

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

**Proposing rule making related to adoption of 2017 food code
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2(1).

Purpose and Summary

The proposed amendments adopt by reference the 2017 Food and Drug Administration (FDA) Food Code, update associated references to the Food Code, and make modifications to the adoption of the 2017 FDA Food Code with respect to food production manager certification requirements. The primary effects of adopting the 2017 FDA Food Code include changes to when a certified food protection manager is required (2017 FDA Food Code rule 2-201.12); requiring a person in charge to ensure food employees are routinely monitoring food temperatures (2017 FDA Food Code rule 2-103.11); and requiring a single-use glove to be worn over a bandage, finger cot, or finger stall (2017 FDA Food Code rule 2-401.13). The remaining effects of adopting the 2017 FDA Food Code generally provide clarification of existing requirements and editorial content. The FDA’s summary of the changes in the 2017 Food Code and the Supplement to the 2017 Food Code may be found at: www.fda.gov/food/fda-food-code/summary-changes-fda-food-code-2017 and www.fda.gov/media/133749/download.

The proposed amendments also correct an erroneous reference to Iowa Code chapter 137C.

Prior to submission of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments, and food safety educators.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 24, 2020. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 481—30.2(10A,137C,137D,137F), introductory paragraph, as follows:

481—30.2(10A,137C,137D,137F) Definitions. If both the ~~2013~~ 2017 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

ITEM 2. Amend rule 481—31.1(137F), introductory paragraph, as follows:

481—31.1(137F) Inspection standards for food establishments.² The department adopts, with the following exceptions, the ~~2013~~ 2017 Food Code with Supplement of the Food and Drug Administration as the state’s “food code,” which is the inspection standard for food establishments other than food processing plants.

ITEM 3. Amend subrule 31.1(1), introductory paragraph, as follows:

31.1(1) Unattended food establishments—assignment of responsibility. For the purposes of section 2-101.11(C) of the ~~2013~~ 2017 Food Code with Supplement, unattended food establishments are not required to have a designated person in charge present during all hours of operation provided that the permit holder ensures the following requirements are met.

ITEM 4. Rescind subrule 31.1(2) and adopt the following **new** subrule in lieu thereof:

31.1(2) Certified food protection manager requirements, exceptions, and time frames for compliance.

a. For the purposes of section 2-102.12(A) of the 2017 Food Code with Supplement, the food establishment may employ a single certified food protection manager who is not present at the food establishment during all hours of operation, as long as the following requirements are met:

(1) The individual who is a certified food protection manager has supervisory and management responsibility and the authority to direct and control food preparation and service at the food establishment;

(2) The person in charge demonstrates knowledge as prescribed in section 2-102.11 of the 2017 Food Code with Supplement; and

(3) The person in charge demonstrates active managerial control of food safety by complying with section 2-103.11 of the 2017 Food Code with Supplement.

b. A food establishment that, upon inspection, is found to be in violation of section 2-102.11 or 2-103.11 of the 2017 Food Code with Supplement will have six months to ensure that any individual designated as the person in charge is a certified food protection manager.

c. For the purposes of section 2-102.12(B), the following food establishments are not required to employ a certified food protection manager:

(1) Food establishments that sell only prepackaged food.

(2) Temporary or farmers market food establishments.

(3) Food establishments at which food is not prepared, where customers may purchase beverages and where the service of food is limited to the service of ice, beverages, prepackaged snack foods, popcorn or peanuts and to the reheating of commercially prepared foods for immediate service that do not require assembly, such as frozen pizza or prepackaged sandwiches.

(4) Food establishments at which food is not prepared, where customers may purchase only commercially prepared non-time/temperature control for safety foods that are dispensed either unpackaged or packaged and that are intended for off-premises consumption.

d. Time frames for compliance with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*” are as follows:

(1) Newly licensed facilities must comply with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*,” within six months of licensure.

(2) If an individual meeting the requirement of paragraph 31.1(2) “*a*” leaves employment, the establishment shall meet the requirement of section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*,” within six months of the individual’s departure.

ITEM 5. Rescind subrule **31.1(10)**.

ITEM 6. Renumber subrules **31.1(11)** to **31.1(19)** as **31.1(10)** to **31.1(18)**.

ITEM 7. Amend rule 481—31.4(137D,137F) as follows:

481—31.4(137D,137F) False label or defacement. No person shall use any label required by Iowa Code chapter ~~437C~~ 137D or 137F which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.