the eggs are packed in individual cartons of twelve (12) eggs or less.
- (g) Any dented or damaged package or can of consumer products shall clearly be marked "Damaged".
-

(h) Any fresh or frozen meat or poultry products which have had water added shall be clearly labeled "Water added". Any meat products which have been previously given a United States Department of Agriculture grade or category shall have the grade or category clearly marked on each package of meat offered for sale, whether or not later repackaged.

(i) It shall be unlawful to sell any rusty canned goods or goods with rusty metal lids, unless the rust can be removed by rubbing with a cotton cloth.

(j) It shall be a misdemeanor for any person to sell or offer for sale any food, drug or consumer commodity which is not clearly labeled and marked in English or Chamorro as herein provided for in this Chapter.

(k) In addition to criminal penalties for the violation of this Section, the Director of Public Health and Social Services shall, by rules and regulations to be established seize and destroy all food, drug, or consumer products which are displayed or offered for sale which are not properly marked or labeled in the English or Chamorro languages, and shall pursuant to regulations, impose civil penalties and fines not exceeding Five Hundred Dollars (\$500) for each failure to properly label or mark products in English or Chamorro languages as provided by this

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Chapter, and may, pursuant to regulation, and close repeated offenders; shall

(l) In addition to any other penalties provided for by law, each violation of this Section shall be counted as at least one or more demerits as the conditions dictate, in determining demerit points in the issuance of sanitary permits or renewals thereof as provided for in 10 GCA Chapter 21. For purposes of this subsection, a minimum of one (1) demerit point must be given for each different inventory item found in violation of this Section, but exactly identical items found in violation may be counted as one violation.

(m) Any seller of food, drugs and consumer commodities found to have more than twenty (20) different products displayed or offered for sale which do not comply with the provisions of this Section shall be immediately closed in the same manner as an unsanitary establishment pursuant to the provisions of 10 GCA Chapter 21.

(n) The Director of the Department of Public Health and Social Services shall promulgate rules and regulations to implement this Section pursuant to the Administrative Adjudication Act.

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MAY 26 '88

NINETEENTH GUAM LEGISLATURE  
1988 (Second) Regular Session

Bill No. 930/1s

Introduced by:

Don Parkinson  
and other Senators

② Marcia K. Hertzok

④ [Signature]

③ [Signature]

M. RUTH [Signature]

AN ACT TO ADD A NEW SUBSECTION (f) TO SECTION  
40120 OF THE GOVERNMENT CODE RELATIVE TO REQUIRING  
THAT ALL FOOD, DRUG AND CONSUMER COMMODITIES BE  
MARKED WITH EXPIRATION DATE, AND OTHER  
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food, drug or consumer commodity should be used, clearly marked on the packaging or labeling. Color coding may be used if the meanings of the color codes are clearly and plainly displayed in close proximity to the consumer commodities. Any product with a date on it shall be clearly marked as to whether the date is the date of packaging, the pull date, the expiration date, or some other date.

- (2) Any outdated food, drug or consumer commodities which are still fit for human consumption and which is more than two days outdated, may be sold, displayed in a retail store or offered for sale only if the item is still fit for human consumption and each package is clearly marked with the word "Outdated" or "Expired Merchandise" or words of similar meaning as may be approved by regulations promulgated by the Director of the Department of Public Health.
- (3) Notwithstanding any provision of law, all fresh or frozen packaged meat, fresh eggs, bread, fresh milk and fresh dairy products and ice cream, and such other food, drug and consumer commodities designated by of the Director of the Department of Public Health

and Social Services shall have a clearly designated expiration date on each package offered for retail sale.

- (4) Any dented or damaged package or can of consumer products shall clearly be marked "Damaged".
  - (5) Any fresh or frozen meat or poultry products which have had water added shall be clearly labeled "Water added".
  - (6) It shall be unlawful to sell any rusty canned goods.
  - (7) It shall be a misdemeanor for any person to sell or offer for sale any food, drug or consumer commodity which is not clearly labeled and marked in English or Chamorro as herein provided for in this Chapter.
  - (8) In addition to criminal penalties for the violation of this Section, the Director of Public Health and Social Services may, pursuant to regulations, impose civil penalties and fines not exceeding Five Hundred Dollars (\$500) for each failure to properly label or mark products in English or Chamorro languages as herein provided, and may, pursuant to regulation, and close repeated offenders; shall
-

- (9) Each violation of this Section shall be counted as at least one or more demerits as the conditions dictate, in determining demerit points in the issuance of sanitary permits or renewals thereof as provided for in 10 GCA Chapter 21. For purposes of this subsection, a minimum of one (1) demerit point must be given for each different inventory item found in violation of this Section, but exactly identical items found in violation may be counted as one violation.
- (10) Any seller of food, drugs and consumer commodities found to have more than twenty (20) different products displayed or offered for sale which do not comply with the provisions of this Section shall be immediately closed as an unsanitary establishment pursuant to the provisions of 10 GCA Chapter 21.
- (11) The Director of the Department of Public Health and Social Services shall promulgate rules and regulations to implement this Section pursuant to the Administrative Adjudication Act.

Bill No. 930(LS)

Date Received June 29, 1988

Mandatory Bill Yes  No

Date Reviewed July 4, 1988

Department/Agency Affected: Public Health and Social Services

Department/Agency Head: Leticia Espaldon

Total Fiscal Year Appropriation: \$26,984,239

Bill Title (concise): AN ACT TO ADD A NEW SUBSECTION (f) TO SECTION 40120 OF THE GOVERNMENT CODE RELATIVE TO REQUIRING THAT ALL FOOD, DRUG AND CONSUMER COMMODITIES BE MARKED WITH EXPIRATION DATE, AND OTHER INFORMATION, AND FOR OTHER PURPOSES.

Change in Law: Adds subsection(f) to Section 401020 to the Government Code

Bill Attempts to:

Bill is for:

- Increase Program Funding
- Decrease Program Funding
- Reallocate Present Program Funding

- Operations
- Capital Improvement
- Other

FINANCIAL/PROGRAM IMPACT

PROGRAM CATEGORIES	Minimum Estimated Required Funds (For Five Years)		
	GENERAL FUND	FEDERAL	OTHER
Public Health	See Comments		
GRAND TOTAL			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS

SOURCES	1st	2nd	3rd	4th	5th
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

ESTIMATED MULTI-YEAR REALIZED REVENUES

SOURCES	1st	2nd	3rd	4th	5th
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

*Stephen J. Guerrerro*

STEPHEN J. GUERRERRO

PROGRAM ANALYST

*Michael J. Reidy*

MICHAEL J. REIDY

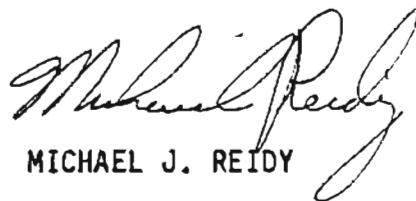
DIRECTOR

Date Review Terminated: 7/4/88

COMMENTS ON BILL NO. 930(LS)

The intent of Bill 930(LS) is to add a new subsection (f) of Section 40120 of the Government Code of Guam relative to the health and safety of food, drug and consumer commodities. It also proposes a fine not to exceed Five Hundred Dollars (\$500.00) for failure to comply with such provisions.

Although the bill does have a fiscal impact, the impact cannot be determined at this time. Information such as the number of establishments or businesses which may be unable to conform to or which may violate such legislation and the amount of the proposed fine for each violation is unavailable. Also, the administrative cost, personnel, supplies and local travel associated to implement such regulations are also not known as this time.

  
MICHAEL J. REIDY



DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

GOVERNMENT OF GUAM  
P. O. BOX 2816  
AGANA, GUAM 96910



Good morning Senator Parkinson and members of the Committee on Energy, Utility and Consumer Protection. I am Mr. Vicente Quitoriano, Administrator of the Division of Environmental Health of the Department of Public Health and Social Services. Here with me is Mr. Greg Blas, Environmental Health Specialist responsible for Food and Drug Enforcement Programs. We are here to testify on behalf of the Department of Public Health and Social Services on Bill #930 which would add a new subsection (f) to section 40120 of the GCA which would require all food, drugs and consumer commodities to be marked with an expiration date, and other information and for other purposes.

To require that manufacturers and/or distributors establish expiration dates, pull dates, "best if used by" dates, and have these dates coded on each commodity produced, is an ideal expectation. Our responses on Bill No. 930 are as follows:

Subsection (f):

- (1) To impose this requirement on U.S. manufacturers who do not use an "established or recommended" pull date is not realistic and may hinder the commerce on Guam. The implementation of this section would be more appropriate for products made on Guam only. This provision is contained in 10 GCA 40102 (z) and (aa).

DISCUSSION: A pack date as defined in 10 GCA 40102 (aa) is sufficient for the purpose of consumer protection as individual discretion and selection are employed by the customer. Pull dates and expiration dates in general are arbitrary and do not reflect loss of product quality. Products with a 2-year shelf life may become unfit for human consumption within a few months due to mishandling and improper storage or other factors, eg: weevils in grain products. Also, bakery products with color codes are scrutinized by the consumers who will obviously choose the fresher product as opposed to those made 2 or 3 days earlier.

*Exhibit "A"*

- (2) This section reflects the current policy of the Division of Environmental Health as specified in 10 GCA 40103 (2).

DISCUSSION: The "use by" dates reflect only the manufacturers guarantee of freshness and does not imply an immediate loss of quality. The manufacturer does not take responsibility for the merchandise after this date. It is borne by the retailer or wholesale operators.

- (3) The Department concurs with the intent of this section.

DISCUSSION: To determine an expiration date of a product is an extremely difficult task. Presently there is no available process to follow. Pickled products are made to withstand a long shelf storage. No one can predict exactly when it will spoil. How long will frozen meat or ice cream remain in the freezer without spoiling or becoming unfit for consumption? No guidelines are presently available to assist us in determining shelf life for these products.

- (4) This provision is a current policy of the Division of Environmental Health.

- (5) This section does not appear to be easily enforceable. Water is an inherent property of these products and it cannot be determined that the products have been altered unless an inspector is present during all hours of operation which is an impossible task.

- (6) This is currently enforced by the Division of Environmental Health but the extent of rust and the definition of "rusty" must be made. In general, rust which affects the vertical seam and the top and bottom rims which seal the can are the most vulnerable points. To require that a can with any rust is unlawful in unrealistic. The weather conditions on Guam do not allow for such a cut and dry application. The USFDA allows the sale of canned goods with rust that can be removed with a cloth.

- (7) The penalty and requirements are already specified in 10 GCA 20118; 40105 (a), 40120 (a) and 40122 (g).
-

(8) The Department in general concurs with this section.

(9) This section reinforces the current inspection rules and regulations of the Division of Environmental Health.

(10) The sale of improperly labeled products and equating it to unsanitary conditions is not realistic. The products should be removed from the shelves and not sold until the approved labels are properly affixed to each product.

DISCUSSION: The policy of the Division of Environmental Health for these products is to: 1) return the products to the country of origin; 2) recondition (re-label) the products in order to be brought into compliance; or, 3) confiscate and condemn the products.

Of these options, reconditioning is the most realistic and practical alternative.

(11) The Department concurs with this section.

SUMMARY: The Department of Public Health and Social Services, Division of Environmental Health has been conducting inspections on all health-regulated establishment and has done so utilizing all available resources.

Enforcement authority is derived from 10 GCA 20 to 40 and the regulations promulgated thereafter. To impose these requirements in order to protect our community are acceptable to this Department. However, the requirement of an absolute expiration date and other items mentioned earlier will be extremely difficult to enforce. As you well know, the inconsistency of power service affects the shelf life of any product under refrigeration or frozen storage. The humidity and climate all add to the fluctuating storage conditions which ultimately affect the quality and condition of these products.

Passage of this legislation would compel this Department to come before the Legislature to seek additional funding for resources needed for implementation.

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10 GCA Chapter 20 - General Provisions

Where notice is given by mail, such notice shall be complete upon deposit in the United States Post Office in an envelope addressed to the last known address of the person to whom notice is being given and bearing sufficient postage.

SOURCE: §9500.16 GC.

§20117. Complaints.

The Director shall investigate any bona fide complaint relative to any alleged violation of this Part and take such action as he may deem necessary.

SOURCE: §9500.17 GC.

§20118. Penalty.

Any person who violates any provision of this Part or any valid rule or regulation promulgated under this Part or who refuses or neglects to comply with any order issued by the Director or other officers and personnel of the Department in the carrying out of the provisions of this Part, the penalty for which is not otherwise prescribed in this Part, is guilty of a misdemeanor.

SOURCE: §9500.18 GC.

§20119. Fees.

Any fees collected pursuant to the enforcement of this Part shall be deposited to the General Fund.

SOURCE: §9500.19 GC.

10 GCA Chapter 40 - Guam Food, Drug & Cosmetic Act

(21 U.S.C. 541 et. seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et. seq.).

(x) (1) The term "color additive" means a material which (a) is a dye, pigment or other substance made by a process of synthesis or similar artificer, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source; or (b) when added or applied to a food, drug or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) or imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the Federal Act.

(2) The term "color" includes black, white and intermediate grays.

(3) Nothing in clause (1) of Section 2 (x) shall be construed to 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 or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(y) The term "Federal Act" means the Drug and Cosmetic Act (Title 21 U.S.C. 301 et. seq.) and the Federal Fair Packaging and Labeling Act.

(z) The term "pull date" means the calendar date printed by the manufacturer on the package or wrapping which represents the date after which the manufacturer recommends that the product not be sold:

(aa) The term "pack date" means the complete date (month in letters, day and year in numbers) printed by the manufacturer on the package, which represents the date the product has been produced and packaged.

SOURCE: §9720.1 GC, as amended by P.L. 14-17.

§40103. Prohibited Acts.

The following acts and the causing thereof within the territory of Guam are hereby prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device or cosmetic, except that, in the case of a food for which the pull date has expired, it may be sold,

10 GCA Chapter 40 - Guam Food, Drug & Cosmetic Act

provided that a sign or notice clearly expressing the fact that the pull date has expired is placed in a conspicuous place next to the items in such a manner as to clearly inform the consumer as to the affected commodities;

(3) The receipt in commerce of any food, drug, device or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The distribution in commerce of a consumer commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Chapter and of regulations promulgated under authority of this Chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(i) are engaged in the packaging or labeling of such commodities; or

(ii) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(5) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of §§40111 or 40117;

(6) The dissemination of any false advertisement;

(7) The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by §40123;

(8) The giving of a guaranty or undertaking which is false;

(9) The removal or disposal of a detained or embargoed article in violation of §40106;

(10) The alteration, mutilation, destruction, obliteration or removal of the whole or part of the labeling of, or the doing of any other Act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(11) Repackaging of food, drugs or cosmetics unless the repackaged product conforms to all labeling requirements set out in this Act;

(12) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device, authorized or required by regulations promulgated under the provisions of this Chapter or of the Federal Act;

(13) The using by any person to his own advantage, or revealing, other than to the Consumer Counsel or his authorized representative or to the Courts when relevant

10 GCA Chapter 40 - Guam Food, Drug & Cosmetic Act

permission in each case of the person ordering or prescribing.

SOURCE: §9720.2 GC.

§40104. Jurisdiction.

In addition to the remedies hereinafter provided, the Consumer Counsel or Director is hereby authorized to apply to the Superior Court for, and such Court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of §40103; irrespective of whether or not there exists an adequate remedy at law.

SOURCE: §9720.3 GC, as amended by P.L. 15-96.

§40105. Penalty.

(a) Any person who violates any of the provisions of §40103 shall be guilty of a misdemeanor.

(b) No person shall be subject to the penalties of Subsection (a) of this Section, for having violated Section 3(a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the territory of Guam from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Act, designated this Act.

(c) No publisher, radio-broadcast licensee or 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, shall be liable under this Section for the dissemination of such false advertisement.

SOURCE: §9720.4 GC, as amended by P.L. 13-187.

NOTE: Subsection (b) appears here as in the original P.L. 13-143. See note to §40115.

§40106. Tags for Adulterated Articles; Violations.

(a) Whenever a duly authorized agent of the Director finds or has probable cause to believe that any food, drug, device, cosmetic or consumer commodity, as defined by this Act, is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this Act or is in violation of §§40111 or 40117 of of this Act, he shall affix to such articles a tag or other appropriate marking giving notice that such article

10 GCA Chapter 40 - Guam Food, Drug & Cosmetic Act

faith for such completion purposes only; but is otherwise subject to all applicable provisions of this Act.

SOURCE: §9720.18 GC.

§40120. Labeling Requirements.

(a) All labels of consumer commodities, as defined by this Act, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451, et. seq.) and the regulations promulgated pursuant thereto; provided, that consumer commodities exempted from such requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this Subsection.

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure or numerical count) of each such serving.

(c) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound or in 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 material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(d) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (a), but nothing in this Section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents; provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure or count that tends to exaggerate the amount of the commodity contained in the package.

(e) Whenever the Director determines that regulations containing prohibitions or requirements other than those

10 GCA Chapter 40 - Guam Food, Drug & Cosmetic Act

Drug and Cosmetic Act are the pesticide chemical regulations in this Territory.

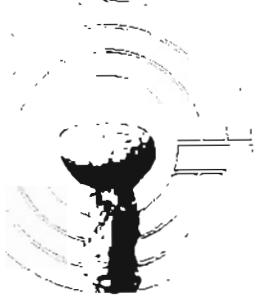
(d) All food additive regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug and Cosmetic Act are the food additive regulations in this Territory.

(e) All color additive regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug and Cosmetic Act are the color additive regulations in this Territory.

(f) All special dietary use regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug and Cosmetic Act are the special dietary use regulations in this Territory.

(g) All regulations and their amendments now or hereafter adopted under the Fair Packaging and Labeling Act shall be the regulations in this Territory. However, the Director may, if he finds it necessary in the interest of consumers, prescribe packaging and labeling regulations for consumer commodities, whether or not in accordance with regulations promulgated under the Federal Act; provided, that no such regulations shall be promulgated which are contrary to the labeling requirements for the quantity of contents required pursuant to Section 4 of the Fair Packaging and Labeling Act and the regulations promulgated thereunder.

(h) A Federal regulation automatically adopted pursuant to this Act takes effect in this Territory on the date it becomes effective as a Federal regulation. The Director shall publish all other proposed regulations in a newspaper of general daily circulation. A person who may be adversely affected by a regulation may, within thirty (30) days after publication of any other regulation, file with the Director in writing objections and a request for a hearing. The timely filing of substantial objections to a Federal regulation automatically adopted stays the effect of the regulation. If no substantial objections are received and no hearings are requested within 30 (thirty) days after publication of a proposed regulation, it shall take effect on a date set by the Director. The effective date shall be at least sixty (60) days after the time for filing objections has expired. If timely substantial objections are made to a Federal regulation within thirty (30) days after it is automatically adopted or to a proposed regulation within thirty (30) days after it is published, the Director after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections.



**GUAM CHAMBER OF COMMERCE  
PARTNERS IN PROGRESS**

July 25, 1988

Senator Don Parkinson  
Chairman, Committee on Energy, Utilities  
& Consumer Protection  
19th Guam Legislature  
P.O. Box CB-1  
Agana, Guam 96910

Dear Senator Parkinson & Members of the Committee:

The Guam Chamber of Commerce is pleased to present testimony on Bill No. 930 which would impose labelling requirements on all food items and for other purposes affecting food condition.

From what we understand, this bill was introduced as a result of a survey by your Committee staff in which they visited a number of retail grocery stores and found/purchased food items that were either spoiled, outdated, or damaged and were still offered for sale. Further, these items were neither marked nor labelled to indicate that they were spoiled or the expiration date for freshness had expired.

We certainly agree that outdated and spoiled food is in fact dangerous and does pose a considerable danger to individuals if consumed. For this reason, it would be in the best interest of the owner or retailer to remove these items from their store shelves if they are spoiled. We believe most if not all retailers do make continuous and conscientious efforts to ensure goods offered for sale are safe, fresh, and wholesome.

Grocers who do not monitor their food commodities for sale and their condition generally will lose customers, lose sales, and perhaps expose themselves to a potential civil suit. While it is the responsibility of the grocer to offer uncontaminated food items, we believe it is also the responsibility of local government officials to insure compliance with existing laws and statutes.

Based on our discussions with officials at the Department of Public Health and Social Services on Bill 930, they have indicated that there are adequate laws and regulations with regard to food labelling and the condition of food items sold in our local stores, but that perhaps there isn't enough enforcement by the government agency probably due to a shortage of manpower and resources. May we suggest that this be researched further and that this Committee consult with Public Health officials to ascertain the reasons for non-enforcement.

*Exhibit "B"*

As we all know, Guam's Geographic location is unique in that although we are a U. S. Territory, we are physically closer to Far East Asian countries such as the Philippines, Korea, Japan, and Taiwan. Moreover, within the last several years, Guam has experienced a substantial growth in the population of Far Easterners. These people have moved and migrated to Guam and have now made Guam their principal residence and home. Besides themselves, they bring their customs, culture, and of course their eating habits and diet which has resulted in a wide variety of retail stores offering food commodities from Asia and the Pacific.

Along with this, we have the increasing progress in the scientific and technological fields with respect to the food industry-new methods of manufacturing, new additives, new preservatives, and new food items in general. Because of this influx of new food items being brought to Guam, the Chamber suggests that a certain task force be created to completely review our current statutes and regulations and to find out if in fact they are appropriate and adequate to meet the needs of the island. This review should also cover such matters as the importation of food commodities, packaging, labelling, and other items affecting the sale and distribution of food.

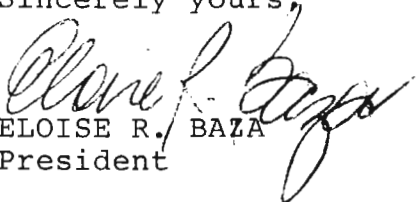
Also, discussions with Public Health should focus on the operational and financial needs of the department in order to adequately inspect and monitor the condition of food items on grocer's shelves to insure freshness and safety. If the need exists for additional manpower, we urge this Committee and the Legislature to provide them with the authorization and sufficient funding for their continued operations.

If the Chamber may further assist in this matter, we would like to offer a proposal and our support toward resolving this issue. The Chamber suggests to co-sponsor with the Small Business Administration a series of workshops for retailers on the various aspects involved with the selling of food items. These forums would be conducted with the assistance of Public Health officials to explain the regulations, enforcement, and inspection procedures that affect all grocery stores or for that matter, any store licensed to sell foodstuffs. Other agencies that may be able to assist in the workshops would be the Department of Agriculture, Department of Commerce, food distributors and wholesalers, and local food manufacturers. These workshops would then offer a series of discussions on compliance with present health laws, inventory turn-over, and tips on how food spoilage can be minimized.

The Chamber remains committed to improving all aspects of business activity which would contribute towards a better lifestyle for all residents and consumers of Guam. It is with this commitment that we offer our assistance and guidance.

Thank you for allowing us the opportunity to testify on Bill No. 930.

Sincerely yours,

  
ELOISE R. BAZA  
President





# BEN FRANKLIN DEPARTMENT STORE

Div. of M.V. Pangilinan Enterprises, Inc.

\* BEN FRANKLIN \*

TELEX 721-6224

153 E. LEON GUERRERO STREET TAMUNING, GUAM 96911 • TEL: (671) 646-6995, 646-6997, 646-6998 • CABLE ADDRESS: FRANKLIN GUAM

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Exhibit "C"



# SAFEWAY MARKETS

A DIVISION OF GOODWIND DEVELOPMENT CORPORATION

P. O. BOX 24787 GMF, GUAM 96921

August 3, 1988

REF:002

Senator Don Parkinson  
19th Guam Legislature  
163 Chalan Santo Papa Street  
Agana, Guam 96910

Dear Senator,

Thank you for your invitation to the informative Public Hearing on Bill 930, Proposed New Sub-Section (f).

I am in complete agreement that Guam needs stricter enforcement of Public Health regulations. Safeway Markets will strive to maintain the standards set by our associated company on the mainland, which I believe exceeds any government regulations.

However, after having said this, I would caution the Legislature on passing new laws that would be too restrictive for importers.

I was in the Middle East from 1982 thru 1987, the countries that I worked in (i.e. Saudi Arabia, Kuwait, Oman and the United Arab Emirates) decided to pass stricter Importation Laws for food items. Within a few months, many items disappeared from the shelves, due to manufacturers not willing to change their procedures (e.g. ground coffee has a pack date on their product, not an expiry date) for such a small market. Other items drastically increased in price due to extra labor charges (e.g. pack dates on individual eggs).

I hope that you will receive this letter in the constructive manner that is intended. While we both want to protect the consumer's health and well being, we should also avoid excessive costs or restrictive laws that would lower the standard of living for the people of Guam.

Please feel free to call upon me, if I might be of any assistance on this.

Sincerely,

Ed Hawkins  
EH/cc

*Exhibit "D"*

Date/Time Recd	4:05 pm 8/4/88
Received by	<i>SP</i>
Exec. Ass't	<i>CA</i>
SENATOR	
Chrono File by	
Orig. Filed at	
Orig. Filed by	<i>ADANNE - ATTACHED</i>
Other Action	<i>the Bill</i>

25-07-88

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5 \*7.74 IL  
 \*20.00 ←  
 \*12.23 →

1112 6314E  
 9-58

094597

DATE 7-25-88

RECEIVED FROM

THE SUM OF Seventeen & 56/100 DOLLARS \$ 17.56

FOR

AMOUNT OF ACCOUNT \$ \_\_\_\_\_  
 AMOUNT PAID \$ \_\_\_\_\_  
 BALANCE DUE \$ \_\_\_\_\_

CASH  CHECK  M.O.

BY [Signature]

FORM 03-870

**PAY-LESS MARKETS INC.**  
 P. O. Box DT  
 Agana, Guam 96910

DATE 7-25-88 <sup>094597</sup>

RECEIVED FROM \_\_\_\_\_

THE SUM OF Seventeen & 56/100 DOLLARS \$ 17.56

FOR \_\_\_\_\_

AMOUNT OF ACCOUNT \$ \_\_\_\_\_  
 AMOUNT PAID \$ \_\_\_\_\_  
 BALANCE DUE \$ \_\_\_\_\_

CASH  CHECK  M.O.

BY [Signature]

Thank You!

Exhibit "E"

# MEMORANDUM

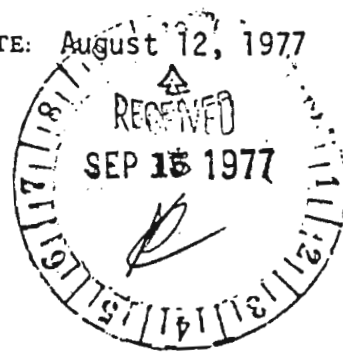
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
PUBLIC HEALTH SERVICE  
FOOD AND DRUG ADMINISTRATION

TO : State and Local Food Officials

DATE: August 12, 1977

FROM : State Services Branch (HFO-310)  
Division of Federal-State Relations/EDRO

SUBJECT: Food Dating.



Our Office of Legislative Services has received numerous Congressional inquiries concerning FDA's position regarding this subject. We believe you will be interested in our reply.

Package dating for foods has been given a considerable amount of attention both by the Food and Drug Administration (FDA) and by the food industry. Some progress has been made on 'open dating' by some firms. This has been accomplished primarily on highly perishable foods such as dairy products. Recently, the infant formula industry has agreed to the use of expiration dates. Our standard for dietary supplements of vitamins and minerals, published August 2, 1973, requires expiration dates. We do not have any regulations that require dating of food products.

There is a serious question concerning the use of either manufacturing dates or expiration dates on all foods. The shelf life of foods depends upon a number of factors including the nature of the product, the type of container, processing procedures, and weather or storage conditions. Among these, the manufacturer has little or no control over the most significant variable, namely weather and storage conditions.

Many products, such as flour, cereal, macaroni, and noodles are highly susceptible to insect infestation when stored under warm temperatures whereas, under cold temperatures the shelf life is increased considerably. In this respect, we should like to point out that the Natick Laboratories in Massachusetts prepared a manual on 'shelf life' of foods for use of the United States Army in which their data showed the shelf life of cereal as being 12 months.

This, of course, points out that the use of an expiration date is no guarantee that a product has been properly stored or is even edible. The converse is also true, that an expired date does not necessarily mean the food is inedible. This, of course, would be a wasteful process making food even more expensive and less available.

Human experience shows that consumers will refuse to purchase the older of two dated food items. This results in the older item becoming unsaleable which consequently is also wasteful.

There have not been any bills passed by Congress which would require the dating of foods. There were a few that were introduced in the 94th Congress, but these were not passed.

On January 4, there was introduced into the House of Representatives bill H.R. 42 which would amend the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. The bill would require that food manufacturers label their perishable or semiperishable food with pull dates and storage conditions. The Department has not taken a position on this bill."

*Charles H. Pogue*

Charles H. Pogue



GOVERNMENT OF GUAM  
AGANA, GUAM 96910

JUN 09 1988

DIRECTOR'S MEMO NO.: 88-107

To: Administrator, Division of Environmental Health  
From: Director of Public Health and Social Services  
Subject: Food Dating

With the recent concern on outdated food products and the potential health hazard to the community, it is only befitting that we educate our citizens on Food Dating jargon.

Press releases on the significance of the numbers and letters (dates) on the products is one way of communicating, "What to look out for when grocery shopping". Please submit releases to the Director's Office by June 19, 1988.

A team, consisting of your Food and Drug personnel: L. Oplinger, J. Legaspi and Greg Blas, should also be assigned to arrange and coordinate a training session on Food Dating to educate Sen. Parkinson's staff and other interested individuals. The training session schedule is appreciated by June 14, 1988.

Thank you for your continued cooperation.

  
LETICIA V. ESPALDON, M.D.

*Exhibit "F"*

Draft



DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

GOVERNMENT OF GUAM  
P. O. BOX 2816  
AGANA, GUAM 96910



PRESS RELEASE

The Department of Public Health and Social Services, Division of Environmental Health, would like to clarify for the general public the meaning of the following terms used by different Food Manufacturers on their products in regards to Food Dating.

- "Exp. June 14, 1988". This is an expiration date for a product after which the manufacturer may recommend or require that the product not be sold.
- "Best Before June 14, 1988". This is a quality assurance date. The manufacturer of the product is assuring the consumer that their product is of Best Quality before this date and does not imply it is spoiled or unwholesome after the date.
- "Best Purchase June 14, 1988". This is a quality assurance date. The manufacturer of the product is assuring the consumer that their product is of Best Quality before this date and does not imply it is spoiled or unwholesome after the date.
- "For Best Result Use Before June 14, 1988". This is a quality assurance date. The manufacturer of the product is assuring the consumer that their product, if used before this date, will give best results and does not imply it is spoiled or unwholesome after the date.
- "Sell by June 14, 1988". This is a quality assurance date. The manufacturer of the product is recommending to sell the product by this date and assuring the quality of the product is of highest standard before this date and does not imply it is spoiled or unwholesome after the date.



GOVERNMENT OF GUAM  
AGANA GUAM 96910

Date/Time Recd	7/1/88
Received by	
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Other Action	

JUN 30 1988

Senator Don Parkinson, Chairperson  
Legislative Committee on Energy, Utilities  
and Consumer Protection  
19th Guam Legislature  
163 Chalan Santo Papa St.  
Agana, Guam 96910

Dear Senator Parkinson:

The Department of Public Health and Social Services appreciates the interest you have shown in protecting "consumer rights," and we would welcome the opportunity to work with you. However, recent events in which you have been directly involved lead us to wonder what your intentions are and whether or not we can work co-operatively. On or about May 25th, before the legislature you presented several samples of "expired" and damaged food products which you had your staff obtain from several local retail markets. Since neither I nor any of my staff were informed in a timely manner of the presentation, we were unable to have someone present to answer any questions or make comments. Through this, you placed our division at a disadvantage.

Following your presentation, the food product samples and a copy of a proposed bill relative to date coding of food products were submitted to us for review and comment. After completing our review, we determined that most of the food products submitted by you as "expired" were not. These products did not carry an expiration date, but did carry what is generally referred to by the food industry as "quality assurance dates". A manufacturer normally guarantees the quality of a product (i.e. flavor, color, texture, etc.) up to or just beyond the date provided the product is stored and handled properly. A quality assurance date does not imply that a product is unfit for consumption once the date has been passed. The products submitted as damaged were in fact so. The proposed bill as submitted contained several provisions which were unclear or difficult to enforce as stated. We have responded to the above in detail in a separate communication to your committee.

As a result of your legislative presentation and your proposed bill on date coding, the Director of the DPH&SS assigned three of my staff members (copy of memorandum enclosed) to meet with you and your staff to discuss in detail the date coding of food products. This meeting was held with you in your office on June 22, 1988. However, none of your staff were present except for one person to take minutes. My staff presented you

*Exhibit "G"*

with documented information on date coding, anticipating you would have some questions to ask. Rather, after accepting the information, you summarized the contents of your proposed bill. Since my staff were instructed to discuss only food dating with you, their comments were limited to what technical information they could provide, as they could not respond on this Department's position on your proposed bill.

It was only after the camera crews for KUAM and Cable TV arrived did it become apparent to my staff why you had agreed to meet with them, and why none of your staff were present for what was supposed to have been a meeting to work with you in developing legislation which would be acceptable to all. Rather, you used the occasion to announce to the public that you did not believe the inspectors of this Department were doing their job.

We can only view your most recent media presentation before the public as another example of legislative grandstanding, at the expense of the department and the Division of Environmental Health staff in particular.

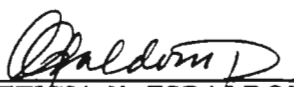
If you and your committee have legitimate questions about whether or not this Department is functioning effectively, or if consumer rights are being adequately protected, we are willing to work with you. In the future, if you have any concerns related to health issues, we would appreciate greatly the opportunity to discuss them with you in a professional manner. We do not believe that an adversarial relationship would be as effective in fostering public confidence (though it does make for better press) as would working in a co-operative manner.

Sincerely,



VICENTE D. QUITORIANO, R.S.  
Administrator  
Division of Environmental Health

CONCURRED:



---

LETICIA V. ESPALDON, M.D.  
Director  
Department of Public Health  
and Social Services





GOVERNMENT OF GUAM  
AGANA GUAM 96910

JUL 29 1988

Senator Don Parkinson  
Chairman, Committee on Energy  
Utilities and Consumer Protection  
19th Guam Legislature  
163 Chalan Santo Papa St.  
Agana, Guam 96910

Dear Senator Parkinson:

As requested, I am providing you with a copy of our guidelines (Regulations) which we use in making inspections of Retail Food establishments and the associated inspection report.

Sincerely,

LETICIA V. ESPAIDON, M.D.  
Director of Public Health  
and Social Services

Date/Time Recd	8/9/88 2:53 pm
Received by	<i>[Signature]</i>
Exec. Ass't	
SENATOR	
Chrono File by	
Orig. Filed at	
Orig. Filed by	
Other Action	

Exhibit "A"

"Use by or Consume  
by June 14, 1988".

This is a quality assurance date. The manufacturer of the product is implying that the quality of the product will be the highest when used by or consumed before June 14, 1988 and does not imply it is spoiled or unwholesome after this date.

"Better if used  
before June 14,  
1988".

This is a quality assurance date. The manufacturer of the product recommends that the product is of better quality if used before June 14, 1988 and does not imply it is spoiled or unwholesome after this date.

"Best when Purchased  
by June 14, 1988".

This is a quality assurance date. The manufacturer of the product recommends that the product is off Best Quality when purchased by June 14, 1988 and does not imply it is spoiled or unwholesome after this date.

All of the above may be sold in accordance with local law provided that a sign or notice clearly expressing the fact that the date has expired is placed in a conspicuous place next to the items in such a manner as to clearly inform the consumer as to the affected commodities.

If only the dates appear on the package, such as "June 14, 1988," this is usually a pack date of the product, the date the product has been packaged. If the manufacturer stamps a date on their product in advance, not the actual date the product has been produced and packaged without implying any term such as expired, best before, etc., then assume that this is the pull date of the product. This can only be determined by contacting the manufacturer or their authorized representative.

The "pull date" as defined by 10 GCA, Chapter 40 is the calendar date printed by the manufacturer on the package or wrapping which represents the date after which the manufacturer recommends that the product not be sold.

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Dating of food products depends on the manufacturers Quality Control Testing of their product. But, the question "How long the product will remain wholesome and fit for human consumption", or the shelf life of foods after the "pull date" or "Quality Assurance Date", depends upon a number of factors including the nature of the product, the type of container, processing procedures, weather and storage conditions. Once the date is passed and the retailer wants to sell the product, it is the responsibility of the retailer or distributor to check the physical condition of the product to determine if the product is still wholesome and fit for human consumption. If so, a placard, sign or notices must be posted next to the affected commodities stating "Outdated Food Products".

LETICIA V. ESPALDON, M.D.  
Director  
Department of Public Health  
and Social Services



GOVERNMENT OF GUAM  
AGANA, GUAM

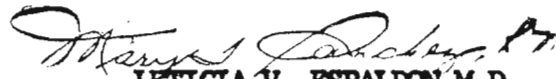
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Sincerely,

  
LETICIA V. ESPALDON, M.D.  
Director of Public Health  
and Social Services

## VIOLATION, DEMERIT ASSIGNMENT CHECK LIST

Item		Demerit
------	--	---------

Item		Demerit
------	--	---------

**FOOD**

1	APPROVED SOURCE, SOUND CONDITION, NO SPOILAGE	6
2	ORIGINAL CONTAINER: Properly labeled	2

**SEWAGE**

28	SEWAGE AND WASTE WATER DISPOSAL	6
----	---------------------------------	---

**FOOD PROTECTION**

3	POTENTIALLY HAZARDOUS FOOD MEETS TEMPERATURE REQUIREMENTS DURING STORAGE, PREPARATION, DISPLAY, SERVICE AND TRANSPORTATION	6
4	FACILITIES TO MAINTAIN PRODUCT TEMPERATURE	4
5	THERMOMETERS PROVIDED, WORKING, CONSPICUOUS, ACCURATE	2
6	POTENTIALLY HAZARDOUS FOOD PROPERLY THAWED	4
7	UNWRAPPED, POTENTIALLY HAZARDOUS FOOD NOT RESERVED	4
8	FOOD PROTECTION DURING STORAGE, PREPARATION, DISPLAY, SERVICE, TRANSPORTATION	4
9	HANDLING OF FOOD (ICE) MINIMIZED	2
10	IN USE FOOD (ICE) DISPENSING UTENSILES PROPERLY STORED	2

**PLUMBING**

29	INSTALLED, MAINTAINED	2
30	CROSS-CONNECTION, BACK SIPHONAGE, BACK-FLOW	6

**HANDWASHING, TOILET FACILITIES**

31	NUMBER, CONVENIENT, ACCESSIBLE, DESIGNED, INSTALLED	4
32	TOILET ROOMS: ENCLOSED, SELF-CLOSING DOORS, FIXTURES, GOOD REPAIR, CLEAN; HAND CLEANSER, SANITARY TOWELS/ ELEC. HAND DRYER, TOILET TISSUE, WASTE RECEPTACLES	4

**GARBAGE, REFUSE DISPOSAL**

33	CONTAINERS OR RECEPTACLES: COVERED, ADEQUATE NUMBER, INSECT/RODENT PROOF, DISPOSAL FREQUENCY, CLEAN, APPROVED	4
34	OUTSIDE STORAGE AREA ENCLOSURES/FACILITIES PROVIDED, CONSTRUCTED, CLEAN	2

**INSECT, RODENT, ANIMAL CONTROL**

35	PRESENCE OF INSECTS/RODENTS, OUTER OPENINGS PROTECTED, NO BIRDS, TURTLES, OR OTHER ANIMALS	4
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**PERSONNEL**

11	PERSONNEL WITH INFECTIONS RESTRICTED	6
12	HANDS WASHED AND CLEAN, GOOD HYGENIC PRACTICES	6
13	CLEAN CLOTHES, HAIR RESTRAINTS	4

**FLOORS, WALLS and CEILINGS**

36	FLOORS: CONSTRUCTED, DRAINED, CLEAN, GOOD REPAIR, COVERING INSTALLATION, DUSTLESS CLEANING METHODS	2
37	WALLS, CEILINGS, ATTACHED EQUIPMENT: CONSTRUCTED, GOOD REPAIR, CLEAN, DUSTLESS CLEANING METHODS	2

**FOOD EQUIPMENT and UTENSILS**

14	FOOD (ICE) CONTACT SURFACES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED	2
15	NON-FOOD CONTACT SURFACES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED	2
16	WAREWASHING FACILITIES: DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED, OPERATED	2
17	ACCURATE THERMOMETER, CHEMICAL TEST KITS PROVIDED, USED; GAUGE COCK (1/8" IPS VALVE)	1
18	TABLEWARE, COOKWARE: PRE-FLUSHED, SCRAPPED, SOAKED	1
19	WASH, RINSE WATER: CLEAN, PROPER TEMPERATURE	2
20	SANITIZING RINSE: CLEAN, TEMPERATURE, CONCENTRATION, EXPOSURE TIME; EQUIPMENT, UTENSILS SANITIZED	4
21	WIPING CLOTHS: CLEAN, STORED, RESTRICTED IN USE	4
22	FOOD CONTACT SURFACES OF EQUIPMENT AND UTENSILS: CLEAN, FREE OF ABRASIVES, FREE OF DETERGENTS	4
23	NON-FOOD CONTACT SURFACES OF EQUIPMENT AND UTENSILS CLEAN	2
24	STORAGE, HANDLING OF CLEAN EQUIPMENT/UTENSILS	2
25	SINGLE SERVICE ARTICLES: STORED, DISPENSED, USED	2
26	NO RE-USE OF SINGLE SERVICE ARTICLES	4

**LIGHTING**

38	LIGHTING PROVIDED AS REQUIRED	2
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**VENTILATION**

39	ROOMS AND EQUIPMENT VENTED AS REQUIRED, MAKE-UP AIR	2
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**DRESSING ROOMS and LOCKERS**

40	DRESSING ROOMS CLEAN, LOCKERS PROVIDED, FACILITIES CLEAN, PROPERLY LOCATED, USED	2
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**OTHER OPERATIONS**

41	ONLY NECESSARY TOXIC SUBSTANCES: PROPERLY LABELED, USED, STORED SEPERATELY	6
42	PREMISES MAINTAINED, FREE OF LITTER AND UNNECESSARY ARTICLES; CLEANING & MAINTENANCE EQUIPMENT PROPERLY STORED, AUTHORIZED PERSONNEL ONLY	2
43	COMPLETE SEPARATION FROM LIVING & SLEEPING QUARTERS AND LAUNDRY FACILITIES; PROPER LAUNDRY FACILITIES	2
44	CLEAN/SOILED LINEN PROPERLY STORED	2

**DOCUMENTS and PLACARDS**

45	SANITARY PERMIT, HEALTH CERTIFICATES, AND GRADE PLACARD VALID	6
46	ALL DOCUMENTS AND PLACARDS POSTED AS REQUIRED	2

**WATER**

27	WATER SOURCE: SAFE, HOT AND COLD UNDER PRESSURE	6
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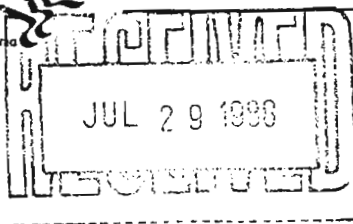
**DEMERIT SUB-TOTAL**

**DEMERIT SUB-TOTAL**



Food and Drug Administration  
Rockville MD 20857

1988



Leticia V. Es  
Director  
Department of  
and Social  
Government of  
P.O. Box 2816  
Agana, Guam 96910

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VA*

*DEH  
7/29/88  
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7/29/88  
7/29/88*

Dear Dr. Espaldon:

This is in reply to your letter of June 6 requesting an update on food dating.

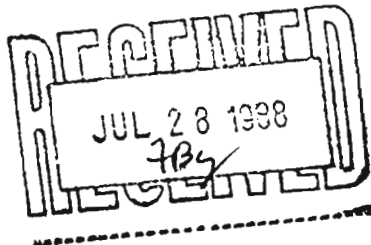
Our memorandum to you in August of 1977 provided FDA's position on the subject. The information contained in the 1977 memo is still current. There still has not been any bills passed by Congress which would require the dating of food. I am enclosing a copy of a study done by the Office of Technology Assessment in 1979 for Congress on this subject. Also enclosed is a copy of a letter sent to a Congressman in April of 1986 on food dating.

If we can be of further assistance, please let us know.

Sincerely yours,

*Charles H. Pogue*  
Charles H. Pogue  
Assistant to the Director  
State Services Branch  
Division of Federal-State Relations, ORA

Enclosures



The Honorable J. J. Pickle  
House of Representatives  
Washington, D.C. 20515

APR 29 1986

Dear Mr. Pickle:

Thank you for your letter of March 26, 1986, to Ms. Pamela Hackenberg of the Department, concerning the dating of foods.

Package dating for foods has been given a considerable amount of attention by both the Food and Drug Administration (FDA) and the food industry. Some progress has been made on "open dating" by some firms. This has been accomplished primarily on highly perishable foods such as dairy products. The infant formula industry agrees to the use of expiration dates. Our standards for dietary supplements of vitamins and minerals published August 2, 1973, require expiration dates. We do not have any regulations that require the dating of food products.

There is a serious question concerning the use of either manufacturing dates or expiration dates on all foods. The shelf life of foods depends upon a number of factors including the nature of the product, the type of container, processing procedures, and weather or storage conditions. Among these, the manufacturer has little or no control over the most significant variable, namely, weather and storage conditions.

Many products, such as flour, cereal, macaroni, and noodles are highly susceptible to insect infestation when stored under warm temperatures, whereas under cold temperatures the shelf life is increased considerably.

This, of course, points out that the use of an expiration date is no guarantee that a product has been properly stored or is even edible. The converse is also true, that an expired date does not necessarily mean the food is inedible. This, of course, would be a wasteful ~~idea~~ ~~and~~ ~~even~~ ~~more~~ ~~expensive~~ and less available. Human experience shows that consumers will refuse to purchase the older of ~~expired~~ ~~food~~ ~~items~~. This results in the older item becoming unsaleable and this is wasteful.

Thank you for bringing this matter to our attention. If we can be of further assistance, please let us know.

Sincerely yours,

Hugh C. Cannon  
Associate Commissioner  
for Legislative Affairs  
CCB w/cy inc ES/PMS w/cy inc

cc: WFB-11(2)

R/CO/MS/LL/MS/4/24/86

F/T:rh:4/25/86 r/t:rh:4/29/86

*Review*

# OPEN SHELF-LIFE DATING OF FOOD

**OJA** CONGRESS OF  
THE UNITED STATES  
Office of Technology Assessment  
WASHINGTON D. C. 20510



## Executive Summary

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In their concern over the freshness of food, consumers have increasingly advocated open shelf-life dating—the use of dates on a can or package of food that gives the consumer some idea of when a product was packed or should be sold or used. Although such a step appears simple and sensible at first glance, it entails many scientific and financial uncertainties and involves some complex choices.

The Senate Committee on Commerce, Science, and Transportation asked OTA to assess the feasibility of open shelf-life dating of food and to provide Congress with the necessary information to adequately address this area of food labeling.

This assessment analyzes: consumers' perspectives on open-date labeling; benefits and costs; alternative systems and techniques; alternative criteria and scientific tests to establish open dates; enforcement mechanisms and liability related to open-date labeling; and options available to Congress.

### CONSUMER CONCERNS

Ever since the vast majority of Americans became urbanized, consumers have had no sure way of knowing how fresh their food really is. Since they did not grow it themselves or personally know such factors as its age or storage condition, they have had to rely on assurances that wholesalers and retailers were abiding by some system that would eliminate food that was no longer fresh. Fresh food refers to food in which the quality has been unchanged from its initial state. Even under ideal conditions some foods lose their freshness within 2 or 3 days of being packed, while other foods may remain fresh for over a year.

Recent studies have shown that, indeed, consumers are concerned over whether or not the food they purchase is fresh. A U.S. Department of Agriculture (USDA) consumer

survey in 1971 showed that 20 percent had complaints about food product freshness; a Nielson survey in 1973 turned up 50 percent with such complaints. A 1978 survey further supported this concern by noting that of all the problems on the minds of consumers when they shop for food, making sure that food in supermarkets is fresh heads the list.<sup>1</sup>

Facts that lend support to such concerns are scarce, however. There are no nationwide statistics on the amount of food sold that is not fresh, although there have been some individual State studies that indicate there is a problem.

---

<sup>1</sup>Skelly Yankelovich, and White, Inc., "A Study of Consumers' Attitudes and Behaviors Towards Eating at Home and Out of Home," *Woman's Day, Family Food Study*, 1978.

For example, a study of 25 supermarkets in Minnesota showed that all of those stores had some outdated food on their shelves.<sup>2</sup> Another study in that State found that 44 percent of the baby formula being sold was over age and that since 64 percent of the store managers could not read a coded date, they could not rotate the stock.<sup>3</sup> These findings led the State to adopt mandatory open shelf-life dating for some foods.

Open shelf-life dating means the use of legible terms such as a day, month, and year as an indication of when the food was packaged or by when it should be sold or used. Such dating is considered by most people to be a measure of food freshness. It does inform the buyer about the time lapse between packaging and purchase or use and, to the extent that such time lapse is synonymous with quality loss, of the quality or freshness as well. However, such a time lapse is not necessarily the only factor leading to quality loss—i.e., deviation from freshness. Therefore, an open date is not an absolute assurance of freshness—but it can be an indication.

Dating of food is far from being a new concept—in fact, it started back in the early 1930's. However, the dates have usually been in coded form, based on a color-keyed or number/letter system. The codes were originally designed to aid in controlling food inventories and to assist in any product recalls, such as for contaminated foods.

Consumers complain that since they cannot interpret the codes, they cannot tell whether or not the food they are buying is fresh. Indeed, sometimes employees at both the retail and wholesale level cannot read the codes either and thus are unable to use them as a means of keeping stocks in-date.

All indications are that consumers do want dates they can understand. For example, in

<sup>2</sup>Minnesota Public Interest Research Group, "Survey of Minnesota Food Stores, 1972," testimony before the Minnesota State Senate on Open Dating Legislation.

<sup>3</sup>Keith Ford, Minnesota Office of Consumer Services, testimony before the Minnesota State Senate Hearings on Open Dating Legislation, 1972.

1977 the New York Consumer Protection Board published a report translating food manufacturers' freshness codes. The Board received over 100,000 requests for copies of the report.

Currently, no Federal policy exists on open dating. There is wide variation among the 21 States and the District of Columbia that have some form of mandatory open dating. For example, different States require different products to be dated, require different dates for the same products, and the same dates can have different interpretations. In addition, none of the States seem to have done "before and after" studies of open dating.

Even where not required by State law, some manufacturers have chosen to voluntarily open date their products. However, since there are no industry guidelines, there is no uniform system.

The result is often consumer confusion. For example, a survey conducted for OTA shows that three out of four consumers can correctly identify the type of date on milk. But only one in four knows the type of date on breakfast cereal, and only one in three knows the type of date on ground beef. Of course, milk is more often open dated than are breakfast cereal and ground beef.

To further complicate matters, there is no scientific body of knowledge to accurately determine dates for various products, no consensus on which type of date or dates—"pack" (when food was processed or packaged for retail sale), "sell by" (the last date a food product should be sold), "best-if-used-by" (the date after which food is no longer at its most acceptable level of quality), or a combination of these—to use for which product, or even which products to date at all, and no real guidelines as to how to display the date.

What appears at first to be a simple task of converting code to open dates readily becomes complex with many unanswered questions.

Even though no action has been taken at the Federal level, there has been and contin-

ues to be much congressional and executive agency interest in open dating. Bills have been introduced in the U.S. Congress on food labeling that would require open dating. However, only the Senate has approved such legislation.

In 1978, joint hearings were conducted by the Food and Drug Administration, USDA,

and the Federal Trade Commission on food labeling issues. Over 9,000 written responses were received, 5,000 of which were from consumers. Preliminary results of the consumer responses indicate that consumers do want some form of open dating.

## BACKGROUND

### State Practices

Some form of open-date labeling is required in 40 percent of the States, including the District of Columbia (table 1). But more revealing than the number of States that have open dating are the food products covered and the type of date used.

Perishable foods, such as fluid milk, are the most common food products open dated. In 21 States with some form of mandatory open dating, 12—or 60 percent—have laws limiting coverage to fluid milk and/or milk products.\*

Open-dating laws or regulations in seven States and the District of Columbia apply to a broader class of food products. One State, Massachusetts, includes both perishables and nonperishables, or long shelf-life foods.

The type of date used varies by State, but the majority either require or suggest a sell-by date, which is the last date a food product should be sold. Seventeen States and the District of Columbia fall into this category.

There is some variation among the States, however, in the requirement for sell-by dates—particularly for fluid milk and/or milk products. For example, the New Mexico law states that fluid milk and cream containers shall be labeled "with a legible sell-by date

\*Perishable foods have a short shelf life, usually less than 30 days. Semiperishable foods have a shelf life of between 1 and 6 months. Nonperishable or long shelf-life foods have a shelf life of more than 6 months.

not to exceed 14 days including the date of packaging for pasteurized products and 5 days for raw products." By contrast, the Maryland law requires all pasteurized milk products to have the term "sell by," which is designated as a date "7 days after the day of pasteurization."

In addition to the 21 States requiring some form of open dating, some food manufacturers voluntarily open date their products. Some use a pack date, others a sell-by date, and still others a use-by or best-if-used-by date. Some explicitly indicate that it is a sell-by or use-by date, while others only show a date.

Therefore, in some areas of the country, a portion of the food supply has some type of open date, while in other areas, food does not carry any date. Even among the States requiring open dating, the same date can have different interpretations. And in voluntary open dating by industry, there is no guidance as to: 1) which products to date, 2) which date to use, 3) how to display the date, and 4) how to scientifically determine the date. In sum, there is no uniform system.

### Practices in Other Countries

In contrast, many other countries and international organizations have established requirements for dating of food products. For example, open dating, with or without code dating, is mandatory for prepackaged con-

Table 1.—Summary of Open-Date Labeling Requirements by States, 1978

State/locale	Primary products	Form of open date	Effective since about
Alabama	Dairy	Sell-by	1975
California	Dairy	Sell-by	1973
Connecticut	Milk	Sell-by	1973
District of Columbia	Perishable products	Sell-by	1974
Florida	Dairy	Sell-by	1976
Georgia	Milk, eggs	Sell-by	1973
Maryland	Milk	Sell-by	1971
Massachusetts <sup>a</sup>	Perishable & long shelf life	Sell-by or use-by	1979 <sup>b</sup>
Michigan	Perishable products	Sell-by	1969
Minnesota	Perishable products with shelf life < 90 days	Sell-by or use-by	1973
Nebraska	Eggs	Pack	—
Nevada	Dairy	Sell-by	1973
New Hampshire	Cream	Use-by	1973
New Jersey	Dairy	Sell-by	—
New Mexico	Milk	Sell-by	1977
Ohio	Perishable products	Sell-by	1977
Oklahoma	Meat, eggs	Sell-by	—
Oregon	Perishable products	Pack or sell-by	1975
Pennsylvania	Milk	Sell-by	1975
Virginia	Dairy & infant formula	Sell-by	1974
Washington	Dairy & others	Sell-by	1974
Wisconsin	Smoked fish	Pack	1971

<sup>a</sup>This regulation is presently being challenged in court.

<sup>b</sup>1979 for perishable foods; 1980 for frozen foods; and 1981 for remaining long shelf-life foods. These dates may change depending on the court's decision concerning the legality of the regulation.

SOURCE: OTA survey.

sumer food items expected to have a short shelf life in practically all developed countries—with the United States a notable exception. In the developing countries, the same trend applies, particularly for foods intended for export, except that open dating is not confined to short shelf-life items.

Some other countries have already moved from simply code dating to open dating for long-life products. For example, Japan, Venezuela, and Sweden, while allowing codes, require that the pack date also appear in an "open" form.

The Codex Alimentarius Commission, the global organization for food-labeling standards, states a general preference for open dates but requires them only on infant's and children's foods. The European Economic Community recently adopted open dating for nearly all food products, with some exceptions. (See appendix D for a breakdown of open dating throughout the world.)

In view of these international developments, the lack of a U.S. policy on open dating could cause problems and lead to confusion in future food trade. Therefore, the issue of open dating has international as well as domestic implications.

## FINDINGS AND CONCLUSIONS

### Overall Findings

1. There is little evidence to support or to negate the contention that there is a direct relationship between open shelf-life dating and the actual freshness of food products when they are sold.
2. The pressure for open shelf-life dating comes from a consumer perception that such dating ensures food freshness and that industry should disclose its coded dates.
3. Deterioration in food quality is affected by environmental factors such as temperature, humidity, and light in relation to time. Ideally, dating information should reflect on these factors, but the technology to measure their influence inexpensively is in various stages of development and is not likely to be applicable in the near future.
4. Open dating is applicable for all food categories because all foods deteriorate. For most perishable and semiperishable foods the major modes of deterioration cause sensory quality loss such as color loss or off-flavor development, which can be easily recognized. For long shelf-life products, a major mode of deterioration is nutrient loss, such as vitamins A or C, which cannot be recognized by consumers. In addition, most long shelf-life foods are packaged such that it is not possible to examine contents for sensory quality loss before purchase.
5. Information gaps exist on: a) the amount of food sold nationally that is not fresh, b) the experience of States that have initiated open-dating programs, c) the scientific base to determine and monitor a freshness date, and d) the costs of open dating on a product-specific basis.

### Specific Findings

#### Benefits

1. Open dating encourages better handling practices by wholesalers, retailers, and consumers by expediting the sale or use of food near the end of shelf life. This can result in a decrease of consumer complaints about buying spoiled or stale foods. Indeed, a USDA study found that such complaints decreased by 50 percent after the introduction of open dating.
2. Open dating can increase consumer confidence in the freshness of food purchased. In the same study, USDA found that the reduction in consumer complaints about spoiled or stale foods was reported for both open-dated and non-open-dated food in the same store. Apparently, because information was available for some foods, shoppers had more confidence in the freshness of all foods.
3. Better handling practices attributed to open dating could minimize nutrient loss. A processor could estimate the length of time the product would be in the distribution system and, given the environmental conditions, determine how these factors would affect the loss of unstable nutrients, such as vitamin C.
4. There is little or no benefit derived from open dating in terms of improved microbiological safety of foods. For foods in general, microbiological safety hazards are a result of processing failures, contamination after processing, and abuses in storage and handling. These factors are usually independent of the age of the product and have little relationship to an open date.

## Costs

Very little research has been done to determine costs of open dating. These findings are based on the best estimates of academic and industry shelf-life experts and experience by industry and Government with nutrition labeling.

1. A major initial cost in adopting open dating is establishing a reliable date. Estimates are approximately \$100,000 for each perishable and semiperishable food and \$200,000 for each long shelf-life food (1979 dollars).
2. Major costs to wholesalers and retailers would be for employee time to inspect shelves for out-of-date stock and then dispose of such stock.
3. Enforcement costs for the Federal Government could vary from practically none to more than \$500,000 per year, depending on the enforcement system and the extent to which the system were mandatory.
4. Based on nutrition-labeling experience, total costs of adopting open dating would be small on a per-dollar sales basis but nonetheless may add from 0.1 to 1 cent to the cost of each package of food. In 1975, the average cost of establishing nutrition information per dollar of sales was .004 cents, and the average continuing cost of nutrition labeling, which involves complex testing procedures and more information to be printed on the label than does open dating, was a minimal amount—especially once it was established. The same should be true for open-date labeling.

## Open-Dating Techniques

There are many possibilities in converting codes to open dates. The date could be a pack date, sell-by date, best-if-used-by date, or a combination of these.

1. A **pack date** is the day, month, and year the food product was processed or pack-

aged for retail sale. It is of minimal value to consumers in that it provides little information as to freshness or how long products should remain at acceptable quality. A pack date is, however, the easiest and least expensive for industry to implement.

2. A **sell-by date** is the last date a food product should be sold in order to allow a "reasonable" length of time for consumer use. This date is appropriate for perishable foods such as milk and dairy products because they have a short shelf life. It is the most useful date for wholesalers and retailers in their inventory control, since it states the last day of sale. However, it does not indicate to the consumer when foods should be used. Because it is currently being used on many perishable foods, it could easily be implemented by industry for products with a short shelf life.
3. **Best-if-used-by date** is the date after which food is no longer at its most acceptable level of quality. It is the preferred single date by consumers and provides the most useful information on quality. It is more appropriate for foods that have a long shelf life. It is, however, the most difficult for wholesalers and retailers to use in inventory management because they must subjectively determine allowances for home storage in order to determine the last day of sale.

This date is presently used on some semiperishable and long shelf-life foods. However, the full implementation of this kind of date may require as much as a 2-year period to scientifically establish it for a given product at a cost of \$200,000 per product.

4. **Combination dates** are preferred by consumers to single dates. They provide the most information, especially a sell-by and best-if-used-by combination. Combination dates, however, have all of the disadvantages of single dates.



### Criteria in Establishing Open Dates

There are several criteria that can be used to establish sell-by and best-if-used-by dates including: sensory quality, nutrient loss, and degree of perishability.

1. **Sensory quality**, such as color, odor, and flavor, is the most discernible criteria for establishing sell-by and best-if-used-by dates. For some foods, sensory quality change may also be an indicator of nutrient quality. However, regulatory agencies would probably not be able to use sensory criteria to determine whether a food that is still in date is out of compliance with some quality level, since tests to determine whether a given product is of some designated sensory quality require taste panels trained in specific areas. This is not applicable to regulatory methods. However, if a physical or chemical method could be correlated highly with a sensory test, compliance testing would be simplified.
2. **Nutrient loss** would be easier to measure than would sensory quality, since it can be done objectively in an analytical laboratory. However, nutrient content of the same food commodity can vary; also, some foods are naturally poor in some nutrients, are not eaten to provide those nutrients, and may be of good quality even if they lost a certain percentage of the nutrients. Thus, critical nutrient loss methods are useful only where they are highly correlated with overall sensory quality losses.
3. **Perishability time** categories, which establish a date by a set number of days after processing, are more relevant for highly perishable foods that have a minimum of processing. However, modern processing conditions and new types of packaging can increase the shelf life of some foods to the point where time categories are not meaningful unless continuously modified to reflect new circumstances.

### Enforcement and Liability

Open dating raises some unique problems of enforcement and liability. Enforcement, for example, raises two serious points: 1) enforcement with respect to quality standards in establishing the date and 2) sale of a product after the date. Liability in open dating presents unique difficulties because most other labeling requirements only involve the processor, but open dating involves wholesalers and retailers as well. This leads to questions of who is ultimately liable and whether existing law is adequate to determine liability.

In general, the findings in these areas are:

1. An enforcement system where processors establish reasonable dates that must be approved by the appropriate executive agency has many advantages over a system where the enforcement agency performs the necessary laboratory test to determine the validity of open dates. It is less expensive, would not lead to a decline in quality specifications for the date, and would avoid questions of a processor's liability.
2. Consumer complaint-based enforcement for products sold at full price after the stated date (i.e., the consumer complains to the appropriate authority) is less costly than Government agency inspection for out-of-date products and can be very effective.
3. Some foods that are beyond date could be sold to consumers, perhaps at a reduced price, because the foods will still be safe.
4. Federal/State cooperation on enforcement is feasible. However, in order to have each State enforce a Federal mandatory program, the Federal Government may have to provide 100 percent of the costs. If not, the States would prefer enforcement at the Federal level.
5. There have been no court decisions on the questions of liability for deteriorated

food that has been open dated. If there were a Federal requirement for open dating, the Federal Food, Drug, and Cosmetic Act (FDCA) seems to provide several mechanisms by which to ensure compliance, especially as it relates to adulteration and misbranding. However, if literally interpreted, FDCA does not provide for abuses to food products in distribution that could cause the date to be involved. In addition, the meaning of a sell-by date is somewhat vague. This

date suggests that the product can be consumed for a reasonable period of time after the date with no recognizable difference in the food's quality. Omission of information disclosing the ensuing consumption period could constitute the omission of a material fact rendering the product misbranded. These areas should be specifically addressed in the legislative history of any open-dating provisions.

## CONGRESSIONAL OPTIONS

There are three basic options for Congress to consider in the open-dating issue. Congress can:

1. Allow the present **voluntary system** to continue by taking no action. Under this system, the private food sector is developing and adopting open-dating standards.
2. Choose a **mandatory system**, which would require the use of specific open dates.
3. Choose a **voluntary/mandatory system**, whereby the Federal Government develops guidelines, and processors who elect to open date are required to follow those guidelines.

If Congress chooses Options 2 and/or 3, it can either specify the detail or leave it up to others, such as an appropriate regulatory agency or an industry association. In other words, Congress can legislate which type of dates for which food and how those dates are to be determined, or it can delegate the task.

These options are not mutually exclusive. Congress can select one option, two options, or a combination of all three. For example, Congress can decide to leave open dating of bulk fresh produce as is, under a voluntary system; make open dating of other perishables and semiperishables mandatory; and place long shelf-life foods under a voluntary/

mandatory system. In addition, the type of date selected can vary by individual product. In short, many potential combinations exist (see chapter IX for a more detailed discussion).

### Voluntary System

If Congress opts for the *status quo*, it will be supporting a system in which the private food sector will presumably continue to develop and adopt open-dating standards.

**Pros:** The principal advantage to this system is that it allows processors flexibility in determining whether or not to open date and minimizes the cost to the Federal Government and industry, compared with the other systems. Moreover, under this approach 21 States and the District of Columbia have adopted open-dating laws over the past 8 years and have done so with a minimum amount of regulatory control and enforcement.

This option would allow time for specific research to better gauge the cause-and-effect relationship between open dating and spoilage reduction. Specific areas in which further data is needed include: the amount and kinds of food sold nationally that are not fresh, better quantification of costs, and an improved scientific base to accurately deter-



- Technological innovation could be stifled because criteria could not be easily changed.
- The criteria may not likely be based on sensory quality parameters because it would be more difficult to regulate than would other criteria. This could be an advantage for some products and a disadvantage for others, depending on what test index is chosen.

An alternative to mandating specific criteria is to allow a range of criteria. The advantage of mandating some range of criteria is that both sensory and nutritional criteria would likely be included within the range. The disadvantage is that there would not be standard criteria for similar products.

**Enforcement and liability.** Congress has two basic options for determining the enforcement system and for establishing liability as it relates to open-date labeling:

- **Use Existing Laws**

**Pros—Enforcement:** Allowing the existing laws to specify enforcement simplifies the procedure and minimizes the cost and time for both Government and industry.

**Cons—Enforcement:** Existing law does not specify what should be done in the case of: a) food that is still edible but past date and b) food that is beyond criteria but not past date.

**Pros—Liability:** Existing laws covering liability already offer several devices through which manufacturers, wholesalers, and retailers might be held liable for violations of an open-dating requirement.

**Cons—Liability:** Since there is no definitive legislative or judicial definition of the legal significance of an open date, application of existing law remains speculative.

- **Pass New Laws**

**Pros—Enforcement:** Legislating new enforcement procedures has the advantage of allowing Congress to address specific items such as use of State enforcement offi-

cial and/or complaint-based enforcement by consumers for beyond-date compliance and disposal of edible food that is out-of-date.

**Cons—Enforcement:** Writing a new law to adequately provide for enforcement increases both time and cost to Government and industry.

**Pros—Liability:** Writing new legislation that specifies liability and penalties, if any, for open-date labeling could provide consumers with more confidence in an open-date labeling system.

**Cons—Liability:** It is a difficult and burdensome task to ascertain liability to the firms responsible.

### **Leave Implementation of Detail to Others**

Delegating the specifics to either the appropriate executive agency or the private sector would have the following results: 1) it relieves Congress of the necessity to make these determinations and 2) it would be easier to change a technique over time than if specifications were decided by Congress.

- **Appropriate Executive Agency**

- Open-Dating Techniques**

**Pros:** The advantages of this option, as with congressionally mandated detail, include uniformity of the open-dating technique for all food processors producing a single product. Also, the regulatory procedure would allow industry and consumers more involvement than would the detailed statutory approach.

**Cons:** The disadvantages of allowing executive discretion include the potentially large costs in time and money both Government and industry would incur before the regulations could be developed.

- Criteria**

The advantages and disadvantages of establishing open-dating criteria are the

mine freshness dates. The experience of States that have adopted open shelf-life dating will be helpful in obtaining the above data.

**Cons:** The most serious perceived disadvantage of this approach is the lack of uniformity in deciding: 1) which products to date, 2) which date to use, 3) how to display the date, and 4) what scientific guidelines should be used to determine the date. In addition, inventory-control procedures are relatively more difficult, which could result in more food waste than under a mandatory system. Also, some industries may not adopt the program.

### **Mandatory System**

A mandatory system would require the use of specific open dates.

**Pros:** The principal advantages of this system is that a mandatory system would provide uniform regulations; tighten inventory control, which could reduce food waste; provide higher quality and nutritive levels for more food; and set criteria for calculating accurate open dates.

**Cons:** The principal disadvantage is that, with the exception of using a "pack date," it would be difficult to implement in the short run of 2 to 5 years for semiperishable and long shelf-life foods because of insufficient data on shelf-life stability of these product categories. However, since many perishable products are presently open dated, data are available to implement a mandatory system for perishables.

Other disadvantages would be: 1) costs would increase to Government for developing and enforcing regulations and to industry for compliance, compared with a voluntary/mandatory system, 2) out-of-date products may be usable but returned and wasted (unless special arrangements are made for their use), 3) development of regulations would be time-consuming for both Government and industry, 4) innovation in terms of incentives to develop

new processing techniques to increase shelf life could be stifled, and 5) small processors could be forced out of business.

If a mandatory policy is selected, Congress must decide who should specify the technique, criteria, and type of enforcement system. To specify these areas, there are two basic ways Congress can legislate. Congress can either specify the details itself or charge others with the responsibility for doing so.

### **Congress Specifies the Detail**

**Open-dating techniques.** Congress could specify the use of one or a combination of the following open-dating techniques: pack date, sell-by date, best-if-used-by date, or some combination.

**Pros:** The advantages of a mandated technique by product or product category include uniformity in all States and less potential consumer confusion.

**Cons:** The disadvantages include:

- It would be more difficult to change a technique over time than if specifications were left up to the appropriate regulatory agency.
- A continuous legal and/or legislative process may arise in an effort to change dates over time. This could be an expensive process for industry, Government, and ultimately for consumers.

**Open-dating criteria.** In addition, Congress could decide which criteria must be used for which date or dates. In other words, which categories of sensory quality, nutrient loss, and perishability to use.

**Pros:** The advantage of mandating specific criteria used in establishing dates includes standardization among products and/or product categories.

**Cons:**

- Neither Congress nor the Secretary of the appropriate executive branch agency currently may have the technical ability and data necessary to specify criteria for each food item.

same for an executive agency as those discussed for Congress.

- **Private Sector**

- Open-Dating Techniques**

Individual processors could be allowed to choose the dating techniques and make them defensible to the appropriate Secretary.

**Pros:** Allowing individual processors to have this freedom would allow the marketplace to determine the best system.

**Cons:**

- Lack of uniformity of date types on similar products could confuse consumers and retailers.
- The retailer may have problems using open dating for inventory control when there is a lack of uniformity on similar products.
- Small processors may use pack dates since they might not be able to do the necessary research to establish sell-by or use-by dates.

As an alternative, an industry association could be allowed the freedom to choose the dating techniques and make them defensible to the appropriate Secretary.

**Pros:**

- Date types on similar products would be uniform.
- Consumers could have input into industry association meetings to establish dates, especially if the association decision were subject to Secretarial review.

**Cons:**

- If the system were voluntary/mandatory, it would allow nonmembers of the industry association to do nothing.
- If mandatory and nonmembers of the industry association have not had an opportunity to participate in the process of choosing a technique for dating, this could

lead to legal problems such as antitrust or restraint of trade.

- There may be more than one industry association to which one processor belongs, and these associations might establish two different techniques.

- Criteria**

**Pros:** The advantages of allowing processors to specify criteria for establishing open dates include:

- Sensory criteria could be part of the input when considered appropriate for the particular product.
- Through the appropriate Secretary, consumers could have a continuing voice in what criteria is used.

**Cons:**

- Secretaries of the regulatory agencies involved would have an additional burden of reviewing the criteria submitted to them.
- Costs to Government could be quite high relative to other options.

### **Voluntary/Mandatory System**

A voluntary/mandatory system is one in which the Federal Government develops guidelines, and processors who choose to open-date food products are required to follow these guidelines.

**Pros:** This system establishes a mechanism for uniformity to open-date food products, and it provides individual food processors the basic option of determining whether or not to open-date products.

**Cons:** Costs to Government would increase for developing and enforcing regulations and to industry for compliance. Development of regulations would be time-consuming for both Government and industry.

Note that if the Congress chooses this option path, the issues discussed under the mandatory system become relevant.

RETAIL FOOD STORE  
SANITATION REGULATIONS  
PART 1.000  
GENERAL PROVISIONS

Section 1.100

1.101 Purpose

These regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public health.

Section 1.200

1.201 Definitions

For the purpose of these regulations:

- (a) "Corrosion-Resistant Materials" means those materials that maintain their original surface qualities under the prolonged influence of foods, the normal use of cleaning compounds and sanitizing solutions, and other conditions of use within the establishment that may be reasonably expected during normal use.
- (b) "Department" means the Department of Public Health and Social Services.
- (c) "Director" means the Director, Department of Public Health and Social Services.
- (d) "Division" means the Division of Environmental Health, Department of Public Health and Social Services.
- (e) "Easily Cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
- (f) "Employee" means the permit holder, individual having supervisory or management duties, and any other person working in a retail food store.
- (g) "Equipment" means stoves, ovens, hoods, slicers, mixers, meat blocks, tables, counters, refrigerators, freezers, sinks, warewashing machines, ice makers, and similar items, other than utensils, used in the operation of a retail food store.
- (h) "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human or animal consumption.

- (i) "Food Contact Surfaces" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
- (j) "Food Processing Establishment" means a commercial establishment in which food is manufactured or packaged for human or animal consumption. The term does not include a food service establishment or retail food store.
- (k) "Hermetically Sealed Container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents.
- (l) "Kitchenware" means all multi-use utensils.
- (m) "Law" includes Federal and local statutes and regulations.
- (n) "Packaged" means bagged, bottled, boxed, canned, cartoned, or securely wrapped.
- (o) "Person" includes an individual, partnership, corporation, association, or other legal entity.
- (p) "Person In Charge" means the individual present in a retail food store who is the apparent supervisor of the retail food establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the person in charge.
- (q) "Potentially Hazardous Food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include: clean, whole uncracked, odor-free shell eggs; or foods which have a  $p^H$  level of 4.5 or below or a water activity ( $A_w$ ) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage; or dehydrated, dry, or powdered food products so low in moisture content as to preclude development of micro-organisms.
- (r) "Reconstituted" means recombining dehydrated food products with water or other liquids.
- (s) "Regulatory Authority" means the Department of Public Health and Social Services.

- (t) "Retail Food Store" means any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption. Such food or food products may be exposed to varying degrees of preparation and may often need further preparation or processing after it has been purchased. The term "Retail Food Store" shall include any warehouse facility, under administrative control of the Retail Food Establishment, used for the storage of that establishments food and food products; and any vehicle owned by that establishment used to transport food and food products. "Retail Food Store" shall not mean any Food Service Establishment as defined in Public Law 15-96, Chapter VI, Subchapter D, Section 9530.(b).
- (u) "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials used are food additives or color additives as defined in Section 201(s) or (t) of the U.S. Food, Drug, and Cosmetic Act, or Section 9720.1(w) or (x) of the Guam Food, Drug, and Cosmetic Act, they are "safe" only if they are used in conformity with regulations established pursuant to Section 409 or 706 of the Federal act. Other materials are "safe" only if they are used in conformity with regulations established now or hereafter under the above Acts or Public Law 15-96 (The Guam Environmental Health Act).
- (v) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce bacterial count, including pathogens, to a safe level on cleaned food contact surfaces of utensils and equipment.
- (w) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
- (x) "Single Service Articles" means cups, containers, lids and packaging materials, including bags and similar articles intended for use in contact with food that are designed for one-time use and then discarded.
- (y) "Transportation" (transported) means movement of food within the retail food store or delivery of food from a retail food store to another place while under control of the person in charge.
- (z) "Utensil" means any implement used in the storage, preparation, transportation or dispensing of food.

(aa) "Warewashing" means the cleaning and sanitization of food contact surfaces of all equipment and utensils.

Section 1.300

1.301 Captions

Sections and other captions are part of these regulations.

Section 1.400

1.401 Repealer

These regulations shall be effective twelve months after they are adopted and published in accordance with law. At that time, all rules and regulations and parts of rules and regulations in conflict with these regulations are repealed

Section 1.500

1.501 Separability

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications of these regulations.

PART 2.000

FOOD

Section 2.100

Food Supplies

2.101 General

Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human or animal consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The sale or use of hermetically sealed food that was not prepared in a food processing establishment regularly inspected by the Department or other health regulatory agency is prohibited.

2.102 Special Requirements

- (a) Milk and milk products used or sold shall be pasteurized and shall meet quality standards as established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
- (b) Fresh and frozen shucked shellfish (oysters, mussels, or clams) shall be packed in non-returnable packages identified with the name and address of

the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used or sold. Each container of unshucked shell stock (oysters, clams, and mussels) shall be identified by an attached tag to be retained for 90 days, that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the Department, State, or Foreign shellfish control agency.

- (c) Only clean shell eggs, without cracks or checks, and meeting applicable grade standards, or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or sold.
- (d) Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged in a clean sanitary manner.

REASON: The quality and safety of products used or offered for sale by the retail food store is based on the condition of the food at the time it is received from the supplier. Food must first have been protected during production, processing, packaging, storage, and transportation if it is to be acceptable for the consumer following food store operations. Even the best quality control and public health measures at the food store cannot improve food which is marginal or unacceptable when received.

The requirements of this section are designed to reduce the risk of receiving food which is of unacceptable quality and safety. The use or sale of non-commercially packaged hermetically sealed food is prohibited because of the history of such food in causing foodborne illness. The special requirements for eggs and egg products and for milk and milk products are included because these products are exceptionally good media for the growth of pathogens. Labeling requirements for shellfish provide a means of assuring that the source of the shellfish is under the control of a regulatory authority.



Section 2.200

Food Protection

2.201 General

At all times, including while being stored, prepared, displayed, dispensed, or transported, food shall be protected from potential contamination by all agents, including cross-contamination from foods, unsafe or foreign materials, insects, rodents, unclean equipment and utensils, probe type price or identification tags, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage or condensation. The temperature of potentially hazardous foods shall be 45°F or below, or 140°F or above, at all times, except as otherwise provided in these regulations. Retail food stock shall be properly rotated. Hermetically sealed packages shall be properly handled to maintain container integrity.

2.202 Emergency Occurrences

In the event of an occurrence, such as a fire, flood, power outage, earthquake, typhoon, or similar event, that creates a reasonable probability that food in the retail food store may have been contaminated, or which might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the Department. Upon receiving notice of this occurrence, the Department shall take whatever action that it deems necessary to protect the public health.

REASON: Food which is wholesome and safe when received from the supplier can become contaminated with filth, pathogenic micro-organisms, and toxic chemicals if it is mishandled within the retail food store.

The requirements contained in this section are designed to protect food from the numerous potential sources of contamination that may occur during the various retail food store operations and are intended to place emphasis on food temperature control of potentially hazardous foods.

Section 2.300

Food Storage

2.301 General

(a) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean, covered container,

except during necessary periods of preparation. Whole and unprocessed fresh raw vegetables and fruits shall be exempted from this requirement. Container covers shall be impervious and non-absorbent. Solid cuts of meat shall be protected by covering with single service wrapping material during storage, except that quarter cuts or sides of meat may be stored to hang freely and uncovered on clean, sanitized hooks or placed on clean, sanitized metal racks in such a manner that will not allow the contamination of other foods in storage.

- (b) Containers of food shall be stored a minimum of six inches above the floor in a manner that permits easy cleaning of the storage area, or on dollies, racks, or pallets, provided such equipment is easily movable, either by hand or with the use of pallet-moving equipment that is available and used.
- (c) Food and containers of food shall not be stored under exposed or unprotected sewer or water lines, except for automatic fire protection sprinkler heads that may be required by law.
- (d) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.
- (e) Bulk food shall be stored in a container identifying it by common name.
- (f) Spoiled, damaged, returned, or detained (distressed) food items shall be stored separately from and isolated from foods in good condition.
- (g) Food storage in toilet rooms or vestibules, and garbage or mechanical rooms is prohibited.

#### 2.302 Refrigerated/Frozen Storage

- (a) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to  $\pm 3^{\circ}\text{F}$ , located to measure the air temperature in the warmest part of the facility and located to be easily read. Recording thermometers, accurate to  $\pm 3^{\circ}\text{F}$  may be used in lieu of indicating thermometers.
- (b) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of  $45^{\circ}\text{F}$  or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow

pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F or below unless maintained in accordance with paragraph 2.303 of these regulations. Clean, uncracked, odor-free shell eggs shall be refrigerated at an ambient temperature not to exceed 60°F.

- (c) Frozen foods shall be kept frozen and should be stored at an ambient temperature of 0°F or below.
- (d) Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

### 2.303 Hot Food Storage

- (a) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food storage facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer accurate to  $\pm 3^\circ\text{F}$ , located to measure the air temperature in the coolest part of the facility, and located to be easily read. Recording thermometers accurate to  $\pm 3^\circ\text{F}$  may be used in lieu of indicating thermometer. When it is impractical to install thermometers or equipment such as heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.
- (b) The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140°F or above unless maintained in accordance with paragraph 2.302(b) of these regulations.

REASON: Proper care during storage is important in assuring that the condition of food when received is maintained and protected. Requirements of this section are intended to prevent contamination of food, and to control the growth of naturally occurring disease-causing micro-organisms.

Food must be covered in order to provide physical protection of the food. Containers and covers must be impervious and non-absorbent to eliminate the pos-

sibility of their being a factor for contamination. Food storage locations are restricted to minimize risk of food contamination from other foods, equipment, routine employee activities, and environmental systems. Labeling of bulk ingredients is required to prevent confusion which could lead to inadvertent contamination of food during preparation.

Provisions covering the availability of hot and refrigerated/frozen food storage facilities, and the parameters defining the cooling period for foods in storage, are included since controlling product temperature is the best means available for controlling growth of pathogens in food. Thermometers are required in or on equipment to provide a means for monitoring air temperatures around potentially hazardous foods.

Section 2.400  
Food Preparation

2.401 General

- (a) Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross contamination.
- (b) Potentially hazardous foods that are in a form to be consumed without further cooking such as salads, sandwiches, and filled pastry products shall be prepared when possible from chilled products.
- (c) Salads and other ready-to-eat foods prepared in the retail food store shall be prepared in areas that are separated by a barrier or open space from the fresh raw meat and poultry department processing areas. If it is impossible to provide separate areas and equipment because of lack of space, the food-contact surfaces of equipment to be used for processing shall be cleaned and sanitized each time there is a change from the processing of raw to ready-to-eat food and food product or there is a change in processing of raw pork, or raw poultry, or raw fish, and before processing any different kind of product.

2.402 Raw Fruits and Vegetables

Raw fruits and raw vegetables that will be cut or combined with other ingredients or will otherwise be processed into food products in the retail food

establishment shall be thoroughly washed with potable water before being used.

2.4C3 Cooking Potentially Hazardous Foods

Potentially hazardous foods being processed within the retail food establishment and that require cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F, except that

- (a) Poultry, poultry stuffings, stuffed meats and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165°F with no interruption of the cooking process.
- (b) Pork and products containing pork shall be cooked to heat all parts of the food to at least 150°F. The use of microwave ovens is prohibited.
- (c) When beef roasts under 10 pounds in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of at least 350°F throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of at least 325°F throughout the process.

When beef roasts of 10 pounds or over in weight are cooked in a dry heat oven, the oven shall be preheated to and held at an air temperature of at least 250°F throughout the process.

Further, in order to meet public health requirements for the processes cited above, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature.

Minimum Holding Times for  
Beef Roasts at Various  
Minimum Internal Temperatures

Minimum Internal Temperature		Minimum Holding Time in Minutes
<u>°F</u>	<u>°C</u>	
130	54.4	121
131	55.0	97
132	55.6	77
133	56.1	62
134	56.7	47
135	57.2	37
136	57.8	32
137	58.4	24
138	58.9	19

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139	59.5	15
140	60.0	12
141	60.6	10
142	61.1	8
143	61.7	6
144	62.2	5

(d) Beef roasts, if cooked in a microwave oven, shall not be served rare because of the size and density of the product.

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2.404 Bakery Product Fillings

Custards, cream fillings, including synthetics, and similar products shall meet the temperature requirement in paragraph (b) of Section 2.302 following preparation and maintained thereat during storage, transportation, and display. Synthetic filled products may be excluded from this requirement if:

- (a) the food, including the interface between the bakery product and its filling, has a pH level of 4.6 or below or a water activity (a<sub>w</sub>) value of 0.85 or less under standard conditions; or
- (b) it is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or
- (c) other scientific evidence is on file with the regulatory agency demonstrating that the specific product will not support the growth of pathogenic microorganisms.

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These synthetic filled products may be labeled to indicate that refrigeration is not required.

2.405 Dry Milk, Dry Eggs, Liquid Eggs and Frozen Eggs

When incorporated into finished products or reconstituted, dry milk, dry milk products, dry eggs, dry egg products, liquid eggs and frozen eggs shall be used only if the finished products are heated to 140°F or above.

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2.406 Reheating

Potentially hazardous foods that have been cooked and then refrigerated, shall be reheated rapidly to 165°F or higher throughout before being placed in a hot food storage facility. Food warmers, and other hot food holding facilities shall not be used for the rapid reheating of potentially hazardous foods.

2.407 Product Thermometers

Metal stem-type numerically scaled indicating thermometers, accurate to ± 2°F shall be provided and used to assure attainment and maintenance of proper

internal cooking, holding or refrigeration temperatures of all potential hazardous foods.

2.408 Thawing Potentially Hazardous Foods

Potentially hazardous foods shall be thawed:

- (a) In refrigerated units at a temperature not to exceed 45°F; or
- (b) In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- (c) As part of the conventional cooking process.

REASON: Food preparation is the process of necessary manipulation during which food is subjected to potential contamination from the greatest number of sources. Requirements of this section are intended to reduce the likelihood of contamination during preparation as much as practicable and to destroy microorganisms or prevent their rapid growth in foods which may have become contaminated.

Section 2.500

Food Display

2.501 Potentially Hazardous Foods

Potentially hazardous foods shall be kept at an internal temperature of 45°F or below or at an internal temperature of 140°F or higher during display except that rare roast beef offered for sale hot shall be held at a temperature of at least 130°F.

2.502 Frozen Foods

Foods intended for sale in a frozen state should be stored at an ambient temperature of 0°F or below, with a tolerance of 10°F for short periods of time such as defrost cycles or loading or unloading. Frozen foods on display shall be stored below or behind product lines according to the cabinet manufacturer's specifications. Potentially hazardous foods which have been thawed shall not be refrozen.

2.503 Raw Fruits and Vegetables

Raw fruits and raw vegetables may be rinsed in clean vegetable sinks with potable water followed by adequate drainage prior to display for sale.

2.504 Food Display

Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by packaging, counter protector devices, display cases or similar equipment. All food shall be displayed a minimum of six inches above the floor. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

2.505 Dispensing Utensils

To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves unpackaged bulk processed foods such as pickled products or dried foods. These dispensing utensils shall be:

- (a) Stored in the food with the dispensing utensil handle extended out of the food; or
- (b) Stored clean and dry; or
- (c) Stored in running potable water.

2.506 Food Sample Demonstrations and Food Promotions

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

REASON: Any relaxation or lapse in concern for protecting food during display and service can negate all earlier efforts to maintain quality of food that has been carefully purchased, stored, and prepared. Requirements in this section are intended to:

- ..... assure continued control of the product temperatures of potentially hazardous foods; and
- ..... direct the efforts of store employees toward use of sanitary display and dispensing procedures; and
- ..... protect food from contamination by store patrons.

Section 2.600

Food Transportation

2.601 General

During transportation, food other than hanging primal cuts, quarters, or sides of meat, and raw fruits and vegetables, and food utensils shall be



kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be over-wrapped or covered if the original package has not been torn or broken. During transportation, food shall meet all the requirements of these regulations relating to food protection and storage.

REASONS: Special circumstances that arise during the transportation of food can make protection of food and maintenance of proper food temperatures more difficult. There is a corresponding increase in the possibility of contamination and microbial growth. Requirements of this section are intended to assure that food is as carefully protected while being transported as it is during other retail food store operations.

## PART 3.000

### PERSONNEL

#### Section 3.100 Employee Health

#### 3.101 General

No person shall work in a retail food store if:

- (a) they are infected with a disease in a communicable form that can be transmitted by foods; or
- (b) they are a carrier of organisms that cause such a disease; or
- (c) they are affected with a boil or infected sore on the hands, arms, face, or neck areas; or
- (d) they are affected with an acute respiratory infection

if there is a possibility of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other persons.

REASON: A whole range of communicable diseases and infections may be transmitted by infected retail food store personnel to other employees and to the consumer through contamination of food or food utensils.

Section 3.200  
Personal Cleanliness

3.201 General

Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, using the toilet, handling trash, using wiping rags, before and after handling raw meat, poultry or seafood, or after any other activity which contaminates the hands or arms. Employees shall keep their fingernails trimmed and clean.

REASON: The hands are particularly important as a potential vehicle of contamination of food and food-contact surfaces.

Section 3.300  
Clothing

3.301 General

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

REASON: Clothing and falling hair can be direct or indirect vehicles of contamination. Consumers react negatively when store employees handling food have soiled clothing, and are particularly sensitive to having food contaminated with hair.

Section 3.400  
Employee Practices

3.401 General

- (a) Employees shall consume food only in designated areas such that the contamination of other food, equipment, utensils or materials will not occur.
- (b) Employees shall not use tobacco while performing food handling operations, nor while in warewashing or in food preparation areas. Employees shall use tobacco only in designated areas.
- (c) When food is handled during a preparation process, all hand jewelry which cannot be adequately sanitized, and all insecure jewelry shall be removed.

- (d) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the retail food store.

REASON: Hygienic practices must be utilized by employees in keeping personally clean and in performing assigned duties, in order to maintain the integrity of food and to minimize the possibility of transmitting disease to other employees and consumers. Smoking or eating by employees in food preparation areas is prohibited because of the probability of contamination of the hands, food, and food-contact surfaces. Insanitary and unsightly personal practices such as scratching the head, placing the fingers in or about the mouth or nose, and indiscriminate and uncovered sneezing or coughing may result in food contamination, and adversely affect consumer confidence in the establishment.

#### PART 4.000

#### EQUIPMENT AND UTENSILS

#### Section 4.100

#### Materials

##### 4.101 General

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

##### 4.102 Solder

If solder is used, it shall be composed of safe materials and be corrosion resistant.

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Hard maple or equivalently non-absorbent material that meets the general requirements set forth in 4.101 of these regulations may be used for cutting blocks, cutting boards, and bakers tables. The use of wood as a food-contact surface under other circumstances is prohibited except when used for storing shell nuts.

4.104 Plastics and Rubber Materials

Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scouring, decomposition, crazing chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in 4.101 of these regulations are permitted for repeated use.

4.105 Single-Service

Re-use of single-service articles is prohibited.

4.106 Cutting Surfaces

Scratching and scouring of cutting surfaces that interfere with effective cleaning and sanitization shall constitute violations of Sections 4-103 and 4-104.

REASON: Materials which are absorbent or have rough imperfect surfaces will harbor filth and microorganisms and are not cleanable.

Food poisoning has occurred as a result of ingestion of acidic food or drink that has been in contact with equipment or utensils containing metals such as copper, cadmium, lead, and zinc, or the salts of these metals. Unsafe materials used in the manufacture of equipment and utensils may migrate into food.

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Section 4.200

Design and Fabrication

sion 4.201 General

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

- (a) Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices.

Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers, hot oil cooking equipment, or hot oil filtering systems, such threads shall be minimized.

- (b) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
- (c) Sinks and drainboards shall be self draining.

#### 4.202 Accessibility

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

- (a) Without being disassembled; or
- (b) By disassembling without the use of tools; or
- (c) By easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

#### 4.203 In-Place Cleaning

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

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

#### 4.204 Pressure-Spray Cleaning

Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches and connections.

#### 4.205 Thermometers

Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and

accurate to  $\pm 2^{\circ}\text{F}$ .

4.206 Non-Food-Contact Surfaces

Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

4.207 Ventilation Hoods

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

4.208 Existing Equipment

Equipment which was installed in a retail food store prior to the effective date of these regulations, and which does not meet fully all of the design and fabrication requirements of this section, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are non-toxic. Upon replacement, all equipment shall meet the requirements of these regulations.

REASON: Food equipment and utensils which have been designed and fabricated without regard for surface characteristics, durability, and accessibility can be difficult to clean, making build-up of food residues likely. Accumulation of food soil supports bacterial growth, contaminates fresh foods, attracts insects and rodents, causes unpleasant odors, and can be responsible for accelerated food spoilage and foodborne illness. The potential for food contamination from overhead dripping, and fire prevention systems are additional reasons for the proper design of hoods and ventilation systems.

The special requirements for equipment with bearings and gears, and the criteria for acceptability of lubricants are intended to prevent toxic petroleum products from becoming part of food.

Thermometers made of glass and filled with mercury or other fluids are prohibited because of the problem of breakage and the risk of contaminating a batch of food or vat of hot cooking oil with glass and toxic liquid.

#### Section 4.300

#### Equipment Installation and Location

##### 4.301 General

Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, or water lines that are leaking, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

##### 4.302 Table-Mounted Equipment

- (a) Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and the adjacent areas.
- (b) Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a 4-inch clearance between the table or counter except that if no part of the table under the equipment is more than 18 inches from cleaning access, the clearance space shall be three (3) inches or more; or if no part of the table under the equipment is more than (3) inches from cleaning access, the clearance space shall be two (2) inches or more.
- (c) Equipment is portable within the meaning of Section 4-302(b) above if:
  - (1) It is small and light enough to be moved easily by one person; and
  - (2) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning; and
  - (3) It is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment, and:
    - does not exceed 80 pounds, or
    - is equipped with a mechanical means of safely tilting the unit for cleaning.

#### 4.303 Floor-Mounted Equipment

- (a) Floor-mounted equipment, unless easily movable, shall be:
- (1) Sealed to the floor; or
  - (2) Elevated on legs to provide at least a 6-inch clearance between the floor and equipment, except that equipment may be elevated to provide at least a 4-inch clearance between the floor and equipment if no part of the floor under the equipment is more than 6 inches from cleaning access.
  - (3) Display shelving units, display refrigeration units, and display freezer units will be exempt from the provisions of Section 4-303 (a) (1) and (2) above if they are installed so that the floor beneath the units can be cleaned.
- (b) Equipment is easily movable if:
- (1) It is mounted on wheels or casters; and
  - (2) It has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.
- (c) Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch and, if exposed to seepage, the space shall be sealed.

#### 4.304 Aisles and Working Spaces

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

REASON: Food debris and litter frequently accumulate under, above, around, and behind equipment. It is in these areas, especially along the floor and wall junctures, that insects and rodents harbor, run, and feed. The requirements of this section are intended to assure that regular and effective cleaning is possible. They are also intended to assure that employees have enough space to perform their duties without inadvertently contaminating food and clean surfaces.



PART 5.000

CLEANING, SANITIZING  
AND STORAGE OF  
EQUIPMENT AND UTENSILS

Section 5.100

Equipment and Utensil Cleaning  
and Sanitization

5.101 Cleaning Frequency

- (a) Utensils and food-contact surfaces of equipment shall be cleaned and sanitized after any interruption of operations during which time contamination may have occurred; between processing raw pork, or raw poultry, or raw fish, and before processing any different kind of product; and between processing of raw and ready-to-eat food and food products; and after final use each working day.
- (b) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be washed, rinsed, and sanitized, in that order, at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.
- (c) The food-contact surfaces of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day; except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.
- (d) Non-food-contact surfaces of equipment, including all cargo areas of transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

5.102 Wiping Cloths

- (a) Moist cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in paragraph 5.103(e) of these regulations and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

- (b) Moist cloths or sponges used for cleaning non-food contact surfaces of equipment shall be clean and rinsed as specified in paragraph 5.102(a) of these regulations and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.
- (c) Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

5.103 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 by pressure spray methods.
- (b) Easily movable dish tables or drain boards 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 warewashing facilities.
- (c) Equipment and utensils shall be pre-flushed or pre-scraped and, when necessary, presoaked to remove gross food particles and soil.
- (d) Sinks shall be cleaned prior to use.
- (e) When a three compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:
  - (1) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean, with adequate scrubbing by hand to remove food and soil; and
  - (2) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and
  - (3) Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in paragraph 5.103(e) (items 1 thru 4) of these regulations.
- (f) When a two-compartment sink is utilized for warewashing, one of the following two methods shall be used:
  - (1) Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean

5.106 Retail Food Stores without Equipment and Utensil Cleaning Facilities

All retail food stores which do not have facilities for proper cleaning and sanitizing utensils and equipment shall not prepare or package food for sale or dispense processed unpackaged foods.

REASON: Regular, effective cleaning and sanitization of equipment, utensils, and work surfaces minimizes the probability of food contamination, accelerated food spoilage, and the transmission of disease organisms or toxing to employees and consumers. Effective cleaning removes soil and prevents the accumulation of food residues that may decompose or support the rapid growth of food poisoning organisms or toxins. Effective sanitization procedures destroy organisms of public health importance that may be present on wiping cloths, food equipment, or utensils after cleaning, or which have been introduced into the rinse solution.

The requirements of this section are intended to assure that all facilities and testing equipment necessary for effective cleaning and sanitization are provided. They are also intended to provide operating procedures which are known to be safe and effective.

Section 5.200

Equipment and Utensil Handling  
and Storage

5.201 Handling

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

5.202 Storage

- (a) Cleaned and sanitized utensils and equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines, or water lines that are leaking or on which water has condensed, except for automatic fire protection

sprinkler heads that may be required by law.

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

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

5.203 Single Service Articles

(a) Single service articles shall be stored at least six inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines that are leaking or on which water has condensed, except for automatic fire protection sprinkler heads that may be required by law.

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

5.204 Prohibited Storage Areas

The storage of food equipment, utensils or single-service articles in locker rooms, garbage rooms, mechanical rooms, toilet rooms, or vestibules is prohibited.

REASON: Single-service items, and equipment and multi-use utensils which have been properly cleaned and sanitized, can become contaminated in a variety of ways prior to their intended use. Contamination can be caused by moisture from absorption, flooding, drippage, or splash. It can also be caused by food debris, toxic materials, litter, dust, and other materials. The contamination is often related to unhygienic employee practices, unacceptable high risk storage locations, improper construction of storage facilities, and poorly designed and managed consumer self-service operations. The requirements of this section are provided to assure that clean items are protected during necessary handling and while being stored.

PART 6.000

SANITARY FACILITIES  
AND CONTROLS

Section 6.100

Water Supply

6.101 General

Enough potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to law.

6.102 Transportation

All potable water not provided directly by pipe from the island water supply system to the retail food store shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed, maintained, and operated according to law.

6.103 Water Under Pressure

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

6.104 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.

REASON: Water and steam may serve as vehicles of contamination to food or food-contact surfaces. Pressure and temperature determine their effectiveness for cleaning, sanitization, and other store operations.

The requirements in this section are intended to assure that sufficient volumes of water and steam are provided from supplies known to be safe, and through distribution systems which are protected. The requirements are also intended to assure that fixtures and equipment designed to use water will be supplied with water at necessary pressures and temperatures.

Section 6.200

Sewage

6.201 General

All sewage, including liquid wastes from foods or waste water shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated in accordance with Public Law 15-96, Subchapter T and Chapter IV, Title XLI, Government Code of Guam. Non-water carried sewage disposal facilities are prohibited, except as permitted by the Department in remote areas or because of special situations.

REASON: Many diseases can be transmitted from one person to another through fecal contamination of food and water. Proper disposal of human wastes greatly reduces the risk of fecal contamination. The requirements of this section are intended to assure that wastes will not: contaminate ground surfaces and water supplies; be accessible to children, or to pets, rodents, and insects; pollute surface waters; or otherwise create an odorous and unsightly nuisance.

Section 6.300

Plumbing

6.301 General

Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any non-potable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

6.302 Non-potable Water Systems

Non-potable water systems are permitted only for purposes such as air-conditioning, equipment cooling systems and fire protection and only if the system is installed according to law and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

6.303 Backflow

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and

back-siphonage at all fixtures and equipment where an air-gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow preventive device has been installed.

6.304 Grease Traps

If used, grease traps shall be located to be easily accessible for cleaning, and installed and maintained so as not to create any nuisances.

6.305 Garbage Grinders

If used, garbage grinders shall be installed and maintained so as not to create any nuisances.

6.306 Drains

Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed.

REASON: Water and waste lines that are inconveniently located, under-designed, or in disrepair can make necessary store operations either difficult or impossible. Improper plumbing systems have a long history of being implicated in illness outbreaks involving toxic chemicals and pathogenic organisms. They require continuous attention since piping systems and equipment and fixtures designed to use water are continually being extended, altered, or replaced.

The requirements of this section are intended to assure that plumbing is designed and installed so that equipment and facilities requiring water will have sufficient volume and pressure to properly perform their functions. Required measures also are intended to protect potable water systems, fixtures, and equipment from contamination caused by backflow. The requirement that grease traps, if used, be accessibly located is based on their need for frequent cleaning.

Section 6.400  
Toilet Facilities

6.401 Toilet Installation

Toilet facilities shall be installed so that there is an adequate number as required by law, conveniently located, and accessible to employees at all times. Separate toilet rooms shall be provided for male and female employees if five or more persons of both sexes are employed.

6.402 Toilet Design

Toilets and urinals shall be designed to be easily cleanable.

6.403 Toilet Rooms

Except as provided by law, toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing solid doors which shall be kept closed except during cleaning or maintenance.

6.404 Toilet Facility Maintenance

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

REASON: Toilet facilities are necessary for the proper disposal of human waste. Fecal waste has been found to be a prime source of pathogenic organisms of most importance in the spread of enteric diseases from one person to another. The cleanliness of toilet facilities affects employees and patron attitudes about sanitary practices and conditions throughout the retail food store.

The requirements of this section are intended to assure that properly designed and conveniently accessible toilet facilities are provided, and that they are kept in good repair, clean, and properly supplied.



Section 6.500  
Handwashing Facilities

6.501 Handwashing Facility Installation

Handwashing facilities shall be adequate in number, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil washing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing or for any other purpose.

6.502 Handwashing Facility Faucets

Each handwashing facility shall be provided with running water by means of a faucet. Any self-closing, slow-closing or metering faucet used shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

6.503 Handwashing Supplies

A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand drying device providing heated air shall be conveniently located near each handwashing facility. Common towels including cloth roll towels, are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

6.504 Handwashing Facility Maintenance

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

REASON: Hands are probably the most common vehicle for the transmission of contamination to food and food-contact surfaces. Hands can become soiled with a variety of contaminants during routine food store operations. Some employees are unlikely to wash their hands even when the need is apparent unless properly equipped handwashing facilities are conveniently accessible in the immediate work area. Handwashing facilities which are improperly located may often be blocked off by portable equip-

ment or stacked full of soiled utensils or a variety of other items rendering them unavailable for regular employee use. Sinks used for food preparation and warewashing can themselves become vehicles of contamination if indiscreetly used as handwashing facilities by employees returning from the toilet, or from other sources of contamination to the hands. Common towels and cloth roll towels are not permitted as they are an avoidable source of contamination to the hands. Steam mixing valves are prohibited on handwashing facilities because of the risk of scalding.

The requirements of this section are intended to assure that there are sufficient handwashing facilities, properly equipped and located, in the store for convenient employee use.

#### Section 6.600

#### Garbage and Refuse

##### 6.601 Containers

- (a) Garbage and refuse shall be kept in durable, easily cleanable, insect-proof, and rodent proof containers that do not leak and do not absorb liquids. Containers shall be of the type approved by law. Plastic bags and wet strength paper bags may be used to line these containers, and may be used for storage inside the retail food store.
- (b) Containers used in food preparation and utensil washing areas shall be kept covered after they are filled, and during non-working hours.
- (c) Containers stored outside the establishment, including dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers; and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.
- (d) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
- (e) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food equipment, utensils, or food preparation areas. Suitable facilities for cleaning containers shall be provided including hot water and detergent.

- (f) Liquid waste resulting from refuse disposal and container cleaning operations shall be disposed of as sewage.

6.602 Storage

- (a) Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of non-rodent resistant containers, unprotected bags or wet strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard, or other packaging material not containing garbage or food wastes need not be stored in covered containers.
- (b) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, non-absorbent, washable materials, shall be kept clean, shall be insect and rodent proof, and shall be large enough to store all the garbage and refuse containers needed before the refuse is hauled away.
- (c) Outside storage areas or enclosures shall be large enough to store all the garbage and refuse containers used and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside, shall be stored on or above a smooth surface of non-absorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

6.603 Disposal

- (a) Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.
- (b) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration in accordance with law. Areas around incineration facilities shall be kept clean and orderly.

**REASON:** Proper storage and disposal of garbage and refuse is necessary to prevent them from becoming an attractant, harborage, or breeding place for insects, rodents, and other animals. Improperly handled garbage creates obnoxious odors and other nuisance conditions, makes housekeeping and groundskeeping difficult, and can become a source of contamination to food, equipment, and utensils.

Section 6.700  
Insect and Rodent Control

6.701 General

Effective measures intended to minimize the entry, breeding and presence of rodents, flies, cockroaches, or other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

6.702 Openings

Openings to the outside shall be effectively protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall be at least sixteen (16) mesh to the inch.

REASON: Insects and rodents are capable of transmitting disease to man by contaminating food and food-contact surfaces.

Because insects and rodents need food, water, and shelter in order to survive, requirements in this section are intended to block their access into the retail food store and to eliminate harborage and feeding opportunities, both in the retail food store and on the premises.

PART 7.000  
CONSTRUCTION AND MAINTENANCE  
OF PHYSICAL FACILITIES

Section 7.100  
Floors

7.101 Floor Construction

- (a) Except as specified in Section 7.102 below, floors and floor coverings of all food preparation, food storage and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable

grades of linoleum or plastic, or tight-fitting wood impregnated with plastic, and maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

- (b) Floors which are water flushed or which receive discharges of water or fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with trapped drains, properly installed. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials and shall be graded to drain.
- (c) In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, and where water flush cleaning methods are used, the junctures between walls and floor shall be coved and sealed. In all other cases, the juncture between walls and floors shall not present an open seam of more than 1/32 inch.

#### 7.102 Floor Carpeting

Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in food preparation and warewashing areas where it would be exposed to and accumulate large amounts of food residue, grease and water; in food storage areas; and in toilet room areas where urinals or toilet fixtures are located.

#### 7.103 Prohibited Floor Covering

The use of sawdust, wood shavings, or similar loose materials as a floor covering is prohibited, except where they are used as absorbents to immediately clean up spot spills.

#### 7.104 Mats and Duckboards

Mats and duckboards shall be of non-absorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning. Duckboards shall not be used as storage racks.

#### 7.105 Utility Line Installation

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

REASON: Floors that are of smooth durable construction and non-absorbent are more easily cleaned.

Special materials, sealing, coving, and grading to drains are required for floors which are cleaned by spraying or flushing so that liquid wastes are quickly carried away and pooling and other nuisances and hazards are avoided.

The requirements and restrictions regarding floor coverings, utility lines, and floor-way junctures are intended to assure that regular and effective cleaning is possible and that insect harborage is minimized. Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, and similar materials are prohibited in order to prevent unnecessary dust-borne contamination; because they may create a growth media for microorganisms when combined with food scraps and fluids; and because they make effective floor cleaning more difficult and less likely. Small amounts of materials, such as sawdust, granular salt, baked clay, and diatomaceous earth may be used for immediate spot clean-up of spills or drippage to allow for reasonable floor maintenance in between routine floor cleanings.

Section 7.200  
Walls and Ceilings

7.201 Construction

The walls, including non-supporting partitions, wall coverings, and ceilings in walk-in refrigerators, food preparation areas, warewashing areas, toilet rooms and vestibules shall be light colored, smooth, non-absorbent and easily cleanable. Concrete block or similar material used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

7.202 Exposed Construction

Rafters, joists and studs shall not be exposed in those areas listed in paragraph 7.201 of these regulations. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

7.203 Utility Line Installation

Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in paragraph 7.201 of these regulations. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

7.204 Maintenance

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

7.205 Attachments

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

7.206 Covering Material Installation

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

REASON: Walls and ceilings that are of smooth construction, non-absorbent, and in good repair can be easily and effectively cleaned. The special requirements provided for the installation of utility lines, attachment of accessories, and application of covering materials, are intended to assure that the cleanability of these surfaces is retained.

Section 7.300

Cleaning Physical Facilities

7.301 General

Cleaning of floors and walls, except emergency cleaning of floors, shall be done as often as necessary, but preferably when the least amount of food is exposed, such as after closing. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

7.302 Service Sinks

In new or extensively remodeled establishments, at least one service sink on curbed cleaning facility with a floor drain shall be provided and used for

the cleaning of mops or similar wet floor cleaning tools, and for the disposal of mop water or similar liquid wastes. The use of handwashing or warewashing facilities or food preparation sinks for this purpose is prohibited.

REASON: Cleanliness of the retail food store is important to minimize attractants for insects and rodents, aid in preventing the contamination of food and equipment, and prevent nuisance conditions. A clean and orderly retail food store is also conducive to positive employee attitudes which can lead to increased attention to personal hygiene and improved food handling practices. The availability of appropriate service facilities and the use of specified cleaning procedures are important in order to preclude avoidable contamination of food and equipment.

#### Section 7.400

##### Lighting

#### 7.401 General

- (a) Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles of light on all food preparation surfaces and at warewashing work levels.
- (b) Permanently fixed light sources shall be installed to provide, at a distance of 30 inches from the floor:
  - 1. At least 20 foot candles of light in sales areas, utensil and equipment storage areas and in handwashing and toilet areas;
  - 2. At least 10 foot candles of light in walk-in refrigerators, dry food storage areas, and in all other areas.

#### 7.402 Displayed Foods

Displayed foods shall not be illuminated in such a manner as to alter their actual appearance.

#### 7.403 Protective Shielding

- (a) Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation and display facilities, and facilities where utensils and equipment are cleaned and stored.



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

REASON: Properly distributed light makes the need for cleaning apparent by making accumulations of soil conspicuous. Lighting levels are specified to: facilitate reading labels; discern the color of substances; identify toxic materials; recognize the condition of foods, utensils, and supplies; and aid in storage, warewashing, and general store cleaning.

Shielding is important for protecting light bulbs and fluorescent tubes against preventable breakage. In addition, shields protect employees, food, and equipment from glass fragments when breakage occurs.

## Section 7.500

### Ventilation

#### 7.501 General

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

#### 7.502 Special Ventilation

In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside as may be required.

REASON: Ventilation can be important in protecting food from contamination; making effective cleaning possible; preventing hazards and nuisances; and assuring the safety of inside air for employees and patrons.

Ventilation protects food from contamination by controlling condensation. Moisture from condensation is conducive to mold and bacterial growth. Drillage caused by condensation and by

accumulations of fats and oils can carry contaminants to food or food-contact surfaces.

When mechanical ventilation is necessary, a properly designed and installed system assures: that soiling of walls, ceilings, and other equipment is minimized; that obnoxious odors or toxic fumes are effectively removed; that the system itself is readily cleanable; and that no hazards or nuisances involving accumulation of fats, oils, and similar wastes will be created if properly operated.

Special consideration is given to intake ducts used for make-up air in the establishment because they can be an important source of airborne contaminants if either improperly designed or poorly located with respect to equipment placement or operating modes.

#### Section 7.600

#### Dressing Rooms and Locker Areas

##### 7.601 Dressing Rooms and Areas

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

##### 7.602 Locker Areas

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

**REASON:** Street clothing and personal belongings can contaminate food, food equipment, and food preparation surfaces. Lockers or suitable facilities are required in order to provide for the proper storage of personal belongings such as purses, coats, shoes, and personal medications.

Section 7.701

Poisonous or Toxic Materials

7.701 Materials Permitted

Only those poisonous or toxic materials necessary for the maintenance of the establishment, the cleaning and sanitization of equipment and utensils, and the control of insects and rodents, shall be present in retail food stores, except those items being offered for sale as described in Section 7.707 below.

7.702 Labeling of Materials

Containers of poisonous or toxic materials, shall be prominently and distinctly labeled according to law for easy identification of contents.

7.703 Storage of Materials

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

- (a) Insecticides and rodenticides.
- (b) Detergents, sanitizers and related drying or cleaning agents.
- (c) Caustics, acids, polishes and other chemicals.

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

7.704 Use of Materials

- (a) Sanitizers, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on surfaces, nor in a way that constitutes a hazard to employees or other persons.
- (b) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

7.705 Personal Medications

Personal medications shall not be stored in food storage, preparation, or display areas.

7.706 First-Aid Supplies

First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

7.707 Display of Materials

Poisonous or toxic materials offered for retail sale shall be segregated from food, and materials which come in contact with food or the human body.

REASON: The inadvertent contamination of food or food-contact surfaces with pesticides, toxic cleaning compounds, other poisons, or medicinals can be responsible for a serious foodborne illness outbreak.

The requirements of this section are intended to assure that only those toxic materials which are necessary to the store's operation are present; and that they are clearly labeled, safely stored, and properly used.

Section 7.800

Premises

7.801 General

- (a) Retail food stores and all parts of the property used in connection with operations of the establishment shall be kept free of litter.
- (b) The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced or effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling of water.
- (c) Only articles necessary for the operation and maintenance of the retail food store shall be stored on the premises.
- (d) The presence of unnecessary persons passing through or in the food preparation and warewashing areas is prohibited.

7.802 Living Areas

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

self-closing, tight-fitting doors.

7.803 Laundry Facilities

- (a) If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens, cloths, uniforms, and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.
- (b) Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single service articles.

7.804 Linens and Work Clothes Storage

- (a) Clean work clothes and linens shall be stored in a clean place and protected from contamination until used.
- (b) Soiled clothes and linens shall be kept in non-absorbent containers or washable laundry bags until removed for laundering and shall be stored to prevent contamination of food equipment and utensils.

7.805 Cleaning Equipment Storage

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

7.806 Animals

- (a) Live animals shall be excluded from within the retail food operational premises, and from immediately adjacent areas under the control of the permit holder. This exclusion does not apply to live edible fish, crustacea, or shellfish, or other fish in aquariums. Patrol dogs accompanying security or police officers shall also be permitted in offices, storage areas, and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons. Guide dogs accompanying blind persons shall be permitted in sales areas.
- (b) Persons employed in the food operational areas of an establishment shall not care for or handle any pets, or patrol/sentry dogs while on duty.

REASON: The presence of unnecessary articles, including equipment which is no longer used, makes regular and effective cleaning more difficult and less likely. It can also provide harborage for insects and rodents.

The requirements for outside areas are intended to prevent the creation of conditions suitable for insect and rodent feeding, breeding, and harborage; and to minimize nuisances involving dust and the pooling of water.

The requirements involving animals, separation of store operations from living or sleeping quarters, laundry operations and facilities, and the storage of linens and cleaning equipment are all intended to minimize the possibility of disease transmission to employees and consumers through direct or indirect contamination of food and food-contact surfaces.

#### PART 8.000

#### COMPLIANCE PROCEDURES

#### Section 8.100

#### Sanitary Permits and Health Certificates

#### 8.101 General

No person shall operate a retail food store who does not have a valid sanitary permit issued to him or her by the Division. Only a person who complies with the requirements of these regulations shall be entitled to receive or retain such a sanitary permit. Sanitary permits are not transferable. A valid sanitary permit shall be posted in public view in every retail food store.

#### 8.102 Issuance of a Sanitary Permit

- (a) Any person desiring to operate a retail food store shall make written application for a sanitary permit on forms provided by the Division. Such application shall include the name and address of each applicant, the location and type of the proposed retail food store and the signature of each applicant.
- (b) Prior to approval of an application for a sanitary permit, the Division shall inspect the proposed retail food store to determine

compliance with the requirements of these regulations.

- (c) The Division shall issue a sanitary permit to the applicant if its inspection reveals that the proposed retail food store complies with the requirements of these regulations.

#### 8.103 Suspension of a Sanitary Permit

- (a) The Division may, without prior hearing, suspend any sanitary permit to operate a retail food store if the holder of the sanitary permit does not comply with the requirements of these regulations, or if the operation of the retail food store otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 8.103(b) of these regulations. When a sanitary permit is suspended, retail food operations shall immediately cease. Whenever a permit is suspended, the holder of the sanitary permit shall be afforded an opportunity for hearing within 20 days of receipt of a request for hearing.
- (b) Whenever a sanitary permit is suspended, the holder of the permit, or the person in charge shall be notified in writing that the sanitary permit is, upon service of the notice, immediately suspended and that an opportunity for hearing will be provided if a written request for hearing is filed with the Department by the holder of the sanitary permit. The Division may end the suspension at anytime if reasons for suspension no longer exist.

#### 8.104 Revocation of Sanitary Permit

- (a) The Division may, after providing opportunity for hearing, revoke a sanitary permit for serious or repeated violations of any of the requirements of these regulations, or for the interference with the Division in the performance of duty.
- (b) The hearing shall be conducted in accordance with the provisions of the Administrative Adjudication Law.

#### 8.105 Application After Revocation

Whenever a revocation of a sanitary permit has become final, the holder of the revoked sanitary permit may make written application for a new sanitary permit.

## 8.106 Health Certificates

Health Certificates must be obtained by all retail food store employees in accordance with separate regulations established by the Department for obtaining health certificates.

## Section 8.200

### Inspections

#### 8.201 Inspection Frequency

An inspection of a retail food store shall be performed at least once every 3 months. Additional inspections of the retail food store shall be performed as often as necessary for the enforcement of these regulations.

#### 8.202 Access

Representatives of the Department, after proper presentation of credentials shall be permitted to enter any retail food store at any reasonable time for the purpose of making inspections to determine compliance with these regulations. The representatives shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received or used.

#### 8.203 Report of Inspections

Whenever an inspection of a retail food store is made, the findings shall be recorded on the inspection report form set out in Section 8.207 of these regulations. The inspection report form shall summarize the requirements of these regulations and shall set forth a demerit value for each requirement. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the demerit values for all violations. A copy of the completed inspection report form shall be furnished to the person in charge of the store at the conclusion of the inspection. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

#### 8.204 Grading

- (a) Every retail food store shall display in a place designated by the Director, a placard approved by him or her stating the grade received



at the time of the most recent inspection of the retail food store.  
Only the Director or his/her representative may remove such placard.

(b) Grades shall be assigned to retail food stores based upon the demerit score received as follows:

1. Grade A - 0 to 10 demerits total
2. Grade B - 11 to 20 demerits total
3. Grade C - 21 to 40 demerits total
4. Grade D - 41 or more total demerits

Notwithstanding the above grading criteria, whenever there is a consecutive repetition of any 2, 4, or 6 demerit violation, the retail food store shall be downgraded to the next lower grade.

(c) The permit holder or operator of any retail food store, the grade of which has been lowered may at any time request an inspection for the purpose of regrading the store. Within 10 days following the receipt of a request, including a signed statement that the conditions responsible for the lowering of the grade have, in the applicant's opinion, been corrected, the Director shall make an inspection; and thereafter, as many additional inspections as may be deemed necessary to be assured that the applicant is complying with the higher grade requirements. If findings indicate compliance, the higher grade shall be awarded.

#### 8.205 Posting

Copies of the inspection report and grade placard shall be posted in a place designated by the Director's representative where they will be in full view of the public. Failure to post, or unauthorized removal will result in appropriate demerits being given.

#### 8.206 Correction of Violations

(a) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as complete lack of refrigeration, or sewage back-up into the retail food store, the establishment shall immediately cease operations. Operations may not resume until authorized by the Division.

2. All violations of 6 demerit items shall be corrected as soon as possible, but in any event, within 10 days following inspection. Within 15 days after the inspection, the holder of the sanitary permit shall notify the Division stating the 6 demerit violations have been corrected. A follow-up inspection shall be conducted to confirm correction.
  3. If the demerit score of the retail food store is 20 demerits or less, all 1, 2, and 4 demerit violations must be corrected within 30 days. If the demerit score is more than 20 but less than 40, all 1, 2, and 4 demerit violations which are non-structural shall be corrected within 15 days. Structural violations shall be corrected within 30 days.
  4. When the demerit score of a retail food store is more than 40, the sanitary permit shall be immediately suspended.
- (b) The inspection report shall state that failure to comply with any time limits for corrections may result in permit suspension or downgrading. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the Director within the period of time established in the notice for corrections. If a request for hearing is received, a hearing shall be held within 20 days of receipt of the request.
- (c) Whenever a retail food store is required under the provisions of Section 8.206 to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

8.207 Inspection Report Form

See Appendix A

SECTION 8.300

Examination and Condemnation  
of Food

8.301 General

Food may be examined or sampled by the Director as often as necessary for enforcement of these regulations. The Director may, upon written notice to

the owner or person in charge, specifying with particularity the reasons therefore, place a hold order on any food which he or she believes is in violation of Sections 2.101, 2.102, or any other section of these regulations. The Director shall tag, label or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The Director shall permit storage of food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within 10 days and that if no hearing is requested the food shall be destroyed. If a request for hearing is received, the hearing shall be held within 20 days after receipt of the request. On the basis of evidence produced at the hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or bring it into compliance with the provisions of these regulations.

#### Section 8.400

#### Review of Plans and Construction Permit Issuance

##### 8.401 Submission of Plans

No person shall construct, reconstruct or alter, or convert any retail food store without first submitting plans and specifications to the Department. To apply for a construction permit, the applicant must submit complete, properly prepared plans and specifications for such construction, remodeling, or alteration to the Department, Division of Environmental Health for review and approval before construction, remodeling or alteration is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Division of Environmental Health shall approve the plans and specifications if they meet the requirements of these regulations. No retail food store shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Division of Environmental Health. The requirements of this subsection are in addition to the building permit program

administered by the Department of Public Works. Construction permit issuance and approval by the Department, Division of Environmental Health does not imply Department of Public Works acceptance or approval.

8.402 Construction Permit

A construction permit will be issued once approval has been given in accordance with Section 8.401, and with separate regulations established relating to construction permits.

8.403 Pre-Operational Inspection

Whenever plans and specifications are required by Section 8.401 of these regulations to be submitted to the Department, the Division of Environmental Health shall inspect the retail food store prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of these regulations.

Section 8.500

Procedure When Infection  
is Suspected

8.501 General

When the Director has reasonable cause to suspect possible disease transmission by an employee of a retail food store, he or she may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The Director may require any or all of the following measures:

- (a) The immediate exclusion of the employee from employment in retail food stores;
- (b) The immediate closing of the retail food store concerned until, in the opinion of the Director, no further danger of disease outbreak exists.
- (c) Restriction of the employee's services to some area of the store where there would be no danger of transmitting disease;
- (d) Adequate medical and laboratory examination of the employee and of other employees and of their body discharges.

Section 8.600

Remedies

8.601 Penalties (Public Law 15-96, Section 9500.18)

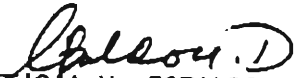
"Any person who violates any provisions of this Chapter (Chapter VI) or any valid rule or regulation promulgated under this Chapter (Chapter VI) or who

refuses or neglects to comply with any order issued by the Director or other officers and personnel of the Department in the carrying out of the provisions of this Chapter (Chapter VI), the penalty for which is not otherwise prescribed in this Chapter (Chapter VI) is guilty of a misdemeanor."

8.602 Injunctions

The Department may seek to enjoin violations of these regulations.

Adopted this 11th day of May, 1987.

  
LETICIA V. ESPALDON, M.D.  
Director of Public Health  
and Social Services

8.4

MAY 26 '88

NINETEENTH GUAM LEGISLATURE  
1988 (Second) Regular Session

Bill No. 930(Ls)

Introduced by:

(3) *[Signature]*  
 Don Parkinson  
 and other Senators  
 (2) Marcia K. Kentsock *[Signature]*  
 (4) J.M. RIVERA *[Signature]*  
 (3) *[Signature]*  
 J.B. AMBA *[Signature]*  
 E. Garcia  
 A. C. ANTONIO III  
 M. B. O. Manubusa  
 E. M. *[Signature]*  
 E. R. Duent  
 M. RUTH *[Signature]*

AN ACT TO ADD A NEW SUBSECTION (f) TO SECTION 40120 OF THE GOVERNMENT CODE RELATIVE TO REQUIRING THAT ALL FOOD, DRUG AND CONSUMER COMMODITIES BE MARKED WITH EXPIRATION DATE, AND OTHER INFORMATION, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new subsection (f) is added to 10 GCA 40120 to read as follows:

"(f) Any food, drug or consumer commodity for which the manufacturer or distributor has established or recommended a pull date or other date by which the food, drug or consumer commodity should be used shall:

- (1) Have the pull date, "best if used by" date, expiration date or other date by which the

food, drug or consumer commodity should be used, clearly marked on the packaging or labeling. Color coding may be used if the meanings of the color codes are clearly and plainly displayed in close proximity to the consumer commodities. Any product with a date on it shall be clearly marked as to whether the date is the date of packaging, the pull date, the expiration date, or some other date.

- (2) Any outdated food, drug or consumer commodities which are still fit for human consumption and which is more than two days outdated, may be sold, displayed in a retail store or offered for sale only if the item is still fit for human consumption and each package is clearly marked with the word "Outdated" or "Expired Merchandise" or words of similar meaning as may be approved by regulations promulgated by the Director of the Department of Public Health.
- (3) Notwithstanding any provision of law, all fresh or frozen packaged meat, fresh eggs, bread, fresh milk and fresh dairy products and ice cream, and such other food, drug and consumer commodities designated by of the Director of the Department of Public Health

and Social Services shall have a clearly designated expiration date on each package offered for retail sale.

- (4) Any dented or damaged package or can of consumer products shall clearly be marked "Damaged".
- (5) Any fresh or frozen meat or poultry products which have had water added shall be clearly labeled "Water added".
- (6) It shall be unlawful to sell any rusty canned goods.
- (7) It shall be a misdemeanor for any person to sell or offer for sale any food, drug or consumer commodity which is not clearly labeled and marked in English or Chamorro as herein provided for in this Chapter.
- (8) In addition to criminal penalties for the violation of this Section, the Director of Public Health and Social Services may, pursuant to regulations, impose civil penalties and fines not exceeding Five Hundred Dollars (\$500) for each failure to properly label or mark products in English or Chamorro languages as herein provided, and may, pursuant to regulation, and close repeated offenders; shall



- (9) Each violation of this Section shall be counted as at least one or more demerits as the conditions dictate, in determining demerit points in the issuance of sanitary permits or renewals thereof as provided for in 10 GCA Chapter 21. For purposes of this subsection, a minimum of one (1) demerit point must be given for each different inventory item found in violation of this Section, but exactly identical items found in violation may be counted as one violation.
- (10) Any seller of food, drugs and consumer commodities found to have more than twenty (20) different products displayed or offered for sale which do not comply with the provisions of this Section shall be immediately closed as an unsanitary establishment pursuant to the provisions of 10 GCA Chapter 21.
- (11) The Director of the Department of Public Health and Social Services shall promulgate rules and regulations to implement this Section pursuant to the Administrative Adjudication Act.