

result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

- (2) An additive that is used as specified in section 409 of the Federal Food, Drug, and Cosmetic Act; or
- (3) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999 per cent reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Service animal" means an animal that meets the criteria as specified in 28 CFR 36, entitled "Nondiscrimination on the basis of disability in public places and commercial facilities".

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia Coli*" (STEC) means any *E. Coli* capable of producing Shiga toxins (also called verocytotoxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea, to hemorrhagic colitis (i.e., blood diarrhea), to hemolytic uremic syndrome (HUS - a type of kidney failure). Examples of serotypes of STEC include: *E.coli* O157:H7; *E.coli* O157:NM; *E.coli* O26:H11; *E.coli* O145:NM; *E.coli* O103:H2; and *E.coli* O111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic *E.coli*) or

as EHEC (Enterohemorrhagic *E.coli*). EHEC are a subset of STEC of which can cause hemorrhagic colitis or HUS.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications in sections 11-50-45(a) and 11-50-46(a) and (c) for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus ten degrees Fahrenheit to twenty-five degrees Fahrenheit in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"Smooth" means:

- (1) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;
- (2) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
- (3) A floor, wall, or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

"Special event" means a planned activity where food is distributed to the public with or without charge at a single specified location held indoors or outdoors, on public or privately owned property, and may include a sporting event, carnival, fairs, farmer's markets, public exhibition, festival, religious organization function, parade or other similar gathering.

"State" means the State of Hawaii.

"Support kitchen" means a food establishment that provides facilities or services in support of another food establishment for cleaning, storage, food preparation,

cooking, cooling, reheating, servicing water supply, or wastewater disposal. A private home kitchen shall not be used as an approved support kitchen.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"TCS food" means time/temperature control for safety food.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the director that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the director, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

"Water activity" means the measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol A_w .

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

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment. [Eff 2/24/2014; am and comp SEP 01 2017] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-3 Permits, special events, homemade food products and hand-pounded poi, and exemptions. (a)

Permits. No person may operate a food establishment without a valid permit issued by the director, which shall remain valid for one year from the date of issuance unless suspended by the director, after which it shall become void unless renewed in accordance with section 11-50-4, except as otherwise provided in this section.

(b) Special events. Any person who intends to operate a food establishment in conjunction with a special event may apply for a special event permit:

- (1) A special event permit shall not be issued until the applicant has submitted documents and information in accordance with, and otherwise conforms to, the requirements of section 11-50-4.
- (2) The director may issue a special event permit to operate a food establishment in conjunction with a special event only if the documents and other information provided pursuant to section 11-50-4, or otherwise requested by the director, are consistent with the protection of public health and the environment.
- (3) The director may attach special conditions to any special event permit that, in its discretion, is reasonably necessary to mitigate any potential impact on public health or the environment associated with the special event. Any violation of a special condition shall be enforceable as a violation of this chapter.
- (4) A special event permit shall be valid only for the particular dates of operation, or period(s) of operation, indicated on the special event permit, and in no event shall the particular dates or period(s) of operation indicated on any one permit cumulatively exceed thirty-one days in a three hundred sixty-five day period.
- (5) Any person who operates a food establishment in conjunction with a special event shall comply with all the requirements of this chapter except



sections 11-50-70, 11-50-71, 11-50-72(d)-(k), 11-50-73 and 11-50-74.

(c) Homemade food products and hand-pounded poi. Any person who operates a food establishment that produces or packages only homemade food products in a home kitchen or only produces hand-pounded poi shall be exempt from the provisions of this chapter, except that they shall remain subject to the inspection in accordance with section 11-50-8 and, the provisions of sections 11-50-10, 11-50-11, 11-50-14, and shall adhere to the following special conditions, violations of which shall constitute violations of this chapter:

- (1) Obtain food safety certification in accordance with section 11-50-20(c);
- (2) Ensure that a handwashing sink with appropriate cleaning compound is available at all times during food preparation activities and is used to maintain cleanliness pursuant to sections 11-50-22(b) and (c);
- (3) Label all food in accordance with the requirements of section 11-50-35(c); and
- (4) Distribute food products only directly to the consumer.

(d) Exemptions. The following food establishments shall be exempt from the provisions of this chapter except that they shall remain subject to inspection in accordance with section 11-50-8 and the provisions of sections 11-50-10, 11-50-11, and 11-50-14, and shall adhere to the following special conditions, violations of which shall constitute violations of this chapter:

- (1) A food establishment that is inspected by another federal, state or county regulatory agency, provided that the agency has entered into a memorandum of understanding or a memorandum of agreement with the director and the agency maintains regulatory responsibility for the establishment;
- (2) A food establishment that sells or otherwise distributes only prepackaged foods that are not potentially hazardous food (time/temperature control for safety food) manufactured and packaged in a food establishment permitted by the director or otherwise approved by an equivalent agency in another jurisdiction;
- (3) A food establishment that sells or otherwise distributes only pre-packaged frozen confections

produced in a food establishment permitted by the department or otherwise approved by an equivalent agency in another jurisdiction;

- (4) A food establishment that sells or otherwise distributes only not potentially hazardous hot beverages served directly into sanitary single-service articles; and
- (5) A home kitchen operated by a child-care provider where food is served to no more than twelve children, or a home kitchen operated by an adult-care provider or bed-and-breakfast where food is served to no more than six guests, so long as the person in charge obtains food protection certification pursuant to section 11-50-20(c), food operations are limited to those risk categories enumerated in section 11-50-7(e)(1)-(4), and signage, with lettering no smaller than one inch in height, remains posted at the entrance to the kitchen within the home notifying any consumer that the food served is "Made in a home kitchen not routinely inspected by the Department of Health". [Eff 2/24/2014; am and comp SEP 01 2017] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-4 Permit application, renewal, and HACCP plans. (a) A permit to operate a food establishment, and any renewal of a permit to operate a food establishment, may be issued only after the department receives a complete application on the forms provided by the department, as well as all necessary plans, menus, operating procedures, the required fee, other information deemed necessary to access the operations of the proposed food establishment, and the inspection(s) specified in subsection (i) has been completed, if required by the department.

(b) For any new permit, or the renewal of an existing permit, the applicant shall submit to the department:

- (1) A completed application for food establishment permit or application for renewal;
- (2) The plans and specifications of the food establishment with an application for plan review, if requested by the department;
- (3) A list of food items to be offered by the food establishment, if requested by the department;
- (4) A HACCP plan, if requested by the department;



- (5) Any documents detailing significant operational or menu changes anticipated or which have already occurred;
 - (6) Any documents detailing the operational agreement between a food establishment and a support kitchen, if applicable; and
 - (7) Any other information that may be required by the department for the proper review of the proposed construction, conversion, or modification, and procedures for operating a food establishment.
- (c) For changes of ownership of food establishments, the director may issue a permit to a new owner of an existing establishment after:
- (1) A completed application for food establishment is submitted;
 - (2) The required fee is submitted; and
 - (3) An inspection shows that the establishment is in compliance with this chapter.
- (d) The department may decline to act upon any incomplete application. An application shall be deemed complete only when all required and requested information, including the application form, plans, specifications, and other information have been submitted.
- (e) Every application shall be signed by a person with authority to represent the food establishment's owner or operator and shall constitute an acknowledgment and agreement, that the applicant, and those the applicant represents, will comply with all the terms and conditions of this chapter.
- (f) The department may require the submission of additional information after the application has been submitted and may suspend the processing of the application until such time as the applicant has supplied all required information or otherwise corrected the deficiency.
- (g) The failure of the department to act on a completed application within thirty days of the receipt of the application shall be deemed an approval of the application; provided that the applicant has acted in good faith with the application process and has submitted all requested information.
- (h) Hazard Analysis and Critical Control Point (HACCP) plan.
- (1) A food establishment shall operate in conformance with a HACCP plan approved by the department when:

- (A) A variance is required as specified in section 11-50-33(a)(4)(D), 11-50-34(j), or 11-50-46(w)(2);
 - (B) A variance is requested by the applicant;
 - (C) The director determines that a HACCP plan is needed based on information submitted pursuant to an application for permit; or
 - (D) Circumstances discovered during an inspection indicate the need for a HACCP plan.
- (2) When the department identifies a health hazard for which a HACCP plan is needed, the owner or operator of a food establishment shall submit for the department's approval plans and specifications that indicate:
- (A) A categorization of the types of potentially hazardous foods (time/temperature control for safety foods) that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the director;
 - (B) A flow diagram by specific food or risk category type identifying critical control points and providing information on the following:
 - (i) Ingredients, materials, and equipment used in the preparation of that food; and
 - (ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
 - (C) Food employee and supervisory training plan that addresses the food safety issues of concern;
 - (D) A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - (i) Each critical control point;
 - (ii) The critical limits for each critical control point;
 - (iii) The method and frequency for monitoring and controlling each critical control point by the food

- employee designated by the person in charge;
- (iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
- (v) Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
- (vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
- (E) Additional scientific data or other information, as required by the director, supporting the determination that food safety is not compromised by the proposal.
- (i) The department may conduct inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures, and is in compliance with this chapter and other laws. [Eff 2/24/2014; am and comp

SEP 01 2017] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-5 REPEALED. [R SEP 1 2017]

§11-50-6 REPEALED. [R SEP 1 2017]

§11-50-7 Fees. (a) Each application for issuance or renewal of a food establishment permit shall be accompanied by the payment of a fee.

(b) No food establishment permit shall be issued or renewed unless all fees required by this chapter are paid.

(c) If an establishment fails to qualify for issuance or renewal of a food establishment permit, no part of the fee will be refunded to the applicant.

(d) A renewal fee for each food establishment shall be paid to the department before the permit expiration date.

(e) The fees shall be based on the following permit categories shown in Table 7-1. The permit categories are based on the total number of food operations within the establishment. These food operations include the following:

- (1) Receiving;
- (2) Cold storage, holding, preparation, and thawing;
- (3) Hot storage, holding, and preparation;
- (4) Thermal processing;
- (5) Transportation;
- (6) Cooling;
- (7) Reheating; and
- (8) Display.

(f) The following permit risk categories are as follows:

- (1) Category 1 Any six to eight of the food operations noted in subsection (e);
- (2) Category 2 Any three to five of the food operations noted in subsection (e); and
- (3) Category 3 Any zero to two of the food operations noted in subsection (e);

(g) Annual and renewal permit fees are as specified in Table 7-1.

Table 7-1 PERMIT FEES SCHEDULE

	FOOD ESTABLISHMENT TYPE	s.f. ¹ (size)	RISK CATEGORY	PERMIT FEE
1.	Catering	-	1	\$400
2.	Catering	-	2	\$300
3.	Catering	-	3	\$200
4.	Food Manufacturer - small	≤1,000	1	\$300
5.	Food Manufacturer - small	≤1,000	2	\$200
6.	Food Manufacturer - small	≤1,000	3	\$100
7.	Food Manufacturer - large	>1,000	1	\$400
8.	Food Manufacturer - large	>1,000	2	\$300
9.	Food Manufacturer - large	>1,000	3	\$200
10.	Food Warehouse - small	≤1,000	-	\$100
11.	Food Warehouse - large	>1,000	-	\$300
12.	Hotel Main Kitchen/ Banquet/Convention	-	1	\$600

13.	Hotel Main Kitchen/ Banquet/Convention	-	2	\$500
14.	High Risk Institutional Kitchens (pre-schools, elementary schools, hospitals, other high-risk populations)	-	1	\$400
15.	Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	1	\$400
16.	Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	2	\$300
17.	Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	3	\$100
18.	Market - small	≤1,000	1	\$300
19.	Market - small	≤1,000	2	\$200
20.	Market - small	≤1,000	3	\$100
21.	Market - large	>1,000	1	\$400
22.	Market - large	>1,000	2	\$300
23.	Market - large	>1,000	3	\$200
24.	Mobile Establishments	-	1	\$300
25.	Mobile Establishments	-	2	\$200
26.	Mobile Establishments	-	3	\$100
27.	Support Kitchen	-	1	\$300
28.	Support Kitchen	-	2	\$200
29.	Support Kitchen	-	3	\$100
30.	Restaurant - small	≤1,000	1	\$300
31.	Restaurant - small	≤1,000	2	\$200
32.	Restaurant - small	≤1,000	3	\$100
33.	Restaurant - large	>1,000	1	\$400
34.	Restaurant - large	>1,000	2	\$300
35.	Restaurant - large	>1,000	3	\$200
36.	Service Area - limited food prep	-	-	\$100
37.	Service Area - no food prep	-	-	\$50
38.	Homeless Feeding/Charitable or Benevolent Organization	-	1	\$0
39.	Homeless Feeding/Charitable or Benevolent Organization	-	2	\$0

40.	Homeless Feeding/Charitable or Benevolent Organization	-	3	\$0
41.	Special Event Food Establishment: 1-5 days	-	-	\$50
42.	Special Event Food Establishment: 6-10 days	-	-	\$75
43.	Special Event Food Establishment: 11-20 days	-	-	\$100
44.	Special Event Food Establishment: 21-31 days	-	-	\$100 +\$5 for each day over 20 days
45.	Special Event Food Establishment: Value added farm products	-	-	\$25
46.	Special Event Food Establishment (applicants such as youth groups, schools, hospitals, religious groups, community service organizations, athletic groups, and other charitable or benevolent organizations)	-	-	\$0

¹s.f. means square feet

(h) All permit fees are non-transferable and non-refundable and must be fully paid prior to the issuance of any new or renewed permit.

(i) Food establishment renewal fees that are received by the department after the expiration date will be subject to an additional late fee equal to twenty per cent of the annual permit fee.

(j) Food establishment permits shall not be issued or renewed if any outstanding fines imposed by the department have not been paid in full.

(k) Plan review fees are as specified in Table 7-2.

Table 7-2 PLAN REVIEW FEE TABLE

PLAN REVIEW TYPE	SUB-TYPE	FEE
Food Establishment, Liquor Establishment, Mobile Unit	1,000 s.f. or less	\$200
Food Establishment, Liquor Establishment, Mobile Unit	>1,000 s.f.	\$300
Prepackaged Only	Mobile or fixed	No Fee

¹s.f. means square feet

[Eff 2/24/2014; am and comp SEP 1 2017] (Auth: HRS
S321-11) (Imp: HRS S321-11)

S11-50-8 Inspection and correction of violations.

(a) Establishing inspection interval.

- (1) The department may inspect a food establishment at a frequency based upon the risk of foodborne illness transmission as determined by the department. Inspections shall also be conducted in response to a complaint or an epidemiological investigation of an alleged foodborne illness outbreak;
- (2) The department shall be permitted to examine the records of the establishment to get pertinent information regarding food, supplies, and services purchased, received, or used and persons employed.

(b) The department may prioritize and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

- (1) Past performance, for nonconformance with this chapter or HACCP plan requirements that are critical items;
- (2) Past performance, for numerous or repeat violations of this chapter or HACCP plan requirements that are noncritical items;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular foods that are prepared, stored, or served;

- (5) The type of operation including the methods and extent of food storage, preparation, and service;
- (6) The number of people served; and
- (7) Whether the population served is a highly susceptible population.

(c) After the department presents official credentials and indicates an intent to conduct an inspection, the person in charge shall allow the department to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the department is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(d) An inspection report or other record shall be used to document the conditions observed and any noncompliance with this chapter that requires correction, which may include any of the following:

- (1) Nonconformance with requirements of this chapter;
- (2) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified in section 11-50-13(i);
- (3) Failure of the person in charge to provide records required by the department for determining conformance with a HACCP plan as specified in section 11-50-4(h)(2)(D); and
- (4) Nonconformance with critical limits of a HACCP plan.

(e) The department shall specify on the inspection report the time frame for correction of the violations in accordance with this chapter.

(f) At the conclusion of the inspection, the department shall request a signature by the person in charge acknowledging receipt of the department's findings.

(g) Refusal to sign acknowledgment of the department's findings shall not affect the owner or operator's obligation to correct the violations noted in the inspection report within the time frames specified.

(h) The department shall treat the inspection report as a public document and shall make the report available for disclosure to a person who requests the report as provided by law.

(i) Ceasing operation and self-reporting - imminent health hazard.

(1) The owner or operator shall immediately discontinue food operations and notify the department that an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, natural disaster, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(2) An owner or operator may be allowed to continue operations in an area of an establishment that is unaffected by the imminent health hazard.

(j) Resumption of operations. If operations are voluntarily suspended or suspended as may otherwise be provided by this chapter, the owner or operator shall obtain approval from the department before resuming operations.

(k) Timely correction of violations.

(1) Except as otherwise directed by the department, an owner or operator shall immediately correct a critical violation of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

(2) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the department may specify a longer time frame for the owner or operator to correct critical violations or HACCP plan deviations.

(3) The owner or operator shall correct all critical and non-critical violations by a date and time specified by the department in any inspection report or other directive from the department.

(1) Verification and documentation of correction.

(1) After observing at the time of inspection a correction of a critical violation or a HACCP plan deviation, the department shall enter the violation and information about the corrective action on the inspection report.

(2) After receiving notification that the owner or operator has corrected a critical violation or HACCP plan deviation, or at the end of the

specified period of time, the department shall verify correction of the violation, document the information on an inspection report, and enter the report in the department's records.

(m) Upon request, the department shall provide a copy of the completed inspection report to the owner or operator or person in charge. [Eff 2/24/2014; am and comp

SEP 01 2017] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-9 Placarding. (a) Upon completion of an inspection, the department may post at the food establishment a color coded placard indicating the compliance status of that establishment. The placard shall be posted in a location clearly visible to the general public and patrons entering the food establishment.

(1) Clearly visible to the general public and patrons means:

- (A) Posted in the window of the food establishment within five feet of the main entrance to the establishment;
- (B) Posted in a display case (such as a menu box) mounted on the outside wall of the food establishment within five feet of the main entrance to the establishment; or
- (C) In the event that a food establishment is operated in the same building as a separately permitted or licensed business, or in the event that a facility shares common patron entrance with a separately permitted facility or licensed business, or in the event of both, posted in the initial patron contact area; or
- (D) Posted in any other location approved by the director to ensure proper notice to the general public and patrons.

(b) The placard shall not be defaced, marred, camouflaged, hidden, or removed. It shall be unlawful to operate a food establishment unless the placard is posted in accordance with this chapter and tampering of any kind with the placard may result in the immediate suspension of the food establishment permit.

(c) A placard shall remain valid from the time of issuance until it is removed or replaced by the department.

(d) Placard color coding:

(1) A green placard shall indicate:

- (A) Zero or one critical violation was observed during an inspection, and the critical violation was corrected or mitigated during the inspection; or
 - (B) A follow-up inspection has verified correction of all critical violations;
- (2) A yellow placard shall indicate one violation as described in paragraph (1) (A) remains uncorrected or two or more critical violations were observed during an inspection and additional corrective action is necessary.
- (A) A follow-up inspection may be conducted within two business days to ensure all critical violations are corrected or mitigated and remain corrected;
 - (B) The yellow placard shall remain posted until all critical violations are corrected or mitigated to the satisfaction of the director;
- (3) A red placard shall indicate there is an immediate danger to public health and closure of the food establishment is necessary to protect public health:
- (A) A red placard may be posted upon a finding by the department that there exists an imminent health hazard which includes, but is not limited to:
 - (i) The department being denied entry into the food establishment or being unable to perform an inspection due to circumstances within the control of the owner or operator or person in charge;
 - (ii) The food establishment having no valid permit to operate issued by the department;
 - (iii) Epidemiological evidence of foodborne illness or disease transmission connected to the food establishment;
 - (iv) An employee of the food establishment who is a carrier of a communicable disease working in a capacity whereby the disease may be transmitted through food;
 - (v) Hot or cold water not available as required;

- (vi) No power available to operate refrigeration or cooking equipment;
- (vii) Rodent or vermin infestation;
- (viii) Sewage overflow or flooding within the establishment;
- (ix) Any other condition that poses an immediate danger to public health or the environment, as determined by the director;
- (B) Upon the posting of a red placard, closure of the food establishment shall be effectuated by an immediate suspension of the food establishment permit.
 - (i) The red placard shall indicate that the applicable food establishment permit has been suspended and shall constitute written notice to the owner or operator pursuant to section 11-50-12(c).
 - (ii) The procedures of section 11-50-12(c) shall be applicable and shall govern the disposition of both the red placard and the permit suspension.
- (e) Critical violations may include, but are not limited to:
 - (1) Employees with communicable diseases, wounds, and rashes;
 - (2) An employee has discharge from the eyes, nose, or mouth;
 - (3) Hands not clean and not properly washed, gloves not used properly;
 - (4) Handwashing facilities not provided, not supplied, not properly operating, or inaccessible;
 - (5) Improper temperature control of potentially hazardous foods;
 - (6) PHF (time/temperature control for safety food) not properly labeled when using time as a public health control;
 - (7) PHF (time/temperature control for safety food) improperly cooled;
 - (8) Improper cooking time and temperatures not adhered to;
 - (9) Improper reheating procedures for hot holding not adhered to;
 - (10) Re-service of returned food;

- (11) Food contaminated or adulterated;
 - (12) Food-contact surfaces not cleaned and sanitized as required;
 - (13) Improper warewashing procedure;
 - (14) Non-compliance with proper shellfish handling and service;
 - (15) Non-compliance with HACCP plans, specialized process, and variances;
 - (16) Prohibited food offered to highly susceptible population;
 - (17) Hot or cold water not available as required;
 - (18) Sewage and wastewater not properly disposed of;
 - (19) Rodents, insects, birds, or prohibited animals within establishment;
 - (20) Food not protected from cross contamination;
 - (21) Restrictions on eating and the use of tobacco; and
 - (22) Improper storage or use of poisonous or toxic materials.
- [Eff 2/24/2014; am and comp SEP 01 2017] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-10 Embargo and detention. (a) Based upon the department's findings or other evidence, the director may embargo or detain any food determined to be a potential health hazard.

- (1) The department may attach a tag or other appropriate marking to food determined to be a potential health hazard. The marking shall be removed only by the department;
- (2) Food embargoed or detained pursuant to this subsection shall not be moved or used unless the embargo or detainment has been rescinded;
- (3) Within seven days of the embargo or detainment, the director shall:
 - (A) Extend the holding period for the period of time needed to further investigate the safety of the food being held; or
 - (B) Rescind the action.
- (b) The tag or other marking indicating that food has been embargoed or detained shall:
 - (1) Provide the department's findings and conclusions with respect to the food determined to be a potential health hazard; and

- (2) Notify the person whose food has been embargoed or detained of their right to request a hearing.
- (c) If the owner of food which has been embargoed or detained submits a written request to the department for a hearing to contest the embargo or detainment within seven days from the date the tag or other marking was affixed to the food, the director shall provide a hearing as soon as practicable. At such hearing the director shall:
 - (1) Determine whether the embargoed or detained food is a potential health hazard;
 - (2) Determine whether the food must be destroyed and under what circumstances; and
 - (3) Issue a final order for the continued embargo or detainment and ultimate disposition of the embargoed or detained food, or rescind the action.
- (d) If no written request is submitted to the department within seven days from the date the tag or other marking of embargo or detainment was affixed to the food, the department's findings and conclusions shall become final and the owner or operator of the food establishment shall dispose of the embargoed or detained food in the manner prescribed by the director. [Eff 2/24/2014; am and comp ^{SEP 0 1 2017} (Auth: HRS §321-11) (Imp: HRS §321-11)]

§11-50-11 Prevention of foodborne disease transmission by employees. (a) The department shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

- (1) Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and
 - (2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.
- (b) Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the department may issue an