

2019

**FIRST DISTRICT
HEALTH UNIT**

Environmental Health Division

Requirements for Food and Beverage Establishments



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NOTICE OF RULE AND REGULATION NO. 1 of the FIRST DISTRICT HEALTH UNIT

This rule and regulation regulates the inspection of food and beverage establishments; the issuing, suspension, and revocation of permits for the operation of such establishments; the enforcement of this regulation, and the fixing of penalties, and prohibiting the sale of adulterated, misbranded, or unwholesome food and drink.

Section 1. All licensure of, regulation of, and inspection of any food establishment found within the First District Health Unit shall be done in accordance with First District Health Unit policies and in accordance with the 2019 edition of the First District Health Unit Requirements for Food and Beverage Establishments. All food establishments shall operate in full compliance with these policies and regulations.

Section 2. Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor.

Section 3. That Rule and Regulation No. 1 dated July 1, 2016 by order of the First District Health Unit and all other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

Section 4. That this Code and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect as of January 1, 2019.

Passed and approved by the First District Health Unit Board of Health on June 28, 2018.

By President Walter M. Lipp
First District Health Unit
Board of Health

First District Health Unit

Requirements for Food and Beverage Establishments

The following regulations, promulgated by the First District Health Unit and approved by resolution of the First District Board of Health on June 28, 2018; and effective January 1, 2019 as authorized by Section 23-35-08 of the ND Century Code, shall govern the operation of all food establishments located in the counties of the First District Health Unit. All such facilities shall operate in a manner consistent with the following rules and regulations hereafter referred to as the Code.

Public Health Protection. The First District Health Unit shall apply this Code to promote its underlying purpose of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented to the consumer. If necessary to protect public health and safety, the First District Health Unit may impose specific requirements in addition to those required in the code. The conditions that necessitate any specific requirements shall be documented and the documentation along with the underlying public health rationale shall be provided to the operator/license holder.

SECTION 1. DEFINITIONS

In this Code, unless the context or subject matter otherwise requires:

1-1. “Accredited Program”

- A. “Accredited Program” means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.
- B. “Accredited Program” refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor’s mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.
- C. “Accredited Program” does not refer to training functions or educational programs.

1-2. “Additive”

- A. “Food additive” has the meaning stated in the Federal Food, Drug, and Cosmetic Act, subsection 201(s) and 21 CFR 170.3(e)(1).
- B. “Color additive” has the meaning stated in the Federal Food, Drug, and Cosmetic Act, subsection 201(t) and 21 CFR 70.3(f).

1-3. “Adulterated” has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Subsection 402.

1-4. “Alcohol” means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use. A beverage containing alcohol is any liquid suitable for drinking by human beings that contains one-half of one percent or more of alcohol by volume.

1-5. “Approved” means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

1-6. “Asymptomatic” means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but

not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

- 1-7. **“a_w”** means water activity, which is a 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.
- 1-8. **“Balut”** means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.
- 1-9. **“Beverage”** means a liquid for drinking, including water.
- 1-10. **“Bottled drinking water”** means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.
- 1-11. **“Casing”** means a tubular container for sausage products made of either natural or artificial (synthetic) material.
- 1-12. **“Certification number”** means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.
- 1-13. **“CFR”** means the Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers.
- 1-14. **“Cleaning”** means a process in which an item is cleaned free of soil, residue, or debris using an approved method of washing; then rinsed free of any remaining cleaning product using an approved method; then sanitized using an approved method.
- 1-15. **“CIP”**:
 - A. “CIP” means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning; such as the method used, in part, to clean and sanitize a frozen dessert machine.
 - B. “CIP” does not include the cleaning of equipment such as band saws, slicers, or mixers that are subject to in place manual cleaning without the use of a CIP system.
- 1-16. **“Commingle”** means:
 - A. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
 - B. To combine shucked shellfish from containers with different container codes or different shucking dates.
- 1-17. **“Comminuted”** means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

- 1-18. “Conditional Employee”** means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.
- 1-19. “Confirmed disease outbreak”** means a foodborne disease outbreak in which laboratory analysis or appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.
- 1-20. “Consumer”** means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
- 1-21. “Corrosion-resistant materials”** means those materials that maintain acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, normal use of cleaning compounds and sanitizing solutions, and of other conditions found in the environment in which the material is used.
- 1-22. “Counter mounted equipment”** means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.
- 1-23. “Critical control point”** means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
- 1-24. “Critical item”** means a provision of this Code that, if it is in noncompliance, is more likely than other non-critical violations to contribute to food contamination, illness, or to an environmental health hazard. Critical items are marked with an asterisk (*).
- 1-25. “Critical limit”** means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- 1-26. “Cut leafy greens”** means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. Leafy greens include iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e. immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term “leafy greens” does not include herbs such as cilantro or parsley.
- 1-27. “Dealer”** means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.
- 1-28. “Department”** means the First District Health Unit (FDHU) or its designated agent.
- 1-29. “Disclosure”** means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

- 1-30. “Drinking water”** means water that meets criteria as specified in 40 CFR 141 National Primary Drinking Water Regulations. Drinking water is traditionally known as “potable water.” Drinking water includes the term water except where the term used connotes that the water is not potable, such as “boiler water”, “mop water”, “rainwater”, “wastewater”, and “nondrinking” water.
- 1-31. “Dry storage area”** means a room or area designated for the storage of packaged or containerized bulk food that is not TCS food and dry goods, such as single-service items.
- 1-32. “Easily cleanable”**
- A. “Easily cleanable” means a characteristic of a surface that:
 - 1. Allows effective removal of soil by normal cleaning methods;
 - 2. Is dependent on the material, design, construction, and installation of the surface; and
 - 3. Varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose, and use.
 - B. “Easily cleanable” includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Part A of this definition to different situations in which varying degrees of cleanability are required such as:
 - 1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
 - 2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.
- 1-33. “Easily movable”** means:
- A. Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
 - B. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.
- 1-34. “Egg”** means the shell egg of any avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. Egg does not include:
- A. A balut;
 - B. The egg of reptile species such as alligator; or
 - C. An egg product.
- 1-35. “Egg product”:**
- A. Egg product means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs.
 - B. Egg product does not include food that contains eggs only in a relatively small proportion such as that found in cake mixes.
- 1-36. “Employee”** means the license holder, their designate, a person in charge, a person having supervisory or management duties, a person on the payroll, a family member, a volunteer, a person performing work under contractual agreement, or any other person working in or

engaged in any food production process or any other activity pertinent to operation in a food establishment.

- 1-37. **“EPA”** means the United States Environmental Protection Agency.
- 1-38. **“Equipment”** means an article that is used in the operation of a food establishment such as, but not limited to, a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.
- 1-39. **“Exclude”** means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.
- 1-40. **“FDA”** means the U.S. Food and Drug Administration.
- 1-41. **“Fish”** means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption; and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.
- 1-42. **“Food”** means any raw, cooked, or processed edible substance; ice; beverage; ingredients used in, or intended for use in, whether in whole or in part, for any product for human consumption; or chewing gum.
- 1-43. **“Foodborne disease outbreak”** means the occurrence of 2 or more cases of a similar illness resulting from ingestion of a common food or of foods from a common source.
- 1-44. **“Food-contact surface”** 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 into a food or onto a surface normally in contact with food.
- 1-45. **“Food employee”** means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- 1-46. **“Food establishment”**:
 - A. “Food establishment” means an operation that stores, prepares, packages, serves, or vends food directly to the consumer:
 - 1. Such as a restaurant; a satellite or catered feeding location; a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; a market; a vending location; a conveyance used to transport people that also serves food, such as a train; an institution; or a food bank; and
 - 2. That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.
 - B. “Food establishment” includes:
 - 1. Any element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or a satellite feeding

- location unless the vending or feeding location is separately permitted by the Department; and
- 2. Any operation that is conducted in a mobile, stationary, temporary, or permanent facility or location whether consumption of the food happens on or off of the premises and regardless of whether there is a charge for the food.
- 3. Any facility that grows, prepares, packages, supplies, or vends food to or for any food establishment licensed by the Department if that facility is:
 - a. Located in the First District Health Unit; and
 - b. Not regulated by, licensed by, and inspected by the regulatory authority in a manner approved by the Department.
- C. "Food establishment" does not include:
 - 1. An establishment that offers only prepackaged foods that are made in a commercial establishment that is regulated by the regulatory authority, as long as the prepackaged foods are not TCS and as long as no opening of the packages, preparation of the foods, or alteration or modification of the food occurs;
 - 2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
 - 3. A kitchen in a private home if only food that is not TCS food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the point of sale or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Department;
 - 4. A private home that receives catered or home-delivered food.

1-47. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

1-48. "Game animal" means an animal, the products of which are food, which is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 Definitions, or as poultry or fish. Game animal includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and non-aquatic reptiles such as land snakes. Game animal does not include ratites.

1-49. "Grade A standards" means the requirements of the U.S. Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

1-50. "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods. Any HACCP plan required under any section of this Code shall be one that contains all required information and shall be one that has been approved by the Department.

1-51. "Handwashing sink" means a lavatory, a basin or vessel for washing, a washbasin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands. Handwashing sink includes any automatic handwashing facility or handwashing sink.

1-52. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

- 1-53. “Health practitioner”** means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.
- 1-54. “Hermetically sealed container”** means a container designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
- 1-55. “Highly susceptible population”** means persons who are more likely than other people in the general population to experience foodborne disease because they are immunocompromised, preschool age children, or older adults; and obtaining food at a facility that provides services such as custodial care, health care or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services, such as a senior center.
- 1-56. “Imminent health hazard”** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
- A. The number of potential injuries, and
 - B. The nature, severity, and duration of the anticipated injury.
- 1-57. “Impermeable container”** means a container that does not allow the passage of fluids through interstices. For purposes of this regulation, examples of impermeable containers include: commercially canned products in the original, unopened can; sealed plastic and glass containers that do not have a threaded cap.
- 1-58. “Injected”** means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as “injecting,” “pump marinating,” or “stitch pumping.”
- 1-59. “Intact Meat”** means a cut of whole muscle(s) meat that has not undergone comminution, injection, mechanical tenderization, or reconstruction.
- 1-60. “Juice”** means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.
- 1-61. “Kitchenware”** means food preparation and storage utensils.
- 1-62. “Law”** includes applicable federal, state, and local statutes, ordinances, and regulations.
- 1-63. “License”** means the document issued by the Department that authorizes a food establishment to operate.
- 1-64. “License holder”** means any entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and that possesses a valid license to operate a food establishment.
- 1-65. “Linens”** means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments, including cloth gloves.

- 1-66. “Major food allergen”:**
- A. “Major food allergen” means:
 - 1. Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or
 - 2. A food ingredient that contains protein derived from a food, as specified in Part A(1) of this definition.
 - B. “Major food allergen” does not include:
 - 1. Any highly refined oil derived from a food specified in Part A(1) of this definition and any ingredient derived from such highly refined oil;
 - 2. Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).
- 1-67. “Meat”** means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, goats, game animals, and any other edible animals, except for those classified as fish, poultry, or wild game animals.
- 1-68. “Mechanically tenderized”** means manipulating meat with deep penetration by processes which may be referred to as “blade tenderizing”, “jaccarding”, “pinning”, “needling”, or using blades, pins, needles, or any mechanical device. Mechanically tenderized does not include processes by which solutions are injected into meat.
- 1-69. “Mobile food unit”** means a vehicle-mounted food establishment designed to be readily movable.
- 1-70. “Molluscan shellfish”** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
- 1-71. “Non-continuous cooking”** means any cooking of food using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. Non-continuous cooking does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.
- 1-72. “Norovirus”** means any non-enveloped RNA virus of the one of the 2 genera of the group of viruses known as the caliciviruses that can infect humans and cause gastroenteritis.
- 1-73. “Packaged”** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include wrapped or placed in a carry out container to protect the food during service or delivery to the consumer by a food employee upon consumer request.
- 1-74. “Person”** includes any association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- 1-75. “Person in charge”** means the individual present in a food establishment who is responsible for the operation at that given time.

- 1-76. “Personal care items”** means items or substances that may be poisonous, toxic, or a source of contamination and that are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medications; first-aid supplies; shaving equipment; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
- 1-77. “pH”** means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.
- 1-78. “Physical facilities”** means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air-conditioning system vents.
- 1-79. “Plumbing fixture”** means a receptacle or device that:
- A. Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or
 - B. Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.
- 1-80. “Plumbing system”** means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices and appurtenances within the premises; and water treating equipment.
- 1-81. “Poisonous or toxic materials”** means substances that are not intended for ingestion and are included in 4 categories:
- A. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
 - B. Pesticides, which include substances such as insecticides and rodenticides;
 - C. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
 - D. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- 1-82. “Poultry”** means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry.
- 1-83. “Premises”** means the physical facility, its contents, and the contiguous land or property under the control of the license holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the license holder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger organization such as a health care facility, motel, school, recreational camp, or prison.
- 1-84. “Primal cut”** means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

- 1-85. “Public water system”** has the meaning stated in 40 CFR 141 National Primary Drinking Water Regulations.
- 1-86. “Pushcart”** means a non-self-propelled vehicle limited to serving Department approved TCS foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters.
- 1-87. “Ratite”** means a flightless bird such as an emu, ostrich, or rhea.
- 1-88. “Ready-to-eat food”:**
- A. Means food that:
 - 1. Is in a form that is edible without additional preparation to achieve food safety, as specified under one of the following: Sections 4-122(A-H), 4-124, or 4-127; or
 - 2. Is a raw or partially cooked animal food and the consumer is advised as specified in Sections 4-122(I)(1) or 4-122(I)(3); or
 - 3. Is prepared in accordance with a variance that is granted as specified in Section 4-122(I); and
 - 4. May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.
 - B. Includes:
 - 1. Raw animal food that is cooked as specified under Sections 4-122 or 4-124, or frozen as specified under Section 4-127;
 - 2. Raw fruits and vegetables that are washed as specified in Section 4-134;
 - 3. Fruits and vegetables that are cooked for hot holding as specified under Section 4-125;
 - 4. All TCS food that is cooked to the temperature and time required for that specific food under Section 4-122 and cooled as specified under Section 4-131;
 - 5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;
 - 6. Substances derived from plants such as spices, seasonings, or sugar;
 - 7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
 - 8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages (such as dry salami or pepperoni); salt cured meat and poultry products (such as prosciutto ham, country cured ham, and Parma ham); and dried meat and poultry products (such as jerky or beef sticks); and
 - 9. Foods manufactured as specified in 21 CFR Part 113, “Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers”.
- 1-89. “Reconstituted”** means dehydrated food products that have been recombined with water or other liquids.
- 1-90. “Reduced oxygen packaging”** means the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and involves a food for which the hazards

Clostridium botulinum or *Listeria monocytogenes* require control in the final packaged form. Reduced oxygen packaging includes:

- A. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
- B. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
- C. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material;
- D. Cook-chill packaging, in which cooked food is hot filled into impermeable bags from which the air has been expelled and which are then sealed or crimped closed. The bagged food is then rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or
- E. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and then refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

1-91. “Refuse” means solid waste not carried by water through the sewage system.

1-92. “Regulatory authority” means the federal, state, and local enforcement authority or authorities having jurisdiction over any facility.

1-93. “Reminder” means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

1-94. “Re-service” means the transfer of food, single-service items, or single-service condiments that are unused and returned by or recovered from a consumer after being served or sold and in the possession of the consumer, to another person.

1-95. “Responsible Beverage Server Course” means an approved training program that includes information covering, but not limited to, the following topics:

- A. How to check a form of identification;
- B. How to recognize counterfeit or non-legitimate forms of identification; and
- C. Policies and procedures involving how to avoid sales of alcohol to minors or other illegal sales of alcohol, how to refuse to sell alcohol to individuals when necessary, and when to stop selling alcohol to intoxicated individuals.

1-96. “Restrict” means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and so that the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

1-97. “Restricted use pesticide” means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

- 1-98. **“Risk”** means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.
- 1-99. **“Safe material”** means an article 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 food; an additive that is used as specified in Subsection 409 of the federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.
- 1-100. **“Safety data sheet”** means written or printed material concerning a hazardous chemical that is prepared in accordance with Paragraph g of the Hazard Communication Standard of the Occupational Health and Safety Administration.
- 1-101. **“Sanitization”** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yields a reduction of 5 logs, which is equal to 99.999% reduction, of representative disease microorganisms of public health importance.
- 1-102. **“Sealed”** means free of cracks or other openings that permit the entry or passage of moisture.
- 1-103. **“Service animal”** means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.
- 1-104. **“Servicing area”** means an operating base location to which a mobile 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.
- 1-105. **“Sewage”** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
- 1-106. **“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.
- 1-107. **“Shellstock”** means raw, in-shell molluscan shellfish.
- 1-108. **“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., bloody 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 which can cause hemorrhagic colitis or HUS.
- 1-109. **“Shucked shellfish”** means molluscan shellfish that have one or both shells removed.

- 1-110. “Single-service articles”** means tableware, carryout 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.
- 1-111. “Single-service condiments”** means any individual service size containers of sugar, salt, pepper, butter, jelly, cream cheese, or any other food item packaged in such a way so as to be meant to be used once or to constitute a single portion or serving.
- 1-112. “Single-use articles”** means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes 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 ten cans which do not meet the materials, durability, strength, and cleanability specifications contained in Section 4-3 for multi-use utensils.
- 1-113. “Slacking”** means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F to 25°F in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.
- 1-114. “Smooth”** means:
- A. A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of one hundred grit (number 3) stainless steel;
 - B. A non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
 - C. A floor, wall, or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.
- 1-115. “Tableware”** means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons and hollowware including bowls, cups, serving dishes, tumblers, and plates.
- 1-116. “Temperature measuring device”** means a thermometer, thermocouple, thermistor, or any other device that indicates the temperature of food, air, or water.
- 1-117. “Temporary food establishment”** means a food establishment that operates at a fixed location for a period of time of not more than 4teen consecutive days in conjunction with a single event or celebration.
- 1-118. “Time/temperature control for safety food”** or **“TCS food”** (formerly potentially hazardous food) means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.
- A. TCS food includes:
 1. An animal food (a food of animal origin) that is raw or heat-treated;
 2. A food of plant origin that is heat-treated or that consists of raw seed sprouts;
 3. Cut melons;
 4. Garlic and oil mixtures that have not been modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation;
 5. Cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation;

6. Cut leafy greens;
7. Except as specified in part B below, a food that because of the interaction of its a_w and pH values is designated as Product Assessment Required in Table A or B below:

Table A. Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

| a_w values | pH: 4.6 or less | pH: > 4.6 -5.6 | pH: > 5.6 |
|--------------|-----------------|----------------|--------------|
| <0.92 | non-TCS FOOD* | non-TCS FOOD | non-TCS FOOD |
| > 0.92 -0.95 | non-TCS FOOD | non-TCS FOOD | PA** |
| > 0.95 | non-TCS FOOD | PA | PA |

* TCS Food means Time/temperature control for safety food

** PA means Product Assessment required

Table B. Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

| a_w values | pH: < 4.2 | pH: 4.2 -4.6 | pH: > 4.6 -5.0 | pH: > 5.0 |
|---------------|---------------|--------------|----------------|--------------|
| < 0.88 | non-TCS food* | non-TCS food | non-TCS food | non-TCS food |
| 0.88 – 0.90 | non-TCS food | non-TCS food | non-TCS food | PA** |
| > 0.90 – 0.92 | non-TCS food | non-TCS food | PA | PA |
| > 0.92 | non-TCS food | PA | PA | PA |

* TCS Food means Time/temperature control for safety food

** PA means Product Assessment required

- B. “Time/temperature control for safety food” does not include the following foods (despite being included in this category, the license holder of a food establishment shall obtain a variance from the Department prior to producing any foods that are claimed to be non-time/temperature control for safety foods under this section):
1. An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *salmonellae*;
 2. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
 3. A food that because of its pH or a_w , or interaction of a_w and pH values, is designated as a non-TCS food in Tables A or B of this definition; or
 4. A food that is designated as Product Assessment Required in Tables A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
 - a. Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,

- b. Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or
 - c. A combination of intrinsic and extrinsic factors.
5. A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with this definition even though the food may contain a pathogenic microorganism or chemical of physical contaminant at a level sufficient to cause illness or injury.

1-119. “USDA” means the U.S. Department of Agriculture.

1-120. “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; thermometers; and any probe type price or identification tags that contact food.

1-121. “Variance” means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Code, if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

1-122. “Vending machine” means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by electronic transaction or optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

1-123. “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.

1-124. “Warewashing” means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

1-125. “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.

SECTION 2. LICENSING

The numbers located in parenthesis indicate the point value for that item when determining the inspection score (see Section 4-709).

2-1. All food establishments located within the boundaries of the First District Health Unit (FDHU), hereafter referred to as “the Department”, are required to have a valid license issued by the Department prior to operating for business. **(41)**

2-2. License fees and late fees are set according to the FDHU fee schedule.

2-3. All license fees are non-refundable.

2-4. Licenses are non-transferable from one person, food establishment, or license category to another.

- 2-5.** Licenses are valid for the current calendar year. License fees shall be renewed prior to January 1. Licenses not renewed prior to January 15 shall be charged a late fee as per the FDHU fee schedule.
- 2-6.** The application for licensure shall be made at least 30 days before the intended date of opening or commencement of food preparation.
- 2-7.** To qualify for a permit, an applicant shall:
- A. Be an owner of the food establishment or an officer of the legal ownership;
 - B. Comply with the requirements of this Code;
 - C. Agree to allow the required access to the food establishment and to provide required information; and
 - D. Pay the applicable license fees at the time the application is submitted.
- 2-8.** Food establishment licenses are divided into classes and risk levels based on the types of foods that are prepared in the establishment. Each license class is specific to a certain type of food production and is only valid for that type of food. Establishments producing foods that fall under different license classes at the same location shall have the proper license class for each type of food that is being produced. The risk level is assigned by the Department and is based on the types of food production processes that occur in a food establishment. See Appendix A for a list of license classes and descriptions. **(10)**
- 2-9.** To apply for a license, a potential food establishment license holder shall complete a license application provided by the Department and submit it to the Department along with the required license fee. The application shall be completed by the potential license holder to include all of the information required by the Department.
- 2-10.** The license application shall provide the following information to the Department and any license holder shall update the information with the Department if any changes are made within 7 days of the date of the change of information:
- A. The operating name, mailing address, and physical address of the establishment;
 - B. The name, mailing address, telephone number, and signature of the person applying for the permit;
 - C. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
 - D. A statement specifying whether the food establishment:
 1. Is mobile or stationary and temporary or permanent, and
 2. Is an operation that includes one or more of the following:
 - a. Prepares, offers for sale, or serves TCS food:
 - i. Only to order upon a customer's request,
 - ii. In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or
 - iii. Using time as a public health control as specified in Section 4-120.
 - b. Prepares TCS food in advance using a food preparation method that involves 2 or more steps which may include combining TCS ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

- c. Prepares food as specified under Part(D)(2)(b) of this section for delivery to and consumption at a location off the premises of the food establishment where it was prepared,
 - d. Prepares food as specified under Part(D)(2)(b) of this section for service to a highly susceptible population,
 - e. Prepares only food that is not TCS food, or
 - f. Does not prepare, but offers only for sale only prepackaged food that is not TCS food;
- E. The name, title, address, and telephone number of the person that is directly responsible for the establishment;
 - F. The names, titles, and addresses of:
 - 1. The persons comprising the legal ownership as specified under Part C of this section including the owners and officers, and
 - 2. The local resident agent if one is required based on the type of legal ownership;
 - G. A statement signed by the applicant that:
 - 1. Attests to the accuracy of the information provided in the application, and
 - 2. Affirms that the applicant will:
 - a. Comply with this Code, and
 - b. Allow the Department access to the establishment as specified under 3-1 and to the records specified under Sections 4-116, 4-507, and 4-707;
 - H. For any establishment that serves beverages containing alcohol for on premises consumption, proof that all employees that serve alcohol containing beverages have completed an approved Responsible Beverage Server Course;
 - I. Hours of operation; and
 - J. Other information required by the Department.

2-11. A license applicant, or license holder, shall submit to the Department properly prepared plans and specifications for review and approval before:

- A. The construction of a food establishment;
- B. The conversion of an existing structure for use as a food establishment; or
- C. The remodeling of a food establishment or a change of type of food establishment or food operation if the Department determines that plans and specifications are necessary to ensure compliance with this Code.

2-12. The plans and specifications for a food establishment shall include, as required by the Department based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Code provisions:

- A. Intended menu;
- B. Anticipated volume of food to be stored, prepared, and sold or served;
- C. Proposed layout, mechanical schematics, construction materials, and finish schedules;
- D. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capabilities, and installation specifications;
- E. Evidence that standard procedures that shall ensure compliance with the requirements of this Code are developed or being developed;
- F. 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; and

- G. A completed plan review request form and the fee for the cost of plan review as per the FDHU fee schedule.
- 2-13.** Construction of or work on the proposed food establishment may not begin until approval for the plans and specifications has been granted by The Department.
- 2-14.** For food establishments that are required to submit plans under Section 2-10, the Department shall issue a permit to the applicant after:
- A. A properly completed application is submitted;
 - B. The required fees are submitted;
 - C. The required plans, specifications, and information are reviewed and approved; and
 - D. A preoperational inspection as specified in Section 3-8 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.
- 2-15.** The Department may renew a license for an existing food establishment or may issue a permit to a new owner of an existing food establishment after:
- A. Either:
 - 1. A signed renewal form is remitted by the current license holder, or
 - 2. A properly completed application is submitted by the applicant and the application has been reviewed and approved by the Department,
 - B. All fees are paid; and
 - C. An inspection by the Department documents compliance with this Code.
- 2-16.** By purchasing a license, the owner/operator agrees to operate in full compliance with this Code and agrees to all terms and conditions contained herein. The license holder also agrees to take any necessary steps to bring a licensed facility into compliance. **(5)**
- 2-17.** If an application for a license is denied, the Department shall provide the applicant with a notice that includes:
- A. The specific reasons and Code citations for the license denial;
 - B. The actions, if any, that the applicant must take to qualify for a permit; and
 - C. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.
- 2-18.** The Department may revoke or suspend any license for cause. Before the license will be revoked or suspended, the Department shall notify the licensee in writing of the reason for the revocation or suspension.
- 2-19.** The licensee may appeal the revocation or suspension. The appeal shall be requested in writing, signed by the licensee, and submitted to the Department within 10 days of the licensee being notified of the revocation. During the course of the appeal, the revocation or suspension shall remain in effect.
- 2-20.** If a food establishment ceases operations for a period of 30 days or longer, then the license for that establishment shall be considered suspended. The license holder shall contact the Department and obtain permission before resuming operations. If a food establishment ceases operations for a period of 60 days or longer, then the license for that establishment shall be considered revoked. The license holder shall contact the Department to obtain a new food establishment license prior to resuming operations.

- 2-21.** Any produce operation that wishes to be licensed shall obtain all necessary criteria and operational requirements from the Department. All aspects of the produce operation must be in compliance with Department standards during all phases of production in order for a produce operation to be licensed. Failure to operate in a manner that is compliant with all aspects of the FDHU Requirements for Food and Beverage Establishments may result in revocation of the produce operation license.

SECTION 3. INSPECTION

The numbers located in parenthesis indicate the point value for that item when determining the inspection score (see Section 4-708).

- 3-1.** After the Department presents official credentials and provides notice of the purpose of, and 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 Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the Department is entitled according to law, during the food establishment's hours of operation and at other reasonable times. The Department may suspend the food establishment license upon denial of inspection. **(41)**
- 3-2.** If a person denies access to the Department, the Department shall:
- A. Inform the person that:
 - 1. The license holder is required to allow access to the Department as specified in Section 3-1 of this Code,
 - 2. Access is a condition of the acceptance and retention of a food establishment license to operate as specified under Section 4-702; and
 - B. Make a final request for access; and
 - C. If the person continues to deny access, the Department shall notify the person in charge that the license for the food establishment is immediately suspended.
- 3-3.** If, after the Department presents credentials and provides notice as specified under Section 3-1, and explains the authority upon which access is requested, and makes a final request for access as specified in Section 3-2, the person in charge continues to refuse access, the Department shall provide details of the denial of access on an inspection form.
- 3-4.** The Department shall document on an inspection report form:
- A. Administrative information about the food establishment's identity, address, inspection date, and type of inspection.
 - B. Specific factual observations or violative conditions or other deviations from this Code that require correction by the license holder.
 - C. Any required correct by dates or time frames for correction of items determined to be out of compliance with the requirements of this Code.
- 3-5.** The inspection form shall be signed by the Department and by the license holder or their designate. At the conclusion of the inspection and according to law, the Department shall provide a copy of the inspection report form to the license holder or their designate.
- 3-6.** If the license holder or their designate refuses to sign the inspection form, the Department shall:
- A. Inform a person who declines to sign the inspection form that:

1. Refusal to sign the inspection form does not affect the license holder's obligation to correct the violations noted in the inspection report form within the time frames specified, and
 2. A refusal to sign an inspection form is noted in the inspection form and is recorded in the Department's historical record for that food establishment.
 - B. Make a final request that the person in charge sign the inspection form.
- 3-7.** The Department shall inspect each facility at a frequency as determined by the assigned Risk Level for the permit.
- A. Risk level 1 permits shall be inspected at least 1 time per 2 calendar years.
 - B. Risk level 2 permits shall be inspected at least 1 time per calendar year.
 - C. Risk level 3 and 4 permits shall be inspected at least 2 times per calendar year.
- 3-8.** The Department shall conduct one or more preoperational 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 as specified under Section 2-12, and is in compliance with law and this Code. **(5)**
- 3-9.** Any proposed changes to, remodeling of, or alteration of any part of any facility shall be presented to the Department prior to being done and are subject to the approval of the Department. **(5)**
- 3-10.** It is the responsibility of the license holder to ensure that their establishment is inspected as required. Establishments that are not inspected as required may have their license suspended or revoked. **(10)**
- 3-11.** Any facility that fails to meet a certain minimum standard as defined by the Department shall have a mandatory reinspection. Reinspections shall be performed by the Department and a reinspection fee shall be charged to the license holder as per the FDHU fee schedule.
- 3-12.** Timely correction.
- A. Except as specified in Part B of this Section, a license holder shall at the time of inspection correct a critical violation of this Code and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.
 - B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame than specified in Part A of this section.
- 3-13.** Time frame for correction.
- A. Except as specified in Part B, the license holder shall correct non-critical items by a date or time agreed to or specified by the Department, but no later than 90 calendar days after the inspection.
 - B. The Department may approve a compliance schedule that extends beyond the time limits specified under Part A of this section if a written schedule of compliance is submitted by the license holder and no health hazard exists or will result from allowing an extended schedule for compliance.

3-14. Verification and documentation of correction.

- A. After observing at the time of inspection a correction of a violation 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 form.
- B. As specified under Section 3-12(B), after receiving notification that the license holder has corrected a violation of 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 form, and enter the report in the Department's records.

SECTION 4. GENERAL PROVISIONS

The numbers located in parenthesis indicate the point value for that violation when determining the inspection score (see Section 4-709).

4-001. Code – content, copy kept on premises. (1) This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, license issuance, inspection, and employee restrictions. A copy of this Code shall be kept on premises at all food establishments and shall be available for reference by all food employees at all times.

SECTION 4-1: Food.

4-101. General care of food supplies.* (3)

- A. Food shall be obtained from approved sources that comply with law.
- B. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.
- C. Food shall be safe, unadulterated, and honestly presented.
 - 1. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
 - 2. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- D. Food that is prepared in a private home may not be used or offered for human consumption in a food establishment.
- E. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
- F. Packaged food shall be labeled as specified in Law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified in this Code.
- G. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and standards of identity or composition, and the general requirements in 21 CFR 130 – Food Standards: General and 9 CFR 319 Subpart A – General.

4-102. General food protection.* (3)

- A. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination. Sources of potential contamination include dust, insects, rodents, unclean equipment and utensils, unnecessary handling, cross contamination, bare hand contact, coughs and sneezes, flooding, or any other source of non-potable or potentially non-potable water.

- B. Food packages shall be in good condition and shall protect the integrity of the contents so that the food is not exposed to adulteration or to potential contaminants.
- C. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or because of the way it is positioned in the ice or water.
- D. Except as specified in this section, unpackaged food may not be stored in direct contact with undrained ice.
- E. Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.
- F. Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.
- G. Food that is not packaged in a container or food that is packaged in a non-impermeable container shall be stored at least 6 inches above the floor and shall be stored higher if necessary to protect it from animals, moisture, or any other contamination.
- H. Food shall be protected from contamination that may result from a factor or source not otherwise specified in this Code.

4-103. Protection of food from cross contamination.* (4)

- A. Food shall be protected from cross-contamination by:
 - 1. Separating raw animal foods during storage, preparation, holding, and display from:
 - a. Raw ready-to-eat food (including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables); and
 - b. Cooked ready-to-eat food; and
 - c. Fruits and vegetables before they are washed;
 - d. Frozen, commercially processed and packaged raw animal foods may be stored or displayed with or above frozen, commercially processed and packaged ready-to-eat foods.
 - 2. Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
 - a. Using separate equipment for each type; or
 - b. Arranging each type of food in equipment so that cross-contamination of one type with another is prevented; and
 - c. Preparing each type of food at different times or in separate areas;
 - 3. Cleaning and sanitizing equipment; and
 - 4. Except as specified in Part B, storing the food in packages, covered containers, or wrappings;
 - 5. Cleaning hermetically sealed containers of food of visible soil before opening by being washed, rinsed, sanitized, and air-dried in an approved manner;
 - 6. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
 - 7. Storing damaged, spoiled, or recalled food being held in the food establishment as specified in Section 4-105(G); and
 - 8. Separating fruits and vegetables before they are washed from ready-to-eat food.

9. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.
 10. During preparation, unpackaged food shall be protected from environmental sources of contamination.
- B. Part A(4) does not apply to:
1. Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption;
 2. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
 3. Whole, uncut processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks;
 4. Food that is being cooled as specified under Section 4-131; or
 5. Shellstock.

4-104. Disposal of unsafe, adulterated, or contaminated food.* (3)

- A. A food that is unsafe, adulterated, or not honestly presented; or is in any other way in violation of Section 4-101 shall be discarded.
- B. Food that is not from an approved source shall be discarded.
- C. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded shall be discarded.
- D. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.
- E. Food that may potentially be unsafe due to time or temperature abuse shall be discarded.

4-105. General food storage. (1)

- A. All food containers, including hermetically sealed containers, shall be kept clean. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent.
- B. Except as specified in Sections 4-102(E) and (F), and as specified in this section, food shall be protected from contamination by being stored:
 1. In a clean, dry location;
 2. Where it is not exposed to splash, dust, or other contamination; and
 3. At least 6 inches above the floor.
- C. Food in packages and working containers may be stored less than 6 inches above the floor on case lot handling equipment as specified in Section 4-385.
- D. Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.
- E. Food may not be stored:
 1. In locker rooms;
 2. In toilet rooms;
 3. In dressing rooms;
 4. In garbage rooms;
 5. In mechanical rooms;
 6. Under sewer lines that are not shielded to intercept potential drips;
 7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

- 8. Under open stairwells; or
- 9. Under other sources of contamination.
- F. Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food.
- G. Products that are held by the license holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.
- H. Food storage equipment and areas shall be kept free of any standing or pooled water. Refrigerated food storage facilities shall be kept free of excess condensation and ice.

4-106. Food labeling.* (2)

- A. Food packaged in a food establishment shall be labeled as specified in Law, including 21 CFR 101 - Food labeling, 9 CFR 317 - Labeling, marking devices, and containers.
- B. Label information shall include:
 - 1. The common name of the food, or absent of a common name, an adequately descriptive identity statement.
 - 2. If made from 2 or more ingredients, a list of ingredients and sub-ingredients in descending order of predominance by weight, including a declaration of artificial colors, artificial flavors, and chemical preservatives, if contained in the food.
 - 3. An accurate declaration of the net quantity of contents.
 - 4. The name and place of business of the manufacturer, packer, or distributor.
 - 5. The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.
 - 6. Nutrition labeling, except as exempted in the federal Food, Drug, and Cosmetic Act Section 403(g)(3)-(5), nutrition labeling as specified in 21 CFR 101 - food labeling and 9 CFR 317 subpart B Nutrition Labeling.
 - 7. For any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.
- C. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
 - 1. The manufacturer's or processor's label that was provided with the food; or
 - 2. A card, sign, or other method of notification that includes the information specified under Part B(1, 2 and 6).
- D. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
 - 1. A health, nutrient content, or other claim is not made;
 - 2. There are no state or local laws requiring labeling; and
 - 3. The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

- E. If required by law, consumer warnings shall be provided.
- F. Food establishment or manufacturers' dating information on foods may not be concealed or altered.
- G. Any labeling or country of origin labeling or signage requirements shall be met as specified by law.

4-107. Variance requirement.* (4) A food establishment shall obtain a variance from the department before:

- A. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
- B. Curing food;
- C. Using food additives or adding components such as vinegar:
 - 1. As a method of food preservation rather than as a method of flavor enhancement, or
 - 2. To render a food so that it is not TCS food;
- D. Packaging TCS food using a reduced oxygen packaging method except where the growth and toxin formation by *Clostridium botulinum* and *Listeria monocytogenes* are controlled as per Section 4-108;
- E. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;
- F. Custom processing animals that are for personal use as food and not for sale or service in a food establishment;
- G. Preparing food by another method that is determined by the regulatory authority to require a variance; or
- H. Sprouting seeds or beans for food.

4-108. Reduced oxygen packaging without a variance – criteria.* (3) Except for a food establishment that obtains a variance as specified in Section 4-107, a food establishment that packages TCS food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

- A. Except as specified under Part E of this section, a food establishment that packages TCS food using a reduced oxygen packaging method shall implement a HACCP plan that:
 - 1. Identifies the food to be packaged;
 - 2. Except as specified in this section, requires that the packaged food shall be maintained at 41°F or less and meet at least one of the following criteria:
 - a. Has an a_w of 0.91 or less;
 - b. Has a pH of 4.6 or less;
 - c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of Food Ingredients and Sources of Radiation, and is received in an intact package; or
 - d. Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;
 - 3. Specifies methods for maintaining food at 41°F or below;
 - 4. Describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 - a. Maintain the food at 41°F or below; and
 - b. Discard the food if within 30 calendar days of its packaging if it is not

- served for on-premises consumption, or consumed if served or sold for off-premises consumption;
5. Limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
 6. Includes operational procedures that:
 - a. Prohibits contacting food with bare hands;
 - b. Identify a designated work area and the method by which:
 - i. Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and
 - ii. Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
 - c. Delineate cleaning and sanitization procedures for food-contact surfaces; and
 7. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:
 - a. Concepts required for a safe operation;
 - b. Equipment and facilities; and
 - c. Procedures specified in this section and in Section 4-707.
- B. Except for fish that is frozen before, during, and after packaging and bears a label indicating that it is to be kept frozen until time of use, a food establishment may not package fish using a reduced oxygen packaging method.
- C. A food establishment that packages food using a cook-chill or sous vide process (except as specified in Parts B or E) shall:
1. Implement a HACCP plan;
 2. Ensure that the food is:
 - a. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer,
 - b. Cooked to heat all parts of the food to a temperature and for a time as specified in Section 4-122,
 - c. Protected from contamination before and after cooking as specified in Part A(6) of this section,
 - d. Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 135°F;
 - e. Cooled to 41°F in the sealed package or bag as specified in Section 4-131 and;
 - i. Cooled to 34°F or less within 48 hours of reaching 41°F and held at that temperature until consumed or discarded within 30 days after the date of packaging;
 - ii. Held at 41°F or less for no more than 7 days at which time the food must be consumed or discarded; or
 - iii. Held frozen with no shelf life restriction while frozen until consumed or used.
 - f. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,

- g. If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, and
 - h. Labeled with the product name and the date packaged; and
 - 3. Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:
 - a. Make such records available to the regulatory authority upon request, and
 - b. Hold such records for at least 6 months; and
 - 4. Implement written operational procedures as specified under Part A(6) of this section and a training program as specified under Part A(7) of this section.
- D. Except as specified under Part E of this section, a food establishment that packages cheese using a reduced oxygen packaging method shall:
 - 1. Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semi soft cheeses;
 - 2. Have a HACCP plan;
 - 3. Label the package on the principal display panel with a “use by” date that does not exceed 30 days from its packaging date or from the original manufacturer’s “sell by” or “use by” date, whichever occurs first; and
 - 4. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.
- E. A HACCP plan is not required when a food establishment uses a reduced oxygen packaging method to package TCS food that is always:
 - 1. Labeled with the production time and date,
 - 2. Held at 41° or less during refrigerated storage, and
 - 3. Removed from its package in the food establishment within 48 hours after packaging.

4-109. Meat.* (3) All meat, including that from those animals defined as game animals shall comply with the following standards:

- A. Meat or meat products and meat containing foods intended for human consumption shall not be sold or offered for sale or service unless slaughtered and processed in a packing plant or slaughterhouse that is federally or state inspected or that is inspected by the agency that has animal health jurisdiction. All such products must be plainly and legibly stamped with a state or federal mark of inspection unless otherwise exempted under 9 CFR 303.1(d), exemptions-retail (FSIS/USDA).
- B. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in this section shall be:
 - 1. Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or
 - 2. Deemed acceptable by the Department based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and
 - 3. If individually cut in a food establishment:

- a. Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in Part B(1) above or identified as specified in Part B(2);
 - b. Prepared so they remain intact; and
 - c. If packaged for undercooking in a food establishment, labeled as specified in Part B(1) above, or identified as specified in Part B(2).
- C. Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in Law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).
- D. Solid cuts of meat shall be protected by being covered in storage, except that the quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
- E. If game animals are received for sale or service, they shall be commercially raised for food and:
 - 1. Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or
 - 2. Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
 - 3. Raised, slaughtered, and processed according to the Federal Meat Inspection Act.
- F. Game animals may not be received for sale and service if it is a species of wildlife that is listed in 50 CFR 17 endangered and threatened wildlife and plants.

4-110. Poultry.* (3) All poultry shall meet the following requirements:

- A. All poultry or poultry products intended for human consumption shall not be sold or offered for sale or service unless slaughtered and processed in a packing plant or slaughterhouse that is federally or state inspected or that is inspected by the agency that has animal health jurisdiction. All such products must be plainly and legibly stamped with a state or federal mark of inspection.
- B. Poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in Law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

4-111. Eggs.* (3) All eggs shall comply with the following standards:

- A. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States consumer grade B as specified in United States Standards, Grades, and WEIGHT Classes for Shell Eggs, AMS 56.200 *et seq.*, administered by the Agricultural Marketing Service of USDA. Other grades of eggs shall not be kept in any food establishment for any reason.
- B. Eggs that have not been specifically treated to destroy all viable *salmonellae* shall be labeled to include safe handling instructions as specified in Law, including 21 CFR 101.17(h).
- C. Raw eggs and egg products shall be received in refrigerated equipment that maintains an ambient air temperature of 45°F or less. Eggs received at a temperature between 45°F and 41°F shall immediately be placed into refrigerated storage at 41°F or less; or immediately cooked and served.
- D. Eggs that have not been treated to destroy all viable *salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of 41°F or less.

- E. Only clean whole eggs, with shell intact and without cracks or checks; or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.
- F. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:
 - A. Cooked as specified under 4-122(A); or
 - B. Included in 4-122(I).
- G. Pasteurized shell intact eggs that have not been hard-boiled are not considered TCS foods. Pasteurized eggs that have been hard-boiled or that have been removed from the shell are considered to be TCS and must be protected against contamination and time or temperature abuses.
- H. Egg products shall be obtained pasteurized.

4-112. Milk.* (3)

- A. Fluid milk, dry milk, and all milk products shall be obtained from sources that comply with grade A standards as specified in law, and shall meet all associated requirements.
- B. Fluid milk, dry milk, and all milk products shall be obtained pasteurized.
- C. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen desserts.
- D. Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the Code of Federal Regulations, such as 21 CFR 133 - Cheeses and related cheese products, for curing certain cheese varieties.

4-113. Ice.* (3)

- A. Ice for use as a food or a cooling medium shall be made from drinking water.
- B. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.
- C. Ice storage bins shall be drained through an air gap.
- D. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment.
- E. Ice that is used in any manner in a temporary food establishment shall be made under conditions meeting the requirements of this section. The ice shall be obtained only in chipped, crushed, or cubed form and packaged in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

4-114. Juice.* (3)

- A. Prepackaged juice shall:
 1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120; or
 2. Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24.
- B. Juice packaged in a food establishment shall be treated under a HACCP plan as specified in Section 4-707 to attain a 5-log reduction, which is equal to 99.999% reduction, of the most resistant microorganism of public health significance.

4-115. Fish.* (3) All fish shall comply with the following requirements:

- A. Fish that are received for sale or service shall be:
 - 1. Commercially and legally caught or harvested; or
 - 2. Approved for sale or service.
- B. Fish, other than those specified in Section 4-127(B), that are intended for consumption in raw or undercooked form and are allowed as specified in Section 4-122(I), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under Section 4-127, or if they are frozen on the premises under Section 4-127 and records are retained as specified under Section 4-128.

4-116. Molluscan shellfish.* (3)

- A. Molluscan shellfish that are recreationally caught may not be received for sale or service.
- B. Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.
- C. Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.
- D. Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
 - 1. Name, address, and certification number of the shucker, packer, or repacker of the molluscan shellfish; and
 - 2. The “sell by” or “best if used by” date for packages with a capacity of less than one-half gallon or the date shucked for packages with a capacity of one-half gallon or more.
- E. A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under Part D of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D – Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan shellfish.
- F. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list:
 - 1. On the harvester’s tag or label, the following information in the following order (except as specified under Part H):
 - a. The harvester’s identification number that is assigned by the shellfish control authority;
 - b. The date of harvesting;
 - c. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the Shellfish Control Authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;
 - d. The type and quantity of shellfish; and
 - e. The following statement in bold, capitalized type:
“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.”

2. On each dealer's tag or label, the following information in the following order (except as specified in Part H):
 - a. The dealer's name and address, and the certification number assigned by the Shellfish Control Authority;
 - b. The original shipper's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested;
 - c. The same information as specified for a harvester's tag under Part F(1)(b)-(d) of this section; and
 - d. The following statement in bold, capitalized type:
"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."
- G. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under Part F shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D – Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).
- H. If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.
- I. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under of Part F(2)(a and b), individual dealer tags or labels need not be provided.
- J. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.
- K. Molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service (except as specified in Parts L and M).
- L. For display purposes, shellstock may be removed from the container in which it is received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
 1. The source of the shellstock on display is identified as specified in Part F and recorded as specified in Part P; and
 2. The shellstock are protected from contamination.
- M. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:
 1. The labeling information for the shellfish on display as specified in Part D is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
 2. The shellfish are protected from contamination.
- N. Shucked shellfish may be removed from the container in which they were received and repackaged in consumer self-service containers where allowed by law if:
 1. The labeling information for the shellfish is on each consumer self-service container as specified in Part D and in Section 4-106;
 2. The labeling information as specified under Part D is retained and correlated to the date when, or dates during which, the shellfish are sold or served;
 3. The labeling information and dates specified under Part N(2) are maintained for 90 days; and
 4. The shellfish are protected from contamination.

- O. Until the container is empty, the shellstock tags shall remain attached to the container in which the shellstock is received. The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.
- P. The identity of the source of shellstock that is sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date that is recorded on the tag or label as specified in Part O, by:
 - 1. Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under Part O of this section; and
 - 2. If shellstock are removed from its tagged or labeled container:
 - a. Preserving source identification by using a record keeping system as specified in Part P(1) of this section; and
 - b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.
- Q. Except as specified in Part R below, molluscan shellfish life-support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.
- R. Molluscan shellfish life-support system display tanks that are used to store and display live shellfish that are offered for human consumption must be operated and maintained in accordance with a variance granted by the Department and a HACCP plan that:
 - 1. Is submitted by the permit holder and approved by the Department; and
 - 2. Ensures that:
 - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank,
 - b. The safety and quality of the shellfish as they were received are not compromised by use of the tank, and
 - c. The identity of the source of shellstock is retained as specified in this section.
- S. Mollusk and crustacean shells may be used only once as a serving container and only for the animal that lived in that shell. Reuse of such shells for food service is prohibited.

4-117. Mushrooms.* (3) Mushrooms shall be obtained from an approved, commercial source. Mushroom species picked in the wild shall not be offered for sale or service by a food establishment. This requirement does not apply to:

- A. Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the regulatory authority; or
- B. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the regulatory authority that has jurisdiction over the plant.

4-118. Time/temperature control for safety food – hot and cold holding.* (3)

- A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under Section 4-119 and except as specified in Parts B and C of this section, TCS food shall be maintained:

1. At 135°F or above; except that roasts cooked to a temperature and for a time specified under Section 4-122(G) or reheated as specified in Section 4-133(E) may be held at a temperature of 130°F or above; or
 2. At 41°F or less.
- B. TCS food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified in Part A of this section, while contained within specially designed equipment that complies with the design and construction requirements specified under Section 4-376(D).
 - C. Adequate refrigeration facilities shall be provided to assure the maintenance of all TCS food stored or served under refrigeration in a food establishment at 41°F or less.
 - D. Adequate hot holding facilities shall be provided to assure the maintenance of all TCS food being held or served at 135°F or more.
 - E. Stored frozen foods shall be maintained frozen.

4-119. Temperature – specifications for receiving.* (3)

- A. Except as specified in Part B of this section, refrigerated, TCS food shall be at a temperature of 41°F or below when received.
- B. If a temperature other than 41°F for a TCS food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.
- C. TCS food that is cooked to a temperature and for a time specified under Sections 4-122, 4-124, and 4-125 and received hot shall be at a temperature of 135°F or above.
- D. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
- E. Upon receipt, TCS food shall be free of evidence of previous temperature abuse.

4-120. Time as a public health control.* (3)

- A. Except as specified under Part D of this section, if time without temperature control is used as the public health control for a working supply of TCS food before cooking, or for ready-to-eat TCS food that is displayed or held for sale or service:
 1. Written procedures shall be prepared in advance, maintained in the food establishment, and made available to the Department upon request that specify:
 - a. Methods of compliance with this section; and
 - b. Methods of compliance with Section 4-131 for food that is prepared, cooked, and refrigerated before time is used as a public health control.
- B. If time without temperature control is used as the public health control up to a maximum of 4 hours:
 1. The food shall have an initial temperature of 41° or less when removed from cold holding temperature control, or 135°F or greater when removed from hot holding temperature control;
 2. The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;
 3. The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; and
 4. The food in unmarked containers of packages, or marked to exceed a 4-hour limit shall be discarded.

- C. If time without temperature control is used as the public health control up to a maximum of 6 hours:
 - 1. The food shall have an initial temperature of 41°F or less when removed from temperature control and the food temperature may not exceed 70°F within a maximum time period of 6 hours;
 - 2. The food shall be monitored to ensure that the warmest portion of the food does not exceed 70°F during the 6 hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 70°F during the 6 hour period;
 - 3. The food shall be marked or otherwise identified to indicate:
 - a. The time when the food is removed from 41°F or less cold holding temperature control, and
 - b. The time that is 6 hours past the point in time when the food is removed from cold holding temperature control;
 - 4. The food shall be:
 - a. Discarded if the temperature of the food exceeds 70°F, or
 - b. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 41°F or less cold holding temperature control; and
 - 5. Food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded.
- D. A food establishment that serves a highly susceptible population may not use time as specified under this section as the public health control for raw eggs.

4-121. Thawing.* (3) Except as specified in this section, TCS food shall be thawed:

- A. Under refrigeration that maintains the food temperature at 41°F or less;
- B. Completely submerged under running water:
 - 1. At a water temperature of 70°F or below,
 - 2. With sufficient water velocity to agitate and float off loose particles in an overflow, and
 - 3. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F, or
 - 4. For a period of time that does not allow thawed portions of raw animal foods requiring cooking to be above 41°F for more than 4 hours including:
 - a. The time that the food is exposed to the running water and the time needed for preparation for cooking, or
 - b. The time it takes under refrigeration to lower the food temperature to 41°F;
- C. As part of a cooking process if the food that is frozen is:
 - 1. Cooked as specified under Section 4-122(A, B, C, D, E, F, or G), or
 - 2. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
- D. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.
- E. Reduced oxygen packaged fish that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:
 - 1. Prior to its thawing under refrigeration as specified in this section; or
 - 2. Prior to, or immediately upon completion of, its thawing using procedures specified in Part B of this section.

4-122. Cooking – raw animal foods.* (4) Raw animal foods shall be cooked to heat all parts of the food to temperatures as specified in this section (if any food item contains multiple types of raw animal foods, then that food shall be cooked to the temperature necessary to meet the most stringent requirement).

- A. Eggs:
 - 1. Eggs that are broken and prepared in response to a consumer’s order and for immediate service shall be cooked to 145°F or above for at least 15 seconds.
 - 2. Eggs and food containing eggs not cooked as per Part A(1) shall be cooked to a temperature of 155°F or above for at least 17 seconds.
- B. Fish:
 - 1. Fish and foods containing fish (except as stated in Part B(2 and 3)) shall be cooked to 145°F or above for at least 15 seconds.
 - 2. Comminuted fish and foods containing comminuted fish shall be cooked to 155°F or above for at least 17 seconds, or to a time and temperature combination as specified in Table 26-1.
 - 3. Stuffed fish, stuffing containing fish, or foods containing these items shall be cooked to 165°F or more for at least 15 seconds.
- C. Meat and ratites:
 - 1. Meat and foods containing meat, except any meat as stated in Part C(2 and 3), shall be cooked to 145°F or above for at least 15 seconds.
 - 2. Ratites, comminuted or injected meat or ratites, foods containing comminuted or injected meat or ratites, and mechanically tenderized meat or ratites shall be cooked to 155°F or above for at least 17 seconds, or to a time and temperature combination as specified in Table 26-1.
 - 3. Stuffed meat or ratites, stuffing containing meat or ratites, or any food containing these items shall be cooked to 165°F or above for at least 15 seconds.
- D. Game animals:
 - 1. Game animals and foods containing game animals, except any game animal as stated in Part D(2 and 3), shall be cooked to 145°F or above for at least 15 seconds.
 - 2. Comminuted game animals shall be cooked to heat all parts of the food to a temperature of 155°F or more for at least 17 seconds, or to a time and temperature combination as specified in Table 26-1.
 - 3. Stuffed game animals, stuffing containing game animals, and any foods containing these items shall be cooked to 165°F or above for at least 15 seconds.

TABLE 26-1

| Minimum Temperature in °F | Minimum Time |
|---------------------------|---------------------------|
| 145 | 3 minutes |
| 150 | 1 minute |
| 158 | <1 second (instantaneous) |

- E. Poultry, baluts, and any foods containing poultry or baluts shall be cooked to 165°F or above for at least 15 seconds.
- F. Stuffed pasta or foods containing stuffed pasta shall be cooked to 165°F or above for at least 15 seconds.
- G. Whole meat roasts, such as beef, corned beef, pork, lamb, and cured pork roasts such as ham shall be cooked:

1. If cooked in an oven, use an oven that is preheated to the temperature specified for the roast's weight in Table 26-2 and that is held at that temperature:

TABLE 26-2
Oven Temperature Based on Roast Weight

| Oven Type | Less than 10 lbs | 10 lbs or more |
|---|------------------|----------------|
| Still Dry | 350°F or more | 250°F or more |
| Convection | 325°F or more | 250°F or more |
| High Humidity ¹ | 250°F or less | 250°F or less |
| ¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity. | | |

2. As specified in Table 26-3, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.

TABLE 26-3

| Temperature in °F | Time ¹ in Minutes | Temperature in °F | Time ¹ in Seconds |
|---|------------------------------|-------------------|------------------------------|
| 130 | 112 | 145 | 240 |
| 131 | 89 | 147 | 134 |
| 133 | 56 | 149 | 85 |
| 135 | 36 | 151 | 54 |
| 136 | 28 | 153 | 34 |
| 138 | 18 | 155 | 22 |
| 140 | 12 | 157 | 14 |
| 142 | 8 | 158 | Instantaneous |
| 144 | 5 | | |
| ¹ Holding time may include postoven heat rise. | | | |

- H. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
 1. The food establishment serves a population that is not a highly susceptible population,
 2. The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in Section 4-109(B), and
 3. The steak is cooked on both the top and bottom to a surface temperature of 145°F or above and a cooked color change is achieved on all external surfaces.
- I. A raw animal food such as raw egg, raw fish, raw marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft-cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in Part H, may be served or offered for sale in a ready-to-eat form upon consumer request if:
 1. The food establishment serves a population that is not a highly susceptible population; and
 2. The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; and
 3. The consumer is informed by a disclosure and reminder as specified in Section 4-123 that to ensure its safety, the food should be cooked as specified above; or

4. The regulatory authority grants a variance based on a HACCP plan that:
 - a. Is submitted by the license holder and approved as specified in Section 4-704;
 - b. Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and
 - c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

4-123. Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.* (2)

- A. Except as specified in Sections 4-122(H) and 4-122(I)(4) and under Section 4-146(C), if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the license holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder as specified in this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.
- B. Disclosure shall include:
 1. A description of the animal-derived foods, such as “oysters on the half shell (raw oysters),” “raw-egg Caesar salad,” and “hamburgers (can be cooked to order);” or
 2. Identification of the animal-derived foods by marking them with an asterisk to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.
- C. Reminder shall include marking with an asterisk the animal-derived foods requiring disclosure to a footnote that states:
 1. Regarding the safety of these items, written information is available upon request;
 2. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
 3. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

4-124. Microwave cooking.* (3) Raw animal foods cooked in a microwave shall be:

- A. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- B. Covered to retain surface moisture;
- C. Heated to a temperature of at least 165°F in all parts of the food; and
- D. Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

4-125. Plant food cooking for hot holding. (1) Plant foods that are cooked for hot holding shall be cooked to a temperature of 135°F.

4-126. Non-continuous cooking of raw animal foods.* (4) Raw animal foods that are cooked using a non-continuous cooking process shall be:

- A. Subject to an initial heating process that is no longer than 60 minutes in duration;

- B. Immediately after initial heating, cooled according to the time and temperature parameters as specified in Section 4-131(A);
- C. After cooling, held frozen or cold at 41° or below for a maximum of 7 days;
- D. Prior to sale or service, cooked to at least 165°F for at least 15 seconds;
- E. Cooled according to the time and temperature parameters as specified for cooked TCS food under Section 4-131 if not either hot held as specified under Section 4-118, served immediately, or held using time as a public health control as specified under Section 4-120 after complete cooking; and
- F. Prepared and stored according to written procedures that:
 - 1. Have received prior approval from the Department;
 - 2. Are maintained in the food establishment and are available to the Department upon request;
 - 3. Describe how the requirements specified under this section are to be monitored and documented, and how corrective actions will be taken if the requirements of this section are not met;
 - 4. Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under this section prior to being offered for sale or service; and
 - 5. Describe how the foods, after initial heating but prior to cooking as specified under this section, are to be separated from ready-to-eat foods as specified under Section 4-103.

4-127. Parasite destruction in fish.* (3)

- A. Except as specified in this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:
 - 1. Frozen and stored at a temperature of -4°F or below for a minimum of 168 hours [7 days] in a freezer;
 - 2. Frozen at -31°F or below until solid and stored at -31°F or below for a minimum of 15 hours; or
 - 3. Frozen at -31°F or below until solid and stored at -4°F or below for a minimum of 24 hours.
- B. Part A does not apply to:
 - 1. Molluscan shellfish;
 - 2. A scallop product consisting only of the shucked adductor muscle;
 - 3. Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), or
 - 4. Aquaculture fish, such as salmon, that:
 - a. If raised in open water, are raised in net-pens; or
 - b. Are raised in land-based operations such as ponds or tanks; and
 - c. Are fed formulated feed, such as pellets, that contain no live parasites infective to the aquacultured fish.
 - 5. Fish eggs that have been removed from the skein and rinsed.

4-128. Parasite destruction – records, creation, and retention.* (2)

- A. Except as specified in Section 4-127 and in Part B of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.

- B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time as specified in Section 4-127 may substitute for the records as specified under Part A.
- C. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in Section 4-127, written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in Section 4-127 shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.

4-129. Ready-to-eat time/temperature control for safety food – date marking.* (2)

- A. Except when packaging food using a reduced oxygen packaging method as specified in Section 4-108, and except as specified in this section, refrigerated, ready-to-eat TCS food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of 7 days. The day of preparation shall be counted as Day 1.
- B. Except as specified in this section, refrigerated, ready-to-eat TCS food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in this section and;
 - 1. The day the original container is opened in the food establishment is counted as Day 1; and
 - 2. The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.
- C. A refrigerated, ready-to-eat food ingredient or a portion of a refrigerated, ready-to-eat TCS food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.
- D. A date marking system that meets the criteria as specified in this section may include:
 - 1. Using a method approved by the Department for refrigerated, ready-to-eat TCS food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;
 - 2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in this section;
 - 3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under this section; or
 - 4. Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the Department upon request.
- E. Parts A and B of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
- F. Parts A and B of this section do not apply to shellstock.

- G. Part B of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by the regulatory authority:
1. Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;
 2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, Gruyere, Parmesan and Reggiano, and Romano;
 3. Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, Edam, Gorgonzola, Gouda, and Monterey jack;
 4. Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;
 5. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods.
 6. Shelf stable, dry fermented sausages, such as pepperoni and Genoa; and
 7. Shelf stable salt-cured products such as prosciutto and Parma (ham).

4-130. Ready-to-eat, time/temperature control for safety food – disposition.* (3)

- A. A food specified in Section 4-129(A or B) shall be discarded if it:
1. Exceeds the temperature and time combination as specified in Section 4-129(A), except time that the product is frozen;
 2. Is in a container or package that does not bear a date or day; or
 3. Is inappropriately marked with a date or day that indicates the food was prepared or opened more than 7 days previously.
- B. Refrigerated, ready-to-eat TCS food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in Section 4-129(A).

4-131. Cooling.* (4)

- A. Cooked TCS food shall be cooled:
1. Within 2 hours from 135°F to 70°F; and
 2. Within a total of 6 hours from 135°F to 41°F or below.
- B. TCS food shall be cooled within 4 hours to 41°F or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.
- C. Except as specified under Part D, a TCS food received in compliance with laws allowing a temperature above 41°F during shipment from the supplier shall be cooled within 4 hours to 41°F or less.
- D. Raw eggs received at a temperature above 41°F as allowed by law, shall be immediately placed in refrigerated equipment that maintains an ambient temperature of 41°F or less.

4-132. Cooling methods.* (2)

- A. Cooling shall be accomplished in accordance with the time and temperature criteria as specified under Section 4-131 by using one or more of the following methods based on the type of food being cooled:
1. Placing food in shallow pans;
 2. Separating the food into smaller or thinner portions;
 3. Using rapid cooling equipment;

4. Stirring the food in a container placed in an ice water bath;
 5. Using containers that facilitate heat transfer;
 6. Adding ice as an ingredient; or
 7. Other effective means.
- B. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
1. Arranged in the equipment to provide maximum heat transfer through the container walls; and
 2. Loosely covered, or uncovered, if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

4-133. Reheating for hot holding.* (3)

- A. Except as specified in this section, TCS food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F for 15 seconds.
- B. Except as specified in Part C of this section, TCS food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.
- C. Ready-to-eat TCS food that has been commercially processed and packaged in a food processing plant that is inspected by the regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 135°F when being heated for hot holding.
- D. Reheating for hot holding, as specified in this section, shall be done rapidly and the time the food is between 41°F and the temperatures specified in this section may not exceed 2 hours.
- E. Remaining unsliced portions of meat roasts that are cooked as specified in Section 4-122(G) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions as specified in Section 4-122(G).
- F. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature.

4-134. Washing raw fruits and vegetables. (1)

- A. Except as specified in this section, and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.
- B. Fruits and vegetables may be washed by using chemicals as specified under Section 4-609.
- C. Devices used for on-site generation of chemicals meeting the requirements specified in 21 CFR 173.315, Chemicals used in the washing or to assist in the peeling of fruits and vegetables, for the washing of raw, whole fruits and vegetables shall be used in accordance with the manufacturer's instructions.

4-135. Returned food and re-service of food.* (4)

- A. Except as specified in this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.
- B. Except as specified under Section 4-146(F), a container of food that is not TCS food may be re-served from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
 2. The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.
- C. Food may not be re-served under the following conditions:
1. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.
 2. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

4-136. Food display.* (3) Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

4-137. Consumer self-service operations.* (3)

- A. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This part does not apply to:
1. Consumer self-service operations for ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;
 2. Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or
 3. Raw, frozen, shell-on shrimp, or lobster.
- B. Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.
- C. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

4-138. Non-dairy products. (1) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they are stored in sanitized, covered containers not exceeding one gallon in capacity and cooled to 41°F or below within 4 hours after preparation.

4-139. Non-dairy product dispensing. (1) Nondairy creaming or whitening agents must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

4-140. Milk and cream dispensing. (1)

- A. Milk and milk products for drinking purposes must be provided to the consumer in an unopened, commercially filled package not exceeding one pint in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser.
- B. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.
- C. Where a dispenser for milk and milk products is not available and portions of less than one-half pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than

one-half gallon capacity provided that the consumer does not have contact with or access to the commercially filled container.

- D. Cream or half-and-half must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

4-141. Condiments, protection. (1)

- A. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.
- B. Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

4-142. Bottled drinking water.* (5) Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water.

4-143. Additives.* (5)

- A. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe, or prior sanctioned substances that exceed amounts as specified in 21 CFR 181-186, substances that exceed amounts as specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions as specified in 40 CFR 180 Tolerances for pesticide chemicals in food, and exceptions.
- B. Food shall be protected from contamination that may result from the addition of, as specified in this section:
 - 1. Unsafe or unapproved food or color additives; and
 - 2. Unsafe or unapproved levels of approved food and color additives.
- C. A food employee may not:
 - 1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁; or
 - 2. Except for grapes, serve or sell food as specified under Part B of this section that is treated with sulfiting agents before receipt by the food establishment.

4-144. Food contact with equipment and utensils.* (3) Food shall only contact surfaces of:

- A. Equipment and utensils that are cleaned as specified in Section 4-310 and sanitized as specified in Section 4-316 of this Code;
- B. Single-service or single-use articles; or
- C. Linens, such as clean cloth napkins, as specified in Section 4-371.

4-145. Vended time/temperature control for safety food – original container. (1) TCS food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

4-146. Additional safeguards for highly susceptible populations.* (5) In a food establishment that serves a highly susceptible population:

- A. The following criteria apply to juice:

1. For the purposes of this section only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 2. Any juice served on or off premises to members of a highly susceptible population shall be pasteurized.
- B. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:
1. Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg fortified beverages, and
 2. Except as specified in Part E of this section, recipes in which more than one egg is broken and the eggs are combined;
- C. The following foods may not be served or offered for sale in a ready-to-eat form:
1. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare,
 2. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and
 3. Raw seed sprouts.
- D. Time only, as the public health control as specified under Section 4-120, may not be used for raw eggs.
- E. Part B does not apply if:
1. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under Section 4-122, and served immediately, such as an omelet, soufflé, or scrambled eggs;
 2. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
 3. The preparation of the food is conducted under an approved HACCP plan that:
 - a. Identifies the food to be prepared,
 - b. Prohibits contacting ready-to-eat food with bare hands,
 - c. Includes specifications and practices that ensure:
 - i *Salmonella enteritidis* growth is controlled before and after cooking, and
 - ii *Salmonella enteritidis* is destroyed by cooking the eggs according to the temperature and time as specified in Section 4-122,
 - d. Details the procedures that:
 - i Will control cross-contamination of ready-to-eat food with raw eggs, and
 - ii Delineate cleaning and sanitization procedures for food-contact surfaces, and
 - e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.
- F. Food may not be re-served under the following conditions:
1. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.
 2. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

4-147. Temporary and mobile food establishments – food restrictions.* (5) This subsection is applicable only whenever a temporary or mobile food establishment is permitted by the Department to operate in any manner without complying with all the requirements of this Code.

- A. Only those TCS foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served.
- B. The preparation or service of other TCS foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish, is prohibited.
- C. This prohibition does not apply to any TCS food that has been prepared and packaged under conditions meeting the requirements of this chapter; is packaged in individual servings; is stored at a temperature of 41°F or below or at a temperature of 135°F or above in facilities meeting the requirements of this chapter; and is served directly in the unopened container in which it was packaged.

4-148. Cottage foods. Those foods classified as cottage foods under Section 23-09.5 of the North Dakota Century Code and associated rules developed by the North Dakota Department of Health Division of Food and Lodging (hereafter referred to as the Cottage Food Law) are not within the scope of this Code and are not regulated by the Department.

SECTION 4-2: Management and Personnel.

4-201. Mandatory food education and other training requirements.* (5)

- A. All food employees are required to take and pass an approved food education course.
 - 1. The FDHU Food Safety for Food Service Employees course shall be an approved course for completing this requirement.
 - 2. Other food safety courses will be evaluated on a case-by-case basis for content and possible satisfaction of the requirements of this section. In order to determine whether a food safety course will be deemed acceptable for fulfilling the requirements of this section by the Department, a person shall:
 - a. Prior to taking a course, submit a complete description of the course including date, time, content of the course, the name of the course instructor, name of the organization sponsoring or that is hosting the course, and contact information for the instructor and sponsor, or
 - b. Upon completion of the course, submit a complete description for the course, including duration of the course, topics covered, complete copies of all texts or resources used during the course, and any other information deemed necessary by the Department for completing an evaluation of the content upon completion of the course.
 - 3. Nothing in this Section shall obligate the Department to accept any particular food safety course in place of the FDHU Food Safety for Food Service Employees course. Submitting an alternate course for approval does not stop, change, or alter the requirements in Parts D-H below.
- B. All food employees are required to maintain proof that they have a current food education certification at all times while performing any tasks in the food establishment.
- C. An employee that does not meet the requirements specified in Part A may not work in any food establishment as a food employee until they have successfully passed an approved food education course.
- D. All management and supervisory employees shall take and pass an approved food education course prior to performing any duties in any food establishment.

- E. New food employees shall take and pass an approved food education course within 30 days of the date on which they first perform any duties in the food establishment.
- F. Food employees of any temporary, seasonal, mobile, or non-permanent food establishment shall take and pass an approved food education course prior to performing any duties in that food establishment.
- G. Seasonal or temporary employees at any food establishment shall take and pass an approved food education course prior to performing any duties at that food establishment.
- H. The Department may, upon review or evaluation of any duties performed by any employee of any food establishment, mandate that employee take and pass an approved food education class, even if they do not meet the definition of food employee, and may mandate that any employee take and pass an approved food safety class in a time frame less than that specified in Part E above.
- I. All employees that serve beverages containing alcohol to customers are required to take and pass an approved responsible beverage server training course, and to have proof on their person at all times while working in the establishment that they have a current certification. Such certification shall be obtained within 45 days of beginning employment in a position that involves serving beverages containing alcohol to customers.

4-202. Employee health.* (41) Unless specified otherwise in this regulation, all issues pertaining to employee health as it relates to employees in establishments regulated by this Code shall be addressed as per the most current version of the FDA Model Food Code under the chapter named “Employee Health”. At the time of adoption of this Code, this document is the 2017 Food Code. The “Employee Health” section can be found in Section 2-2 of the 2017 FDA Model Food Code.

4-203. Obtaining information: personal history of illness, medical examination, and specimen analysis. 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:

- A. Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and
- B. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.

4-204. Restriction or exclusion of food employee, or summary suspension of permit. 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 order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

- A. Restricting the food employee or conditional employee;
- B. Excluding the food employee or conditional employee; or
- C. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

4-205. Restriction or exclusion order: warning or hearing not required, information required to order. Based on the findings of the investigation as specified in Section 4-203 and to control disease transmission, the Department may issue an order of restriction or exclusion to a suspected

food employee or the permit holder without prior warning, notice of hearing, or a hearing if the order:

- A. States the reasons for the restriction or exclusion that is ordered;
- B. States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- C. States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided by law; and
- D. Provides the name and address of the Department representative to whom a request for an appeal hearing may be made.

4-206. Removal of exclusions and restrictions. The Department shall release a food employee or conditional employee from restriction or exclusion according to law and the conditions specified under Section 4-202.

4-207. Employee health – coughing, sneezing, and nasal discharges.* (5) Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

4-208. Use of bandages, finger cots, or finger stalls. (2) If used, an impermeable cover such as a bandage, finger cot, or finger stall located on the wrist, hand, or finger of a food employee working with exposed food shall be covered with a single-use glove.

4-209. General personal cleanliness.* (5)

- A. Food employees shall keep their hands and exposed portions of their arms clean.
- B. Food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink.
- C. Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:
 - 1. Wetting hands under clean, running water that is at least 100°F;
 - 2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;
 - 3. Rub vigorously for at least 10 to 15 seconds while:
 - a. Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure, and
 - b. Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, fingertips, and areas between the fingers;
 - 4. Thoroughly rinse under clean, running warm water; and
 - 5. Immediately follow the cleaning procedure with thorough drying using a method as specified in Section 4-419(B).
- D. To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.
- E. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food establishment.

- F. Except as specified in Part G, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets allowed as specified in Section 4-432.
- G. Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacean in display tanks if they wash their hands as specified in Part B.
- H. The greatest concentration of microbes exists around and under the fingernails of the hands. The area under the fingernails, known as the “subungual space”, has by far the largest concentration of microbes on the hand and is also the most difficult area of the hand to decontaminate. Fingernail brushes, if used properly, have been found to be effective tools in decontaminating this area of the hand. Proper use of single-use fingernail brushes, or designated individual fingernail brushes for each employee, during the handwashing procedure can achieve up to a 5-log reduction in microorganisms on the hands.

4-210. When to wash.* (5) Food employees shall clean their hands and exposed portions of their arms as specified under Section 4-209 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

- A. After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- B. After using the toilet room;
- C. After caring for or handling service animals or aquatic animals;
- D. After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- E. After handling soiled equipment or utensils;
- F. During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- G. When switching between working with raw food and working with ready-to-eat food;
- H. Before donning gloves for working with food; and
- I. After engaging in any other activities that contaminate the hands.

4-211. Approved handwashing facilities.* (5) Food employees shall only clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink, mop sink, utility sink, or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

4-212. Fingernail maintenance. (1) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

4-213. General clothing and jewelry. (1) Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles. While preparing food, food employees may not wear any jewelry, including medical information jewelry on their arms and hands; with the exception that a plain wedding band or wedding ring shall be allowed to be worn as long as it does not contaminate the food or serve as a source of contamination of the food.

4-214. Hair restraints. (1)

- A. Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- B. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

4-215. General employee practices – smoking, eating, and drinking.* (3)

- A. Employees may consume food only in designated dining areas. An employee dining area may not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection. An employee dining area may not be located in any food preparation areas.
- B. Employees may not use tobacco in any form while engaged in food preparation or service, or while inside a food establishment. Employees may use tobacco only in designated areas in compliance with law. An employee tobacco-use area may not be designated for that purpose if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection or if it is in violation of law.
- C. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. Open beverage containers are prohibited for use by food employees.

4-216. Bare hand contact.* (5)

- A. Bare hand contact with ready-to-eat foods is prohibited.
- B. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

4-217. Preventing contamination when tasting.* (3) During any stage of food preparation or service, if a utensil is used to taste any food by any employee or food employee, then that utensil may not be used again to contact any food that is for sale or service until it has been cleaned and sanitized as specified in Sections 4-310, 4-315, and 4-316. Tasting of food may not result in contamination of food for sale or service.

4-218. Person in charge.* (3)

- A. The license holder for any food establishment shall be the person in charge or shall designate a person in charge at that food establishment. There shall be a person in charge present at a food establishment during all of its hours of operation.
- B. The person in charge shall be a Certified Food Protection Manager who has shown proficiency of required information through passing a test that is part of an Accredited Program.
 - 1. This requirement is:
 - a. Mandatory at all food establishments categorized as a risk level 2 or higher, and having 10 or more food employees; and
 - b. Recommended at all other food establishments.
 - 2. Those food establishments in operation as of the date of adoption of this regulation shall have 12 months from the effective date of this regulation to

come into compliance. All facilities that begin operation after the date of adoption of this regulation shall be in compliance with this requirement prior to beginning operations.

- C. The person in charge shall ensure that:
1. Food establishment operations are not conducted in any private home or in any room used as living or sleeping quarters;
 2. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that the person in charge may authorize brief visits and tours if steps are taken to ensure that food; clean equipment, utensils, and linens; and single-service articles, single-use articles, and single-service condiments are protected from contamination;
 3. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with all aspects of this Code;
 4. Employees are effectively cleaning their hands by routinely monitoring the employees' handwashing;
 5. Employees are visibly observing foods as they are received, and evaluating foods delivered during non-operating hours in order to make a determination that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;
 6. Employees are verifying that foods delivered to the food establishment during non-operating hours are from approved sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented;
 7. Employees are properly cooking TCS foods, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices that are properly scaled and calibrated;
 8. Employees are using proper methods to rapidly cool TCS foods that are not being held hot or that are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
 9. Employees are properly maintaining the temperatures of TCS foods during hot and cold holding through daily oversight of the employees' routine monitoring of food temperatures;
 10. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed by means of a disclosure and reminder that the food is not cooked sufficiently to ensure its safety;
 11. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;
 12. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;
 13. Employees are preventing cross-contamination by prohibiting bare hand contact with food;

14. Employees are properly trained in food safety, including food allergy awareness as it relates to their assigned duties;
 15. Food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food;
 16. Written procedures and plans, where specified by this Code and as developed by the food establishment, are maintained and implemented as required; and
 17. All food employees that are working in the food establishment at that time have taken and passed the mandatory food education course as specified in Section 4-201.
 18. All employees that serve beverages containing alcohol have completed an approved responsible beverage server training course and maintain a current certification.
- D. In a food establishment with 2 or more separately licensed operations or departments that are the legal responsibility of the same license holder and that are located on the same premises the license holder may, during specific time periods when food is not being prepared, packaged or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately licensed food establishment on the premises.

4-219. Person in charge – demonstration of knowledge.* (3) Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the department knowledge of foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by:

- A. Complying with this Code by having no violations of critical items during the current inspection;
- B. Being able to communicate with the representative of the Department well enough to understand the requirements of this Code and to understand and implement any necessary corrective actions that need to be taken to bring the facility into compliance with this Code;
- C. Being a Certified Food Protection Manager who has shown a proficiency in required information by passing a test that is part of an accredited program; and
- D. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
 1. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
 2. Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;
 3. Describing the symptoms associated with the diseases that are transmissible through food;
 4. Explaining the significance of the relationship between maintaining the time and temperature of TCS food and the prevention of foodborne illness;
 5. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
 6. Stating the required food temperatures and times for safe cooking of TCS food including meat, poultry, eggs, and fish;
 7. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of TCS food;

8. Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - a. Cross contamination;
 - b. Bare hand contact with ready-to-eat foods;
 - c. Handwashing; and
 - d. Maintaining the food establishment in a clean condition and in good repair;
9. Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction;
10. Explaining the relationship between food safety and providing equipment that is:
 - a. Sufficient in number and capacity; and
 - b. Properly designed, constructed, located, installed, operated, maintained, and cleaned;
11. Explaining correct procedures for cleaning and sanitizing utensils, and food-contact surfaces of equipment;
12. Identifying the source of water used and measures taken to ensure it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;
13. Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;
14. Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code;
15. Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by law, this Code, or an agreement between the Department and the food establishment;
16. Explaining the responsibilities, rights, and authorities assigned by this Code to the:
 - a. Food employee;
 - b. Conditional employee;
 - c. Person in charge;
 - d. Department; and
17. Explaining how the person in charge, food employees, and conditional employees comply with the reporting responsibilities and exclusion or restriction of food employees.

4-220. Food protection manager certification. (1)

- A. A person in charge who demonstrates knowledge by being a Food Protection Manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with Section 4-219.
- B. A food establishment that has a person in charge that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food

Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with Section 4-218.

4-221. Operator knowledge – mechanical warewashing machines.* (3) In any establishment, the license holder or their designate shall be knowledgeable in regards to the type of and specifications of the mechanical warewashing equipment used in that establishment, including:

- A. Correct specifications for that machine (such as single tank, multiple tank, single temperature, dual temperature, etc.); and
- B. Correct wash temperatures for the machine in use; and
- C. Correct sanitization temperatures for hot water sanitizing machines; or
- D. Correct sanitizer concentrations for chemical sanitizing machines as well as how to check sanitizer concentration on the machine in real-world conditions.

SECTION 4-3: Equipment, Utensils, and Linens.

4-301. Existing equipment. (1) Equipment that was installed in a food establishment prior to January 1, 2019, and that does not fully meet all of the design and construction requirements of this Chapter may be deemed acceptable by the Department for use in that establishment if the license holder can demonstrate that it is in good repair, that it is capable of being maintained in a sanitary condition, and that all food-contact surfaces are nontoxic. All such equipment must be replaced with equipment that is in full compliance of this chapter by January 1, 2020.

Replacement equipment and new equipment acquired after July 1, 2019, must meet all the requirements of this Code.

4-302. Temperature measuring devices – ambient air and water. (1)

- A. In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.
- B. Except as specified in Part C of this section, cold or hot holding equipment used for TCS food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.
- C. Part B of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as bain-maries, steam tables, heat lamps, calrod units, cold plates, or insulated food transport carriers, and salad bars.
- D. Temperature measuring devices shall be designed to be easily readable.
- E. Ambient air and water temperature measuring devices that are scaled only in Celsius or that are dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1.5^{\circ}$ C in the intended range of use.
- F. Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}$ F in the intended range of use.
- G. Ambient air temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

4-303. Temperature measuring devices – food.* (2) Temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures.

- A. The temperature measuring device used for checking the temperatures of foods being cooked or held shall be appropriate for checking the temperature of the food being checked.
 - 1. Temperature measuring devices with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.
 - 2. Temperature measuring devices with appropriately sized sensing areas shall be provided for taking temperatures of items that would reasonably be expected to have variations in temperature between different parts of the food such as the difference in temperature between the surface of a piece of chicken and the interior part of the piece of chicken.
- B. Temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.
- C. Temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use. Temperature measuring devices that are dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use.
- D. Food temperature measuring devices shall have a numerical scale, printed record, or digital readout in increments of no greater than 2°F in the intended range of use.
- E. Food temperature measuring devices shall be calibrated in accordance with the manufacturer's specifications as necessary to ensure their accuracy.

4-304. In-use utensils – between use storage. (1) During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

- A. Except as specified in this section, in the food with their handles above the top of the food and the container;
- B. In food that is not a TCS food with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
- C. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under Sections 4-310 and 4-316;
- D. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
- E. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not a TCS food; or
- F. In a container of water if the water is maintained at a temperature of at least 135°F or 41°F or less and the container is cleaned and sanitized as specified in Sections 4-310 and 4-316 after each use or following any interruption of operations during which contamination may have occurred.

4-305. Using clean tableware for second portions and refills. (1)

- A. Food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills, except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container.

- B. Self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment except as specified in Part C.
- C. Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process.

4-306. Preset tableware. (1)

- A. Except as specified in this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted;
- B. Preset tableware may be exposed if:
 - 1. All unused settings are removed when a consumer is seated; or
 - 2. Settings not removed when a consumer is seated are cleaned and sanitized before further use.

4-307. Kitchenware and tableware. (1)

- A. Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.
- B. Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.
- C. Except as specified in this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.
- D. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

4-308. Equipment, utensils, linens, and single-service and single-use articles – storage. (1)

- A. Except as specified in this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
 - 1. In a clean, dry location;
 - 2. Where they are not exposed to splash, dust, or other contamination; and
 - 3. At least 6 inches above the floor.
- B. Clean equipment and utensils shall be stored as specified in this section, and shall be stored:
 - 1. In a self-draining position that allows air drying, or
 - 2. Dry; and
 - 3. Covered or inverted.
- C. Single-service and single-use articles shall be stored as specified in this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.
- D. Items that are kept in closed packages may be stored less than 6 inches above the floor on dollies, pallets, racks, and skids that are designed as specified in Section 4-385.
- E. Except as specified in Part F of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:
 - 1. In locker rooms;
 - 2. In toilet rooms;
 - 3. In garbage rooms;
 - 4. In mechanical rooms;

5. Under sewer lines that are not shielded to intercept potential drips;
 6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
 7. Under open stairwells; or
 8. Under other sources of contamination.
- F. Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

4-309. Equipment, storage cabinets – contamination prevention. (1)

- A. Except as specified below, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:
1. In locker rooms;
 2. In toilet rooms;
 3. In garbage rooms;
 4. In mechanical rooms;
 5. Under sewer lines that are not shielded to intercept potential drips;
 6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
 7. Under open stairwells; or
 8. Under other sources of contamination.
- B. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

4-310. Equipment food-contact surfaces and utensils – cleaning frequency.* (3)

- A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.
- B. Equipment food-contact surfaces and utensils shall be cleaned:
1. Except as specified below, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
 2. Each time there is a change from working with raw foods to working with ready-to-eat foods;
 3. Between uses with raw fruits and vegetables and with TCS food;
 4. Before using or storing a food temperature measuring device; and
 5. At any time during the operation when contamination may have occurred.
- C. Part B(1) above does not apply if the food-contact surface or utensil is in contact with a succession of different types of raw meat and poultry each requiring a higher meat as specified in Section 4-122 than the previous type.
- D. Except as specified in Part E of this section, if used for TCS food, food-contact surfaces of equipment and utensils shall be cleaned throughout the day at least every 4 hours.
- E. Surfaces of utensils and equipment contacting TCS food may be cleaned less frequently than every 4 hours if:
1. In storage, containers of TCS food and their contents are maintained at temperatures specified in Section 4-118 and the containers are cleaned when they are empty;
 2. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:
 - a. The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

| Temperature: | Cleaning Frequency: |
|---------------------|------------------------------|
| 41°F or less | At least once every 24 hours |
| >41°F - 45°F | At least once every 20 hours |
| >45°F - 50°F | At least once every 16 hours |
| >50°F - 55°F | At least once every 10 hours |

- b. The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.
 - 3. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat TCS food that is maintained at the temperatures specified in Section 4-118, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;
 - 4. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Section 4-118;
 - 5. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;
 - 6. The cleaning schedule is approved based on consideration of:
 - a. Characteristics of the equipment and its use,
 - b. The type of food involved,
 - c. The amount of food residue accumulation, and
 - d. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or
 - 7. In-use utensils are intermittently stored in a container of water in which the water is maintained at 135°F or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.
- F. Except when dry cleaning methods are used as specified under Section 4-314, surfaces of utensils and equipment contacting food that is not TCS food shall be cleaned:
- 1. At any time when contamination may have occurred;
 - 2. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
 - 3. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
 - 4. In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks, and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - a. At a frequency specified by the manufacturer, or
 - b. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.
- G. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid,

alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

- H. The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.
- I. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

4-311. Cooking and baking equipment. (1)

- A. The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in Section 4-310(E)(6).
- B. The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

4-312. Precleaning. (1)

- A. Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
- B. If necessary for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with abrasives.

4-313. Wet cleaning. (1)

- A. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.
- B. The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.
- C. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:
 - 1. Exposes the items to the unobstructed spray from all cycles; and
 - 2. Allows the items to drain.

4-314. Dry cleaning. (1)

- A. If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not TCS food.
- B. Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

4-315. Rinsing procedures. (1) Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

- A. Use of a distinct, separate water rinse after washing and before sanitizing if using:
 - 1. A 3-compartment sink,
 - 2. Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified in Section 4-324(E), or
 - 3. A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;
- B. Use of a detergent-sanitizer as specified under Section 4-325 if using:

1. Alternative warewashing equipment as specified in Section 4-324(E) that is approved for use with a detergent-sanitizer, or
2. A warewashing system for CIP equipment;
- C. Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a 2-compartment sink operation;
- D. If using a warewashing machine that does not recycle the sanitizing solution as specified under Part E below, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:
 1. Integrated in the application of the sanitizing solution, and
 2. Wasted immediately after each application; or
- E. If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

4-316. Sanitization – food-contact surfaces and utensils.* (4)

Utensils and food-contact surfaces of equipment shall be sanitized before use after being washed and rinsed by:

- A. Hot water manual operations by immersion for at least 30 seconds and as specified in Section 4-326;
- B. Hot water mechanical operations by being cycled through equipment that is set up as specified under Sections 4-328, 4-333, and 4-334, and achieving a utensil surface temperature of 160°F as measured by an irreversible registering temperature indicator; or
- C. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under Section 4-607. Contact times shall be consistent with those on EPA-registered label use instructions by providing:
 1. Except as specified under Part 2 in this section, a contact time of at least 10 seconds for a chlorine solution as specified in Section 4-607(A),
 2. A contact time of at least 7 seconds for a chlorine solution of 50 ppm that has a pH of 10 or less and a temperature of at least 100°F or a pH of 8 or less and a temperature of at least 75°F,
 3. A contact time of at least 30 seconds for other chemical sanitizing solutions, or
 4. A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in Section 1-101.

4-317. Testing devices.* (3)

- A. A test kit or other device that accurately measures the concentration in ppm or mg/l of sanitizing solutions shall be obtained by the license holder and available for use.
- B. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.
- C. Any testing equipment shall be of a minimum accuracy approved by the Department.
- D. Testing strips, reagents, or other single-use testing materials shall be replaced every 6 months, or more often as recommended by the manufacturer.
- E. All testing equipment and related materials shall be kept in a clean location and shall be protected from moisture and from temperature extremes.

- F. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.
- G. In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature.
- H. Water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

4-318. Rinsing equipment and utensils after cleaning and sanitizing. (1)

After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

- A. The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated in accordance with the manufacturer's instructions and with all applicable sections of this Code; and
- B. The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution, whose EPA registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

4-319. Drying. (1)

After cleaning and sanitizing, equipment and utensils:

- A. Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions) before contact with food; and
- B. May not be cloth dried, except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

4-320. Warewashing equipment – clean solutions. (1)

The wash, rinse, and sanitize solutions shall be maintained clean and shall be free of food debris and visible soil.

4-321. Warewashing equipment – cleaning agents.* (3)

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

4-322. Warewashing equipment – cleaning frequency. (1)

A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards shall be cleaned:

- A. Before use;
- B. Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
- C. If used, at least every 24 hours.

4-323. Drainboards. (1)

- A. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.
- B. Drainboards shall be self-draining.

4-324. Manual warewashing – sink compartment requirements.* (3)

- A. Except as specified in this section, a sink with at least 3-compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.
- B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in Part E shall be used.
- C. Warewashing sinks shall be self-draining.
- D. Once the 3-compartment sink has been cleaned and then sanitized as per Section 4-316, manual washing, rinsing, and sanitizing must 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 clean and maintained at not less than 110°F.
 - 2. Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.
 - 3. Equipment and utensils shall be sanitized in the third compartment using an approved sanitizing method.
 - 4. Equipment and utensils shall be adequately drained and air-dried.
- E. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative warewashing equipment may include:
 - 1. High-pressure detergent sprayers;
 - 2. Low- or line-pressure spray detergent foamers;
 - 3. Other task-specific cleaning equipment;
 - 4. Brushes or other implements;
 - 5. 2-compartment sinks as specified under Parts F and G of this section; or
 - 6. Receptacles that substitute for the compartments of a multicompartment sink.
 - 7. If washing in sink compartments or a warewashing machine is impractical, such as when the equipment is fixed or the utensils are too large, and washing is done by using alternative manual warewashing equipment as specified in this section, it shall be done in accordance with the following:
 - a. Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
 - b. Equipment components and utensils shall be scraped or rough cleaned to remove food particle accumulation; and
 - c. Equipment and utensils shall be washed as specified under Section 4-310(D).
- F. Before a 2-compartment sink is used:
 - 1. The permit holder shall have its use approved; and
 - 2. The permit holder shall limit the number of kitchenware items cleaned and sanitized in the 2-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

- a. Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use, and
 - b. Use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified in Section 4-325, or
 - c. Use a hot water sanitization immersion step as specified in Section 4-326.
- G. A 2-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.
- H. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned and sanitized before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized before and after using the sink to wash produce or thaw food.
- I. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this Chapter; beverages that are not TCS food and are dispensed from covered urns or other protected equipment; and frankfurters need not comply with requirements of Part A if approved by the Department and if the required equipment for cleaning and sanitization exists at the base of operations for the mobile food unit.

4-325. Manual warewashing equipment – chemical sanitization using detergent-sanitizers. (1) If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

4-326. Manual warewashing equipment – hot water sanitization.* (3)

- A. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:
 - 1. Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F; and
 - 2. Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.
- B. The temperature of the water shall be maintained at 171°F or above if immersion in hot water is used for sanitizing in a manual operation.

4-327. Warewashing machine – data plate operating specifications. (1) A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

- A. Temperatures required for washing, rinsing, and sanitizing;
- B. Pressure required for the fresh water sanitizing rinse, unless the machine is designed to use only a pumped sanitizing rinse; and
- C. Conveyor speed for conveyor machines or cycle time for stationary rack machines.

4-328. Mechanical warewashing machines – manufacturers' operating instructions.* (2)

- A. A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.
- B. A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with the manufacturer's specifications.

4-329. Warewashing machines – automatic dispensing of detergents and sanitizers.* (3)

A warewashing machine shall be equipped to:

- A. Automatically dispense detergents and sanitizers; and
- B. Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

4-330. Mechanical warewashing equipment – temperature measuring devices. (1)

- A. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:
 - 1. In each wash and rinse tank; and
 - 2. As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.
- B. Temperature measuring devices on warewashing machines shall:
 - 1. Have a numerical scale, printed record, or digital readout in increments no greater than 1° C or 2°F in the intended range of use; and
 - 2. Be maintained in good repair and be accurate within the intended range of use.

4-331. Warewashing machines – internal baffles. (1) Warewashing machine with separate wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

4-332. Mechanical warewashing equipment – wash solution temperature.* (3)

- A. The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:
 - 1. For a stationary rack, single temperature machine, 165°F;
 - 2. For a stationary rack, dual temperature machine, 150°F;
 - 3. For a single-tank, conveyor, dual temperature machine, 160°F; or
 - 4. For a multi-tank, conveyor, multitemperature machine, 150°F.
- B. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 120°F.

4-333. Mechanical warewashing equipment – hot water sanitization temperatures.* (3)

- A. In a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 194°F, or less than:
 - 1. For a stationary rack, single temperature machine, 165°F; or
 - 2. For all other machines, 180°F.
- B. The maximum temperature specified in Subsection A does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

4-334. Mechanical warewashing equipment – sanitization pressure. (1)

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than 5 pounds per square inch or more than 30 pounds per square inch.

4-335. Warewashing machines – flow pressure device. (1)

- A. Warewashing machines that provide a fresh, hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that

- measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and
- B. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a ¼ inch Iron Pipe Size (IPS) valve.
 - C. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pound per square inch or smaller and shall be accurate to ± 2 pounds per square inch in the range indicated on the manufacturer's data plate.

4-336. Refilling returnables.* (3)

- A. Except as specified in this section, empty containers returned to a food establishment for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.
- B. A take-home food container returned to a food establishment may be refilled at a food establishment with food if the food container is:
 - 1. Designed and constructed for reuse and in accordance with the requirements specified under Section 4-3;
 - 2. One that was initially provided by the food establishment to the consumer, either empty or filled with food by the food establishment, for the purpose of being returned for reuse;
 - 3. Returned to the food establishment by the consumer after use;
 - 4. Subject to the following steps before being refilled with food:
 - a. Cleaned as specified in Section 4-310 of this Code,
 - b. Sanitized as specified under Section 4-316 of this Code, and
 - c. Visually inspected by a food employee to verify that the container, as returned, meets the requirements as specified in Section 4-3.
- C. A take-home food container returned to a food establishment may be refilled at a food establishment with beverage if:
 - 1. The beverage is not a TCS food;
 - 2. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
 - 3. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
 - 4. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
 - 5. The container is refilled by:
 - a. An employee of the food establishment, or
 - b. The owner of the container if the beverage system includes a contamination-free transfer process as specified under Section 4-376 that cannot be bypassed by the container owner.
- D. Consumer-owned, personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under Section 4-376.
- E. Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

4-337. Cleaned in place equipment. (2)

- A. CIP equipment shall meet the criteria found in Section 4-337 and shall be designed and constructed so that:
 - 1. Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces, and
 - 2. The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and
- B. CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are effectively being cleaned.

4-338. Equipment – reassembly. (1) Equipment shall be reassembled so that food-contact surfaces are not contaminated.

4-339. Water reservoir of fogging devices – cleaning.* (3)

- A. A reservoir used to supply water to a device such as a produce fogger shall be:
 - 1. Maintained in accordance with manufacturer's specifications; and
 - 2. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under Part B, whichever is more stringent.
- B. Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:
 - 1. Draining and complete disassembly of the water and aerosol contact parts;
 - 2. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
 - 3. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
 - 4. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 ppm chlorine solution.

4-340. Steam. (2) Steam used in contact with food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

4-341. Pressure spray cleaning. (1) Fixed equipment designed and constructed to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

4-342. Fixed equipment. (1)

- A. Equipment that is fixed because it is not easily movable shall be installed so that it is:
 - 1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;
 - 2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 of an inch; or
 - 3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.
- B. Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:
 - 1. Sealed; or
 - 2. Elevated on legs, as specified in this section.
- C. Except as specified in this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 6 inch clearance between the floor and the equipment.

- D. If no part of the floor under the floor-mounted equipment is more than 6 inches from the point of cleaning access, the clearance space may be only 4 inches.
- E. This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.
- F. Except as specified below, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 4 inch clearance between the table and the equipment.
- G. The clearance space between the table and counter-mounted equipment may be:
 - 1. 3 inches if the horizontal distance of the table top under the equipment is no more than 20 inches from the point of access for cleaning; or
 - 2. 2 inches if the horizontal distance of the table top under the equipment is no more than 3 inches from the point of access for cleaning.

4-343. Equipment openings, closures, and deflectors. (1)

- A. A cover or lid for equipment shall overlap the opening and be sloped to drain.
- B. An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 0.2 inches.
- C. Except as specified in Part D of this section, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.
- D. If a watertight joint is not provided:
 - 1. The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
 - 2. The opening shall be flanged as specified in Part B of this section.

4-344. Food-contact surfaces.* (3)

- A. Multiuse food-contact surfaces shall be:
 - 1. Smooth;
 - 2. Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
 - 3. Free of sharp internal angles, corners, and crevices;
 - 4. Finished to have smooth welds and joints; and
 - 5. Except as specified in Part B of this section, accessible for cleaning and inspection by one of the following methods:
 - a. Without being disassembled;
 - b. By disassembling without the use of tools; or
 - c. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.
- B. Part A of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage lines or tubes.

4-345. Nonfood-contact surfaces. (1)

- A. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.
- B. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices; and designed and constructed to allow easy cleaning and to facilitate maintenance.

- C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

4-346. General equipment and utensils – characteristics. (1)

- A. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:
 - 1. Safe;
 - 2. Durable, corrosion resistant, and non-absorbent;
 - 3. Sufficient in weight and thickness to withstand repeated cleaning and warewashing;
 - 4. Finished to have a smooth, easily cleanable surface; and
 - 5. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.
- B. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.
- C. Utensils, equipment, and food-contact surfaces of equipment shall be maintained in a state of repair and condition that maintains the requirements of Part A and Part B or shall be discarded and removed from the premises.
- D. Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with the manufacturer's specifications.
- E. Equipment shall be kept free of excess condensation, ice, or any standing or pooled water or other liquids that may contaminate food or utensils.

4-347. Protective shielding. (1)

- A. Light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.
- B. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:
 - 1. The integrity of the packages cannot be affected by broken glass falling into them; and
 - 2. The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.
- C. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

4-348. Nonstick coatings. (1) Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids. For equipment with such coatings, the coating shall be maintained in a whole, intact condition.

4-349. Cutting surfaces. (1) Surfaces, such as cutting blocks and boards, that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

4-350. Cast iron. (1) Except as specified in this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

- A. Cast iron may be used as a surface for cooking.

- B. Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

4-351. Galvanized metal.* (3) Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

4-352. Lead. (1)

- A. Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

| Utensil Category | Ceramic Article Description | Maximum Lead ppm |
|--|------------------------------------|-------------------------|
| Beverage Mugs, Cups, Pitchers | Coffee Mugs | 0.5 |
| Large Hollowware (excluding pitchers) | Bowls ≥ 1.16 QT | 1.0 |
| Small Hollowware (excluding cups and mugs) | Bowls <1.16 QT | 2.0 |
| Flat Tableware | Plates, Saucers | 3.0 |

- B. Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.
- C. Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

4-353. Copper.* (3)

- A. Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.
- B. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

4-354. Wood. (1)

- A. Wood and wood wicker may not be used as a food-contact surface, except as specified below.
- B. Hard maple or an equivalently hard, close-grained wood may be used for:
 1. Cutting boards, cutting blocks, baker’s tables, and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
 2. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F or above.
- C. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.
- D. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
 1. Untreated wood containers; or

2. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.
- E. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons.

4-355. Plastics. (1) Plastic, rubber, or rubber-like materials may be used for multiuse equipment or utensils only if:

- A. They are made of safe and approved materials and are specifically designed to be multiuse;
- B. The material is resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, melting, and distortion; and is used only so long as it is free of defect and in good repair;
- C. The material is of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods; and
- D. The material meets the following general requirements: shall be smooth and easily cleanable and free of difficult-to-clean edges or projections, shall not allow the migration of deleterious substances into food, and shall not impart odors, colors, or tastes to food.

4-356. Latex. (1) Latex shall not be used as a food-contact surface, and items containing latex shall not contact any food or food-contact surface.

4-357. Can openers. (1)

- A. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.
- B. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.
- C. Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

4-358. “V” threads, use limitations. (1) Except for hot oil cooking or filtering equipment, “V” type threads may not be used on food-contact surfaces.

4-359. Hot oil filtering equipment. (1) Hot oil filtering equipment shall meet the requirements as specified under 4-337 and 4-344 and shall be readily accessible for filter replacement and cleaning of the filter.

4-360. Bearing and gear boxes – leakproof. (1) Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

4-361. Beverage tubing – separation. (1) Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold plate beverage cooling devices may not be installed in contact with stored ice.

4-362. Ice units – separation of drains. (1) Liquid waste drain lines may not pass through an ice machine or ice storage bin.

4-363. Condenser unit – separation. (1) If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

4-364. Equipment compartments – drainage. (1) Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

4-365. Kick plates. (1) Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

- A. Removable by one of the methods specified in 4-344(A)(5) or capable of being rotated open; and
- B. Removable or capable of being rotated open without unlocking equipment doors.

4-366. Mats and duckboards. (1)

- A. Any floor mats or duckboards shall be of nonabsorbent, grease-resistant materials and shall be of such size, design, and construction as to be removable and easily cleanable.
- B. All floor mats and duckboards shall be maintained in a clean condition.
- C. Duckboards shall not be used as storage racks.

4-367. Gloves – use limitations.* (5)

- A. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.
- B. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under Sections 4-122, 4-124, 4-125, or 4-126, such as a frozen food or primal cut of meat.
- C. Cloth gloves used as specified in Part B shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork, or poultry.

4-368. Slash-resistant gloves. (2)

- A. Except as specified in this section, slash-resistant gloves that are used to protect hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in Sections 4-122, 4-124, 4-125, or 4-126, such as frozen food or a primal cut of meat.
- B. Slash-resistant gloves may be used with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable nonabsorbent glove, or a single-use glove.

4-369. Wiping cloths – use limitations. (1)

- A. Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:
 - 1. Maintained dry; and
 - 2. Used for no other purpose.
- B. Cloths in-use for wiping counters and other equipment surfaces shall be:
 - 1. Held between uses in a chemical sanitizer solution at a concentration as specified in Section 4-607; and
 - 2. Laundered daily as specified in Section 4-372.
- C. Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.
- D. Dry wiping cloths and the chemical sanitizing solutions, specified in this section in which wet wiping cloths are held between uses, shall be free of food debris and visible soil.

- E. Containers of chemical sanitizing solutions specified in this section, in which wet wiping cloths are held between uses, shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.
- F. Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

4-370. Sponges. (1) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

4-371. Cloth items – use limitations. (1)

- A. Linens, such as cloth napkins, may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.
- B. Linens that are used as specified under Part A and cloth napkins shall be laundered between each use.

4-372. Linen, cloth, and clothing/uniform storage. (1)

- A. Clean linens, cloths, and clothing/uniforms shall be stored in a clean place at least 6 inches off of the floor and shall be protected from contamination until used.
- B. Soiled linens, cloths, and clothing/uniforms shall be stored in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.
- C. Clean linens, cloths, and clothing/uniforms shall not be stored in toilet rooms.
- D. Linens that do not come into direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.
- E. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.
- F. Linens shall be mechanically washed and dried.
- G. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in Section 4-423 shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths.

4-373. Clean linens. (1) Clean linens shall be free from food residues and other soiling matter.

4-374. Single-service and single-use articles – use restrictions and materials.* (3)

- A. Single-service articles, single-use items, or any other items designed for a single-use such as the packaging from commercially packaged food, shall be used only once and may not be reused.
- B. Materials that are used to make single-service and single-use articles may not allow the migration of deleterious substances or impart any colors, odors, or tastes to food.
- C. Materials that are used to make single-service and single-use articles shall be clean, sanitary, and safe.
- D. Temporary and mobile food establishments shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

4-375. Single-service and single-use articles – storage and handling. (1)

- A. Single-service and single-use articles shall be stored at least 6 inches above the floor in the original protective package, in closed cartons, or containers which protect them from contamination until used and shall not be placed under exposed sewer lines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
- B. Employees shall wear single-use gloves when handling unwrapped single-service utensils.

4-376. Dispensing equipment – prevention of cross contamination. (1) In equipment that dispenses or vends liquid food or ice in unpackaged form:

- A. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.
- B. The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed and shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
 - 1. Located in an outside area that does not afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
 - 2. Available for self-service during hours when it is not under the full-time supervision of a food employee; and
- C. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.
- D. Dispensing equipment in which TCS food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under Section 4-118 shall:
 - 1. Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; and
 - 2. Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006- Manual Food and Beverage Dispensing Equipment.

4-377. Vending machines – automatic shutoff.* (3)

- A. A machine vending TCS food shall have an automatic control that prevents the machine from vending food:
 - 1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures below 41°F or above 135°F; and
 - 2. Until the machine is serviced and restocked with food that has been maintained at temperatures below 41°F or above 135°F.
- B. When the automatic shutoff within a machine vending TCS food is activated:
 - 1. In a refrigerated vending machine, the ambient air temperature may not exceed 41°F for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or
 - 2. In a hot holding vending machine, the ambient air temperature may not be less than 135°F for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

4-378. Vending machines – vending stage closure. (1) The dispensing compartment of a vending machine, including a machine that is designed to vend prepackaged snack food that is not TCS food such as chips, candy, party mixes, and pretzels, shall be equipped with a self-closing door or cover if the machine is:

- A. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
- B. Available for self-service during hours when it is not under the full-time supervision of a food employee.

4-379. Vending machine doors and openings. (1)

- A. Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1/16 inch by:
 - 1. Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1/16 inch. Screening of 12 or more mesh to 1 inch meets this requirement;
 - 2. Being effectively gasketed;
 - 3. Having interface surfaces that are at least ½ inch wide; or
 - 4. Jambs or surfaces used to form an L-shaped entry path to the interface.
- B. Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1/16 inch.

4-380. Vending machines – liquid waste products. (1)

- A. Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.
- B. Vending machines that dispense liquid food in bulk shall be:
 - 1. Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
 - 2. Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.
- C. Shutoff devices specified in this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

4-381. Vending machines – refuse receptacles. (1) Except for a receptacle for beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.

4-382. Compressed gas cylinders. (1) Any compressed gas cylinders kept on premises shall be equipped with a protective collar around the valve, or shall be securely attached to a stable surface.

4-383. Fire Suppression. (1) All cooking equipment shall be protected by an approved pre-engineered fire suppression system. An approved pre-engineered fire suppression system shall be designed, installed, operated, and maintained in complete compliance with the ND Building Code and the NFPA Uniform Fire Code or legally adopted fire code of ND, whichever is most strict.

4-384. Microwave ovens. (1) Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4-385. Case lot handling apparatuses – movability. (1) Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

4-386. Cleaning maintenance tools – preventing contamination.* (2) Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

4-387. Storage of maintenance tools. (1) Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

- A. Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and
- B. Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.
- C. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

SECTION 4-4: Physical Facilities.

4-401. Electrical system. (1) All portions of the electrical system including all light fixtures, wiring, outlets, outlet covers, and switch plate covers shall be installed and maintained in accordance with law; and shall be maintained in a clean state and in good repair.

4-402. Utility lines – floors, walls, and ceilings. (1)

- A. Utility service lines and pipes may not be unnecessarily exposed.
- B. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceiling.
- C. Exposed horizontal utility service lines and pipes may not be installed on the floor.
- D. In all new or extensively remodeled establishments, installation of exposed utility service lines and pipes on walls or ceilings is prohibited.

4-403. General lighting. (1) Permanently fixed, artificial light sources must be installed so as to provide:

- A. At least 500 foot-candles of light on all food preparation surfaces where equipment such as knives, slicers, grinders, and saws are used or at any other location where employee safety is a factor.
- B. At a distance of 30 inches from the floor:
 - 1. At least 200 foot-candles of light in utensil and equipment storage areas and in handwashing sink and toilet areas; and
 - 2. At least 100 foot-candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas, including dining areas during cleaning operations.

4-404. General cleaning physical facilities. (1)

- A. All parts of the physical facility shall be maintained in a condition that is clean to sight and touch and shall be cleaned as often as necessary to keep them clean.

- B. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed, such as after closing.
- C. Except as specified in Part D, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.
- D. Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:
 - 1. Without the use of dust-arresting compounds; and
 - 2. In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

4-405. Physical facilities – repairing. (1) Physical facilities shall be maintained in good repair.

4-406. Maintaining premises – unnecessary items, litter, and traffic. (1)

- A. The premises shall be free of:
 - 1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
 - 2. Litter.
- B. The traffic of unnecessary persons through the food preparation and storage areas, equipment storage areas, single-service or single-use article storage, and utensil-washing areas is prohibited.

4-407. Aisles and working spaces. (1) Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width or space 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.

4-408. Walls and Ceilings – studs, joists, and rafters. (1) Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

4-409. Indoor areas – surface characteristics. (1)

- A. Except as specified in this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:
 - 1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
 - 2. Closely woven and easily cleanable carpet for carpeted areas; and
 - 3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.
- B. In a temporary food establishment:
 - 1. If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other approved materials that are effectively treated to control dust and mud; and
 - 2. Walls and ceilings shall be constructed of a material that protects the interior from the weather and windblown dust and debris.

4-410. Outdoor areas – surface characteristics. (1)

- A. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.
- B. Exterior walking and driving surfaces shall be graded to drain.
- C. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

4-411. Cleanability – floors, walls, and ceilings. (1) Except as specified under Section 4-413 and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

4-412. Absorbent materials on floors – use limitations. (1) Except as specified in Section 4-404, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

4-413. Floor carpeting – restrictions and installation. (1)

- A. A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.
- B. If carpeting is installed as a floor covering in areas other than those specified under Part A of this section, it shall be:
 - 1. Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
 - 2. Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

4-414. Floor and wall junctures – coved, and enclosed or sealed. (1)

- A. In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1/32 inch.
- B. The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

4-415. Walls and ceilings – attachments. (1)

- A. Except as specified in Part B of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.
- B. In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambience need not meet this requirement if they are kept clean.

4-416. HVAC system vents. (1) Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

4-417. Toilet facilities. (1)

- A. Unless otherwise required or mandated by law, any food establishment that has customer seating or that serves any food for consumption on premises shall have separate male and female toilet facilities.
- B. Unless a stricter standard is mandated by law, any food establishment with an occupant load of 100 or more or seating for 100 or more shall have separate toilet facilities for employees and customers. Food establishments in operation prior to the date of adoption of this regulation shall be exempted from this requirement, unless and until such time as any significant remodeling, renovation, or construction that involves alteration of walls, plumbing, or foundations/footings/slabs.
- C. Toilet rooms and facilities shall be conveniently located and accessible to employees during all hours of operation.
- D. A supply of toilet tissue shall be provided at each toilet at all times.
- E. Each toilet room shall be equipped with easily cleanable receptacles for waste materials.
- F. Toilet rooms used by females shall have at least 1 covered waste receptacle for sanitary napkins located at each toilet fixture.
- G. Toilet rooms shall be equipped with locks so as to be securable from the inside.
- H. Toilet rooms shall be completely enclosed and shall be equipped with solid, self-closing doors.
- I. Except during cleaning and maintenance operations, toilet room doors shall be kept closed.
- J. There shall be at least 1 handwashing sink located in or immediately adjacent to all toilet rooms.

4-418. Handwashing sink facilities.* (5)

- A. Handwashing sinks shall be at least the number required by law and shall be installed according to law.
- B. There shall be at least one handwashing sink, and more as needed, located so as to be no farther than 15 feet of walking distance from any food preparation, food dispensing or utensil-washing areas. Food establishments in operation prior to the date of adoption of this regulation that have handwashing sinks not more than 24 feet of walking distance from any food preparation or utensil-washing areas shall be exempted from this regulation unless or until any significant remodeling of the food establishment occurs.
- C. Handwashing sinks shall not be located in such a way so that employees have to open closed doors in moving from food preparation areas to the handwashing sinks or in moving from the handwashing sinks to food preparation areas.
- D. Each back bar area shall be provided with a separate handwashing sink.
- E. A handwashing sink shall be maintained so that it is accessible at all times for employee use.
- F. A handwashing sink may not be used for purposes other than handwashing.
- G. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.
- H. An automatic handwashing facility shall be used in accordance with manufacturer's instructions.
- I. If approved, when food exposure is limited and handwashing sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

4-419. Handwashing sink supplies. (1)

- A. A supply of hand-cleansing soap or detergent shall be available at each handwashing sink.
- B. Each handwashing sink or group of adjacent handwashing sinks shall be provided with:
 - 1. Individual, disposable towels; or
 - 2. A continuous towel system that supplies the user with a clean towel; or
 - 3. A heated-air hand drying device; or
 - 4. A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.
- C. The use of common towels at handwashing sinks is prohibited.
- D. Approved refuse receptacles shall be conveniently located within 5 feet of each handwashing sink or group of adjacent handwashing sinks.
- E. If provided at a handwashing sink located in food preparation, food storage, or utensil washing areas, nailbrushes shall either be single-use or designated for an individual's use and not used by other individuals.
- F. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.
- G. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the items required in this section.
- H. All soap dispensers, hand drying devices, and all related appurtenances and items shall be kept clean to sight and touch and in good repair.

4-420. General ventilation. (1)

- A. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.
- B. Ventilation systems shall be installed and operated according to law.
- C. If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.
- D. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.
- E. All rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.
- F. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
- G. All kitchen and cooking areas shall be provided with mechanical ventilation capable of an exhaust airflow rate of at least 0.7 cubic feet per minute per square foot of occupiable area. If any applicable building or mechanical code requirements mandate a higher number, then that standard shall be used.

4-421. Ventilation hoods. (1)

- A. Exhaust ventilation hood systems in food preparation and warewashing areas, including components such as hoods, fans, guards, and ducting, shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.
- B. Filters or other grease-extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place and must be kept clean.

- C. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.
- D. Filters in exhaust ventilation systems shall be cleaned as often as necessary to prevent accumulation of grease, dirt, or residue.
- E. Exhaust ventilation systems shall not be operated without all necessary filters in place. In systems designed to remove any particulate matter or grease from the air, filtration shall be adequate so that no air is vented through the system without having been passed through a filter.

4-422. Laundry facilities. (1)

- A. Laundry facilities in a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.
- 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.
- C. The wiping cloths may be laundered in a warewashing or food preparation sink that is cleaned and sanitized before using for warewashing or food preparation.
- D. Any laundry equipment and facilities shall be maintained clean and in a state of good repair.
- E. Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

4-423. Clothes washers and dryers. (1)

- A. Except as specified in this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.
- B. If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried, a mechanical clothes washer and dryer need not be provided.
- C. If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

4-424. Dressing areas, lockers, and employee accommodations. (1)

- A. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.
- B. Lockers or other suitable facilities shall be provided and used for the orderly storage of employees' clothing and other possessions.
- C. Lockers and areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.
- D. Lockers or other suitable facilities may be located only in dressing rooms or in food storage rooms or areas containing only completely packaged food or packaged single-service articles.
- E. Dressing rooms shall be provided and used by employees if the employees regularly change their clothes in the establishment.
- F. Dressing rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage, or for single-service or single-use article storage.
- G. Employee's personal items shall only be stored in dressing rooms or areas, lockers, or areas designated for employees to eat, drink, and use tobacco.

4-425. Living areas.* (5)

- A. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.
- B. No space, equipment, or utensils that are used for or in a personal kitchen shall be used in any manner for or in a food establishment.
- C. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

4-426. Outside openings. (1)

- A. The outer openings of a food establishment shall be protected against the entry of insects and rodents by:
 - 1. Filling or closing holes and other gaps along floors, walls, and ceilings;
 - 2. Closed, tight-fitting windows; and
 - 3. Solid, self-closing, tight-fitting doors.
- B. Part A does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.
- C. Exterior doors used as exits need not be self-closing if they are:
 - 1. Solid and tight fitting;
 - 2. Designed for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
 - 3. Limited-use so they are not used for entrance or exit from the building or purposes other than the designated emergency exit use.
- D. If the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified in Part A, the window or door openings shall be protected against the entry of insects and rodents by:
 - 1. Screens that are at least 16 mesh to 1 inch;
 - 2. Properly designed and installed air curtains to control flying insects; or
 - 3. Other effective means approved by the Department.
- E. Part D of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting conditions.

4-427. Exterior walls and roof – protective barrier. (1) Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

4-428. Outside food vending areas – overhead protection. (1) Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

4-429. Outdoor servicing areas – overhead protection. (1) Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

4-430. Refuse, recyclables, and returnables storage areas – on premises requirements. (1)

- A. If located within the food establishment, storage areas for refuse, recyclables, and returnables shall meet the requirements of Section 4-4 and shall be maintained in good repair.
- B. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.
- C. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.
- D. Inside storage rooms, inside storage areas, outside storage areas, outside storage enclosures, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.
- E. An area designated for refuse, recyclables, returnables, and, except as specified in Part F, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.
- F. A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.
- G. The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.
- H. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified in Section 4-406, and clean.

4-431. Fire safety requirements. (1) All food establishments in the First District Health Unit shall be constructed in compliance with and operated in compliance with the legally adopted fire code for the state of North Dakota as well as with the legally adopted building code for the state of North Dakota. In the event that any item contained in this Code is different from either the fire code or building code, then the stricter standard shall be enforced. Unless a stricter standard is otherwise required by law, all fire extinguishers shall be inspected and tagged at least annually. Unless a stricter standard is otherwise required by law, all pre-engineered fire suppression systems shall be inspected and tagged at least every 6 months or as follows:

- A. In high volume cooking operations, such as 24 hour cooking, charbroiling, or wok cooking: at least once every 3 months; or
- B. Low volume or seasonal cooking operations: at least once every 12 months; or
- C. Cooking operations using solid fuel burning cooking appliances: at least once monthly.

4-432. Prohibiting animals.* (3)

- A. Except as specified in this section, live animals may not be allowed on the premises of a food establishment.
- B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:
 - 1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
 - 2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;
 4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:
 - a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
 - b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
 - c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and
 5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.
- C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

4-433. General insect and rodent control.* (5)

- A. The premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:
 1. Routinely inspecting incoming shipments of food and supplies;
 2. Routinely inspecting the premises for evidence of pests;
 3. Using methods, if pests are found, such as trapping devices or other means of pest control .
 4. Eliminating harborage conditions.
- B. The license holder or their designate shall employ effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises.
- C. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.
- D. Insect control devices shall be installed so that:
 1. The devices are not located over a food preparation area; and
 2. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- E. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

4-434. Mold* (3). All components of a food establishment shall be kept free of visible mold growth. If conditions exist that could result in mold growth in areas of the establishment that are not easily visible, those conditions shall be modified to a state that is not conducive to mold growth and any potential mold growth that may have occurred shall be identified and remediated.

4-435. Mobile food operations – base of operations. (1) Mobile food units or pushcarts shall operate out of a fixed base of operations. This base of operations shall be a food establishment

that meets all requirements of this Code. The mobile food unit or pushcart shall report at least daily to all such locations for all supplies and cleaning and servicing operations.

- A. Within this servicing area there shall be a location provided for the flushing and drainage of liquid wastes, which is separate from the locations provided for water servicing and for the loading and unloading of food and related supplies.
- B. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and graded to drain.
- C. The construction of the walls and ceilings of the servicing area is exempted from the provision of Sections 4-408 and 4-409.
- D. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart, or where mobile food units do not contain wastewater retention tanks.

SECTION 4-5: Water, Plumbing, Wastewater, and Trash.

4-501. General plumbing.* (10)

- A. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.
- B. A water filter shall be made of safe materials.
- C. A plumbing system shall be designed, constructed, and installed according to law.

4-502. Prohibiting a cross connection.* (10)

- A. A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.
- B. The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

4-503. Plumbing – maintenance and cleaning. (1)

- A. All parts of the plumbing system shall be maintained in good repair.
- B. A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.
- C. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

4-504. Handwashing sink fixtures. (1)

- A. A handwashing sink shall be equipped to provide water at a temperature of at least 100°F through a mixing valve or combination faucet.
- B. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
- C. A steam mixing valve may not be used at a handwashing sink.
- D. Unless otherwise mandated by law, the faucet shall be plumbed so that the flow of hot water is controlled by the left side of the faucet when the user is facing the faucet.
- E. Hot and cold water markings on faucets shall correspond correctly with hot and cold water flow.
- F. An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

4-505. Water pressure. (1) Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified in

Section 4-516 to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

4-506. Backflow prevention.* (10)

- A. An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 1 inch.
- B. A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.
- C. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:
 - 1. Providing an air gap as specified in Part A; or
 - 2. Installing an approved backflow prevention device as specified in this section.
- D. If not provided with an air gap as specified in Part A, a dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 1 inch shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.
- E. A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under Part D.
- F. A backflow prevention device shall be located so that it may be serviced and maintained.

4-507. Scheduling inspection and service for a water system device.* (2) A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

4-508. Conditioning device – design and location. (1)

- A. A water filter, screen, and other water conditioning device installed on water lines shall be designed and located to facilitate disassembly for periodic servicing and cleaning.
- B. A water filter element shall be of the replaceable type.

4-509. Water tank – materials, system flushing, and dedicated use.* (10)

- A. Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:
 - 1. Safe;
 - 2. Durable, corrosion-resistant, and nonabsorbent; and
 - 3. Finished to have a smooth, easily cleanable surface.
- B. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, or after any emergency situation, such as a flood, that may introduce contaminants to the system, and periods of nonuse.
- C. A water tank and pump used for conveying drinking water shall be used for no other purpose.

4-510. Water tanks – design and construction. (1)

- A. A mobile water tank shall be:
 - 1. Enclosed from the filling inlet to the discharge outlet; and
 - 2. Sloped to an outlet that allows complete drainage of the tank.
- B. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:
 - 1. Flanged upward at least ½ inch; and
 - 2. Equipped with a port cover assembly that is:
 - a. Provided with a gasket and a device for securing the cover in place, and
 - b. Flanged to overlap the opening and sloped to drain.
- C. A fitting with “V” type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.
- D. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:
 - 1. 16 mesh to 1 inch screen or equivalent when the vent is in a protected area; or
 - 2. A protective filter when the vent is in an area that is not protected from windblown dirt and debris.
- E. A water tank and its inlet and outlet shall be sloped to drain.
- F. A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.
- G. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.
- H. If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in Part G.
- I. A mobile food establishment’s water tank inlet shall be:
 - 1. ¾ inch in inner diameter or less; and
 - 2. Provided with a hose connection of a size or type that will prevent its use for any other service.
- J. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

4-511. Hose – construction and identification.* (10) A hose used for conveying drinking water shall be:

- A. Safe;
- B. Durable, corrosion-resistant, and nonabsorbent;
- C. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- D. Finished with a smooth interior surface; and
- E. Clearly and durably identified as to its use if it is not permanently attached.
- F. Used for no other purpose.

4-512. Air compressor – filter.* (10) A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

4-513. General water supplies.* (15) Drinking water shall be obtained from an approved source, and shall meet the following requirements:

- A. Be a public water system, or a nonpublic water system that is constructed, maintained, and operated according to law.

- B. Water from a public water system shall meet 40 CFR 141 – National Primary Drinking Water Regulations and State drinking water quality standards.
- C. Water from a nonpublic water system shall meet state drinking water quality standards.
- D. Shall be sampled and tested at least monthly and as required by state water quality regulations if from a nonpublic water system.
- E. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.
- F. Have hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.

4-514. Water tests – reporting. (1)

- A. The most recent sample report for the nonpublic water system shall be retained on file and posted in public view in the food establishment and the report shall be maintained as specified by state water quality regulations.
- B. If a lab other than the First District Health Unit lab is used, a copy of the results shall be submitted to the Department within 7 days of receipt of the results by the food establishment.

4-515. Water system – distribution, delivery, and retention.* (3) Water shall be received from the source through the use of:

- A. An approved public water main; or
- B. One or more of the following that shall be constructed, maintained, and operated according to law:
 1. Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,
 2. Water transport vehicles, or
 3. Water containers.

4-516. Alternative water supply.* (3) Water meeting the requirements specified under Sections 4-513 and 4-515 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- A. A supply of containers of commercially bottled drinking water;
- B. One or more closed portable water containers;
- C. An enclosed vehicular water tank;
- D. An on-premises water storage tank; or
- E. Piping, tubing, or hoses connected to an adjacent approved source.

4-517. Nondrinking water.* (15)

- A. A nondrinking water supply shall be used only if its use is approved.
- B. Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection.

4-518. System flushing and disinfection.* (5) A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after any occurrence or emergency situation, such as a flood, that may introduce contaminants to the system. Before the system is put into use, the water from the system shall be tested by a certified lab to ensure compliance with 40 CFR 141 – National Primary Drinking Water Regulations and State Drinking Water Quality Standards.

4-519. General sewage.* (15)

- A. Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including the use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.
- B. Non-water-carried sewage disposal facilities are prohibited, except as permitted by the Department in remote areas or because of special circumstances.
- C. If a food establishment uses an onsite treatment system for sewage disposal and treatment, then that system shall be designed by the Department or shall be approved by the Department.
- D. No dishwater, rinse water, or any other substance that may become foul or offensive or that is putrescible shall be discharged upon the ground or into any storm sewer.
- E. Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

4-520. Other liquid wastes and rainwater. (1) Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

4-521. Sewage holding tanks – mobile facilities. (1) A sewage holding tank in a mobile food establishment shall:

- A. Be permanently installed;
- B. Be sized 15% larger in capacity than the water supply tank;
- C. Be sloped to a drain that is 1 inch in inner diameter or greater, equipped with a shut-off valve;
- D. Be thoroughly flushed and drained in a sanitary manner during the servicing operation;
- E. Have tank connections of a different size or type than those used for supplying potable water to the mobile food unit; and
- F. Have a waste connection located lower than the water inlet connection to preclude contamination of the drinking water system.

4-522. Drains – direct connections.* (10)

- A. Except as specified in this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.
- B. Part A does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.
- C. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.
- D. If allowed by law, a warewashing or culinary sink may have a direct connection.

4-523. Grease traps. (1)

- A. Grease traps shall be:
 - 1. Located on the waste lines leading from sinks, drains, dishwashers, or any other equipment if the Department determines that wastewater pretreatment is necessary to prevent line stoppage or to prevent hindrance of sewage treatment or disposal;
 - 2. Maintained, kept clean, and located to be easily accessible for cleaning; and

3. Emptied at least monthly, or more often as necessary to prevent grease from being introduced into any drainage piping or sewer.

4-524. Garbage grinders. (1)

- A. Garbage grinders shall be installed and maintained according to law.
- B. Garbage grinders and all related appurtenances shall be maintained in a whole, functional, and clean condition.

4-525. Utility sinks. (1)

- A. All food establishments shall be equipped with at least 1 utility sink or curbed cleaning facility with a floor drain for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes.
- B. The use of toilets, urinals, utensil or equipment washing, or food preparation sinks for disposal of mop water or similar liquid wastes is prohibited.

4-526. Grease – storage and disposal. (1)

- A. Grease shall be disposed of in containers designed for disposal of grease.
- B. Grease containers shall be of sufficient capacity to hold grease generated by the food establishment.
- C. Grease containers shall be durable, maintained, leakproof, covered, insect- and rodent-resistant, and kept clean.
- D. Grease containers shall be emptied as necessary and all grease disposed of in an approved manner.

4-527. Refuse, recyclables, and returnables – receptacles. (1)

- A. Except as specified in Part B, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent, and shall be maintained in good repair.
- B. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.
- C. Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.
- D. Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.
- E. Suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.
- F. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.
- G. Except as specified in Part H, refuse receptacles not meeting the requirements specified under Part A such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.
- H. Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

- I. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:
 - 1. Inside the food establishment if the receptacles and units:
 - a. Contain food residue and are not in continuous use; or
 - b. After they are filled; and
 - 2. With tight-fitting lids or doors if kept outside the food establishment.
- J. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.
- K. Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and wastewater shall be disposed of as specified under Section 4-519.
- L. Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.
- M. A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

4-528. Refuse, recyclables, and returnables – removal. (1)

- A. Refuse shall be removed from the premises at least once per 7 day period and at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects or rodents.
- B. Recyclables and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects or rodents.
- C. Refuse, recyclables, and returnables shall be removed from the premises by way of:
 - 1. Portable receptacles that are constructed and maintained according to law; or
 - 2. A transport vehicle that is constructed, maintained, and operated according to law.

4-529. Community or individual facility. (1) Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

SECTION 4-6: Chemicals and Poisonous or Toxic Materials.

4-601. Presence and use – restriction.* (3)

- A. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.
- B. Part A of this section does not apply to packaged poisonous or toxic materials that are for retail sale.
- C. For all poisonous or toxic materials allowed under Part A of this section, there shall be present a current and correct Safety Data Sheet (SDS). All SDS shall be alphabetized in a binder located in the vicinity of the chemical storage area.

4-602. Containers, original and working – labeling.* (3)

- A. Original containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.
- B. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

4-603. Storage of materials.* (3)

- A. Poisonous or toxic materials shall be considered to consist of the following 4 categories:
 - 1. Pesticides;
 - 2. Detergents, sanitizers, and related cleaning or drying agents;
 - 3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
 - 4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- B. Each of the 4 categories set forth in Part A must be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose.
- C. To preclude contamination, poisonous or toxic materials shall be separated by spacing or partitioning from, and shall not be stored above, any food, equipment, utensils, linens, and single-service or single-use articles. This requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.
- D. Poisonous or toxic materials shall be stored and displayed for retail sale so that they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:
 - 1. Separating the poisonous or toxic materials by spacing or partitioning; and
 - 2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

4-604. Conditions of use.* (5) Poisonous or toxic materials shall be:

- A. Used according to:
 - 1. Law and this Code,
 - 2. Manufacturer's use directions included in labeling and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment,
 - 3. The conditions of certification, if certification is required, for use of the pest control materials, and
 - 4. Additional conditions that may be established by the regulatory authority; and
- B. Applied or used so that:
 - 1. Bactericides, cleaning compounds, or other compounds intended for use on food contact surfaces shall not be used in a way that leaves any toxic residue on such surfaces or in any way that constitutes a hazard to employees or other persons, and
 - 2. Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:

- a. Removing the items,
 - b. Covering the items with impermeable covers, or
 - c. Taking other appropriate preventive actions, and
 - d. Cleaning and sanitizing equipment and utensils after the application.
- C. A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide, and Rodenticide Act, or a person under the direct supervision of a certified applicator.
- D. Poisonous or toxic materials shall be used according to the conditions of certification, if certification is required, for the use of pest control materials.
- E. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

4-605. Medicines – restriction and storage.* (3)

- A. Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.
- B. Medicines that are in a food establishment for the employees’ use shall be labeled as specified under Section 4-602 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.
- C. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:
- 1. Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines, and
 - 2. Located so they are inaccessible to children.

4-606. First aid supplies.* (3) First aid supplies shall be labeled as per Section 4-602, and shall be stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles. First aid supplies shall be used by or discarded and replaced according to any manufacturer’s labeling that indicates use-by dating.

4-607. Chemical sanitization for manual and mechanical warewashing equipment – temperature, pH, concentration, and hardness.* (3) A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation shall meet the requirements listed in 40 CFR 180.940 (Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions)) or 40 CFR 180.2020 (Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance-Non-food determinations). Sanitizing solutions shall be used in accordance with the Environmental Protection Agency registered label use instructions, and shall be used as follows:

- A. Chlorine solutions shall have a:
- 1. Concentration of at least 50 ppm and not more than 200 ppm; and
 - 2. Minimum temperature based on the concentration and pH of the solution as listed in the following chart;

| Concentration Range: | Minimum temperature in degrees F: | |
|----------------------|-----------------------------------|--------|
| | 8 < pH < 10 | pH < 8 |
| ppm | | |
| 50-99 | 100 | 75 |
| 100 or higher | 55 | 55 |

- B. Iodine solutions shall have a:
- 1. Minimum temperature of 68°F; and
 - 2. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
 - 3. Concentration between 12.5 and 25 ppm;

- C. Quaternary ammonium compounds shall:
 - 1. Have a minimum temperature of 75°F; and
 - 2. Have a concentration as specified in 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions) and as indicated by the manufacturer's use directions included in the labeling; and
 - 3. Be used only in water with 500 ppm hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions;
- D. If another solution of a chemical specified in Parts A through C of this section is used, the license holder or their designate shall demonstrate to the Department that the solution achieves sanitization and the use of the solution shall be approved;
- E. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions; and
- F. If a chemical sanitizer is generated by a device located on-site at the food establishment it shall be used as specified in this section and shall be produced by a device that:
 - 1. Complies with regulation as specified in 2(q)(1) and 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
 - 2. Complies with 40 CFR 152.500 Requirements for Devices and 40 CFR 156.10 Labeling Requirements,
 - 3. Displays the EPA device manufacturing facility registration number on the device, and
 - 4. Is operated and maintained in accordance with manufacturer's instructions.

4-608. Hand antiseptic.* (2)

- A. A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:
 - 1. Be applied only to hands that are cleaned using the approved handwashing procedure;
 - 2. Comply with one of the following:
 - a. Be an approved drug that is listed with the Food and Drug Administration publication "Approved Drug Products with Therapeutic Equivalence Evaluations" as an approved drug based on safety and effectiveness; or
 - b. Have active antimicrobial ingredients that are listed in the Food and Drug Administration monograph for Over-The-Counter Health Care Antiseptic Drug Products as an antiseptic handwash; and
 - 3. Comply with one of the following:
 - a. Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles; or
 - b. Comply with and be listed in:
 - i. 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with conditions of safe use, or
 - ii. 21 CFR 182 - Substances Generally Recognized as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances

- Affirmed as Generally Recognized as Safe for use in contact with food, and in FDA's Inventory of GRAS Notices, or
 - iii. A prior sanction listed under 21 CFR 181 – Prior Sanctioned Food Ingredients, or
 - iv. A Food-Contact Notification that is effective.
- B. If a hand antiseptic or an antiseptic solution used as a hand dip does not meet the criteria specified, use shall be:
 1. Followed by the approved handwashing procedure before any hand contact with non-ready-to-eat food occurs, or by the use of gloves; or
 2. Limited to situations that involve no direct contact with food by the bare hands; and
- C. A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 ppm chlorine.

4-609. Chemicals for washing, treatment, storage, and processing fruits and vegetables – criteria.* (5) Chemicals, including those generated on-site, used to wash or peel raw, whole fruits and vegetables or used in the treatment, storage, and processing of fruits and vegetables shall:

- A. Be an approved food additive listed for this intended use in 21 CFR 173, or
- B. Be generally recognized as safe (GRAS) for this intended use, or
- C. Be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification), and
- D. Meet the requirements in 40 CFR 156 Labeling Requirements for Pesticide and Devices.

4-610. Drying agents – criteria.* (5) Drying agents used in conjunction with sanitization shall:

- A. Contain only components that are listed as one of the following:
 1. Generally recognized as safe for use in food as specified in 21 CFR 182 – Substances Generally Recognized as Safe, or 21 CFR 184 Direct Food Substances Affirmed as Generally Recognized as Safe,
 2. Generally recognized as safe for the intended use as specified in 21 CFR 186 – Indirect Food Substances Affirmed as Generally Recognized as Safe,
 3. Generally recognized as safe for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to food as described in 21 CFR 170.30 Eligibility for classification as generally recognized as safe (GRAS),
 4. Subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) Section 409(h);
 5. Approved for use as a drying agent under a prior sanction as described in the Federal Food Drug and Cosmetic Act (FFDCA) 201(s)(4);
 6. Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 174-178; or
 7. Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and
- B. When sanitization is with chemicals, the approval required under Parts A(5) or A(7) of this section or the regulation as an indirect food additive required under Part A(6) of this section, shall be specifically for use with chemical sanitizing solutions.

4-611. Lubricants – incidental food-contact – criteria.* (5) Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces,

or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

4-612. Lubricants – food contact surfaces. (1) Lubricants as specified under 4-611 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

4-613. Rodent bait stations.* (5) Rodent bait shall be contained in a covered, tamper-resistant bait station.

4-614. Tracking powders – pest control and monitoring.* (5)

- A. Except as specified in this section, a tracking powder pesticide may not be used in a food establishment.
- B. If used, a nontoxic tracking powder, such as talcum or flour, may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

4-615. Personal care items – storage. (1) Except as specified in Sections 4-605 and 4-606, employees shall store their personal care items in facilities as specified in Section 4-424.

4-616. Boiler water additives – criteria.* (5) Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler water additives.

4-617. Restricted use pesticides – criteria.* (5) Restricted use pesticides specified under 4-604 shall meet the requirements specified in 40 CFR 152 Subpart I – Classification of Pesticides.

4-618. Cleaning agents and sanitizers, availability. (1)

- A. Cleaning agents that are used to clean equipment and utensils shall be provided and available for use during all hours of operation.
- B. Except for those that are generated on-site at the time of use, chemical sanitizers that are used to sanitize equipment and utensils shall be provided and available for use during all hours of operation.

SECTION 4-7: Policies and Procedures.

4-701. Ceasing operations and reporting – emergency occurrences.* (41)

- A. Except as specified in this section, a license holder shall immediately discontinue operations and notify the Department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup or sewer failure, 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.
- B. A license holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.
- C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to continuing operations in the event of an extended interruption of electrical or water service if:
 - 1. A written emergency operating plan has been approved;
 - 2. Immediate corrective action is taken to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

3. The Department is informed upon implementation of the written emergency operating plan.
- D. If operations are discontinued under this section or otherwise according to law, the license holder shall request and obtain permission from the Department before resuming operations.

4-702. Responsibilities of the license holder. (1) Upon acceptance of the license issued by the Department, the license holder in order to retain the license shall:

- A. Post the permit in a location in the food establishment that is conspicuous to consumers;
- B. Comply with the provisions of this Code including the conditions of a granted variance and approved plans;
- C. If a food establishment is required by the Department to operate under a HACCP plan, comply with the plan as specified under Section 4-705;
- D. Immediately contact the Department to report an illness of a food employee or conditional employee as specified under Section 4-2;
- E. Immediately discontinue operations and notify the Department if an imminent health hazard may exist as specified under Section 4-701;
- F. Allow representatives of the Department access to the food establishment as specified under Section 3-1;
- G. Replace existing facilities and equipment with facilities and equipment that comply with this Code if:
 1. The Department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria, upon which the facilities and equipment were accepted,
 2. The Department directs the replacement of the facilities and equipment because of a change of ownership, or
 3. The facilities and equipment are replaced in the normal course of operation;
- H. Comply with the directives of the Department including time frames for corrective actions specified in inspection report forms, notices, orders, warnings, and other directives issued by the Department in regard to the permit holder's food establishment or in response to community emergencies;
- I. Accept notices issued and served by the Department according to law; and
- J. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the Department, including time frames for corrective actions specified in inspection report forms, notices, orders, warnings, and other directives.
- K. Notify customers that a copy of the most recent establishment inspection report form is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or another method acceptable to the Department.

4-703. Clean up of vomiting and diarrheal events. (1) A food establishment shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

4-704. Variances.* (3) The Department may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the Department there is a scientific or documented

reason that modifying or waiving the requirements of this Code will not result in a health hazard or risk to public safety.

- A. A variance request shall be made in writing, and shall be signed and dated by the license holder requesting the variance. The variance request shall be addressed to the Director of Environmental Health and shall be submitted to the Department. The variance request shall include the following information:
 - 1. A statement of the proposed variance of the Code requirement citing relevant Code section numbers;
 - 2. A statement detailing the reason for which the variance is being requested;
 - 3. An analysis of the rationale for how the potential public health hazards addressed by the relevant Code sections will be alternatively addressed by the license holder; and
 - 4. A HACCP plan, if required, that includes the information specified under Section 4-707 as it is relevant to the variance requested.
- B. The Department shall review this information and make a determination within 10 days of receiving the variance request. If there is any reason that the determination cannot be made within 10 days, the Department shall notify the license holder with the expected timetable for completing the review of the variance request.
- C. The Department shall notify the license holder in writing with the Department's decision.
- D. If the variance request has been denied by the Department, the written notification shall include the reasons for the denial of the request.
- E. In the event of denial of a variance request, the license holder may request an appeal. A request for an appeal shall be in writing and shall be signed and dated by the license holder. The written request shall be addressed to the Executive Officer and shall be submitted to the FDHU office located in Minot. Within 10 days of receiving the request, the FDHU shall notify the license holder of the date and time of the hearing for the appeal.
- F. If the variance is approved, the Department shall maintain a copy of the variance request and variance request approval in its records for the food establishment and shall provide a written variance request approval to the license holder. The license holder shall keep the variance request approval on hand during the duration of time that the variance is in effect, and then for 3 years after the date that the variance request approval expires. The variance request approval shall detail the length of time for which the variance shall be in effect and shall detail the criteria for renewal of the variance, if applicable.
- G. The Department is not obligated under any circumstances to approve a request for a variance and may deny such request for any reason.

4-705. Conformance with approved procedures – HACCP and variances.* (5) If the Department grants a variance, or if a HACCP plan is required, the license holder shall:

- A. Comply with the HACCP plans and procedures that are submitted and approved as a basis for the modification or waiver;
- B. Maintain on the premises and provide to the Department upon request, records specified in Section 4-707 that demonstrate the following are routinely employed:
 - 1. Procedures for monitoring critical control points,
 - 2. Monitoring of the critical control points,
 - 3. Verification of the effectiveness of the operation or process, and
 - 4. Necessary corrective actions if there is failure at a critical control point.

4-706. When a HACCP plan is required. (1)

- A. Before engaging in an activity that requires a HACCP plan, a license applicant or license holder shall submit to and obtain approval from the Department a properly prepared HACCP plan if:
 - 1. Submission of a HACCP plan is required according to law;
 - 2. A variance is required as specified under Section 4-107; or
 - 3. The Department determines that a food preparation or processing method requires a variance based on a plan submittal, an inspectional finding, or a variance request.
- B. Before engaging in reduced oxygen packaging without a variance as specified under Section 4-108, a license applicant or license holder shall submit a properly prepared HACCP plan to the Department.

4-707. Contents of a HACCP plan.* (3) For a food establishment that is required to have a HACCP plan, the license applicant or license holder shall submit to the Department a properly prepared HACCP plan that includes:

- A. General information such as the name of the license applicant or license holder, the food establishment address, and contact information;
- B. A categorization of the types of TCS foods that are to be controlled under the HACCP plan;
- C. A flow diagram or chart for each specific food category type that identifies:
 - 1. Each step in the process;
 - 2. The hazards and controls for each step in the flow diagram or chart;
 - 3. The steps that are critical control points;
 - 4. Ingredients, materials, and equipment used in the preparation of that food; and
 - 5. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
- D. A critical control points summary for each specified food or category type that clearly identifies:
 - 1. Each critical control point,
 - 2. The critical limits for each critical control point,
 - 3. The method and frequency for monitoring and controlling each critical control point by the designated food employee or person in charge,
 - 4. 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,
 - 5. Action to be taken by the designated food employee or person in charge if the critical limits for each critical control point are not met, and
 - 6. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed;
- E. Supporting documents such as:
 - 1. Food employee and supervisory training plan that addresses the food safety issues of concern;
 - 2. Copies of blank records forms that are necessary to implement the HACCP plan; and
 - 3. Additional scientific data or other information, as required by the Department, supporting the determination that food safety is not compromised by the proposal; and
- F. Any other information required by the Department.

4-708. Closure*.

- A. If the Department determines that a food establishment presents an imminent health hazard, that food establishment may be ordered closed or be ordered to cease certain food production processes. If a food establishment does not present an imminent health hazard, but is found to be out of compliance with this Code to the extent that a danger to public health and safety exists, then that food establishment may be ordered closed.
- B. The following conditions shall result in closure:
 - 1. The operator fails to submit plans as required in this Chapter or an inspection indicates that construction or renovation at the facility is not in substantial compliance with the requirements of this Chapter;
 - 2. The operator fails to submit a license application for a food service establishment or change of operator;
 - 3. The operator was not granted a license under the requirements of this Code;
 - 4. The holder of the license does not remit the annual renewal fee;
 - 5. Interference with the Department or its agents and assistants in the performance of its duties has occurred;
 - 6. The Department or its agents have been denied complete and unrestricted access to any or all parts of a food establishment for purposes of inspection;
 - 7. Failure to comply completely with the Department's food education requirement;
 - 8. Being the source of or location of a foodborne disease outbreak;
 - 9. Being implicated as being the source or location of a foodborne disease outbreak by clear and convincing evidence; or
 - 10. A violation of any section of this Code which contains therein criteria mandating closure.

4-709. Inspection Scoring.

- A. Each food establishment shall start an inspection with a score of 100. Each violation found in this Code has been assigned a point value. Each documented occurrence of any one violation shall result in that point value being subtracted from the final score. The cumulative point values for violations shall be subtracted from 100 to give a score for that inspection.
- B. If a food establishment is documented to have a score of 59 or lower, the establishment shall be ordered closed until such time as the Department determines that the violations have been corrected and that the establishment is no longer a threat to public health and safety.
- C. Any food establishment that is documented with a score of 69 or below shall have a mandatory re-inspection. The establishment shall correct all specified violations before the date specified by the Department. Failure to correct all specified violations may result in closure.

4-710. Produce production* (15). All produce production shall be done in compliance with Appendix C.

SECTION 5. SEPARATION

If any part of this Code is found to be or held invalid that invalidity shall not affect any other parts of this Code.

SECTION 6. SOURCE

Items in this Code are taken in whole or in part from the North Dakota Century Code, the North Dakota Administrative Code, and the 2017 FDA Food Code. It is the responsibility of the proprietor of any facility to identify and comply with any and all other local, state, or federal rules and regulations pertaining to the operation of their facility that are not contained herein.

SECTION 7. COMPLIANCE AND ENFORCEMENT

- 7-1. Citation.** The Department shall clearly state and reference within the code the legally sound basis for compliance and enforcement action, the responsibilities of the parties, and sanctions for non-compliance and due process.
- 7-2. Proper methods.** A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:
- A. The notice is personally served by the Department, a law enforcement officer, or a person authorized to serve a civil process to the license holder or their designate or to a person operating a food establishment without a valid license;
 - B. The notice is sent by the Department to the last known address of the license holder or of the person operating a food establishment without a valid license, by registered or certified mail, or by other public means so that a written acknowledgement of receipt may be required; or
 - C. The notice is provided by the Department in accordance with another manner of service authorized by law.
- 7-3. Administrative or judicial remedy.** The Department may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if the license holder, or any other person operating a food establishment:
- A. Fails to have a valid permit to operate a food establishment as specified in Section 2-1;
 - B. Violates any term or condition of a permit as specified under Section 4-702;
 - C. Allows serious or repeated code violations to remain uncorrected beyond time frames for correction approved, directed, or ordered by the Department under Sections 3-12 and 3-13;
 - D. Fails to comply with an order from the Department issued as specified in Section 4-204 concerning an employee or conditional employee suspected of having a disease transmissible through food by infected persons;
 - E. Fails to comply with a hold order as specified in Section 7-501; or
 - F. Fails to comply with a summary suspension order issued by the Department as specified in Section 7-601.
- 7-4. Examining, sampling, and testing food.** The Department may examine, sample, and test food in order to determine its compliance with this Code.
- 7-5. Hold orders.**
- 7-501. Hold order, justifying conditions, and removal of food.**
- A. According to time limits imposed by law, the Department may place a hold order on a food that:
 - 1. Originated from an unapproved source;
 - 2. May be unsafe, adulterated, or not honestly presented;

3. Is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or
 4. Is otherwise not in compliance with this Code.
- B. If the Department has a reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the Department may remove the food that is subject to the order to a place of safekeeping.

7-502. Hold order, warning, or hearing not required. The Department may issue a hold order to a license holder or person that owns or controls the food, as specified in Section 8-501, without prior warning, notice of a hearing, or a hearing on the hold order.

7-503. Hold order, contents. The hold order notice shall:

- A. State the food subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order from the Department;
- B. State the specific reasons for placing the food under the hold order with reference to the applicable provisions of this Code and the hazard or adverse effect created by the observed condition;
- C. Completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, the Department's tag or identification information, and location;
- D. State that the license holder has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in Section 7-702;
- E. State that the Department may order the destruction of the food if a timely request for an appeal hearing is not received; and
- F. Provide the name and address of the Department representative to whom a request for an appeal hearing may be made.

7-504. Hold order, official tagging of food.

- A. The Department shall securely place an official tag or label on the food or containers or otherwise conspicuously identify food subject to the hold order.
- B. The tag or other method used to identify a food that is the subject of a hold order shall include a summary of the provisions specified in Section 7-503 and shall be signed and dated by the Department.

7-505. Hold order, food may not be used or moved.

- A. Except as specified in Part B of this section, a food placed under a hold order may not be used, sold, served, or moved from the establishment by any person.
- B. The Department may allow the license holder the opportunity to store food in an area of the food establishment if the food is protected from subsequent deterioration and the storage does not restrict operations of the establishment.

7-506. Destroying or denaturing food. If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the Department may order the license holder or other person who owns or has custody of the food to bring the food into compliance with this Code or to destroy or denature the food under the Department's supervision.

7-507. Releasing food from hold order.

- A. The Department shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification if the hold order is vacated.
- B. Only the Department may remove hold order tags, labels, or other identification from food subject to a hold order.

7-508. Releasing food from hold order without approval. It shall be considered a violation of an order of the Board of Health for any person to sell, remove, or dispose of any food that is under a hold order without a release of the hold order as per Section 7-507.

7-6. Summary permit suspension.

7-601. Conditions warranting action. The Department may summarily suspend a license to operate a food establishment if it determines through inspection, or examination of employees, food, records, or other means as specified in this Code that an imminent health hazard exists.

7-602. Summary suspension, warning, or hearing not required. The Department may summarily suspend a license as specified in Section 7-601 by providing written notice as specified in Section 7-603 of the summary suspension to the license holder or their designate without prior warning, notice of hearing, or a hearing.

7-603. Contents of the notice. A summary suspension notice shall state:

- A. That the food establishment license is immediately suspended and that all food operations shall immediately cease;
- B. The reasons for summary suspension with reference to the provisions of this code that are in violation;
- C. The name and address of the Department representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
- D. That the license holder may request an appeal hearing by submitting a timely request.

7-604. Time frame for reinspection. After receiving a written request from the license holder stating that the conditions cited in the summary suspension order no longer exist, the Department shall conduct a reinspection of the food establishment for which the license was summarily suspended within 5 business days, which means 5 days during which the Department's office is open to the public.

7-605. Term of suspension, reinstatement of license.

- A. A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the Department through reinspection and other means as appropriate.
- B. The suspended license shall be reinstated immediately if the Department determines that the public health hazard or nuisance no longer exists. A notice of reinstatement shall be provided to the license holder or their designate.

7-7. Hearings administration.

7-701. Response to notice of hearing or request for hearing, basis, and time frame.

- A. A person who receives a notice of hearing for an administrative remedy as specified in Section 7-3 and elects to respond to the notice shall file a response to notice as specified in Section 7-702 within 7 calendar days after service.
- B. A license applicant may request a hearing regarding the disposition of an application for a new or revised license if the Department does not issue or deny the license within the time frame specified in law.
- C. A license holder may request a hearing to address concerns about the Department's denial of application for a license or request for a variance, or compliance actions, except that a hearing request does not stay the Department's restriction or exclusion of employees as specified in Section 4-2, a hold order as specified in Section 7-4, or the imposition of a summary suspension as specified in section 7-5.
- D. A person desiring a hearing in response to a denial of an application for a license or an adverse administrative determination shall submit a hearing request to the Department within 10 calendar days of the date of the denial, inspection, or compliance action, unless the Department specifies in certain situations that the request shall be submitted within a shorter period of time.

7-702. Response to a notice of hearing or request for hearing, required form, and contents. A response to a hearing notice or a request for hearing as specified in Section 7-701 shall be in written form and shall contain the following:

- A. If a response to notice of hearing,
 - 1. An admission or denial of each allegation of fact;
 - 2. A statement as to whether the respondent waives the right to a hearing; and may also contain
 - 3. A statement of defense, mitigation, or explanation concerning any allegation of fact; and
 - 4. A request to the Department for a settlement of the proceeding by consent agreement, if the Department will provide this opportunity.
- B. If a request for a hearing,
 - 1. A statement of the issue of fact Specified in Section 7-603(B) for which the hearing is requested; and
 - 2. A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.
- C. If either a response to notice of hearing or a request for a hearing,
 - 1. A statement indicating whether the presence of witnesses for the Department is required; and
 - 2. The name and address of the respondent's or requester's legal counsel, if any.

7-8. Criminal proceedings.

7-801. Institution of proceedings.

- A. Proceedings to enforce this Code may be instituted by the Department according to law by filing a misdemeanor complaint affidavit and request for a warrant of arrest with the court of competent jurisdiction or by referring the complaint to a grand jury for indictment, as appropriate.

B. The Department may designate a representative to issue summons or citations or sign warrants on behalf of the agency.

7-802. Petitions for injunction. The Department may, according to law, petition a court of competent jurisdiction for temporary or permanent injunctive relief to achieve compliance with the provisions of this Code or its orders.

7-803. Penalty. A person who violates a provision of this Code may be charged with a Class B misdemeanor under Section 23-35-13 of the North Dakota Century Code (NDCC).

APPENDIX A:

Food Establishment Licensure. Food establishment licenses are assigned based on criteria including the type of operation (ex. bakery, restaurant, etc.), the size or seating capacity of the establishment, and the risk level assigned based on the foods and processes that are part of operations at the establishment.

Operation Types:

“AL”: **“Assisted Living Facility”** means a building or structure containing a series of at least 5 living units operated as one entity to provide services for 5 or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual’s needs and abilities to maintain as much independence as possible. An assisted living facility in this Code includes a facility that is defined as an assisted living facility in any other code, rule, or regulation. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under Chapter 23-16 or 25-16 or Section 50-11-01.4 of the North Dakota Century Code. An assisted living facility license covers both the food and lodging components of an assisted living facility operation. Assisted living facility food operations are, by definition, risk level 4 operations. All lodging operations are governed by the FDHU Rules and Requirements for Facilities.

“BK”: **“Bakery”** means a food establishment operation in which products such as bread, cake, pastries, and similar types of foods are cooked with dry heat (especially as in an oven) and where such products are sold.

“BT”: **“Bar and Tavern”** means a food establishment operation that sells beverages that contain alcohol that are served in such a way as to be intended for consumption on the premises and that does not serve any other types of food items. Bar and tavern facilities are, by definition, risk level 1 operations.

“CC”: **“Child Care”** means a facility that is required to meet the requirements found in ND Administrative Code, Chapters 75-03-10-18 or 75-03-09-18. Child care food operations are, by definition, risk level 4 operations. All non-food operations are governed by the FDHU Rules and Requirements for Facilities.

“CP”: **“Summer Camp”** means a site or facility where seasonal, usually summer time, lodging provisions and/or food are provided to specific groups of individuals, especially children, and at which the camp proprietors provide care and designate activities for participation. A summer camp license covers both the food and lodging components of a summer camp operation. Summer camp facility licenses are based on a combination of the base fee assigned to the food operation based on risk level and with a unit fee based on the number of sleeping units available for campers. All lodging operations are governed by the FDHU Rules and Requirements for Facilities.

“CS”: **“Convenience Store”** means a food establishment at which multiple classes of food types are made or sold, and at which a retail food (RF) type of operation is not the predominant or primary type and which would be normally considered to be a convenience store. Convenience store licenses are based on a combination of the fees for the different operations on premises.

“GS”: **“Grocery Store”** means a food establishment at which multiple classes of food types are made or sold, and at which a retail food (RF) type of operation is the predominant or primary type and which would be normally considered to be a grocery store. Grocery store licenses are based on a combination of the fees for the different operations on premises.

“HL”: **“Hunting Lodge”** means any establishment at which lodging and/or food are provided to any person or group of persons and that is not a motel, assisted living facility, or bed and breakfast. A hunting lodge license covers both the food and lodging components of a hunting lodge operation. Hunting lodge food operations are classified by risk level. All lodging operations are governed by the FDHU Rules and Requirements for Facilities.

“MF”: **“Mobile Food Unit”** means a food establishment operation that:

- A. Prepares food for sale to the public that is sold in a form where it is ready for and intended for immediate consumption or for consumption within a short period of time; and
- B. Is not permanently established at one location and that does not operate at a single, specific event; and
- C. Can move under its own power or by being towed by another vehicle to different locations.

Mobile food unit license categories are based on the assigned risk level.

“MM”: **“Meat Market”** means a food establishment operation at which whole or partial cuts of meat, poultry, or fish are cut, manipulated, packaged, or processed for sale to the ultimate consumer or to another food establishment operation where meat, poultry, or fish are sold. Meat market does not include a facility where prepackaged cuts of meat, poultry, or fish are received and sold without additional cutting, manipulation, packaging, or processing. Meat market operations are classified as:

- A. Meat Market – no sale or service of ready-to-eat foods; or
- B. RTE Meat Market – sells or handles ready-to-eat foods.

“PP”: **“Produce Production”** means a food establishment operation at which plant foods are grown and/or processed for sale to a licensed food establishment located within the First District Health Unit.

“RE”: **“Restaurant”** means a food establishment operation in which food is prepared for sale to the public in a form where it is ready for immediate consumption on premises or for expected consumption within a short period of time, such as would occur at a facility serving food for takeout or delivery. Restaurant license categories are based on the assigned risk level combined with the number of seats.

“RF”: **“Retail Food Store”** means a food establishment operation in which foods that have been made and packaged in a food processing plant or in another class of food establishment operation are offered to the public for preparation and consumption off premises. A retail food store class license does not cover any type of food handling or processing of food including cutting, portioning of TCS foods, cooking, or any other similar processes. Retail food store licenses are categorized by the size of the retail sales floor.

“SF”: **“Salvaged Food Operation”** means a food establishment operation at which discarded or damaged commercially made or packaged food is offered for sale to the public for preparation and consumption off premises. A salvaged food operation may not offer to the public any foods that are not in compliance with all other criteria for food in this Code.

“TE”: **“Temporary Food Establishment”** means a food establishment operation that operates at a fixed location for a period of time of not more than fourteen consecutive days in conjunction with a single event or function. Based on available equipment, services, facilities, or other constraints, The Department may prohibit the preparation or sale of certain foods by temporary food establishments. Temporary food establishment licenses are assigned based on the risk level of the food and the number of days of the event.

“VE”: **“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 TCS food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Risk Level Assignments:

- A. **Risk Level 1.** Risk level 1 food establishments are those that do not package food, and that prepare and sell:
1. Only non-TCS foods;
 2. Commercially processed, pre-packaged TCS foods that require cold holding and that are sold in the package;
 3. Commercially processed, pre-packaged TCS foods that are heated in the package and sold to the customer without being removed from the package; or
 4. Alcoholic beverages.
- B. **Risk Level 2.** Risk level 2 food establishments are those that:
1. Primarily serve a limited menu including items that are prepared, cooked, and served immediately;
 2. May perform operations that may involve hot and/or cold holding of TCS foods after preparation and cooking; and
 3. Have a menu of food items that include no more than 2 TCS food items that are involved in complex preparation processes such as cooking, cooling, or reheating for hot holding.
- C. **Risk Level 3.** Risk level 3 food establishments are those that:
1. Primarily serve an extensive menu that involves the handling of raw animal food ingredients; and
 2. That prepare and serve more than 2 foods with operations that include, but are not limited to, complex processes such as cooking, cooling, and reheating for hot holding; and
 3. Do not have any of the additional requirements found in part D below.
- D. **Risk Level 4.** Risk level 4 food establishments are those that:
1. Serve a highly susceptible population; or
 2. Conduct specialized processes that require a variance (Section 4-107) or HACCP plan review (Section 4-108).

APPENDIX B:

BACKFLOW PREVENTION DEVICES

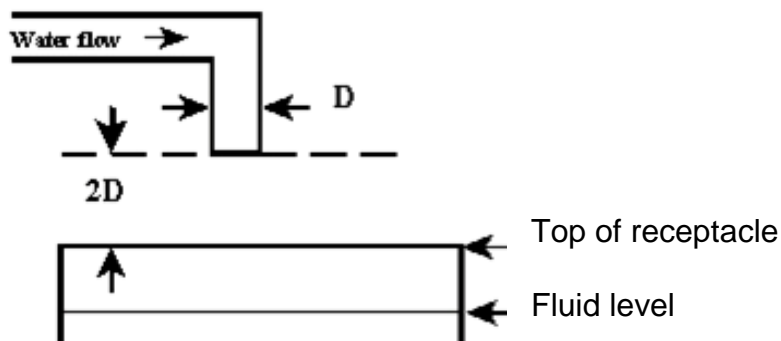
Cross connection: any actual or potential physical connection between a potable water supply and any pipe, vessel, or machine containing a non-potable fluid, solid or gas such that it is possible for the non-potable fluid, solid, or gas to enter the water system by backflow.

Backflow: flow in reverse from the normal direction of flow in a piping system. It occurs due to a difference in pressure between 2 different points in a continuous fluid system. The fluid flows from an area of higher pressure to an area of lower pressure.

Backsiphonage: caused by negative pressure in the supply piping.

5 Cross Connection Control Devices:

1. Air Gap - physical separation. Protects against backsiphonage and backpressure. Gap must be at least 2 times the inside diameter of the outlet. The gap may never be less than 1 inch.



Example of an air gap

2. Atmospheric Vacuum Breaker - protects against backsiphonage only. Cannot be used under continuous pressure, so it must be installed on the discharge side of the last control valve. Hose connection vacuum breakers can be used on sill cocks and service sinks. Should be installed vertically. Should be installed at least 6 inches higher than the final outlet.



Atmospheric Vacuum Breaker



Hose Connection Vacuum Breaker

3. Pressure Type Vacuum Breakers - protects against backsiphonage only. Backflow preventers with an intermediate atmospheric vent may be used to provide protection against back pressure. May be used under continuous pressure. Should be at least 6 to 12 inches above the final outlet.
4. Double Check Valve Assembly - can be used on all direct connections where a nuisance substance might enter the potable water system. Can be used under continuous pressure. May not be used to protect against substances that may be a health hazard. Can be tested to determine functionality.
5. Reduced Pressure Zone Devices - can be used on all direct connections. Can be used under constant pressure. Protects against substances that may be health hazards.

APPENDIX C:

GUIDELINES FOR PRODUCE GROWERS LICENSED TO PROVIDE PRODUCE TO LICENSED FOOD ESTABLISHMENTS IN THE FIRST DISTRICT HEALTH UNIT

Section C1: Scope: The intent of this section is to provide additional guidance to produce growers who wish to be approved to distribute their products to licensed food establishments located in the 7 counties of the First District Health Unit (FDHU). This section contains requirements for produce growers that must be followed in addition to all other requirements found in this Code.

While this document may provide good guidance for any growers of produce, it is intended only for use of those growers working under the FDHU produce regulation program. While following the guidelines set forth in this document will help produce operations provide produce that is reasonably safe for consumption, conditions and circumstances may still result in contamination of produce that could result in sickness when produce is consumed. Also, there may be additional steps or practices that a produce grower can take or follow that will help to reduce the likelihood of contamination. It is the responsibility of the produce grower to find and follow any additional practices that will result in safe produce.

Section C2: Definitions: All definitions in this section are the same as those found in Section 1, with the following additions:

- C2-1. “Authorized person”** means any person affiliated with a produce operation that is directly engaged in growing, processing, or packaging produce at that produce operation.
- C2-2. “Compost”** means a combination of decomposed plant and animal materials and other organic materials that are being decomposed largely through aerobic decomposition.
- C2-3. “Foliage”** means single or aggregate leaves, stems, branches, or reproductive structures of a plant.
- C2-4. “GAP” or “Good agricultural practice”** means applying available knowledge to addressing environmental, economic, and social sustainability dimensions for on-farm production and post-production processes, resulting in safe and quality food and non-food agricultural products. Based on generic sustainability principles, GAP’s aim at supporting locally developed optimal practices for a given production system based on a desired outcome, taking into account market demands and farmers constraints and incentives to apply practices.
- C2-5. “Harvest”** means the act or process of gathering, taking, or collecting any part of a plant.
- C2-6. “IPM” or “Integrated pest management”** means an ecologically based approach to pest (animal and weed) control that utilizes a multi-disciplinary knowledge of crop/pest relationships, establishment of acceptable economic thresholds for pest populations, and constant field monitoring for potential problems. Management may include, but is not limited to, such practices as the use of resistant varieties; crop rotation; cultural practices; optimal use of biological control organisms; certified seed; protective seed treatments; disease-free transplants or rootstock; timeliness of crop cultivation; improved timing of pesticide applications; and removal or 'plow down' of infested plant material.

- C2-7. “Irrigation”** means to supply land with water.
- C2-8. “Manure”** means fecal material and any other organic material that may contain fecal material.
- C2-9. “Packaging”** means bottling, canning, cartoning, bagging, wrapping, or in some other way placing into a container or receptacle as part of operations at a produce operation.
- C2-10. “Plant”** means any member of the kingdom Plantae, comprising multi-cellular organisms that typically produce their own food from inorganic matter by the process of photosynthesis and that have more or less rigid cell walls containing cellulose, including vascular plants, mosses, liverworts, and hornworts. For purposes of this document, plant will also be used to include fungi, algae, bacteria, blue-green algae, and certain single-celled eukaryotes that have plantlike qualities, including rigid cell walls or photosynthesis. Plant will also be used to include any symbiotic organisms consisting of 2 or more of any of the individual organisms included in the definition of “plant”.
- C2-11. “Processing”** means to treat or prepare through some systematic series of actions.
- C2-12. “Produce”** means any edible part or product of any plant.
- C2-13. “Produce operation”** means an operation that grows, stores, prepares, packages, or vends produce to a food establishment.
- C2-14. “Raw manure”** means manure that has not been processed in an approved manner so as to be free of pathogens and living weed seeds.
- C2-15. “Self-audit procedure”** means an established method of measuring and documenting critical control points used in a produce operation to internally monitor operating conditions and to use as an indicator for effecting change when conditions are outside established parameters.
- C2-16. “SOP” or “Standard operating procedure”** means an established series of steps taken to procure a desired effect or goal that is to be followed in carrying out a given operation or in a given situation
- C2-17. “Transport”** means to convey from one location to another.

Section C3: Inspection:

- C3-1. License suspension or hold order.** Observation of the following conditions during an inspection may result in the immediate suspension of the license and/or the issuance of a hold order for any contaminated or potentially contaminated produce from a produce growing operation:
- A. Animal occupation of or contamination of any produce, produce growing area, or production or processing area;
 - B. Any employee practices that could lead to the contamination of food, including any sick employees being present in any growing or production/packaging areas, any employee eating, drinking, or using tobacco in any growing area or production/packaging area or any person urinating or defecating in any non-approved toilet facility;

- C. Misuse of any chemical, including pesticides and herbicides;
- D. Falsification of any documents; or
- E. Any other activity or practice that the Department deems could present any immediate or long-term hazard.

Section C4: Requirements:

C4-1. Land use/rotations:

- A. If there is any potential source of contamination located or situated in such a way that contaminants from that source could be likely to migrate onto any produce or produce growing area, then a produce growing area shall be situated so that the potential source of contamination be at least $\frac{1}{4}$ mile away from the nearest edge of the produce growing area. If the Department deems that a distance of $\frac{1}{4}$ mile will not be adequate to prevent likely contamination, then a greater distance may be mandated.
- B. An analysis of the use history of the land used in a produce operation shall be done. If the history includes any use as a feedlot, dairy operation, any type of waste disposal, flooding, or any other possible use that could result in contamination of the ground, then the soil shall be tested for microbial contaminants. Land that has been flooded shall not be used for produce production for a period of 365 days after the flood waters have receded. Alternately, the soil on flooded land may be tested for the presence of pathogenic microorganisms. The results of the testing shall be submitted to the Department and approval to use the land may be granted at the discretion of the Department based on the test results.
- C. Human manure, or any derivative thereof, shall not be used in any way on land used for the purpose of growing produce at any produce operation.
- D. Raw manure may not be applied to any field used for produce unless it is incorporated into the soil.
- E. Any plant that is grown for the purpose of edible leaves, stems, or roots shall not be grown on a field that has had raw manure applied to it unless the time between application of the manure and planting is no less than 365 days.
- F. To be considered not raw, manure shall be composted in an approved manner.
- G. To be properly composted, manure shall be maintained at a temperature that is at least 131°F for a time that is at least 15 days.
- H. Compost piles shall be located so as not to be a potential source of contamination of any produce or produce storage, processing, or production areas. Manure compost piles shall be covered with an approved cover that prevents runoff, leaching, wind spread, or contamination.

C4-2. Water/irrigation:

- A. Any water used at a produce operation must be approved by the Department.
- B. Water from municipal supplies shall be submitted to the FDHU lab at least one time per year for bacterial analysis. If any storage or treatment of municipal water is done on site, then that stored or treated water shall be considered to be water from a non-municipal source and tested accordingly.
- C. Water from any non-municipal sources shall be submitted to the FDHU lab at least quarterly during the seasons of use for bacterial analysis.
- D. Any ice used in any way that could result in contact with produce or produce contact surfaces shall be made from potable water. If ice is made on-site, samples of ice shall be submitted monthly for bacterial testing.

- E. If any water or ice sample tests positive for coliform bacteria, then that water or ice source shall no longer be used for any purpose that involves contact with produce, or produce contact surfaces, or for washing of hands until approval has been granted by the Department.
- F. If any non-approved water comes into contact with any plant of which any part will be used for human consumption, even if the water does not appear to have come into contact with any edible part of the plant, then no part of that plant may be harvested and sold for consumption without the approval of the Department.
- G. Any irrigation that involves water being splashed, sprayed, or in any other way being applied to the foliage of the plant shall not be used. Watering shall be done in such a way so as to minimize the chances of plant disease, to prevent the movement of soil or other materials that may harbor pathogens onto edible plant materials and in such a way so as to maximize water conservation.
- H. Irrigation water shall meet the criteria found in the Safe Drinking Water Act. At no point in growing, harvesting, processing, packaging, or transporting shall any water that does not meet these criteria be applied to any plants of which any part is going to be harvested and used for human consumption. If any chemical treatment is done in which any pesticide or fertilizer will come into contact with any part of any plant intended for human consumption, then any water used in that chemical treatment shall also meet the criteria found in the Safe Water Drinking Act.
- I. All produce operations shall be equipped with approved handwashing facilities. These facilities must be located immediately adjacent to or in any restrooms and must be located conveniently for use in all processing and producing areas.
- J. An approved handwashing facility shall be equipped with water at a minimum of 100°F, soap, single-use towels, a trash receptacle, and an approved means of disposal of wastewater.

C4-3. Equipment:

- A. Any food contact surface shall be cleaned and sanitized daily before any produce contact, and as often as necessary during the hours of operation to prevent the contamination of produce.
- B. Any equipment used during harvest shall be cleaned and sanitized at least once daily, and as often as necessary during the day to prevent the contamination of any produce.
- C. Any storage facilities shall be cleaned and sanitized before being used and as often as necessary to prevent the contamination of produce.
- D. Any equipment that comes into contact with produce shall be maintained in a whole, undamaged condition with produce contact surfaces that are smooth, non-absorbent, and easily cleanable.
- E. All chemicals shall be stored in a location that is not in a growing, storage, processing, or packaging area.

C4-4. IPM - use of. Any pest control efforts shall involve all aspects of IPM.

C4-5. Contaminated produce – in field disposition. At harvest, any produce observed to be contaminated with animal wastes or any other contaminants shall be left in the field until after all harvest activities are complete.

C4-6. Handling:

- A. Bare hand contact with any produce during processing or packaging is prohibited. Where practical, bare hand contact with produce shall be avoided during harvest also.
- B. Any person handling any produce shall wash their hands before handling the produce.
- C. All produce operations are required to have a written policy regarding employee health. This policy shall be in compliance with Section 4-2. There shall be a statement signed by each employee detailing that they have read, understood, and agree to comply with the employee health policy.
- D. All produce shall be kept at a temperature that is optimal to maximize quality and to prevent the growth of pathogens or spoilage agents.

C4-7. Processing/packaging:

- A. All packaging materials shall be approved for food-contact, and all produce operations shall keep on hand all documentation proving that packaging materials are approved while those materials are being used, and for 30 days past the last use of the materials.
- B. All animals shall be excluded from any processing/packaging areas and from any areas where produce is stored.
- C. Wash water that does not arrive at the facility with testable levels of chlorine in it shall be chlorinated to drinking water standards where practical.
- D. The final wash/rinse solution shall be chlorinated to at least 100 ppm and to not more than 150 ppm. If a produce operation uses a sanitizer other than chlorine, then that sanitizer must meet the approval of the Department before being used, and shall be used at concentrations that give an effect equal to that of 100-150 ppm of chlorine. The pH of the final wash/rinse solution shall be between 6.5 and 7.5. This solution shall be allowed to contact the produce for at least one minute.
- E. Any wash or rinse tanks shall be emptied each day. Tanks shall be cleaned and sanitized before use, between different products, and as often as necessary to prevent the contamination of any produce. Tanks shall be refilled with fresh solution each day and as often as necessary during the day to prevent contamination of produce.
- F. All processing/packaging areas shall be equipped with an approved handwashing facility. Handwashing facilities shall be accessible by any persons working with produce at all times.
- G. All parts of a produce operation, including any transportation equipment, shall be maintained in a clean state.
- H. Processing/packaging facilities shall be secured to prevent entry by animals and unauthorized persons.

C4-8. Transport:

- A. All transport of produce shall be done in complete compliance with all other regulations and produce shall be protected from any additional contamination risks associated with the transportation process.
- B. Harvested produce in transport shall be covered.
- C. All vehicles used for transport shall be maintained in a clean and sanitary manner. Any material that could potentially contaminate produce shall not be in the same part of the vehicle where the produce is located during transport.

C4-9. Documentation:

- A. All produce operations shall have a written plan. The plan shall include SOP's, GAP's, and self-audit procedures. GAP's shall be from a source recognized by and approved by the Department. The plan shall be submitted to the Department for review and must meet the approval of the Department before a produce operation license will be issued.
- B. Each produce operation shall have an approved procedure for keeping track of all recipients of produce from that operation. All produce that is delivered must have some means of identifying the origin of that produce.
- C. Each produce operation shall have a map of all growing areas that includes delineation of any possible sources of contamination.

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