

**R392. Health and Human Services, Population Health, Environmental Health.**

**R392-100. Food Service Sanitation.**

**R392-100-1. Authority and Purpose.**

- (1) Sections 26B-7-402, and 26B-1-202 authorize this rule.
- (2) The purpose of this rule is to safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented by:
  - (a) setting standards for management, personnel, food operations, equipment, and facilities; and
  - (b) providing conditions for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.

**R392-100-2. Definitions.**

- (1) "Agritourism food establishment" has the same meaning as defined in Section 26B-7-401.
- (2) "Department" means the Utah Department of Health and Human Services.
- (3) "FDA Food Code" or "Food Code" means the version of U.S. Public Health Service, Food and Drug Administration, Model Food Code as incorporated by reference with exceptions and amendments in this rule.
- (4) "Food Cart" has the same meaning as defined in Section 11-56-102.
- (5)(a) "Food Truck" has the same meaning as defined in Section 11-56-102.
- (6) "Ice Cream Truck" has the same meaning as defined in Section 11-56-102.
- (7) "Local health department" has the same meaning as defined in Section 26A-1-102.
- (8) "Microenterprise home kitchen" has the same meaning as defined in Section 26B-7-401.
- (9) "Recovery residence" has the same meaning as defined in Subsection 26B-2-101(36).
- (10) "Residential support" has the same meaning as defined in Subsection 26B-2-101(38).
- (11) "Residential treatment" has the same meaning as defined in Subsection 26B-2-101(39).

**R392-100-3. General Requirements.**

- (1) The following food service establishments are exempt from the requirements of this rule:
  - (a) a food truck;
  - (b) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children;
  - (c) a residential treatment program, residential support program, or recovery residence, as defined in this rule and in Rule R392-110, that provides a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider;
  - (d) an agritourism food establishment; and
  - (e) a microenterprise home kitchen.
- (2) A food truck operator shall comply with the requirements of Rule R392-102, Food Truck Sanitation.
- (3) Certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children; residential treatment programs; residential support programs; and recovery residences providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider shall comply with the requirements of Rule R392-110, Food Service Sanitation in Residential Care Facilities.
- (4) An agritourism food establishment operator shall comply with the requirements of Rule R392-105, Agritourism Food Establishment Sanitation.
- (5) A microenterprise home kitchen shall comply with the requirements of Rule R392-106, Microenterprise Home Kitchen Sanitation.

**R392-100-4. Incorporation by Reference.**

- (1) The Department incorporates by reference the following:
  - (a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342; and
  - (b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Food Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments as established in Subsection R392-100-4(2).
- (2) The following subparts of the Food Code are not incorporated into this rule:
  - (a) Subpart 5-203.15(B);
  - (b) Subparts 5-402.11(B), (C) and (D);
  - (c) Subparts 8-302.14(D) and (E);
  - (d) Subpart 8-304.11(K);
  - (e) Annex 1, Subpart 8-905.40;
  - (f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);
  - (g) Annex 1, Subpart 8-909-20; and
  - (h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).
- (3)(a) This rule incorporates by reference Subpart 1-201.10(B) of the Food Code.:
  - (i) "Core Item(1)" is changed to read, "'Core Item' also referred to as "non-critical" means a provision in the Food Code that is not designated as a Priority Item or a Priority Foundation Item;
  - (ii) "Food Establishment(2)" is changed to add Paragraph (c) to read:

"(2)(c) A catering operation that is a licensed business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, or the client's guests or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or a meal that is individually purchased with the exception of cash bars."

(iii) "Food Establishment(3)" is changed to add Subparagraph (h), (i), (j), and (k) to read:

"(3)(h) an agritourism food establishment

(3)(i) a food truck;

(3)(j) a microenterprise home kitchen

(3)(k) a certified or licensed childcare facility, including a residence, that provides care for 16 or fewer children; a residential treatment program; a residential support program; and recovery residence providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider"

(iv) A definition of "Potentially Hazardous Food" is added to read:

"Potentially Hazardous Food" means the same as 'Time/Temperature Control for Safety Food.'

(v) "Priority Item(1)" is changed to read:

"Priority Item' also referred to as 'critical 1' means a provision in the Food Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no provision that more directly controls the hazard."

(vi) "Priority Foundation Item(1)" is changed to read:

"Priority Foundation Item' also referred to as 'critical 2' means a provision in the Food Code whose application supports, facilitates or enables one or more priority items."

(b) After Subpart 2-102.12 of the Food Code, a new subpart is added to read:

"2-102.13 Food Employee Training. The person in charge shall obtain training and certification as required under Section 26B-7-412, and Rule R392-101. Food employees shall obtain training in food safety as required under Section 26B-7-413 and Rule R392-103, Food Handler Training and Certificate."

(c) Paragraph 3-201.16(A) of the Food Code is changed to read:

"Except as specified in Paragraph (B), mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Subpart 3-501.17 of the Food Code is changed to include additional Paragraph (H):

"(H) A date marking system that meets the criteria stated in Paragraph (A) shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(A) before which food must be used as specified in Paragraph (A); or

(B) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) of the Food Code is changed to read:

"Only one time-marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) Paragraph 3-603.11(A) of the Food Code is changed to read:

"(A) Except as specified in Paragraphs 3-401.11(C) and 3401.11(D)(4), and under Paragraph 3-801.11(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 permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in Paragraphs (B) and (C) using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means."

(g) After Subpart 4-204.123 of the Food Code a new subpart is added to read:

"4-204.124 Restraint of Pressurized Containers. Carbon dioxide, helium, or other similar pressurized containers shall be restrained or secured to prevent the tanks from toppling."

(h) Subpart 5-101.12 of the Food Code is changed to add:

"The process shall be in accordance with the American Water Works Association (AWWA) C651-2015 for disinfection and testing."

(i) Subpart 5-202.13 of the Food Code is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, 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 25 millimeters (1 inch); and

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(j) Subpart 5-203.14 of the Food Code is changed to read:

"(A) 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, by:

- (1) providing an air gap as specified under Subpart 5-202.13; or
  - (2) installing an approved backflow prevention device as specified under Subpart 5-202.14; and
- (B) Each chemical dispenser shall connect to a separate dedicated water supply line, and not a sink faucet."  
(k) Paragraph 5-203.15(A) of the Food Code is changed to read:

"(A) If not provided with an air gap as specified under Subpart 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed downstream from any copper in the water supply and upstream from any:

- (i) carbonated beverage dispenser;
- (ii) coffee machine; or
- (iii) noncarbonated drink dispenser."

(l) Paragraph 5-402.11(A) of the Food Code is changed to read:

"(A) 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."

(m) Subpart 6-202.14 of the Food Code is changed to read:

"6-202.14 Toilet Rooms, Enclosed. A toilet room shall be completely enclosed and provided with a solid self-closing door, except where a toilet room:

- (A) is located outside a food establishment;
- (B) does not open directly into the food establishment such as a toilet room that is provided in a shopping mall; or
- (C) does not open directly into the food preparation area, food service area, or a hallway leading directly into a food preparation or food service area."

(n) Paragraph 6-501.115(B) is changed to read:

"(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.

(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; and

(6) Dogs other than service animals or patrol dogs in the outdoor patio areas of a food establishment if:

(a) a separate entrance is provided from the outside of the food establishment to the outdoor patio to ensure that a dog will have direct access to the patio without entering the interior food preparation, storage, sales, display, or dining areas of the food establishment;

(b) a dog is not allowed within eight feet of any entrance to an interior area of the food establishment, except as necessary to enter or exit the patio;

(c) signs are conspicuously posted at the entrance of the food establishment and patio to notify patrons that dogs may be on the premises;

(i) The signs shall state: "Notice to patrons, dogs may be on the premises but are restricted to the outdoor patio. Dog owners are responsible for keeping their animal under control at all times."

(ii) Signs shall be at least 8" x 10" in size, and the lettering shall be high contrast and at least 5/8" in height.

(d) doors equipped with self-closing devices are provided at all entrances to the outdoor patio from the interior of the food establishment;

(e) no food preparation is done in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment;

(f) the outdoor patio area is continuously maintained free of visible dog hair and other dog related wastes or debris;

(g) while on duty, wait staff, servers, or food employees do not care for or handle a dog that may be present;

(h) a dog is kept on a leash and remains in the control of the patron while on the outdoor patio;

(i) a dog is wearing a collar or harness with a rabies tag attached to it;

(j) a dog is not allowed on a chair, table, countertop, or similar surface in the outdoor patio area; and

(k) a dog does not have contact with any of the food establishment's condiments, equipment, or reusable utensils."

(o) Subpart 8-103.10 Modifications and Waivers is changed to read:

"(A) The local health department may grant a variance by modifying or waiving the requirements of FDA Food Code if in the opinion of the local health department a health hazard or nuisance will not result from the variance. If a variance is granted, the local health department shall retain the information specified under Subpart 8-103.11 in its records for the food establishment.

(B) A copy of any variance or waiver issued by the local health department and the documentation required in Subpart 8-103.11 shall be provided to the Department, Environmental Sanitation Program within five working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health department jurisdiction in the state shall be approved by the Department before issuance."

(p) Subpart 8-103.11 is changed to add Paragraph (D) to read:

"(D) In addition, a variance from Subpart 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or workstation;

(2) the applicant has demonstrated good cause why Subpart 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(q) Paragraph 8-302.14(C) is changed to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(r) Paragraph 8-304.10(A) is changed to read:

"(A) Upon request, the local health department shall provide a copy of Rule R392-100 according to the policy of the local health department."

(s) Subparagraph 8-401.10(B)(2) is changed to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction."

(t) Subpart 8-501.10 is changed to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(u) Annex 1, Subpart 8-601.10 is changed to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(v) Annex 1, Subpart 8-801.30 is changed to read:

"Service is effective when the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(w) Annex 1, Subpart 8-903.10 is changed to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26B-7-414.

(B) The local health department may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days' notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the local health department has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the local health department may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in Paragraphs (B), (C), and (D), the local health department may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of FDA Food Code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of Food Code."

(x) Annex 1, Subpart 8-903.60 is changed to read:

"The local health department may examine, sample, and test food to determine its compliance with Food Code in Subpart 8-402.11."

(y) Annex 1, Subpart 8-903.90 is changed to read:

"The local health department shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(z) Annex 1 Subpart 8-904.30 heading is changed to read, 8-904.30 Contents of the Summary Suspension Notice.

(aa) Annex 1, Paragraph 8-905.10(A) is changed to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(ab) Annex 1, Subpart 8-905.20 is changed to read:

"A response to a hearing notice or a request for a hearing as specified in Subpart 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

- (4) A statement as to whether the respondent wishes to settle some or all claims made by the local health department.
- (B) A request for hearing must include:
- (1) A statement of the issues of fact specified in Subpart 8-905.30 Paragraph (B) for which a hearing is requested; and
- (2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.
- (C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.
- (D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."
- (ac) Annex 1, Subparagraph 8-905.50(A)(1) is changed to read:
- "(1) Except as provided in Paragraph (B) of this Subpart, within 5 calendar days after receiving a written request for an appeal hearing from:"
- (ad) Annex 1, Subparagraph 8-905.50(A)(2) is changed to read:
- "(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in Subpart 8-905.10(C) or for matters as determined necessary by the local health department."
- (ae) Annex 1, Subpart 8-905.60 heading is changed to read:
- "8-905.60 Notice of Hearing Contents."
- (af) Annex 1, Subpart 8-905.80 heading is changed to read:
- "8-905.80 Expeditious and Impartial Hearing."
- (ag) Annex 1, Subpart 8-905.90 heading is changed to read:
- "8-905.90 Confidentiality of Hearing and Proceedings."
- (ah) Annex 1, Paragraph 8-905.90(A) is changed to read:
- "(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."
- (ai) Subpart 8-906.30 Paragraph (B) is changed to read:
- "(B) Unless a party appeals to the head of the local health department within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer."
- (aj) Annex 1, Subpart 8-907.60 is changed to read:
- "Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party before the hearing as ordered by the hearing officer."
- (ak) Annex 1, Subpart 8-908.20 is changed to read:
- "Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."
- (al) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is changed to read:
- "(B) Any person who violates this rule may be assessed a civil penalty as provided in Section 26B-1-224."
- (am) Annex 1, Subpart 8-913.10 headline is changed to read:
- "8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."
- (an) Annex 1, Paragraph 8-913.10(B) is changed to read:
- "In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."
- (ao) Annex 1, Subpart 8-913.10 is changed to add Paragraph (D) to read:
- "(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

#### **R392-100-5. Construction Standards.**

The food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

**KEY: public health, food services, sanitation**

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**Authorizing, and Implemented or Interpreted Law: 26B-7-402; 26B-1-202**