



Article III “Food Safety” Repeal and Replace: Public Comment Period Overview & Summary of Notable Changes

The Board of Health approved a Public Comment Period of 75 days for the proposed repeal and replace of Article III “Food Safety” on Nov. 3, 2021. The Public Comment Period was held from November 12, 2021 through January 24, 2022. In addition to accepting written comments, oral testimony was also compiled at a Virtual Public Hearing that was held on January 20, 2022. Fourteen members of the public gave oral testimony at the Hearing. Throughout the comment period, ACHD and the Food Safety Program performed outreach activities to encourage comment from all corners of the food sector. A wide spectrum of the food sector ultimately submitted comments, with submissions received from brick and mortar food facilities, mobile vendors, event organizers, nonprofit facilities, transportation and delivery services, professional organizations, policy and educational groups, and the general public.

At the close of the Public Comment Period, the BOH received over 650 submissions, including both written and oral testimony. ACHD drafted a Comment and Response document that considers 202 unique comments compiled from submissions. Actions the Department has and will continue to take in response to public comment include:

- Revising the proposed language of Art. III.
- Creating new guidance documents for food facility operators and revising existing guidance to align with proposed changes.
- Identifying opportunities for greater accessibility, including further enhancing the readability of the final Art. III document and translating select public-facing materials into relevant languages.
- Reviewing and improving internal policies and procedures.
- The Food Safety Program is also pursuing or boosting activities that complement the update to Article III and that address comments on issues outside of the scope of the Article, including: updating the fee schedule, performing educational outreach to members of the food industry, updating the program’s website, and updating IT for internal and external use.

The below summary captures the first of these actions, outlining the most notable proposed language changes found in the new draft of Article III. Page numbers correspond to the Proposed Article III Revision document.

Notable Changes Drafted in Response to Public Comment:

- §302 Food Permits: Language outlining nonprofit/community groups that are subject to classification and permitting has been moved from the “General” to the “Fees” subsection. This change reflects that nonprofit status can have an impact on permitting and planning fees but is not a factor when determining classification. **p. 5**
- §304 Food Facility Plans and Applications: Language was added to clarify that the replacement of equipment with a similar item or alterations that are strictly cosmetic in nature are not subject to plan review. **p. 8**
- §305 Inspections: Clarifying language added to the requirement that food facilities that operate on an irregular basis shall provide the Department with planned or anticipated dates of operation. **p. 10**
- §310 Utensil Handling and Storage: **Subsection 310.4 “Returnable Items” was added.** The subsection outlines the cleaning, durability, and construction requirements for returnable items and adheres to language that appears to the FDA Food Code. **p. 16**



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- §311 Cleaning and Sanitization of Equipment and Utensils: **Subsection 311.5 “Alternative Manual Cleaning and Sanitizing” was added.** The subsection provides approved procedures for when washing in a three-compartment sink or dishwasher is unavailable or impractical. This subsection and other clarifying language throughout the section was added in response to public comment. Subsection 311.2 “Cleaning Frequency” was amended to place language from the FDA Food Code directly in the text rather than adopting requirements by reference. **p. 21**
- §316 Animals in Food Facilities: Section 316.1 was amended to reflect the need for approval from the Department for pet areas external to the food facility. Section 316.2 “Pet Friendly Areas” has been removed from the proposed regulation and its provisions that are consistent with PA Department of Agriculture requirements will be incorporated into an internal pet friendly approval process and an external guidance document for food facility operators. **p. 25**
- §321 Plumbing: Section was revised to reflect the requirements for the use of two compartment sinks after prior approval from the Department. **p. 29**
- §325 Certified Food Protection Managers: Updated to reflect that nonprofit/community groups outlined in section 302.3 (D) are exempt from the Certified Food Protection Manager requirement, in accordance with the Food Employee Certification Act. **p. 32**
- §332 Food Storage: “TCS Food in a Homogenous Liquid Form” was moved from 332.3 (C) into the subsection 332.5 for clarity and readability. Subsection 332.6 “Date Marking of Food” was expanded to assist in clarifying activities separate from labeling and includes information for both refrigerated and frozen foods. **p. 41**
- §333 Food Preparation: **Subsection 333.9 “Food Labels” was added.** This section is intended to address common confusion differentiating between date marking and labeling and its language aligns with the FDA Food Code. **p. 48**
- §334 Food Display and Service: **Subsection 334.3 “Food Delivery” was added.** The subsection specifies the responsibilities of food facilities that use a delivery service or deliver directly to consumers. The subsection also clarifies that food in the possession of delivery services, as defined in the Article, is outside of the scope of the Article. **p. 50**
- §335 Donation of Foods: Revisions were made throughout to provide improved readability and to further align the section with the Bill Emerson Act and the PA Food Donation Limited Liability Act. Language requiring donors to have knowledge of end-user intent was removed and the subsection 335.6 “Receiving Donated Foods” was added. **p. 52**
- §336 Transportation of Food: Revisions were made throughout to provide improved readability and to distinguish transport from delivery. **p. 53**
- §332 Effective Date: **Effective date was added.** **p. 70**
- §353 Definitions: Definitions for **delivery** and **transport** were added to aid in distinguishing the two activities. Full descriptions were added for **low, medium, and high risk factors**. **Food preparation** and **packaging** definitions were revised for clarity. **p. 70**
- §354 Tables: The tables referenced in the Article were given their own section so as to give uniformity in their citation and to ease readability by placing the tables in one set location. **p. 83**



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How to Read the Redline Proposed Article III Revision:

Plain text	Language that has not changed from the original Article III
Strikethrough text	Language from the original Article III proposed to be removed
<u>Bold and underline text</u>	Language that is proposed to be added to Article III. This includes revised language as well as new content.
Red strikethrough text	Language from the original Article III proposed to be removed after the close of the Public Comment Period
<u>Red bold and underline text</u>	Language that is proposed to be added to Article III after the close of the Public Comment Period. This includes revised language as well as new content.