

ARTICLE 33-30

ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE

Chapter

- 33-30-01 Board of Environmental Health Practitioner Licensure and General Provisions
- 33-30-02 Initial Licensure and Renewals
- 33-30-03 Continuing Education
- 33-30-04 Code of Ethics
- 33-30-05 Grievances and Disciplinary Proceedings
- 33-30-06 Information Changes

CHAPTER 33-30-01

BOARD OF ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE AND GENERAL PROVISIONS

Section

- 33-30-01-01 Organization of the Board of Environmental Health Practitioner Licensure
- 33-30-01-02 Scope of Practice
- 33-30-01-03 Definitions

33-30-01-01. Organization of the board of environmental health practitioner licensure.

1. History and function. The 1985 legislative assembly passed legislation to license environmental health practitioners, codified as North Dakota Century Code chapter 43-43. This chapter authorized the secretary of state to carry out all functions necessary to license and to utilize the services of an advisory board as needed. The 1987 legislative assembly transferred this licensing function from the office of the secretary of state to the state health officer. The 2003 legislative assembly provided the authority to create specialty licenses within the practice of environmental health. The board's responsibility is advisory only. All statutory power is vested with the state health officer.
2. Board membership. The board consists of five members – the state health officer or an appointed agent; the commissioner of the North Dakota department of agriculture or an appointed agent; the president of the North Dakota environmental health association or an appointed agent; one member from a district or a local health unit who is a licensed environmental health practitioner; and one consumer. The environmental health practitioner and consumer must be appointed by the state health officer.
3. Officers. The state health officer shall serve as chairperson. The state health officer may appoint an executive secretary as necessary.
4. Inquiries. Inquiries may be addressed to:
 - State Health Officer

State Department of Health
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0200

History: Effective February 1, 1988; amended effective May 1, 1994; May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-01-02. Scope of practice. This article applies to persons whose duties in environmental health and food safety require the application of scientific knowledge to recognize, evaluate, and control food and environmental hazards to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well-being of the consuming public. It is the intent of the advisory board that these rules apply to all persons engaging in the practice of environmental health and the supervisors of those persons. Exempt are those supervisors employed on May 1, 2004.

History: May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-33-01-03. Definitions.

1. "Board eligible" means having completed an application for licensure, paid the required fee, and met the necessary education requirements.
2. "~~Certified food safety~~ professional - food safety" means a person who, by education and experience in food safety, is qualified, licensed, and limited to inspecting retail food, food service, food production or food manufacturing facilities, or conducting plan reviews for such establishments.
3. "Continuing education unit" means ten contact hours earned in continuing education courses, seminars, workshops, and college courses. Ten hours of contact equals one continuing education unit.
4. "Environmental health practitioner" means a person who, by environmental health science education and experience, is qualified and licensed to practice environmental health.

History: May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-02
INITIAL LICENSURE AND RENEWALS**

Section

33-30-02-01 License Application

33-30-02-02 License Renewal

33-30-02-03 Fees

33-30-02-04 Qualifications and Requirements for Licensure as an Environmental Health Practitioner

33-30-02-04.1 Qualifications and Requirements for Licensure as a Certified Food Safety Professional – Food Safety

33-30-02-05 Reciprocity

33-30-02-06 Requirement for Licensure

33-30-02-01. Licensure application. An application for a license to practice environmental health must be made to the state health officer on forms provided by the officer upon request. The application must contain such information as may be reasonably required.

1. Each application for a license must be accompanied by:
 - a. A prescribed fee.
 - b. A transcript verifying completion of college degree
2. All applications must be signed by the applicant
3. The state health officer may request such additional information or clarification of information provided in the application as the health officer deems reasonably necessary.
4. If the state health officer so directs, an applicant shall personally appear before the board concerning the application.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-02. Licensure renewal. Licenses are renewable biennially on January first of each biennium. They must be renewed on forms provided by the state health officer. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. Any license not renewed within two years of its expiration date may not be renewed, and it may not be restored, reissued, or reinstated. A person whose license has expired may reapply for a new license if such person meets the requirements of the North Dakota Century code chapter 43-43 and this article.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-03. Fees. The following fees must be paid in connection with environmental health practitioner and certified ~~food safety~~ professional - food safety applications, renewals, and penalties:

1. Application fee for an environmental health practitioner and certified ~~food safety~~ professional - food safety license - \$50.00.
2. Renewal fee for an environmental health practitioner and certified ~~food safety~~ professional - food safety license - \$15.00.
3. Late renewal penalty fee per month - \$2.00.
4. Duplicate or changed license fee - \$10.00.

Licensure and renewal fees for a partial licensure period must be assessed on a prorated basis.

History: Effective February 1, 1988; amended effective January 1, 1993; May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-04. Qualifications and requirements for licensure as an environmental health practitioner.

1. Complete an application for licensure and pay the required application fee.
2. Have received a baccalaureate degree in an accredited environmental health curriculum or a baccalaureate in the physical, chemical, or biological sciences, including at least thirty semester or forty-five quarter credits in a physical, chemical, or biological science, or a degree beyond baccalaureate in environmental health or biological science.
3. Pass the national registered environmental health specialist/registered sanitarian (REHS/RS) examination administered by the national environmental health association or equivalent. Persons meeting the licensure requirements in subsections 1 and 2 who have not yet passed the environmental health REHS/RS examination will be considered board eligible. A person who is board eligible may work in the field of environmental health but such work must be under the direction and supervision of a licensed environmental health practitioner. A person who is board eligible may work under a licensed environmental health practitioner for no more than a total of five years after which such person may work in the field of environmental health only after passing the national REHS/RS examination. Environmental health practitioners licensed prior to January 1, 1993, will be exempt from the examination requirement.

History: Effective February 1, 1988; amended effective January 1, 1993; May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-04.1. Qualifications and requirements for licensure as a certified ~~food safety~~ professional - food safety.

1. The candidate must complete an application for licensure and pay the required application fee.

2. The candidate must meet at least one of the following criteria in the "degree" or "experience" track:
 - a. Degree track:
 - a. (1) A baccalaureate degree in an accredited environmental health or food science curriculum or a baccalaureate in physical, chemical, or biological sciences, including at least thirty semester hours or forty-five quarter credits in a physical, chemical, or biological science, or a degree beyond baccalaureate in environmental health or in a physical, chemical, or biological science; or
 - (2) A bachelor's degree with at least two years experience in food protection; or
 - (3) A bachelor's degree and possession of the NEHA REHS/RS credential.
 - b. ~~A high school diploma or GED and:~~ Experience track:
An associate's degree and
 - i. (1) ~~Five~~ Four years of progressive experience in food safety work; and ~~Successful~~ successful passage of the certified professional food manager (CPFM) or food safety managers certification examination (FSMCE); ~~or SuperSafe Mark Exam, or ServSafe exam, or~~
 - (2) a high school diploma or GED and five years of progressive experience in food-related work, and successful passage of the Certified Professional Food Manager (CPFM), Food Safety Managers Certification Examination (FSMCE), SuperSafe Mark Exam, or ServSafe exam
 - b. ~~An associate degree and:~~
 - (1) ~~Four years of progressive experience in food-related work; and~~
 - (2) ~~Successful passage of the certified professional food manager (CPFM) or food safety managers certification examination (FSMCE).~~
3. The candidate must pass the national certified food safety professional – food safety (CFSP CP-FS) examination administered by the national environmental health association or equivalent. Persons meeting the requirements in subsections 1 and 2 who have not yet passed the CFSP CP-FS examination will be considered board eligible. A person who is board eligible may work in the field of food safety but such work must be under the direction and supervision of a licensed certified food safety professional, doctor of veterinary medicine, medical doctor, doctor of osteopathy, dentist, registered sanitarian, or registered environmental health specialist. A person who is board eligible may work under the supervision of those previously listed for no more than a total of ~~five~~ three years after which such person may work in the field of food safety only after passing the CFSP CP-FS examination.

History: Effective May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-05. Reciprocity. A person may be licensed to practice environmental health in North Dakota if such person presents an application, application fee, and proof of licensure in another state or county whose requirements for licensure equal those of North Dakota.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-06. Requirement for licensure. Any person engaged in the practice of environmental health in the state shall be required to be licensed.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-03
CONTINUING EDUCATION**

Section

33-30-03-01 Continuing Education

33-30-03-01. Continuing education.

1. To renew a license a person must present proof of having attained at least 1.5 continuing education units of continuing education in the field of environmental health. Continuing education for licensure renewal must be completed in the biennium preceding the biennium for which licensure is sought. Under extraordinary circumstances the state health officer may consider a request for continuing education units obtained in the current biennium.
2. A curriculum review committee, composed of the advisory board members or their agent, shall meet at timely intervals to review applications for curriculum accreditation. Continuing education units must be assigned as one continuing education unit per ten hours of instruction. Curricula must have public health or environmental health orientation. Programs which already carry accreditation by a recognized educational agency or professional organization may be accepted by the committee. The committee, upon advice from the licensure board, may alter or reject accreditation by another agency or organization if such action is necessitated by facts pointing to an erroneous accreditation having been assigned.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-04
CODE OF ETHICS**

Section

33-30-04-01 Code of Ethics

33-30-04-01. Code of ethics. Licensees in the state of North Dakota shall subscribe to the national environmental health association's code of ethics in effect as of July 1, 1985. This code is incorporated in the rules by reference.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

CHAPTER 33-30-05
GRIEVANCES AND DISCIPLINARY PROCEEDINGS

Section

33-30-05-01 Grievance Procedure

33-30-05-02 Grounds for Disciplinary Proceedings

33-30-05-03 Hearings and Disciplinary Proceedings – Appeals

33-30-05-01. Grievance procedure. Grievances must be processed in accordance with North Dakota Century Code chapter 28-32.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-05-02. Grounds for disciplinary proceedings. The state health officer may refuse to issue or renew, suspend, revoke, or place on probationary status any license issued under this chapter or issue a written warning to a licensee upon proof at a hearing that the applicant or licensed person has engaged in unprofessional conduct. A person has engaged in unprofessional conduct if a person:

1. Obtained a license by means of fraud, misrepresentation, or concealment of material facts.
2. Violated the code of ethics referred to in section 33-30-04-01.
3. Has been convicted of a criminal offense, and the state health officer in accordance with North Dakota Century Code section 12.1-33-02.1, has determined that the person has not been sufficiently rehabilitated or that the offense has a direct bearing on the person's ability to serve the public in the capacity of a licensed environmental health practitioner.
4. Violated any order or rule adopted by the state health officer pertaining to the practice of environmental health.
5. Violated any provision of North Dakota Century code chapter 43-43.
6. Is grossly negligent in the practice of environmental health.
7. Is addicted to the use of alcoholic beverages, drugs, narcotics, or stimulants to such an extent as to be incapacitated from the practice of environmental health.

History: Effective January 1, 1993

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-07

33-30-05-03. Hearings and disciplinary proceedings – Appeals.

1. Upon receipt of a written and signed complaint that alleges that a licensee practicing in this state has engaged in unprofessional conduct as defined under section 33-30-05-02 and which sets forth information about which a reasonable person might believe that further inquiries should be made, the state health officer shall investigate the matter.

2. If the investigation reveals grounds to support the complaint, the advisory board shall initiate a disciplinary action by serving upon the licensee by certified mail a complaint set forth the allegations upon which the action is based specifying the issues to be determined.
3. If a written response contesting the allegations is not received by the board within twenty days of service of the complaint, the allegations are deemed admitted and appropriate disciplinary sanctions are to be imposed.
4. If a disciplinary action has been initiated as provided in subsection 2, the state health officer may offer to meet with the licensee informally for the purpose of determining whether the disciplinary action, including imposition of appropriate sanctions, can be resolved by mutual agreement.
5. If an informal agreement cannot be reached, or the state health officer elects not to offer the licensee an opportunity for informal resolution of the matter, the licensee is entitled to a hearing under North Dakota Century Code chapter 28-32. Appeal from the board's final decision may be taken in accordance with North Dakota Century Code section 28-32-~~15~~ 42.
6. Employers of persons licensed under this article will be notified of any action taken with respect to said license.

History: Effective January 1, 1993; amended effective May 1, 2004

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-07

**CHAPTER 33-30-06
INFORMATION CHANGES**

Section

33-30-06-01 Address and Home Changes

33-30-06-01. Address and home changes. Any licensee must report a change of address, home, or educational degree to the board. Proof of any educational degree change must also be submitted.

History: Effective February 1, 1988

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

Chapter 33-33-04
Food Code
Effective Date: 01-01-08

Section

33-33-04-01	Definitions
33-33-04-01.1	Intent - Scope
33-33-04-02	General Care of Food Supplies*
33-33-04-02.1	Additional Safeguards*
33-33-04-03	Special Requirements*
33-33-04-03.1	Shucked Shellfish - Packaging and Identification*
33-33-04-03.2	Shellstock Identification*
33-33-04-03.3	Shellstock Condition
33-33-04-03.4	Molluscan Shellfish - Original Container
33-33-04-03.5	Shellstock - Maintaining Identification*
33-33-04-04	General Food Protection*
33-33-04-04.1	Packaged and Unpackaged Food - Separation, Packaging, and Segregation*
33-33-04-04.2	Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food*
33-33-04-04.3	Food Labels
33-33-04-05	Emergency Occurrences*
33-33-04-06	General Food Storage
33-33-04-07	Potentially Hazardous Foods - Hot and Cold Holding*
33-33-04-07.1	Ready-to-Eat, Potentially Hazardous Food - Date Marking*
33-33-04-07.2	Ready-to-Eat, Potentially Hazardous Food - Disposition*
33-33-04-07.3	Time as a Public Health Control*
33-33-04-07.4	Consumption of Animal Foods That Are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens*
33-33-04-07.5	Cooling*
33-33-04-07.6	Cooling Methods*
33-33-04-08	Hot and Cold Storage
33-33-04-09	General Food Preparation*
33-33-04-09.1	Preventing Contamination When Tasting*
33-33-04-10	Washing Raw Fruits and Vegetables
33-33-04-11	Cooking Raw Animal Foods*
33-33-04-11.1	Minimum Food Temperature and Holding Time [Repealed]
33-33-04-11.2	Oven Parameters Required for Destruction of Pathogens [Repealed]
33-33-04-11.3	Minimum Holding Times Required at Specified Temperatures [Repealed]
33-33-04-11.4	Microwave Cooking*
33-33-04-11.5	Parasite Destruction*
33-33-04-11.6	Plant Food Cooking for Hot Holding*
33-33-04-11.7	Records - Creation and Retention
33-33-04-11.8	Re-serving Cooked and Refrigerated Food
33-33-04-11.9	<u>Non-continuous Cooking of Raw Animal Foods*</u>
33-33-04-12	Milk Products - Pasteurized*
33-33-04-13	Egg Products - Pasteurized*

33-33-04-14	Reheating for Hot Holding*
33-33-04-15	Nondairy Products
33-33-04-16	Product Thermometers [Repealed]
33-33-04-17	Thawing Potentially Hazardous Foods
33-33-04-18	Food Display and Service of Potentially Hazardous Foods*
33-33-04-18.1	Variance Requirement*
33-33-04-18.2	Reduced Oxygen Packaging <u>Without a Variance</u> - Criteria*
33-33-04-19	Milk and Cream Dispensing
33-33-04-19.1	Dispensing Equipment, Protection of Equipment, and Food
33-33-04-19.2	Molluscan Shellfish Tanks
33-33-04-20	Nondairy Product Dispensing
33-33-04-21	Condiment Dispensing
33-33-04-21.1	Vending Machine Dispensing
33-33-04-21.2	Vending Machine - Automatic Shutoff*
33-33-04-22	Ice Dispensing
33-33-04-23	Dispensing Utensils
33-33-04-24	Re-Serving*
33-33-04-25	Food Display
33-33-04-25.1	Consumer Self-Service Operations*
33-33-04-26	Reuse of Tableware
33-33-04-27	General Food Transportation
33-33-04-27.1	Management and Personnel – <u>Person in Charge</u>*
33-33-04-27.2	Demonstration of Knowledge*
33-33-04-28	Employee Health* (Repealed)
33-33-04-28.1	Employee Exclusions and Restrictions* [Repealed]
33-33-04-28.2	Removal of Exclusions and Restrictions [Repealed]
33-33-04-28.3	Responsibility of a Food Employee or an Applicant to Report to the Person in Charge* [Repealed]
33-33-04-28.4	Reporting by the Person in Charge* [Repealed]
33-33-04-28.5	Obtaining Information - Personal History of Illness, Medical Examination and Specimen Analysis [Repealed]
33-33-04-28.6	Restriction or Exclusion of Food Employee or Summary Suspension of License [Repealed])
33-33-04-28.7	Restriction or Exclusion Order - Warning or Hearing Not Required - Information Required in Order [Repealed]
33-33-04-28.8	Release of Employee from Restriction or Exclusion [Repealed]
33-33-04-28.9	Responsibility of Permit Holder, Person in Charge, and Conditional Employees*
33-33-04-28.10	Exclusions and Restrictions*
33-33-04-28.11	Removal, Adjustment, or Retention of Exclusions and Restrictions.
33-33-04-29	General Personal Cleanliness*
33-33-04-29.1	Preventing Contamination From Hands – Limit Direct Hand Contact*
33-33-04-29.2	Hand Sanitizer
33-33-04-29.3	Where to Wash*
33-33-04-29.4	Fingernail Maintenance
33-33-04-30	General Clothing and Jewelry
33-33-04-31	General Employee Practices*

33-33-04-31.1	Hair Restraints
33-33-04-32	General Equipment and Utensils Materials <u>and Use</u>*
33-33-04-33	Solder and Pewter Alloys
33-33-04-34	Wood
33-33-04-34.1	Cutting Surfaces
33-33-04-35	Plastics
33-33-04-35.1	Sponges
33-33-04-35.2	Nonstick Coatings
33-33-04-36	Mollusk and Crustacea Shells
33-33-04-36.1	Slash-Resistant Gloves <u>Gloves, Use Limitation*</u>
33-33-04-37	Single-Service Article - Reuse Prohibited - Composition*
33-33-04-38	General Design and Fabrication
33-33-04-39	Accessibility*
33-33-04-40	In-Place Cleaning
33-33-04-41	Pressure Spray Cleaning
33-33-04-42	Thermometers - Food*
33-33-04-42.1	Thermometers - Ambient Air and Water
33-33-04-43	Nonfood-Contact Surfaces
33-33-04-44	Ventilation Hoods
33-33-04-45	Existing Equipment
33-33-04-46	General Equipment Installation and Location
33-33-04-47	Table-Mounted Equipment
33-33-04-48	Floor-Mounted Equipment
33-33-04-49	Aisles and Working Spaces
33-33-04-50	Cleaning Frequency of Equipment and Utensils Cleaning and Sanitizing*
33-33-04-50.1	Returnables - Cleaning and Refilling*
33-33-04-51	Wiping Cloths and Working Containers - Use Limitation
33-33-04-52	Manual Warewashing - Sink Compartment Requirements
33-33-04-52.1	Warewashing Equipment - Cleaning Frequency
33-33-04-52.2	Warewashing Machines - Manufacturers' Operating Instructions*
33-33-04-52.3	Warewashing Sinks - Use Limitations
33-33-04-52.4	Warewashing Equipment - Cleaning Agents*
33-33-04-52.5	Warewashing Equipment - Clean Solutions
33-33-04-52.6	Manual Warewashing Equipment - Wash Solution Temperature
33-33-04-53	Mechanical Warewashing Equipment - Wash Solution Temperature
33-33-04-53.1	Manual Warewashing Equipment - Hot Water Sanitization Temperatures*
33-33-04-53.2	Mechanical Warewashing Equipment - Hot Water Sanitization Temperatures*
33-33-04-53.3	Mechanical Warewashing Equipment - Sanitization Pressure
33-33-04-53.4	Manual and Mechanical Warewashing Equipment - Chemical Sanitization - Temperature, pH, Concentration, and Hardness*
33-33-04-53.5	Warewashing Equipment - Determining Chemical Sanitizer Concentration
33-33-04-53.6	Hot Water and Chemical*
<u>33-33-04-53.7</u>	<u>Rinsing Equipment and Utensils After Cleaning and Sanitizing</u>

33-33-04-54	Drying
33-33-04-55	Handling of Equipment and Utensil Storage
33-33-04-56	Storage
33-33-04-56.1	Preset Tableware
33-33-04-57	Single-Service Articles - Storage - Handling
33-33-04-58	Prohibited Storage Areas
33-33-04-59	General Water Supplies*
33-33-04-59.1	System Flushing and Disinfection*
33-33-04-60	Transportation
33-33-04-61	Bottled Water*
33-33-04-62	Water Under Pressure
33-33-04-62.1	Water Reservoir of Fogging Devices*
33-33-04-63	Steam
33-33-04-64	General Sewage*
33-33-04-65	General Plumbing*
33-33-04-66	Nonpotable Water Systems [Repealed]
33-33-04-67	Backflow*
<u>33-33-04-67.1</u>	<u>Backflow Prevention Device, Carbonator</u>
33-33-04-68	Grease Traps
33-33-04-69	Garbage Grinders
33-33-04-70	Drains*
33-33-04-71	Toilet Facility Installation
33-33-04-72	Toilet Design
33-33-04-73	Toilet Rooms
33-33-04-74	Toilet Fixtures
33-33-04-75	Handsink Facility Installation*
33-33-04-76	Handsink Faucets
33-33-04-77	Handsink Supplies
33-33-04-78	Handsink Maintenance
33-33-04-79	Garbage and Refuse Containers
33-33-04-80	Storage
33-33-04-81	Disposal
33-33-04-82	General Insect and Rodent Control*
33-33-04-83	Openings
33-33-04-84	Construction and Maintenance of Floor Construction
33-33-04-85	Floor Carpeting
33-33-04-86	Prohibited Floor Covering
33-33-04-87	Floor Drains
33-33-04-88	Mats and Duckboards
33-33-04-89	Floor Junctures
33-33-04-90	Utility Line Installation - Floors
33-33-04-91	Wall and Ceiling Maintenance
33-33-04-92	Construction
33-33-04-93	Exposed Construction
33-33-04-94	Utility Line Installation - Walls and Ceilings
33-33-04-95	Attachments
33-33-04-96	Covering Material Installation

33-33-04-97	General Cleaning Physical Facilities
33-33-04-98	Utility Sinks
33-33-04-99	General Lighting
33-33-04-100	Protective Shielding
33-33-04-101	General Ventilation
33-33-04-102	Special Ventilation
33-33-04-103	Dressing Rooms or Areas
33-33-04-104	Locker Area
33-33-04-105	Poisonous or Toxic Materials Permitted*
33-33-04-106	Labeling of Materials*
33-33-04-107	Storage of Materials*
33-33-04-108	Use of Materials*
33-33-04-109	Personal Medications*
33-33-04-110	First-Aid Supplies*
33-33-04-111	General Premises
33-33-04-112	Living Areas
33-33-04-113	Laundry Facilities
33-33-04-114	Linen and Clothes Storage
33-33-04-115	Cleaning Equipment Storage
33-33-04-116	Prohibiting Animals*
33-33-04-117	General Mobile Food Service
33-33-04-118	General Mobile Food Service - Restricted Operations
33-33-04-119	Single-Service Articles
33-33-04-120	Water System
33-33-04-121	Waste Retention
33-33-04-122	Base of Commissary Operations
33-33-04-123	Serving Area and Operations
33-33-04-124	Servicing Operations
33-33-04-125	Temporary Food Establishment
33-33-04-126	Temporary Food Establishment - Restricted Operations
33-33-04-127	Ice
33-33-04-128	Equipment
33-33-04-129	Single-Service Articles
33-33-04-130	Water
33-33-04-131	Wet Storage
33-33-04-132	Waste
33-33-04-133	Handwashing
33-33-04-134	Floors
33-33-04-135	Walls and Ceilings of Food Preparation Areas
33-33-04-136	Inspection Report Form FD 2420 [Repealed]
33-33-04-137	Submission of Plans
33-33-04-138	Preoperational Inspection
33-33-04-138.1	Routine Inspections
33-33-04-139	Modifications and Waivers
33-33-04-140	Documentation of Proposed Variance and Justification
33-33-04-141	Conformance With Approved Procedures*
33-33-04-142	When a HACCP Plan is Required

33-33-04-143	Contents of a HACCP Plan
33-33-04-144	Sanitation and Safety
Appendix A	Consumer Advisory
Appendix B-1	Employee Health Decision Tree 1
Appendix B-2	Employee Health Decision Tree 2
Tables 1a - 4	Employee Health Summary

Note: * Indicates critical item. Not all subsections within a section may be critical items.

33-33-04-01. Definitions. For the purpose of this chapter:

1. "Additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(s) and 21 CFR 170 and "color additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(t) and 21 CFR 70.
2. "Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
3. "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 been resolved or subsided, or because symptoms never manifested.
4. " 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 .
5. "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. A balut is a potentially hazardous food subject to time/temperature management.
6. "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.
7. "CFR" or "Code of Federal Regulations" means the compilation of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government which is published annually by the United States government printing office; and contains food and drug administration rules in 21 CFR, United States department of agriculture rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.
8. "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.
9. "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 two or more types of meat that

- have been reduced in size and combined, such as sausages made from two or more meats.
10. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
 11. "Common dining area" means a central location in a group residence where people gather to eat at mealtime. Common dining area does not apply to a kitchenette or dining area located within a resident's private living quarters.
 12. "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.
 13. "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.
 14. "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.
 15. "Core item" means a provision in this Code that is not designated as a critical item. Core item includes an item that usually relates to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.
 156. "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 other conditions-of-use environment.
 167. "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
 178. ~~"Critical item" means a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.~~ whose application contributes directly to or supports the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury. Critical item includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing. Critical item also includes items that require the purposeful incorporation of specific actions, equipment, or procedures by management to attain control of risk factors such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or recordkeeping, and labeling.
 189. "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.
 20. "Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes 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.
1921. "Department" means the state department of health or its designated agent.
202. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be removed effectively by normal cleaning methods.
243. "Easily movable" means weighing thirty pounds [14 kilograms] or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than thirty pounds [14 kilograms] of force to safely tilt a unit of equipment for cleaning; and 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.
224. "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey.
- a. Egg does not include:
- (1) A balut;
 - (2) The egg of reptile species such as alligator; or
 - (3) An egg product.
- b. Egg product.
- (1) 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.
 - (2) Egg product does not include food which contains eggs only in a relatively small proportion such as cake mixes.
235. "Employee" means the licenseholder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
246. "Enterohemorrhagic Escherichia coli" (EHEC) means E. coli which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with E. coli that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: E. coli O157:H7; E. coli O157:NM; E. coli O26:H11; E. coli O145:NM; E. coli O103:H2; or E. coli O111:NM.
257. "EPA" means the United States environmental protection agency.
268. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a food establishment.
279. "Exclude" means to prevent a person from working as an employee or entering a food establishment except for those areas open to the general public.
2830. "Fish" means fresh or saltwater finfish, molluscan shellfish, 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 includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

2931. "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.
302. "Foodborne disease outbreak" means an incident in which two or more persons experience a similar illness after ingestion of a common food and epidemiological analysis implicates the food as the source of the illness. Foodborne disease outbreak includes a single case of illness such as one person ill from botulism or chemical poisoning.
343. "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 back onto surfaces normally in contact with food.
324. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
335. "Food establishment":
- a. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:
 - (1) Such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or 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) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the department; and
 - (2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.
 - c. "Food establishment" does not include:
 - (1) An establishment that offers only prepackaged foods that are not potentially hazardous;
 - (2) A produce stand that only offers whole, uncut fresh fruits and vegetables;
 - (3) A food processing plant;
 - (4) A kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;

- (5) A private home that receives catered or home-delivered food.
346. "Food processing plant" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food establishment, retail food store, or commissary operation.
357. "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR subchapter A - mandatory meat inspection, part 301, as poultry in 9 CFR subchapter 9C - mandatory poultry products inspection, part 381, or as fish as defined in subparagraph 1-201.10(B)(26). Game animal includes animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, bear, and muskrat; aquatic and nonaquatic birds such as wild ducks and geese, quail, and pheasant; nonaquatic reptiles such as rattlesnakes; aquatic mammals; exotic animals as defined in 9 CFR subchapter A - animal welfare, part 1, such as lion, tiger, leopard, elephant, camel, antelope, anteater, kangaroo, and water buffalo; and species of foreign domestic cattle, such as ankole, gayal, and yak.
368. "Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals. Group residence includes a domicile for unrelated persons such as a retirement home or long-term health care facility.
379. "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.
3840. "Handsink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands. Handsink includes an automatic handwashing facility.
3941. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
402. "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.
413. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing .
424. "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.
435. "Injected" means ~~manipulating a meat so that infectious or toxigenic micro-organisms may be to which a solution has been introduced from its surface to into its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be by processes that are referred to as~~ "injecting", "pinning", or "stitch pumping".
446. "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.
457. "Kitchenware" means food preparation and storage utensils.
468. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.
479. "License" means the document issued by the department that authorizes a person to operate a food establishment.
4850. "Licenseholder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.
4951. "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
502. "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 subdivision a(1) of this definition. Major food allergen does not include:
 - b. "Major food allergen" does not include:
 - (1) Any highly refined oil derived from a food specified in Subparagraph (1)(a) of this definition and any ingredient derived from such highly refined oil; or
 - (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).
513. "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry, that is offered for human consumption.
54. "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.
525. "Mobile food unit" means a vehicle-mounted food establishment designed to be readily movable.
536. "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.
57. "Non-continuous cooking" means the cooking of food in a food establishment 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.

548. "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 a wrapper, carryout box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
559. "Person" includes any individual, partnership, corporation, association, or other legal entity.
5660. "Person in charge" means the individual present in a food establishment who is responsible for the operation at the time of inspection.
5761. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medications; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
5862. "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 seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.
5963. "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.
604. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four 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.
645. "Potentially hazardous food":
- a. "Potentially hazardous food" means a food that is a natural or synthetic and is in a form capable of supporting:
 - (1) The rapid and progressive growth of infectious or toxigenic microorganisms;
 - (2) The growth and toxin production of clostridium botulinum; or
 - (3) In shell eggs, the growth of salmonella enteritidis.
 - b. "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; cut leafy greens, 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; and garlic and oil mixtures: that are not modified in a

way so that they are unable to support pathogenic microorganism growth or toxin formation.

c. "Potentially hazardous food" does not include:

- (1) A food with a water activity ($A_w(a_w)$) value of 0.85 or less;
- (2) A food with a hydrogen ion concentration (PH(pH)) level of 4.6 or below when measured at seventy-five degrees Fahrenheit [24 degrees Celsius];
- (3) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
- (4) A food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic micro-organisms or the slower growth of *C. botulinum* cannot occur.
- (5) An egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae.

626. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, or guineas, whether live or dead.

637. "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the licenseholder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the licenseholder 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.

648. "Pushcart" means a non-self-propelled vehicle limited to serving only those regulatory authority-approved potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters.

659. "Ratite" means a flightless bird such as an emu, ostrich, or rhea.

6670. "Ready-to-eat food":

a. "Ready-to-eat food" 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: subsection 1, 2 and 3 of section 33-33-04-11, section 33-33-04-11.4, section 33-33-04-11.5; or
- (2) Is a raw or partially cooked animal food and the consumer is advised as specified in subsection 4(c) of section 33-33-04-11; or
- (3) Is prepared in accordance with a variance that is granted as specified in subsection 4(d) of section 33-33-04-11; and
- (4) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

b. "Ready-to-eat food" includes:

- (1) Raw animal food that is cooked as specified under section 33-33-04-11 or section 33-33-04-11.4, or frozen as specified under section 33-33-04-11.5.

- (2) Raw fruits and vegetables that are washed as specified under section 33-33-04-10.
- (3) Fruits and vegetables that are cooked for hot holding, as specified under section 33-33-04-11.6.
- (4) All potentially hazardous food that is cooked to the temperature and time required for the specific food and cooled as specified under section 33-33-04-07.5.
- (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, and 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 guide-lines 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.

a. ~~"Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.~~

b. ~~"Ready-to-eat food" includes:~~

- ~~(1) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under section 33-33-04-11;~~
- ~~(2) Raw, washed cut fruits and vegetables;~~
- ~~(3) Whole, raw cut fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and~~
- ~~(4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.~~

6771. "Reconstituted" means dehydrated food products recombined with water or other liquids.

6872. "Reduced oxygen packaging"

a. Reduced oxygen packaging means

- (1) 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

- (2) A process as specified in subsection a(1) of this definition that involves a food for which the hazards clostridium botulinum or Listeria monocytogenes require control in the final packaged form.
- b. "Reduced oxygen packaging" includes:
 - (1) 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.
 - (2) 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;
 - (3) 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, nonrespiring food, and impermeable packaging material;
 - (4) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or
 - (5) 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 refrigerated at temperatures what inhibit the growth of psychrotrophic pathogens.

6973. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food establishment.

704. "Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

745. "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 the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

726. "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 or 706 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.

737. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a

- reduction of five logs, which is equal to 99.999 percent reduction, of representative disease micro-organisms of public health importance.
748. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
759. "Servicing area" means an operating base location to which a mobile establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
7680. "Shellstock" or "shucked shellfish" means raw, in-shell molluscan shellfish or molluscan shellfish that have one or both shells removed.
7781. "Shiga toxin-producing Escherichia coli" (STEC) means any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 E. coli.
7882. "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.
7983. "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 sections 33-33-04-32 and 33-33-04-38 for multiuse utensils.
804. "Smooth" means:
- 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;
 - A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
 - A floor, wall, or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.
845. "Support animal" means a trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.
826. "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.
837. "Temporary food establishment" means a food establishment 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 celebration.
848. "Thermometer" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
859. "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; and thermometers. and probe-type price or identification tags used in contact with food.

8690. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.
8791. "Water activity" means 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 AW (a_w).
8892. "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.

33-33-04-01.1. Intent - Scope. The purpose of this chapter is to safeguard public health and to provide consumers with food that is safe, unadulterated, and honestly presented. This chapter 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. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this code that are authorized by law. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the license applicant or licenseholder and a copy shall be maintained in the regulatory authority's file for the food establishment.

33-33-04-02. General care of food supplies.*

1. Food shall be obtained from sources that comply with law.
2. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.
3. Food shall be safe, unadulterated, and honestly presented.
 - a. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
 - b. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
 - c. 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 specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR subpart C section 424.21(b) - food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 185 tolerances for pesticides in food.
4. Food prepared in a private home may not be used or offered for human consumption in a food establishment.
5. 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.

33-33-04-02.1. Additional safeguards.* In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:

- a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, section 101.17(g) food labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision b of subsection 17 of section 33-33-04-03 may not be served or offered for sale; and
 - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in sections 33-33-04-142 and 33-33-04-143 and as specified under 21 CFR part 120 - hazard analysis and critical control point (HACCP) systems, section 120.24 process controls.
2. Pasteurized eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:
- a. Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and
 - b. Except as specified in subsection 5, recipes in which more than one egg is broken and the eggs are combined.
3. Food in an unopened original package may not be re-served.
4. The following foods may not be served or offered for sale in a ready-to-eat form:
- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
 - b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and
 - c. Raw seed sprouts.
5. Subdivision b of subsection 2 does not apply if:
- a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under subdivision a of subsection 1 of section 33-33-04-11, and served immediately, such as an omelet, soufflé, or scrambled eggs;
 - b. 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
 - c. The preparation of the food is conducted under a HACCP plan that:
 - (1) Identifies the food to be prepared;
 - (2) Prohibits contacting ready-to-eat food with bare hands;
 - (3) Includes specifications and practices that ensure:
 - (a) Salmonella enteritidis growth is controlled before and after cooking; and
 - (b) Salmonella enteritidis is destroyed by cooking the eggs according to the temperature and time specified in subdivision b of subsection 1 of section 33-33-04-11;
 - (4) Contains the information specified in subsection 3 of section 33-33-04-143 including procedures that:

- (a) Control cross-contamination of ready-to-eat food with raw eggs; and
 - (b) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- (5) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

33-33-04-03. Special requirements.*

1. Fluid milk, dry milk and milk products shall be obtained pasteurized and comply with grade A standards as specified by law. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen desserts. Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and related cheese products, for curing certain cheese varieties.
2. 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 section 33-33-04-03.1 and 33-33-04-03.2
3. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection 4 of section 33-33-04-11 must be obtained from a supplier that freezes the fish or shall be frozen on the premises as specified in section 33-33-04-11.5.
4. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section 33-33-04-07.4 shall be:
 - a. 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
 - b. Deemed acceptable by the regulatory authority 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
 - c. If individually cut in a food establishment:
 - (1) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subdivision a or identified as specified in subdivision b;
 - (2) Prepared so they remain intact; and
 - (3) If packaged for undercooking in a food establishment, labeled as specified in subdivision a or identified as specified in subdivision b.
5. Meat or meat products, poultry or poultry products intended for human consumption shall not be sold or offered for sale or service unless slaughtered and processed in federal or state inspected packing plant, slaughterhouse or by the agency that has animal health jurisdiction; all such meat and meat products and poultry and poultry products must be plainly stamped with a state or federal mark of inspection unless otherwise exempted under 9 CFR 303.1(d), Exemptions – Retail (FSIS/USDA).

56. 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).
67. 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). Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7°C (45°F) or less.
78. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, 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. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States consumer grade B as specified in 7 CFR part 56 "Voluntary Grading of Eggs and United States Standards, Grades, and Weight Classes for Eggs", and 9 CFR part 590 inspection of eggs and egg products.
89. Raw eggs may not be used as an ingredient in the preparation of uncooked, ready-to-eat menu items. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages. Commercially pasteurized eggs and egg products may be substituted for eggs in such items. Pasteurized eggs are also potentially hazardous and must also be protected against contamination and time or temperature abuses: except an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonella as specified under subdivision c, 5 of subsection 65 of section 33-33-04-01.
910. Pasteurized liquid, frozen, or dry eggs or egg products must be substituted for eggs in the preparation of eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.
101. Individually prepared eggs and pooled eggs shall be cooked to heat all parts to one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds.
142. Cooked eggs requiring holding before service shall be held at an internal temperature of one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above.
123. Fish may not be received for sale or service unless they are commercially and legally caught and harvested. Molluscan shellfish that are recreationally caught may not be received for sale or service.
134. Except as specified in this subsection, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. This subsection does not apply to:
- a. Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; 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 food regulatory agency that has jurisdiction over the plant.
145. If game animals are received for sale or service, they shall be:
- a. 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:
 - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
 - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;
 - b. Under a voluntary inspection program administered by the United States department of agriculture for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 voluntary exotic animal program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 rabbit inspection program;
 - c. As allowed by law, for wild game animals that are live-caught:
 - (1) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction; and
 - (2) Slaughtered and processed according to:
 - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
 - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or
 - d. As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
 - (1) Receive a postmortem examination by an approved veterinarian or veterinarian's designee; or
 - (2) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and

- (3) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.
- e. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 endangered and threatened wildlife and plants.
- 156. Ice for use as a food or a cooling medium must be made from drinking water. After use as a cooling medium, ice may not be used as food.
- 167. Prepackaged juice shall:
 - a. Be obtained from a processor with a HACCP system as specified in 21 CFR parts 120;
 - b. Be obtained, pasteurized or otherwise treated to attain a 5-log reduction of the most resistant micro-organism of public health significance as specified in 21 CFR Part 120.24; or
 - c. Bear a warning label as specified in 21 CFR 101.17(g).
- 178. Juice packaged in a food establishment shall be:
 - a. Treated under a HACCP plan as specified in section 33-33-04-143 to attain a 5-log reduction, which is equal to a 99.999 percent reduction, of the most resistant micro-organism of public health significance; or
 - b. Labeled, if not treated to yield a 5-log reduction of the most resistant micro-organism of public health significance:
 - (1) As specified under 33-33-04-04.3, and
 - (2) As specified in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

33-33-04-03.1. Shucked shellfish - Packaging and identification.*

- 1. Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
 - a. Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and
 - b. The sell by date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.
- 2. 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 subsection 1 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).

33-33-04-03.2. Shellstock identification.*

- 1. 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:

- a. Except as specified under subsection 3, on the harvester's tag or label, the following information in the following order:
 - (1) The harvester's identification number that is assigned by the shellfish control authority;
 - (2) The date of harvesting;
 - (3) 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;
 - (4) The type and quantity of shellfish; and
 - (5) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date of harvest; and
- b. Except as specified in subsection 4, on each dealer's tag or label, the following information in the following order:
 - (1) The dealer's name and address and the certification number assigned by the shellfish control authority;
 - (2) The original shipper's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested;
 - (3) The same information as specified for a harvester's tag under paragraphs 2 through 4 of subdivision a of subsection 1; and
 - (4) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date of harvest."
2. 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 subsection 1 shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D - specified administrative decisions regarding interstate shipments, section 1240.60(2).
3. 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.
4. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under paragraphs 1 and 2 of subdivision b of subsection 1, individual dealer tags or labels need not be provided.

33-33-04-03.3. Shellstock - Condition.

When received by a food establishment, shellstock shall be reasonable free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

33-33-04-03.4. Molluscan shellfish - Original container.

1. Except as specified in subsections 2 and 3, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.
2. For display purposes, shellstock may be removed from the container in which they are 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:
 - a. The source of the shellstock on display is identified as specified in section 33-33-04-03.2 and recorded as specified in section 33-33-04-03.5; and
 - b. The shellstock are protected from contamination.
3. 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:
 - a. The labeling information for the shellfish on display as specified in section 33-33-04-03.1 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
 - b. The shellfish are protected from contamination.
4. Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers where allowed by law if:
 - a. The labeling information for the shellfish is on each consumer self service container as specified under section 33-33-04-03.1 and subsection 1 of section 33-33-04-04.3 and subsection 2(a-e) of section 33-33-04-04.3.
 - b. The labeling information as specified under section 33-33-04-03.1 is retained and correlated with the date when, or dates during which, the shellfish are sold or served.
 - c. The labeling information and dates specified under subsection 4(b) of this section are maintained for 90 days; and
 - d. The shellfish are protected from contamination.

33-33-04-03.5. Shellstock - Maintaining identification.*

1. Except as specified in subdivision b of subsection 2, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.
2. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date the container is emptied by:
 - a. Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
 - b. If shellstock are removed from their tagged or labeled container:
 - (1) Preserving source identification by using a record keeping system as specified in subdivision a; and

- (2) Ensuring that shellstock from one tagged or labeled container are not commingled with the 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.

33-33-04-04. General food protection.* At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage, or overhead drippage from condensation. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

1. Except as specified in subsection 2, refrigerated, potentially hazardous food shall be at a temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below when received.
2. If a temperature other than forty-one degrees Fahrenheit [5 degrees Celsius] for a potentially hazardous 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.
3. Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit [7 degrees Celsius] or less.
4. Potentially hazardous food that is cooked to a temperature and for a time specified in section 33-33-04-11 and received hot shall be at a temperature of one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above.
5. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
6. Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.
7. The temperature of potentially hazardous food shall be forty-one degrees Fahrenheit [5 degrees Celsius] or below or one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above at all times, except as otherwise provided in this chapter.

33-33-04-04.1. Packaged and unpackaged food - Separation, packaging, and segregation.*

- 1.* Food shall be protected from cross-contamination by:
 - a. Except as specified in subsection a(3) below, separating raw animal foods during storage, preparation, holding, and display from:
 - (1) 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 vegetables; and
 - (2) Cooked ready-to-eat food;
 - (3) Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.

- b. 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:
 - (1) Using separate equipment for each type; or
 - (2) Arranging each type of food in equipment so that cross-contamination of one type with another is prevented; and
 - (3) Preparing each type of food at different times or in separate areas;
 - c. Cleaning and sanitizing equipment and utensils as specified in subsection 2 of section 33-33-04-50;
 - d. Except as specified in subsection 2, storing the food in packages, covered containers, or wrappings;
 - e. Cleaning hermetically sealed containers of food of visible soil before opening;
 - f. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
 - g. Storing damaged, spoiled, or recalled food being held in the food establishment as specified in subsection 8 of section 33-33-04-06; and
 - h. Separating fruits and vegetables before they are washed as specified under 33-33-04-10 from ready-to-eat food.
2. Subdivision d of subsection 1 does not apply to:
- a. Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption;
 - b. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
 - c. Whole, uncut processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks;
 - d. Food being cooled as specified in subdivision b of subsection 2 of section 33-33-04-07.6; or
 - e. Shellstock.

33-33-04-04.2. Discarding or reconditioning unsafe, adulterated, or contaminated food.*

- 1. A food that is unsafe, adulterated, or not honestly presented as specified in section 33-33-04-02 shall be reconditioned according to an approved procedure or discarded.
- 2. Food that is not from an approved source as specified in section 33-33-04-02 shall be discarded.
- 3. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in sections 33-33-04-28.9 through 33-33-04-28.11 shall be discarded.
- 4. 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.

33-33-04-04.3. Food labels.

1. Food packaged in a food establishment shall be labeled as specified in law, including 21 CFR 101 - food labeling and 9 CFR 317 - labeling, marking devices, and containers.
2. Label information shall include:
 - a. The common name of the food, or absent of a common name, an adequately descriptive identity statement;
 - b. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
 - c. An accurate declaration of the quantity of contents;
 - d. The name and place of business of the manufacturer, packer, or distributor; and
 - e. The name of the food source for each major food allergens contained in the food unless the food source is already part of the common or usual name of the respective ingredient.
 - f. Except as exempted in the federal Food, Drug, and Cosmetic Act section 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - food labeling and 9 CFR 317 subpart B nutrition labeling.
 - g. For any salmonid fish containing canthaxanthin 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.
3. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
 - a. The manufacture's or processor's label that was provided with the food; or
 - b. A card, sign, or other method of notification that includes the information specified under subdivisions a, b, and e of subsection 2.
4. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
 - a. A health, nutrient content or other claim is not made;
 - b. There are no state or local laws requiring labeling; and
 - c. 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.
5. If required by law, consumer warnings shall be provided.
6. Food establishment or manufacturers' dating information on foods may not be concealed or altered.

33-33-04-05. Emergency occurrences.* In the event of a fire, flood, power outage, or similar event that might result in contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the department. Upon receiving the notice of this occurrence, the department shall take whatever action that it deems necessary to protect the public health.

33-33-04-06. General food storage.

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Linens and 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. 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.
2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
 - a. Metal pressurized beverage containers, and cased food packaged in cans, glass, and milk containers in plastic crates, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
 - b. Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
3. Food may not be stored:
 - a. In locker rooms;
 - b. In toilet rooms;
 - c. In dressing rooms;
 - d. In garbage rooms;
 - e. In mechanical rooms;
 - f. Under sewer lines that are not shielded to intercept potential drips;
 - g. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water had condensed;
 - h. Under open stairwells; or
 - i. Under other sources of contamination.
4. 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.
5. During preparation, unpackaged food shall be protected from environmental sources of contamination.
6. 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 its positioning in the ice or water.
 - a. Except as specified in subdivisions b and c, unpackaged food may not be stored in direct contact with undrained ice.
 - b. 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.
 - c. Raw chicken 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.

7. 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 except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified.
8. Products that are held by the licenseholder 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.

33-33-04-07. Potentially hazardous foods - Hot and cold holding.*

- 1.* Except during preparation, cooking, or cooling, or when time is used as the public health control as specified in section 33-33-04-07.3, and except as specified in subsection 2, potentially hazardous food shall be maintained:
 - a. At one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above, except that roasts cooked to a temperature and for a time specified under subdivision b of subsection 2 of section 33-33-04-11 or reheated as specified in subsection 5 of section 33-33-04-14 may be held at a temperature of one hundred thirty degrees Fahrenheit [54 degrees Celsius]; or
 - b. Forty-one degrees Fahrenheit [5 degrees Celsius] or less for a maximum of seven days.
2. Refrigeration facilities shall be provided to assure the maintenance of potentially hazardous food and shall operate at forty-one degrees Fahrenheit [5 degrees Celsius] or less.
3. Hot holding facilities shall be provided to assure the maintenance of potentially hazardous food and shall operate at one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above.
- 4.* Eggs that have not been treated to destroy all viable salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.
5. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [-17.78 degrees Celsius] or below.
- 6.* 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. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

33-33-04-07.1 Ready-to-eat, potentially hazardous food - Date marking.*

1. Except as specified in subsection 4, refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than twenty-four hours shall be clearly marked 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 subsection 1 of section 33-33-04-07. The day of preparation shall be counted as day one.
2. Except as specified in subsections 4 and 5, refrigerated, ready-to-eat, potentially hazardous food commercially 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 twenty-four 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 subsection 1 of section 33-33-04-07 and:

- a. The day the original container is opened in the food establishment shall be counted as day one; and
 - b. 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.
3. A refrigerated, ready-to-eat potentially hazardous 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, may be marked as specified in subsection 1 or 2, or by using calendar dates, days of the week, color-coded marks, other effective marking methods, or by an alternative method acceptable to the regulatory authority. Subsections 1 and 2 do not apply to specific cheeses containing certain moisture content meeting the aging standards of 21 CFR part 133 and maintained under refrigeration as specified in subsection 1 of section 33-33-04-07.
4. Subsections 1 and 2 do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
5. Subsection 2 does not apply to the following when the face has been cut, but the remaining portion is whole and intact:
- a. Fermented sausages produced in a federally inspected food processing plant that are not labeled "keep refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers and which retain the original casing on the product;
 - b. Shelf-stable, dry, fermented sausages; such as pepperoni and Genoa salami; and
 - c. Shelf-stable, salt-cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "keep refrigerated".
6. Subsection 2 does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority;
- a. 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, packaging, or holding human foods;
 - b. 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 andromano;
 - c. 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;
 - d. Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;

- e. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods.
- 7. A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous 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.

33-33-04-07.2. Ready-to-eat, potentially hazardous food - Disposition.*

- 1. A food specified in subsection 1 or 2 of section 33-33-04-07.1 shall be discarded if it:
 - a. Exceeds either of the temperature and time combinations specified in subdivision b of subsection 1 of section 33-33-04-07, except that the product is frozen;
 - b. Is in a container or package that does not bear a date or day; or
 - c. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subdivision b of subsection 1 of section 33-33-04-07.
- 2. Refrigerated, ready-to-eat, potentially hazardous 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 subdivision b of subsection 1 of section 33-33-04-07.

33-33-04-07.3. Time as a public health control.* Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if:

- 1. The food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;
- 2. The food is served or discarded within four hours from the point in time when the food is removed from temperature control;
- 3. Food in unmarked containers or packages, or for which the time expires, is discarded; and
- 4. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:
 - a. Subsections 1 through 3; and
 - b. Section 33-33-04-07, for food that is prepared, cooked, and refrigerated before time is used as a public health control.
- 5. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

33-33-04-07.4. Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.* Except as specified in subsection 3 of section 33-33-04-11 and subdivision e d of subsection 4 of section 33-33-04-11 and in subsection 4 of section 33-33-04-02.1, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked, or not otherwise processed to eliminate

pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the licenseholder shall inform consumers by way of disclosure and reminder using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form.

1. Disclosure shall include:
 - a. 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
 - b. Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.
2. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:
 - a. Regarding the safety of these items, written information is available upon request;
 - b. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
 - c. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. See appendix A.

33-33-04-07.5. Cooling.*

1. Cooked potentially hazardous food shall be cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to forty-one degrees Fahrenheit [5 degrees Celsius] or less, as specified in subdivision b of subsection 1 of section 33-33-04-07 in six hours, provided that the food is cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to seventy degrees Fahrenheit [21 degrees Celsius] within the first two hours.
2. Potentially hazardous food shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less as specified in subdivision b of subsection 1 of section 33-33-04-07 if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.
3. Except as specified in subsection 4, a potentially hazardous food received in compliance with laws allowing a temperature above forty-one degrees Fahrenheit [5 degrees Celsius] during shipment from the supplier as specified in subsection 2 of section 33-33-04-02, shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less.
4. Raw eggs shall be received as specified in subsection 3 of section 33-33-04-02 and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.

33-33-04-07.6. Cooling methods.

- 1.* Cooling shall be accomplished in accordance with the time and temperature criteria specified in section 33-33-04-07.5 by using one or more of the following methods based on the type of food being cooled:

- a. Placing the food in shallow pans;
 - b. Separating the food into smaller or thinner portions;
 - c. Using rapid cooling equipment;
 - d. Stirring the food in a container placed in an ice water bath;
 - e. Using containers that facilitate heat transfer;
 - f. Adding ice as an ingredient; or
 - g. Other effective methods.
2. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
- a. Arranged in the equipment to provide maximum heat transfer through the container walls; and
 - b. Loosely covered, or uncovered if protected from overhead contamination as specified in subsection 3 of section 33-33-04-06, during the cooling period to facilitate heat transfer from the surface of the food.

33-33-04-08. Hot and cold storage. Enough conveniently located hot and cold food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage.

33-33-04-09. General food preparation.* Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

33-33-04-09.1. Preventing contamination when tasting.* A food employee may not use a utensil more than once to taste food that is to be sold or served.

33-33-04-10. Washing raw fruits and vegetables.

- 1. Raw fruits and vegetables must 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 except as specified in subsection 2 and except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.
- 2. Fruits and vegetables may be washed and treated by using chemicals and ozone as specified in subsections 5 and 6 of section 33-33-04-108.

33-33-04-11. Cooking raw animal foods.*

- 1. Except as specified under subsections 2, 3, and 4, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:
 - a. One hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds for:
 - (1) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service; and

- (2) Except as specified under subdivisions b and c of subsection 1 and subsection 2, fish, meat, including game animals commercially raised for food as specified in subsection 14 of section 33-33-04-03 and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03;
- b. One hundred fifty-five degrees Fahrenheit [68 degrees Celsius] for fifteen seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, mechanically tenderized and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified in subsection 14 of section 33-33-01-03, and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03; and raw eggs that are not prepared as specified under paragraph 1 of subdivision a of subsection 1; or

Minimum	
Temperature °F [°C]	Time
145 [63]	3 minutes
150 [66]	1 minute
158 [70]	<1 second (instantaneous)

- c. One hundred sixty-five degrees Fahrenheit [74 degrees Celsius] or above for fifteen seconds for poultry, wild game animals as specified in subsection 14 of section 33-33-04-03, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.
2. Whole meat including beef, corned beef roasts, pork roasts, lamb, and cured pork roasts such as ham, shall be cooked:
- a. In an oven that is prepared to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg [10 lbs]	4.5 kg [10 lbs] or more
Still Dry	350°F [177°C] or more	250°F [121°C] or more
Convection	325°F [163°C] or more	250°F [121°C] or more
High Humidity	250°F [121°C] or more	250°F [121°C] or more
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.		

- b. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Temperature °F [°C]	Time in Minutes	Temperature °F [°C]	Time in Seconds
130 [54.4]	112	147 [63.9]	134
131 [55.0]	89	149 [65.0]	85
133 [56.1]	56	147 [63.9]	54
135 [57.2]	36	149 [65.0]	34
136 [57.8]	28	151 [66.1]	22 <u>54</u>
138 [58.9]	18	153 [67.2]	14 <u>34</u>
140 [60.0]	12	155 [68.3]	0 <u>22</u>
142 [61.1]	8	157 [69.4]	<u>14</u>
144 [62.2]	5	158 [70.0]	<u>0</u>
145 [62.8]	4		

Holding time may include postoven heat rise.

3. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
 - a. The food establishment serves a population that is not a highly susceptible population;
 - b. The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in subsection 4 of section 33-33-04-03; and
 - c. The steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above and a cooked color change is achieved on all external surfaces.
4. 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 subsection 3, may be served or offered for sale in a ready-to-eat form upon consumer request if:
 - a. The food establishment serves a population that is not a highly susceptible population; and
 - b. The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; and
 - ~~b~~c. The consumer is informed as specified in section 33-33-04-07.4 that to ensure its safety, the food should be cooked as specified under subsection 1 or 2; or
 - ~~e~~d. The regulatory authority grants a variance from subsection 1 or 2 as specified in section 33-33-04-18.1 based on a HACCP plan that:
 - (1) Is submitted by the licenseholder and approved as specified in section 33-33-04-142;
 - (2) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and
 - (3) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

33-33-04-11.1. Minimum food temperature and holding time. Repealed effective August 1, 2003.

33-33-04-11.2. Oven parameters required for destruction of pathogens. Repealed effective August 1, 2003.

33-33-04-11.3. Minimum holding times required at specified temperatures. Repealed effective August 1, 2003.

33-33-04-11.4. Microwave cooking.* Raw animal foods cooked in a microwave shall be:

1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.
2. Covered to retain surface moisture.
3. Heated to a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] in all parts of the food.
4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

33-33-04-11.5. Parasite destruction.*

1. Except as specified in subsection 2, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated partially cooked fish other than molluscan shellfish shall be:
 - a. Frozen and stored at a temperature of minus four degrees Fahrenheit [-20 degrees Celsius] or below for a minimum of one hundred sixty-eight hours [seven days] in a freezer; or
 - b. Frozen at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below until solid and stored at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below for a minimum of 15 hours; or
 - c. Frozen at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below until solid and stored at minus four degrees Fahrenheit [-20 degrees Celsius] or below for a minimum of 24 hours.
2. ~~If the fish are 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 aquacultured 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 food, such as pellets, that contains no live parasites infective to the aquacultured fish~~
 - d. ~~the fish, may be served or sold in a raw, raw-marinated, or partially-cooked ready-to-eat form without freezing as specified under subsection 1.~~
2. Subsection 1 does not apply to:
 - a. Molluscan shellfish
 - b. Tuna of the species Thunnus alalunga, Thunnus albacores (yellowfin tuna),

Thunnus atlanticus, Thunnus maccoyii (bluefin tuna, southern), Thunnus obesus (bigeye tuna), or Thunnus thynnus (bluefin tuna, northern), or

c. Aquaculture fish, such as salmon, that:

- (1) If raised in open water, are raised in net-pens, or
- (2) Are raised in land-based operations such as ponds or tanks, and
- (3) Are fed formulated feed, such as pellets, that contain no live parasites infective to the aquacultured fish.
- (4) Fish eggs that have been removed from the skein and rinsed.

33-33-04-11.6. Plant food cooking for hot holding.* Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius].

33-33-04-11.7. Records - Creation and retention.

1. Except as specified in subsection 2 of section 33-33-04-11.5 and subsection 2, 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 ninety calendar days beyond the time of service or sale of the fish.
2. 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 specified in section 33-33-04-11.5 may substitute for the records specified under subsection 1.
3. 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 33-33-04-11.5(2), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in section 33-33-04-11.5(2) 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.

33-33-04-11.8. Re-serving cooked and refrigerated food. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

33-33-04-11.9. Non-continuous cooking of raw animal foods.* Raw animal foods that are cooked using a non-continuous cooking process shall be:

1. Subject to an initial heating process that is no longer than sixty minutes in duration;
2. Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food subsection 1 of section 33-33-04-07.5;
3. After cooling, held frozen or cold, as specified for potentially hazardous food under subsection 1(b) of section 33-33-04-07;
4. Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least 74°C (165°F) for 15 seconds;

5. Cooled according to the time and temperature parameters specified for cooked potentially hazardous food under subsection 1 of section 33-33-04-07.5 if not either hot held as specified under subsection 1 of section 33-33-04-07, served immediately, or held using time as a public health control as specified under section 33-33-04-07.3 after complete cooking; and
6. Prepared and stored according to written procedures that:
 - a. Have obtained prior approval from the regulatory authority;
 - b. Are maintained in the food establishment and are available to the regulatory authority upon request;
 - c. Describe how the requirements specified under subsections 1-5 of this section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;
 - d. Describe how the foods, after initial heating but prior to cooking as specified under subsection 4 of this section are to be separated from ready-to-eat foods as specified under subsection 1 of section 33-33-04-04.1.

33-33-04-12. Milk products - Pasteurized.*

1. Fluid and dry milk and milk products complying with grade A standards as specified in law shall be obtained pasteurized.
2. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - frozen desserts.
3. 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.

33-33-04-13. Egg products - Pasteurized.* Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

33-33-04-14. Reheating for hot holding.*

1. Except as specified under subsections 2, 3, and 5, potentially hazardous 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 one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] for fifteen seconds.
2. Except as specified under subsection 3, potentially hazardous 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 one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.
3. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] for hot holding.

4. Reheating for hot holding as specified in subsections 1 through 3 of this section, shall be done rapidly and the time the food is between the temperature specified in section 33-33-04-18 and one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] may not exceed two hours.
5. Remaining unsliced portions of meat roasts that are cooked as specified in subsection 2 of section 33-33-04-11 may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection 2 of section 33-33-04-11.

33-33-04-15. Nondairy products. 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 [3.785 liters] in capacity and cooled to forty-one degrees Fahrenheit [5 degrees Celsius] or below within four hours after preparation.

33-33-04-16. Product thermometers. Repealed effective July 1, 1997.

33-33-04-17. Thawing potentially hazardous foods. Except as specified in subsection 5, potentially hazardous foods shall be thawed in any one of the following ways:

1. In refrigerated units at a temperature not to exceed forty-one degrees Fahrenheit [5 degrees Celsius].
2. Under potable running water of a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius] or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit [5 degrees Celsius] or for a period of time that does not allow thawed portions of raw animal food requiring cooking to be above forty-one degrees Fahrenheit [5 degrees Celsius] for more than four hours including the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit [5 degrees Celsius].
3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.
4. As part of the conventional cooking process.
5. Using any procedure if a portion of ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

33-33-04-18. Food display and service of potentially hazardous foods.*

Potentially hazardous foods shall be kept at an internal temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below or an internal temperature of one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above during display and service, except that rare roast beef shall be held for service at a temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius].

33-33-04-18.1. Variance requirement.* A food establishment shall obtain a variance from the department as specified in section 33-33-04-139 and under section 33-33-04-140 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
2. Curing food;
3. Using food additives or adding components such as vinegar:
 - a. as a method of food preservation rather than as a method of flavor enhancement; or
 - b. to render a food so that it is not potentially hazardous;
4. Packaging food using a reduced oxygen packaging method except as specified in section 33-33-04-18.2 where a barrier to Clostridium botulinum and Listeria monocytogenes in addition to refrigeration exists;
5. Operating a molluscan shellfish life support system display tank used to store ~~and~~ or display shellfish that are offered for human consumption;
6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or
7. Preparing food by another method that is determined by the regulatory authority to require a variance.
8. Sprouting seeds or beans.

33-33-04-18.2. Reduced oxygen packaging without a variance - Criteria.*

1. Except for a food establishment that obtains a variance as specified in section 33-33-04-18.1, a food establishment that packages potentially hazardous food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.
42. A food establishment that packages potentially hazardous food using reduced oxygen packaging methods shall have a HACCP plan that contains the information specified under subsection 3 of section 33-33-04-142 ~~which and~~ that:
 - a. Identifies the food to be packaged;
 - b. ~~Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:~~ Except as specified in subsection 2 - 5 of this section, requires that the packaged food shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria:
 - (1) Has an AW (a_w) of 0.91 or less;
 - (2) Has a PH (pH) of 4.6 or less;
 - (3) ~~Is a meat product cured at a food processing plant regulated by the United States department of agriculture or in 9 CFR 318.7 approval of substances for use in the preparation of products and 9 CFR 381.147 restrictions on the use of substances in poultry products and is received in an intact package; or~~ 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
 - (4) Is a food with a high level of competing organisms such as raw meat, ~~or~~ raw poultry, or raw vegetables;

- e. ~~Specifies methods for maintaining food at forty-one degrees Fahrenheit [5 degrees Celsius] or below;~~
 - dc. 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:
 - (1) Maintain the food at forty-one degrees Fahrenheit [5 degrees Celsius] or below; and
 - (2) ~~For food held at refrigeration temperatures, d~~Discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
 - ed. Limits the refrigerated shelf life to no more than fourteen 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;
 - fe. Includes operational procedures that:
 - (1) ~~Limit~~ Prohibit contacting ready-to-eat food with bare hands; as specified in subsection 2 of section 33-33-04-29.1
 - (2) Identify a designated area and the method by which:
 - (a) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and
 - (b) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
 - (3) Delineate cleaning and sanitization procedures for food-contact surfaces; and
 - gf. Ensure that the individual responsible for the reduced oxygen packaging operation understands the:
 - (1) Concepts required for a safe operation;
 - (2) Equipment and facilities; and
 - (3) Procedures specified in subdivision f of subsection 1 and subsection 4 of section 33-33-04-143.
23. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.
34. Except as specified in 23 of this section, a food establishment may that packages food using a cook-chill or sous vide process ~~without obtaining a variance if: shall:~~
- a. ~~The food establishment i~~implements a HACCP plan that contains the information as specified in section 33-33-04-143;
 - b. Ensures the food is:
 - (1) 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.
 - (2) Cooked to heat all parts of the food to a temperature and for a time as specified in section 33-33-04-11,

- (3) Protected from contamination before and after cooking as specified in ~~subdivision f of subsection 1~~ of this section.
- (4) Placed in a package or bag with an oxygen barrier and sealed before cooking, or placed in a package or bag and sealed immediately after cooking and before reaching a temperature below one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius],
- (5) ~~Except for frozen food that is not shelf life restricted,~~ Cooled to forty-one degrees Fahrenheit [5 degrees Celsius] in the sealed package or bag as specified in section 33-33-04-07.5, and subsequently: then
 - (a) cooled to thirty-four degrees Fahrenheit [1 degree Celsius] or less within 48 hours of reaching forty-one degrees Fahrenheit [5 degrees Celsius], and; Hheld at thirty-four degrees Fahrenheit [1 degree Celsius] and consumed or discarded within 30 days after the date of preparation, or
 - (7) (b) If removed from a storage unit that maintains a thirty-four degrees Fahrenheit [1 degree Celsius] food temperature, held at forty-one degrees Fahrenheit [5 degrees Celsius] or less for no more than 72 hours before consumption, at which time the food must be consumed or discarded.
- (86) 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.
- (97) 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
- 4. (8) Labeled with the product name and the date packaged and;
 - ac. Maintain ~~the~~ records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan, are maintained and are:
 - b. ~~M~~made available to the regulatory authority upon request, and held for 6 months; and written operational procedures as specified under subdivision ~~f~~ and ~~g~~ of subsection 4 of this section are implemented.
- 5. A food establishment ~~may that packages~~ cheese using a reduced oxygen packaging method without obtaining a variance if it: shall:
 - a. Limits 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 Semisoft Cheeses;
 - b. Has a HACCP plan that contains the information specified in section 33-33-04-143;
 - c. Except as specified in subdivision a, b, c (2), d (2) and e, of subsection 4 and labels the package on the principal display plane with a "use by"

date that does not exceed 30 days or the original manufacturer's "sell by" or "use by" date, whichever occurs first; and

- d. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging

33-33-04-19. Milk and cream dispensing.

1. Milk and milk products for drinking purposes must be provided to the consumer in an unopened, commercially filled package not exceeding one pint [0.473 liters] in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch [2.54 centimeters] protruding from the chilled dispensing head. Where a dispenser for milk and milk products is not available and portions of less than one-half pint [0.236 liter] 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 [1.892 liters] capacity.
2. 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.

33-33-04-19.1. Dispensing equipment, protection of equipment, and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must 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.
2. The delivery tube, chute, and orifice must be protected from manual contact and 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:
 - a. Located in an outside area that does not afford the protection of an enclosure against rain, windblown debris, insects, rodents, and other contaminants.
 - b. Available for self-service during hours when it is not under the full-time supervision of a food employee.
3. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip contact surface of glasses or cups that are refillable.

33-33-04-19.2. Molluscan shellfish tanks.

1. Except as specified under subsection 2 of this section, 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.
2. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and

maintained to ensure that:

- 4a. Water used with fish other than molluscan shellfish does not flow into the molluscan tanks.
- 2b. The safety and quality of the shellfish as they were received are not compromised by use of the tank.
- 3c. The identity of the source of the shell stock is retained as specified in subsection 2 of section 33-33-04-03.2.

33-33-04-20. Nondairy product dispensing. 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.

33-33-04-21. Condiment dispensing.

1. Condiments, seasonings, and dressings for self-service use shall be protected from contamination by being kept in dispensers that are designed to provide protection. Protected food displays shall be provided with the proper utensils in accordance with sections 33-33-04-23 and 33-33-04-25.
2. Condiments provided for table or counter service must be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use must be provided in individual packages or in pour-type dispensers.
3. 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. Potentially hazardous 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.

33-33-04-21.1. Vending machine dispensing. The dispensing compartment of a vending machine, including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels, shall be equipped with a self-closing door or cover if the machine is:

1. 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
2. Available for self-service during hours when it is not under the full-time supervision of a food employee.

33-33-04-21.2. Vending machines - Automatic shutoff.*

1. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:
 - a. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in section 33-33-04-04; and

- b. If a condition specified under subdivision a occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in section 33-33-04-04.
- 2. When the automatic shutoff within a machine vending potentially hazardous food is activated:
 - a. In a refrigerated vending machine, the ambient temperature may not exceed any time and temperature combination as specified under subdivision b of subsection 1 of section 33-33-04-07 for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or
 - b. In a hot holding vending machine, the ambient temperature may not be less than one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

33-33-04-22. Ice dispensing. Ice for consumer use must be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles must be stored in a way that protects them from contamination. Ice storage bins shall be drained through an airgap. Liquid water drain lines may not pass through an ice machine or ice storage bin.

33-33-04-23. Dispensing utensils. To avoid unnecessary manual contact with food, suitable dispensing utensils must be used by employees or provided to consumers who serve themselves. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

- 1. Except as specified under subsection 2, in the food with their handles above the top of the food and the container;
- 2. In food that is not potentially hazardous 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;
- 3. 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 in subsection 2 of section 33-33-04-50;
- 4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
- 5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or
- 6. In a container of water if the water is maintained at a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or forty-one degrees Fahrenheit [5 degrees Celsius] or less and the container is cleaned at a frequency specified under subsection 2 of section 33-33-04-50.

33-33-04-24. Re-serving.*

1. Except as specified in subsection 2, 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.
2. Except as specified under subsection 3 of section 33-33-04-02.1, a container of food that is not potentially hazardous may be transferred from one consumer to another if:
 - a. 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
 - b. The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

33-33-04-25. Food display. 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.

33-33-04-25.1. Consumer self-service operations.*

1. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This subsection does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish; 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 raw, frozen, shell-on shrimp or lobster.
2. 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.
3. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

33-33-04-26. Reuse of tableware.

1. 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, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.
2. Except as specified in subsection 3, 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.
3. Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under section 33-33-04-19.1.

33-33-04-27. General food transportation. During transportation, food and food utensils must be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be

overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food must meet the requirements relating to food protection and food storage.

33-33-04-27.1. Management and personnel – person in charge.* The licenseholder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation. The person-in-charge shall ensure that:

- a. Food establishment operations are not conducted in a private home or room used as living or sleeping quarters as specified in sections 33-33-04-02 (4) and 33-33-04-112;
- b. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination.
- c. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Code.
- d. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
- e. Employees are visibly observing foods as they are received to determine 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;
- f. Employees are properly cooking potentially hazardous food 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 properly scaled and calibrated as specified in section 33-33-04-42.
- g. Employees are using proper methods to rapidly cool potentially hazardous foods (~~time/temperature control for safety foods~~) that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
- h. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified in section 33-33-04-11(4) that the food is not cooked sufficiently to ensure its safety;
- i. 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;
- j. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified in section 33-33-04-26;

- k. Employees are preventing cross-contamination by limiting having no direct hand contact with exposed, ready-to-eat food when deli tissue, spatulas, tongs, dispensing equipment, or other utensils can be used;
- l. Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; and
- m. Food employees and conditional employees are informed 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, as specified in section 33-33-04-28.9.

33-33-04-27.2. Demonstration of knowledge.* Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of this code, as it relates to the food operation. The person in charge shall demonstrate this knowledge by compliance with this code, or by being a certified food protection manager who has shown proficiency of required information through passing an accredited test, or by responding correctly to the inspector's questions as they relate to the specific food operation. An accredited test for a food protection manager is one that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency. The person in charge shall demonstrate knowledge by:

- 1. Complying with this code by having no violations of critical items during the current inspection;
- 2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or
- 3. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
 - a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
 - b. 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;
 - c. Describing the symptoms associated with the diseases that are transmissible through food;
 - d. Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;
 - e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
 - f. Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;
 - g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;
 - h. Describing the relationship between the prevention of foodborne illness and the management and control of the following:

- (1) Cross contamination,
- (2) Hand contact with ready-to-eat foods,
- (3) Handwashing, and
- (4) Maintaining the food establishment in a clean condition and in good repair;
- i. 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.
- j. Explaining the relationship between food safety and providing equipment that is:
 - (1) Sufficient in number and capacity, and
 - (2) Properly designed, constructed, located, installed, operated, maintained; and cleaned;
- k. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment,
- l. Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from back-flow and precluding the creation of cross connections;
- m. 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;
- n. 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;
- o. Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this code, or an agreement between the regulatory authority and the food establishment;
- p. Explaining the responsibilities, rights, and authorities assigned by this code to the:
 - (1) Food employee,
 - (2) Conditional employee,
 - (3) Person in charge,
 - (4) Regulatory authority; and
- q. Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees.

33-33-04-28. Employee health.* Repealed effective January 1, 2008.

33-33-04-28.1. Employee exclusions and restrictions.* Repealed effective January 1, 2008.

33-33-04-28.2. Removal of exclusions and restrictions. Repealed effective January 1, 2008.

33-33-04-28.3. Responsibility of a food employee or an applicant to report to the person in charge.* Repealed effective January 1, 2008.

33-33-04-28.4. Reporting by the person in charge.* Repealed effective January 1, 2008.

33-33-04-28.5. Obtaining information - Personal history of illness, medical examination, and specimen analysis. Repealed effective January 1, 2008.

33-33-04-28.6. Restriction or exclusion of food employee or summary suspension of license. Repealed effective January 1, 2008.

33-33-04-28.7. Restriction or exclusion order - Warning or hearing not required - Information required in order. Repealed effective January 1, 2008.

33-33-04-28.8. Release of employee from restriction or exclusion. Repealed effective January 1, 2008.

33-33-04-28.9. Responsibility of Permit Holder, Person in Charge, and Conditional Employees.*

1. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as a date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:
 - a. Has any of the following symptoms:
 - (1) vomiting,
 - (2) diarrhea,
 - (3) jaundice,
 - (4) sore throat with fever, or
 - (5) a lesion containing pus such as a boil or infected wound that is open or draining and is:
 - (a) on the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover.
 - (b) on exposed portions of the arms, unless the lesion is protected by an impermeable cover, or
 - (c) on other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
 - b. Has an illness diagnosed by a health practitioner due to:
 - (1) Norovirus,
 - (2) Hepatitis A virus,
 - (3) Shigella spp.,

- (4) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, or
 - (5) Salmonella typhi;
 - c. Had a previous illness, diagnosed by a health practitioner, within the past three months due to Salmonella typhi, without having received antibiotic therapy, as determined by a health practitioner;
 - d. Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:
 - (1) Norovirus within the past 48 hours of the last exposure,
 - (2) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, or Shiga spp. within the past three days of the last exposure.
 - (3) Salmonella typhi within the past 14 days of the last exposure, or
 - (4) Hepatitis A virus within the past 30 days of the last exposure; or
 - e. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by:
 - (1) Norovirus within the past 48 hours of the last exposure,
 - (2) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, or Shigella
 - (3) Salmonella typhi within the past 14 days of the last exposure, or
 - (4) Hepatitis A virus within the past 30 days of the last exposure.
2. The person in charge shall notify the regulatory authority when a food employee is:
 - a. Jaundiced, or
 - b. Diagnosed with an illness due to a pathogen as specified in subdivision b of subsection 1 of this section.
 3. The person in charge shall ensure that a conditional employee:
 - a. Who exhibits or reports a symptom, or who reports a diagnosed illness as specified in subdivisions a-c in subsection 1 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under section 33-33-04-28.11; and
 - b. Who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure as specified in subdivisions d-e in subsection 1 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria as specified in subsection 9 of section 33-33-04-28.11.
 4. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subdivisions a-e of subsection 1 of this section is:
 - a. Excluded as specified under subsections 1-3 of section 33-33-01-28.10, and subsections 4(a), 5(a), 6(a) or 7(a) of section 33-33-04-28.10 and in compliance with the provisions specified in subsections 1-7 of section 33-33-04-28.11; or

- b. Restricted as specified in subsections 4(b), 5(b), 6(b), 7(b) or subsections 8 or 9 of section 33-33-04-28.10 and in compliance with the provisions under subsections 4-9 of section 33-33-04-28.11.
- 5. A food employee or conditional employee shall report to the person in charge the information as specified under subsection 1 of this section
- 6. A food employee shall:
 - a. Comply with an exclusion as specified in subsections 1-3 of section 33-33-04-28.10 and subsections 4(a), 5(a), 6(a) or 7(a) of section 33-33-04-28.10 and with the provisions specified subsections 1-7 of section 33-33-04-28.11; or
 - b. Comply with a restriction as specified under in subsections 4(b), 5(b), 6(b), 7(b), 8 or 9 of section 33-33-04-28.10, and comply with the provisions specified under subsections 4-9 of section 33-33-04-28.11.

33-33-04-28.10. Exclusions and Restrictions.*

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

- 1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:
 - a. Symptomatic with vomiting or diarrhea; or
 - b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga toxin-producing E. coli.
- 2. Exclude a food employee who is:
 - a. Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection;
 - b. Diagnosed with an infection from hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within seven calendar days of the onset of jaundice; or
 - c. Diagnosed with an infection from hepatitis A virus without developing symptoms.
- 3. Exclude a food employee who is diagnosed with an infection from Salmonella typhi, or reports a previous infection with Salmonella typhi within the past three months as specified in subsection 1(c) of section 33-33-04-28.9.
- 4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
- 5. If a food employee is diagnosed with an infection from Shigella spp. and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
- 6. If a food employee is diagnosed with an infection from Enterohemorrhagic or shiga toxin-producing e.coli, and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
- 7. If a food employee is ill with symptoms of acute onset of sore throat with fever:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
- 8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under subdivision a(5) of subsection 1 of 33-33-04-28.9, restrict the food employee.
- 9. If a food employee is exposed to a foodborne pathogen as specified under Subdivisions d or e of subsection 1 of section 33-33-04-28.9, restrict the food employee who works in a food establishment serving a highly susceptible population.

33-33-04-28.11. Removal, Adjustment, or Retention of Exclusions and

Restrictions. The person in charge may remove, adjust, or retain the exclusion or restriction of a food employee according to the following conditions:

- 1. Except when a food employee is diagnosed with an infection from hepatitis A or Salmonella typhi:
 - a. Reinstate a food employee who was excluded as specified in subsection 1(a) of section 33-33-04-28.10 if the food employee:
 - (1) Is asymptomatic for at least 24 hours; or
 - (2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.
 - b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subsection 1(b) of section 33-33-04-28.10:
 - (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsections 4(a) or (b) of this section are met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections 4(a) or (b) of this section are met.
 - c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subsection 1(b) of section 33-33-04-28.10:

- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsections 5(a) or (b) of this section are met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections 5(a) or (b), or 5(a) and 1(c)(1) of this section are met.
- d. If a food employee was diagnosed with an infection from Enterohemorrhagic or shiga toxin-producing *Escherichia coli* and excluded as specified under subsection 1(b) of section 33-33-04-28.10:
- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subsections 6(a) or (b) of this section are met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections 6(a) or (b) are met.
2. Reinstatement a food employee who was excluded as specified under subsection 2 of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
- a. The food employee has been jaundiced for more than seven calendar days;
 - b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days, or
 - c. The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection.
3. Reinstatement a food employee who was excluded as specified under subsection 3 of section 33-33-04-28.10 if:
- a. The person in charge obtains approval from the regulatory authority; and
 - b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from *S. Typhi* infection.
4. Reinstatement a food employee who was excluded as specified under subsections 1(b) or 4(a) of section 33-33-04-28.10 who was restricted under subsection 4(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met.
- a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection;
 - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became asymptomatic; or

- c. The food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed.
5. Reinstatement of a food employee who was excluded as specified under subsections 1(b) or 5(a) of section 33-33-04-28.10 or who was restricted under subsection 5(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a *Shigella* spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:
 - (1) Not earlier than 48 hours after discontinuance of antibiotics, and
 - (2) At least 24 hours apart;
 - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic; or
 - c. The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed.
 6. Reinstatement of a food employee who was excluded or restricted as specified under Subsections 1(b) or 6(a) of section 33-33-04-28.10 or who was restricted under subsection 6(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga toxin-producing *Escherichia coli* based on test results that show two consecutive negative stool specimen cultures that are taken:
 - (1) Not earlier than 48 hours after discontinuance of antibiotics; and
 - (2) At least 24 hours apart;
 - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the food employee became asymptomatic; or
 - c. The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the food employee was diagnosed.
 7. Reinstatement of a food employee who was excluded or restricted as specified under Subsections 7(a) or (b) of section 33-33-04-28.10 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:
 - a. Has received antibiotic therapy for *Streptococcus pyogenes* infection for more than 24 hours;
 - b. Has at least one negative throat specimen culture for *Streptococcus pyogenes* infection; or

- c. Is otherwise determined by a health practitioner to be free of a *Streptococcus pyogenes* infection.
8. Reinstatement of a food employee who was restricted as specified under subsection 8 of section 33-33-04-28.10 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:
 - a. An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;
 - b. An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or
 - c. A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.
 9. Reinstatement of a food employee who was restricted as specified under subsection 9 of section 33-33-04-28.10 and was exposed to one of the following pathogens as specified under subsection 1(d) or (e) of section 33-33-04-28.9:
 - a. Norovirus and one of the following conditions is met:
 - (1) More than 48 hours have passed since the last day the food employee was potentially exposed; or
 - (2) More than 48 hours have passed since the food employee's household contact became asymptomatic.
 - b. *Shigella* spp. or Enterohemorrhagic or Shiga toxin-producing *Escherichia coli* and one of the following conditions is met:
 - (1) More than three calendar days have passed since the last day the food employee was potentially exposed;
 - (2) More than three calendar days have passed since the food employee's household contact became asymptomatic.
 - c. *S. Typhi* and one of the following conditions is met:
 - (1) More than 14 calendar days have passed since the last day the food employee was potentially exposed; or
 - (2) More than 14 calendar days have passed since the food employee's household contact became asymptomatic.
 - d. Hepatitis A virus and one of the following conditions is met:
 - (1) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A.
 - (2) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A;
 - (3) The food employee is immune to hepatitis A virus infection because of IgG administration;
 - (4) More than 30 calendar days have passed since the last day the food employee was potentially exposed;
 - (5) More than 30 calendar days have passed since the food employee's household contact became jaundiced; or
 - (6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subdivisions (4) and (5) of subsection 9(d) of this section, and the food employee receives additional training about:

- (a) Hepatitis A symptoms and preventing the transmission of infection,
- (b) Proper handwashing procedures, and
- (c) Protecting ready-to-eat food from contamination introduced by bare hand contact.

33-33-04-29. General personal cleanliness.*

1. Food employees shall keep their hands and exposed portions of their arms clean. Except as specified in subsection 4, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least twenty seconds, using a cleaning compound in a handsink that is equipped as specified in section 33-33-04-77.
2. Food employees shall use the following cleaning procedure:
 - a. Vigorous friction on the surfaces of the lathered fingers, fingertips, areas between the fingers, hands, and arms or by vigorously rubbing the surrogate prosthetic devices for hands or arms for at least twenty to thirty seconds, followed by;
 - b. Thorough rinsing under clean, running warm water; and
 - c. Immediately follow the cleaning procedure with thorough drying of cleaned hands and arms or surrogate prosthetic devices using a method as specified in section 33-33-04-77.
3. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.
4. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.
5. Food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) as specified in section 33-33-04-29(2) 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 as specified in section 33-33-04-116(2);
 - d. Except as specified in section 33-33-04-31(5), 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 other activities that contaminate the hands.

33-33-04-29.1. Preventing contamination from hands -~~Limit Direct Hand~~

Contact.*

1. Food employees shall wash their hands as specified in section 33-33-04-29.
2. Except when washing fruits and vegetables as specified in section 33-33-04-10, food employees shall ~~limit direct hand~~ may not contact with exposed, ready-to-eat food ~~when with their bare hands and shall use deli tissue, spatulas, tongs, single-use gloves, dispensing equipment, or other utensils can be used.~~
3. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

33-33-04-29.2. Hand antiseptic.

1. A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:
 - a. Be applied only to hands that are cleaned as specified in section 33-33-04-29;
 - b. Comply with one of the following:
 - (1) 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
 - (2) 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; or
 - c. Comply with one of the following:
 - (1) 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
 - (2) Comply with and be listed in:
 - (a) 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
 - (b) 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
2. If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under subdivision b of subsection 1, use shall be:
 - a. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
 - b. Limited to situations that involve no direct contact with food by the bare hands; and
3. A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred milligrams per liter chlorine.

33-33-04-29.3. Where to wash.* Food employees shall clean their hands in a handsink 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 or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

33-33-04-29.4. Fingernail maintenance. 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.

33-33-04-30. General clothing and jewelry. 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 jewelry, including medical information jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band.

33-33-04-31. General employee practices.*

1. 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.
2. Employees may not use tobacco in any form while engaged in food preparation or service or while in areas used for equipment or utensil washing or food preparation. Employees may use tobacco only in designated areas. 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.
3. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food establishment.
5. 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, and exposed food, equipment, utensils, linens, and single-service articles.
6. 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.

33-33-04-31.1. Hair restraints.

1. Except as provided under subsection 2, 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.

2. 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.

33-33-04-32. General equipment and utensils materials and use.* Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use and withstand repeated warewashing. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not allow the migration of deleterious substances or impart odors, color, or taste. Specific materials limitations are as follows:

1. Cast iron may not be used for utensils or food-contact surfaces of equipment except as a surface for cooking and in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.
- 2.* Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food must be lead-free or contain levels of lead not exceeding the following limits:

Utensil Category	Description	Maximum Lead
Hot Beverage Mugs	Coffee Mugs	0.5 mg/L
Large Hollowware	Bowls >1.1L [1.16 QT]	1 mg/L
Small Hollowware	Bowls <1.1L [1.16 QT]	2.0 mg/L
Flat Utensils	Plates, Saucers	3.0 mg/L

- 3.* Copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation and fermentation steps of a beer brewing operation such as a brew pub or microbrewery.
- 4.* Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used for beverages, acidic food, moist food, or hygroscopic food.

33-33-04-33. Solder and pewter alloys. If solder is used, it must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2 percent may not be used on surfaces that contact food. Pewter alloys containing lead in excess of 0.05 percent may not be used as a food-contact surface.

33-33-04-34. Wood.

1. Except as specified in subsections 2, 3, 4 and 5, wood and wood wicker may not be used as a food-contact surface.
2. Hard maple or an equivalent hard, close-grained wood may be used for:

- a. Cutting boards, cutting blocks, baker's tables, and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
- b. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty degrees Fahrenheit [110 degrees Celsius] or above.
3. 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.
4. 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:
 - a. Untreated wood containers; or
 - b. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 preservatives for wood.
5. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons.

33-33-04-34.1. Cutting surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized or discarded if they are not capable of being sanitized.

33-33-04-35. Plastics. Safe plastic, safe rubber, or safe rubberlike materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in section 33-33-04-32 are permitted for repeated use.

33-33-04-35.1. Sponges. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

33-33-04-35.2. Nonstick coatings. Multiuse kitchenware such as frying pans, griddles, saucepans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

33-33-04-36. Mollusk and crustacea shells. Mollusk and crustacea shells may be used only once as a serving container. Reuse of such shells for food service is prohibited.

33-33-04-36.1. ~~Slash-resistant gloves.~~ ~~Slash-resistant gloves that are used to protect hands during operations requiring cutting, may be used in direct contact only with food that is subsequently cooked. 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 are covered with a smooth, durable, nonabsorbent glove, or single-use glove. 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.~~ **Gloves, Use limitation.***

- 1.* 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.

2. Except as specified subsection 3 of this section, slash resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under section 33-33-04-11 such as frozen food or a primal cut of meat.
3. Slash-resistant gloves may be used with ready-to-eat food 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. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under section 33-33-04-11 such as frozen food or a primal cut of meat.

33-33-04-37. Single-service articles - Reuse Prohibited - Composition.* Reuse of single-service articles is prohibited. Materials that are used to make single-service and single-use articles:

1. May not:
 - a. Allow the migration of deleterious substances; or
 - b. Impart colors, odors, or tastes to food; and
2. Shall be:
 - a. Safe; and
 - b. Clean.

33-33-04-38. General design and fabrication. All equipment and utensils, including plasticware, shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions and must be resistant to denting, buckling, pitting, chipping, crazing, distortion, and decomposition. Equipment shall be maintained in a state of repair and components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications and must meet the following standards as applicable:

1. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices and finished to have smooth welds and joints. Threads must be designed to facilitate cleaning, ordinary "V" type threads may not be used in food-contact surfaces, except that in equipment such as icemakers or hot oil cooking equipment and hot oil filtering systems where such threads must be minimized.
2. Equipment containing bearings and gears requiring unsafe lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants may be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
3. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommited at entry and exit points to preclude moisture (conden-

sation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units may not pass through the ice machine or the ice storage bin.

4. Sinks and drainboards must be self-draining.
5. 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.

33-33-04-39. Accessibility.* Unless designed for in-place cleaning, food-contact surfaces must be accessible for cleaning and inspection in any of the following ways:

1. Without being disassembled.
2. By disassembling without the use of tools.
3. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

33-33-04-40. In-place cleaning. Equipment intended for in-place cleaning must be so designed and fabricated that all of the following requirements are met:

1. Cleaning and sanitizing solutions are circulated throughout a fixed system using an effective cleaning and sanitizing regimen.
2. Cleaning and sanitizing solutions contact all interior food-contact surfaces.
3. The system is self-draining or capable of being completely evacuated.
4. Provides inspection access points to insure all surfaces are being effectively cleaned.

33-33-04-41. Pressure spray cleaning. Fixed equipment designed and constructed to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

33-33-04-42. Thermometers - Food.* Thermometers 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.

- 1.* Thermometers that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius in the intended range of use.
- 2.* Thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit in the intended range of use.
- 3.* Thermometers shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in sections 33-33-04-11 and 33-33-04-11.4. Thermometers 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.
4. Each hot and cold food storage facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer. If it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food

transport carriers, a product thermometer must be available and used to check internal food temperature.

33-33-04-42.1. Thermometers - Ambient air and water. Ambient air and water thermometers that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and one-half degrees Celsius in the intended range of use. Ambient air and water thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus three degrees Fahrenheit in the intended range of use.

33-33-04-43. Nonfood-contact surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, must be designed and constructed to be smooth, washable, corrosion-resistant, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Sealed wood is acceptable for non-food contact storage; however, stainless steel or equivalent is recommended. Raw wood or contact paper lined shelving is prohibited. Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being removable without being disassembled, by disassembling without the use of tools, or by easy disassembling with use of tools kept near the equipment and are accessible for use. Nonfood-contact surfaces of equipment must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

33-33-04-44. Ventilation hoods. 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. Filters or other grease-extracting equipment must be in place while ventilation hood is operational and readily removable for cleaning and replacement if not designed to be cleaned in place and must be kept clean. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

33-33-04-45. Existing equipment. Equipment installed in a food establishment prior to July 1, 2003, that does not fully meet all of the design and construction requirements of this chapter must be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and if the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after July 1, 2003, must meet the requirements of this chapter.

33-33-04-46. General equipment installation and location. Equipment, including icemakers and ice storage equipment, may not be located under exposed or unprotected sewerlines or waterlines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

33-33-04-47. Table-mounted equipment.

1. Equipment that is placed on tables or counters, unless portable, must be sealed to the table or counter or elevated on legs to provide at least a four-inch [10.16-centimeter] clearance between the table or counter and equipment, and must be installed to facilitate the cleaning of the equipment and adjacent areas.
2. Equipment is portable within the meaning of subsection 1 if both of the following requirements are met:
 - a. Small and light enough to be moved easily by one person.
 - b. It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

33-33-04-48. Floor-mounted equipment.

1. Floor-mounted equipment, unless easily movable, must be:
 - a. Sealed to the floor;
 - b. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or
 - c. Elevated on legs to provide at least a six-inch [15.24-centimeter] clearance between the floor and equipment. However, vertically mounted floor mixers may be elevated to provide at least a four-inch [10.16-centimeter] clearance between the floor and equipment if no part of the floor under the mixer is more than six inches [15.24 centimeters] from cleaning access.
2. Equipment is easily movable if:
 - a. It is mounted on wheels or casters; and
 - b. It has no utility connection or has a utility connection that connects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.
3. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than one thirty-second of an inch [1 millimeter]; or if exposed to seepage, the equipment must be sealed to the adjoining equipment or adjacent walls or ceilings.

33-33-04-49. Aisles and working spaces. Aisles and working spaces between units of equipment and walls must 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 must be positioned to provide accessibility to working areas.

33-33-04-50. Cleaning frequency of equipment and utensils cleaning and sanitizing.*

1. Tableware must be washed, rinsed, and sanitized after each use.
2. To prevent cross-contamination, kitchenware and food-contact surfaces of equipment must be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

3. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment must be washed, rinsed, and sanitized before each use with a different type of raw animal food or each time there is a change from working with raw foods and ready-to-eat foods.
4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens must be cleaned at least once a day. However, this does not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment must be kept free of encrusted grease deposits and other accumulated soil.
5. Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in sections 33-33-04-52 - 33-33-04-54 or single-service and single-use articles.
6. Except as specified in subsection 7 of this section, if used with potentially hazardous food (~~time/temperature control for safety food~~), equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours.
7. Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every 4 hours if:
 - a. In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified in section 33-33-04-07 and the containers are cleaned with when they are empty;
 - b. 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:
 - (1) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature:

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours
>10.0°C - 12.8°C (>50°F - 55°F)	10 hours

- (2) The cleaning frequency based on the ambient temperature of the refrigerated room or areas is documented in the food establishment.
- c. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified ~~under Chapter 3~~ in section 33-33-04-18, 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;
- d. 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 chapter 3~~ in section 33-33-04-07.

- e. 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;
 - f. The cleaning schedule is approved based on consideration of:
 - (1) Characteristics of the equipment and its use,
 - (2) The type of food used,
 - (3) The amount of food residue accumulation, and
 - (4) 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
 - (5) In-use utensils are intermittently stored in a container of water in which the water is maintained at 57°C (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.
8. Except when dry cleaning methods are used, surfaces of utensils and equipment contacting food that is not potentially hazardous (~~time/temperature-control for safety food~~) shall be cleaned:
- a. At any time when contamination may have occurred;
 - b. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
 - c. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
 - d. 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 ~~ad~~ and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (1) At a frequency specified by the manufacturer, or
 - (2) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

33-33-04-50.1. Returnables - Cleaning and refilling.*

- 1.* Except as specified in subsections 2 and 3, returned empty containers intended for cleaning and refilling with food must be cleaned and refilled in a regulated food processing plant.
- 2.* A food-specific container for beverages may be refilled at a food establishment if:
 - a. Only a beverage that is not a potentially hazardous food;
 - b. 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;
 - c. 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;
 - d. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
 - e. The container is refilled by:

- (1) An employee of the food establishment; or
 - (2) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.
- 3.* Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.
4. A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.
5. Except as specified in subsection 6, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in subsection 2.
6. 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.

33-33-04-51. Wiping cloths and working containers - Use limitation.

1. Cloths used for wiping food spills from tableware, and carry-out containers being served to the consumer, must be clean, dry, and used for no other purpose.
2. Cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment must be clean and rinsed frequently in one of the sanitizing solutions permitted in section 33-33-04-52 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.
3. Cloths used for cleaning nonfood-contact surfaces of equipment, such as counters, dining tabletops, and shelves, must be clean and rinsed as specified in subsection 2 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.
4. Sanitizing solutions in which wet wiping cloths are held between uses shall be free of food debris and visible soil.
5. Working containers of sanitizing solutions for storage of in-use wiping cloths may be stored above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.
6. Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

33-33-04-52. Manual warewashing - Sink compartment requirements.

1. A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. 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.
2. Manual washing, rinsing, and sanitizing must be conducted in the following sequence:
 - a. Sinks must be cleaned prior to use.
 - b. Equipment and utensils must be thoroughly washed in the first compartment with a hot detergent solution that is kept clean and

maintained at not less than one hundred ten degrees Fahrenheit [43 degrees Celsius].

- c. Equipment and utensils must be rinsed free of detergent and abrasives with clean water in the second compartment.
 - d. Equipment and utensils must be sanitized in the third compartment according to one of the methods included in section 33-33-04-53.4.
 - e. Equipment and utensils must be air dried and used only after adequate draining.
3. 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 or a warewashing machine, alternative equipment as specified in subsection 3 shall be used.
 4. Equipment and utensils must be preflushed or prescraped and, when necessary, presoaked to remove gross food particles, soil, and grease.
 5. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:
 - a. High-pressure detergent sprayers;
 - b. Low-pressure or line-pressure spray detergent foamers;
 - c. Other task-specific cleaning equipment; or
 - d. Brushes or other implements.

33-33-04-52.1. Warewashing equipment - Cleaning frequency. 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:

1. Before use;
2. 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
3. If used, at least every twenty-four hours.

33-33-04-52.2. Warewashing machines - Manufacturers' operating instructions.*

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

33-33-04-52.3. Warewashing sinks - Use limitations.

1. A warewashing sink may not be used for handwashing as specified in section 33-33-04-29.
2. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified in section 33-33-04-52.1 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.

33-33-04-52.4. Warewashing equipment - Cleaning agents.* 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.

33-33-04-52.5. Warewashing equipment - Clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

33-33-04-52.6. Manual warewashing equipment - Wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than one hundred ten degrees Fahrenheit [43 degrees Celsius] or the temperature specified on the cleaning agent manufacturer's label instructions.

33-33-04-53. Mechanical warewashing equipment - Wash solution temperature.

1. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:
 - a. For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius];
 - b. For a stationary rack, dual temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius];
 - c. For a single-tank, conveyor, dual temperature machine, one hundred sixty degrees Fahrenheit [71 degrees Celsius]; or
 - d. For a multi-tank, conveyor, multi-temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius].
2. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than one hundred twenty degrees Fahrenheit [49 degrees Celsius].

33-33-04-53.1. Manual warewashing equipment - Hot water sanitization temperatures.* If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at one hundred seventy-one degrees Fahrenheit [77 degrees Celsius] or above.

33-33-04-53.2. Mechanical warewashing equipment - Hot water sanitization temperatures.*

- 1.* Except as specified in subsection 2, in a mechanical operation the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than one hundred ninety-four degrees Fahrenheit [90 degrees Celsius], or less than:
 - a. For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius]; or
 - b. For all other machines, one hundred eighty degrees Fahrenheit [82 degrees Celsius].

2. The maximum temperature specified in subsection 1 does not apply to the high pressure and temperature systems with wand-type, handheld, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

33-33-04-53.3. Mechanical warewashing equipment - Sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than one hundred kilopascals [15 pounds per square inch] or more than one hundred seventy kilopascals [25 pounds per square inch] as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

33-33-04-53.4. Manual and mechanical warewashing equipment - Chemical sanitization - Temperature, pH, concentration, and hardness.* A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure contact times specified in subsection 3 of section 33-33-04-53.6 shall be listed in 21 CFR 178.1010 (see Appendix A-1) sanitizing solutions shall be used in accordance with the environmental protection agency approved manufacturer's registered label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration Range	Minimum Temperature	
	pH 10 or less °F [°C]	pH 8 or less °F [°C]
mg/L 25-49	120 [49]	120 [49]
50-99	100 [38]	75 [24]
100	55 [13]	55 [13]

2. An iodine solution shall have a:
 - a. Minimum temperature of ~~seventy-five~~ sixty-eight degrees Fahrenheit [24 20 degrees Celsius];
 - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
 - c. Concentration between twelve and one-half and twenty-five milligrams per liter;
3. A quaternary ammonium compound solution shall:
 - a. Have a minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];
 - b. Have a concentration as specified in 21 CFR 178.1010 (see Appendix A-1) sanitizing solutions and as indicated by the manufacturer's use directions included in the labeling; and
 - c. Be used only in water with five hundred milligrams per liter hardness or less or in water having a hardness no greater than specified by the manufacturer's EPA registered label use instructions;
4. If another solution of a chemical specified in subsections 1 through 3 is used, the licenseholder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or

5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's EPA registered use directions instructions included in the labeling.

33-33-04-53.5. Warewashing equipment - Determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

33-33-04-53.6. Hot water and chemical.* After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least thirty seconds and as specified in section 33-33-04-53.1;
2. Hot water mechanical operations by being cycled through equipment that is set up as specified in sections 33-33-04-53.2 and 33-33-04-53.3 and achieving a utensil surface temperature of one hundred sixty degrees Fahrenheit [71 degrees Celsius] as measured by an irreversible registering temperature indicator; or
3. 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 in section 33-33-04-53.4. Contact times shall be consistent with those EPA registered label use instructions by providing:
 - a. Except as specified under subdivision b, ~~an exposure~~ a contact time of at least ten seconds for a chlorine solution specified in subsection 1 of section 33-33-04-53.4;
 - b. ~~An exposure~~ A contact time of at least seven seconds for a chlorine solution of fifty milligrams per liter that has a pH of ten or less and a temperature of at least one hundred degrees Fahrenheit [38 degrees Celsius] or a pH of eight or less and a temperature of at least seventy-five degrees Fahrenheit [24 degrees Celsius];
 - c. ~~An exposure~~ A contact time of at least thirty seconds for other chemical sanitizing solutions; or
 - d. ~~An exposure~~ 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 33-33-04-01(72).

33-33-04-53.7. Rinsing equipment and utensils after cleaning and sanitizing.

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

1. The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under section 33-33-04-52.2.
2. 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.

33-33-04-54. Drying. After cleaning and sanitizing, equipment and utensils:

1. Shall be air dried or used after adequate draining as specified in 21 CFR 178.1010(a), sanitizing solutions, before contact with food; and
2. May not be cloth dried except that utensils that have been air dried may be polished with cloths that are maintained clean and dry.

33-33-04-55. Handling of equipment and utensil storage. Cleaned and sanitized equipment and utensils must be handled in a way that protects them from contamination. Equipment shall be reassembled so that food-contact surfaces are not contaminated. Spoons, knives, and forks may be touched only by their handles. Cups, glasses, bowls, plates, and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

33-33-04-56. Storage.

1. Cleaned and sanitized utensils and equipment must be stored at least six inches [15.24 centimeters] above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment must also be protected from contamination. Equipment and utensils may not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Utensils must be air dried before being stored or must be stored in a self-draining position.
3. Glasses and cups must be stored inverted. Other stored utensils must be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons must be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations must protect these articles from contamination and present the handle of the utensil to the consumer.
4. Space must be provided for the adequate protective storage for kitchenware, tableware and utensils.

33-33-04-56.1. Preset tableware. ~~Tableware may be preset if:~~

1. Except as specified in subsection 4 2 of this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.
 - ~~1. It is protected from contamination by being wrapped, covered, or inverted;~~
 - ~~2. It is exposed and unused settings are removed when a consumer is seated; or~~
 - ~~3. It is exposed and unused settings are not removed when a consumer is seated, and are cleaned and sanitized before further use.~~
2. Preset tableware may be exposed if:
 - a. Unused settings are removed when a consumer is seated; or
 - b. Settings not removed when a consumer is seated are cleaned and sanitized before further use.

33-33-04-57. Single-service articles - Storage - Handling.

1. Single-service articles shall be stored at least six inches [15.24 centimeters] 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 sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.
 3. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed one's hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

33-33-04-58. Prohibited storage areas. The storage of food, equipment, utensils, or single-service articles in locker rooms, garbage rooms, under open stairwells, toilet rooms, or vestibules is prohibited.

33-33-04-59. General water supplies.* Drinking water must be obtained from an approved source that:

1. Water from a public water system shall meet 40 CFR 141 - national primary drinking water regulations and state water quality standards.
2. Water from a noncommunity water system shall meet state drinking water quality standards.
3. Nondrinking water shall be used only for nonculinary purposes such as air-conditioning, nonfood equipment cooling, and fire protection, ~~and irrigation.~~
4. Except when used as specified in subsections 2 and 3, water from a noncommunity water system shall be sampled and tested at least annually and as required by state water quality regulations.
5. The most recent sample report for the noncommunity water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.
6. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.
7. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.
8. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

33-33-04-59.1. System flushing and disinfection.* A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

33-33-04-60. Transportation. All potable water not provided directly by pipe to the food establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be constructed and operated according to law.

33-33-04-61. Bottled water.* 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 and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original container.

33-33-04-62. Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water. Water piping and waste piping to all fixtures and equipment that use water shall be maintained free of leaks and in good repair.

33-33-04-62.1. Water reservoir of fogging devices.*

1. A reservoir that is used to supply water to a device such as a produce fogger must be:
 - a. Maintained in accordance with manufacturer's specifications; and
 - b. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection 2 whichever is more stringent.
2. Cleaning procedures must include at least the following steps and must be conducted at least once a week:
 - a. Draining and complete disassembly of the water and aerosol contact parts;
 - b. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
 - c. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
 - d. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 MG/L (mg/L) hypochlorite solution.

33-33-04-63. Steam. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

33-33-04-64. General sewage.* All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Nonwater-carried sewage disposal facilities are prohibited, except as permitted by sections 33-33-04-125 and 33-33-04-132 (pertaining to temporary food establishments), or as permitted by this department in remote areas or because of special situations.

33-33-04-65. General plumbing.* Plumbing shall be sized, installed, and maintained according to law. A plumbing system shall be repaired according to law and maintained in good repair. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated.

33-33-04-66. Nonpotable water system. Repealed effective August 1, 2003.

33-33-04-67. Backflow.* The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment where an airgap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed. A backflow prevention device shall be located so that it may be serviced and maintained.

33-33-04-67.1. Backflow prevention device, carbonator.

1. If not provided with an air gap as specified under section 33-33-04-67, a dual check with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.
2. 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 subsection 1 of this section.

33-33-04-68. Grease traps. If used, grease traps must be maintained, kept clean and shall be located to be easily accessible for cleaning.

33-33-04-69. Garbage grinders. If used, garbage grinders shall be installed and maintained according to law.

33-33-04-70. Drains.* Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet [1.52 meters] of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap. This section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

33-33-04-71. Toilet facility installation. Toilet facilities shall be installed according to law, shall be the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

33-33-04-72. Toilet design. Toilets and urinals shall be designed to be easily cleaned.

33-33-04-73. Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance unless otherwise provided by law except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, airport terminal, truck stop or that which is otherwise approved by the department. Toilet rooms may not be used to store clean clothes and/or uniforms.

33-33-04-74. Toilet fixtures. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle for sanitary napkins.

33-33-04-75. Handsink facility installation.*

1. Handsinks shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
2. Handsinks shall be accessible to employees at all times.
3. Handsinks may not be used for purposes other than handwashing.
4. Handsinks shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.
5. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handsinks in a food establishment that has at least one handsink.
6. A separate handwashing sink must be provided in each back bar area.

33-33-04-76. Handsink faucets. Each handsink shall be provided with hot and cold water tempered to at least one hundred degrees Fahrenheit [38 degrees Celsius] by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Use of steam-mixing valves is prohibited.

33-33-04-77. Handsink supplies. A supply of hand-cleansing soap or detergent shall be available at each handsink. A supply of disposable towels, clean continuous towel system, or a hand-drying device providing heated air, or a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures, shall be conveniently located near each handsink. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handsinks.

33-33-04-78. Handsink maintenance. Handsinks, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.

33-33-04-79. Garbage and refuse containers.

1. Garbage and refuse shall be kept in durable, easily cleanable, nonabsorbent, insect and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers or for storage inside the food establishment.
2. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.
3. Containers stored outside the establishment, and dumpsters, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. In

containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

33-33-04-80. Storage.

1. Garbage and refuse on the premises shall be stored in a manner which makes them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging materials not containing garbage or food wastes need not be stored in covered containers.
2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.
3. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface or nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean, maintained in good repair, and sloped to drain. Storage areas and enclosures for refuse, recyclables, or returnables shall be maintained free of unnecessary items as specified in section 33-33-04-111(3).

33-33-04-81. Disposal.

1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration which prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be clean and orderly.

33-33-04-82. General insect and rodent control.* ~~Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be maintained free of insects, rodents and other pests. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents; and by routinely inspecting incoming shipments of food and supplies and routinely inspecting the premises for evidence of pests.~~ Devices that are used to electrocute flying insects must be designed to have "escape-resistant" trays. Devices that are used to electrocute flying insects and that may impel insects or insect fragments or to trap insects by adherence must be installed so that:

1. The devices are not located over a food preparation area.
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.
3. Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.
- 4.* Rodent bait must be contained in covered, tamper-resistant bait stations.
- 5.* A tracking powder pesticide may not be used in a food establishment.
6. If used, a nontoxic tracking powder such as talcum or flour, may not contaminate food, equipment, utensils, linens, and single-service articles.

33-33-04-83. Openings.

1. Except as specified in subsections 2, 3, 4 and 5, outer openings of a food establishment shall be protected against the entry of insects and rodents by:
 - a. Filling or closing holes and other gaps along floors, walls, and ceilings;
 - b. Closed, tight-fitting windows; and
 - c. Solid, self-closing, tight-fitting doors. Screens shall be in place where required and shall be tight-fitting and free of breaks.
2. Subsection 1 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.
3. Exterior doors used as exits need not be self-closing if they are:
 - a. Solid and tight-fitting;
 - b. Designed for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
 - c. Limited-use so they are not used for entrance or exit from the building or purposes other than the designated emergency exit use.
4. Except as specified in subsections 2 and 5, 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 subsection 1, the openings shall be protected against the entry of insects and rodents by:
 - a. Sixteen mesh to one inch [16 mesh to 25.4 millimeters] screens;
 - b. Properly designed and installed air curtains to control flying insects; or
 - c. Other effective means.
5. Subsection 4 does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

33-33-04-84. Construction and maintenance of floor construction. Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms, and vestibules shall be constructed of smooth durable material, such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Coved baseboards of similar material shall also be provided at

wall and floor junctures. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

33-33-04-85. Floor carpeting. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in walk-in refrigerators food preparation, equipment-washing, and utensil-washing areas where it would be exposed to large amounts of grease and water, in food storage areas, refuse storage areas, and toilet room areas where urinals or toilet fixtures are located.

33-33-04-86. Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

33-33-04-87. Floor drains. Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning, or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile, or similar materials, and shall be graded to drain.

33-33-04-88. Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of such size, design, and construction as to be removable and easily cleanable. Duckboards shall not be used as storage racks.

33-33-04-89. Floor junctures. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile, or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall not present an open seam of more than one thirty-second of an inch [1 millimeter].

33-33-04-90. Utility line installation - Floors. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

33-33-04-91. Wall and ceiling maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair. 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.

33-33-04-92. Construction. The walls, including nonsupporting partitions, wall coverings, and the ceilings of walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface. The physical facilities shall be maintained in good repair.

33-33-04-93. Exposed construction. Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas,

toilet rooms, and vestibules and in areas subject to moisture. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

33-33-04-94. Utility line installation - Walls and Ceilings. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules.

33-33-04-95. Attachments. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

33-33-04-96. Covering material installation. Wall and ceiling covering materials shall be attached and sealed as to be easily cleaned.

33-33-04-97. General cleaning physical facilities. The physical facilities shall be cleaned as often as necessary to keep them clean. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

33-33-04-98. Utility sinks. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mopwater or similar liquid wastes. The use of lavatories toilets, urinals, utensil or equipment-washing, or food preparation sinks for this purpose is prohibited in new or extensively remodeled establishments.

33-33-04-99. General lighting.

1. Permanently fixed artificial light sources must be installed to provide at least fifty foot-candles of light on all food preparation surfaces where equipment such as knives, slicers, grinders, and saws are used.
2. Permanently fixed artificial light sources must be installed to provide, at a distance of thirty inches [76.2 centimeters] from the floor.
 - a. At least twenty foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in utensil and equipment storage areas and in lavatory and toilet areas; and
 - b. At least ten foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in walk-in refrigerating units, dry food storage areas, and in all other areas, including dining areas during cleaning operations.

33-33-04-100. Protective shielding.

1. Except as specified in subsection 2, 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.
2. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:
 - a. The integrity of the packages cannot be affected by broken glass falling into them; and
 - b. The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.
3. Infrared or other heat lamps must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

33-33-04-101. General ventilation. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge. 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.

33-33-04-102. Special ventilation.

1. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
2. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

33-33-04-103. Dressing rooms or areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

33-33-04-104. Locker area. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing, their personal care items, and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles. The use of the kitchen for the storage of personal articles such as coats, clothing, purses, etc. is not permitted.

33-33-04-105. Poisonous or toxic materials permitted.*

There shall be present in food establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents. This section does not apply to packaged poisonous or toxic materials that are for retail sale.

33-33-04-106. Labeling of materials.* Containers of poisonous or toxic materials shall bear a legible manufacturer's label. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

33-33-04-107. Storage of materials.*

1. Poisonous or toxic materials consist of the following four categories:
 - a. Pesticides.
 - b. Detergents, sanitizers, and related cleaning or drying agents.
 - 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.
 - 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.
2. Each of the four categories set forth in subsection 1 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. To preclude contamination, poisonous or toxic materials shall be separated by spacing or partitioning and shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.
3. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, food equipment, utensils, linens, and single-service and single-use articles by:
 - a. Separating the poisonous or toxic materials by spacing or partitioning; and
 - b. Locating the poisonous or toxic materials in an area that is not above food, food equipment, utensils, linens, and single-service or single-use articles.

33-33-04-108. Use of materials.*

1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, in a way that constitutes a hazard to employees or other persons, or in a way other than in full compliance with the manufacturer's labeling.
3. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
4. Drying agents used in conjunction with sanitization may contain only components that are listed in the 21 Code of Federal Regulations.
5. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 (see Appendix A-1) - chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

6. Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone (see Appendix A-1).

33-33-04-109. Personal medications.* Only those medicines necessary for the health of employees are allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale. Medicines for employees' use must be labeled as specified in section 33-33-04-106 and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be 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 located so they are inaccessible to children.

33-33-04-110. First-aid supplies.* First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

33-33-04-111. General premises.

1. Food establishments and all property used in connection with their operations shall be kept free of litter.
2. The walking and driving surfaces of all exterior areas of food establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.
3. Only articles necessary for the operation and maintenance of the food establishment shall be stored on the premises. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used shall not be stored on the premises.
4. The traffic of unnecessary persons through the food preparation and utensil-washing areas is prohibited.

33-33-04-112. Living areas. No operations of a food establishment shall be conducted in any room used as living or sleeping quarters. Food operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

33-33-04-113. Laundry facilities.

1. Laundry facilities in a food establishment shall be used only for the washing and drying of linens, cloths, uniforms, and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.
2. 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.
3. If on-premises laundering is limited to wiping cloths intended to be used moist, or air dried in a location and manner that prevents contamination of food, equipment, utensils, linens, and the wiping cloths, a mechanical washer and

dryer need not be provided. The wiping cloths may be laundered in a warewashing or food preparation sink that is cleaned before use, throughout the day at a frequency to prevent recontamination, or if used, at least every twenty-four hours.

33-33-04-114. Linen and clothes storage.

1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
2. Soiled clothes and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

33-33-04-115. Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner. After use, mops shall be placed in a position that allows them to air dry without soiling walls, equipment, or supplies.

33-33-04-116. Prohibiting animals.*

1. Except as specified in subsections 2 and 3, live animals may not be allowed on the premises of a food establishment.
2. 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:
 - a. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
 - b. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
 - c. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and
 - d. Pets in the common dining areas of group residences at times other than during meals if:
 - (1) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
 - (2) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
 - (3) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.
 - e. 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.

3. Live or dead fish bait must be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.
4. Food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in subsection 2.

33-33-04-117. General mobile food service. Mobile food units or pushcarts shall comply with the requirements of this chapter, except as otherwise provided in this section and in section 33-33-04-118. The department may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities, except those requirements of sections 33-33-04-120, 33-33-04-121, 33-33-04-122, 33-33-04-123, and 33-33-04-124, which may not be waived.

33-33-04-118. General mobile food service - Restricted operations. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems or those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

33-33-04-119. Single-service articles. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

33-33-04-120. Water system. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this chapter. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter. A hose used for conveying drinking water from a water tank must have a smooth interior surface, be of food grade material, and, if not permanently attached, be clearly and durably identified as to its use. A water tank, pump, and hoses used for conveying drinking water may be used for no other purpose.

33-33-04-121. Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that has a capacity of at least fifteen percent or larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections of the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size

or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

33-33-04-122. Base of commissary operations.

1. Mobile food units or pushcarts shall operate out of a commissary or other fixed food establishment and shall report at least daily to all such locations for all supplies and cleaning and servicing operations.
2. The commissary or other fixed food establishments used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this section.

33-33-04-123. Servicing area and operations.

1. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. 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. 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 waste retention tanks.
2. 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.
3. The construction of the walls and ceilings of the servicing area is exempted from the provision of sections 33-33-04-91 through 33-33-04-96.

33-33-04-124. Servicing operations.

1. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged into a sanitary sewerage disposal system in accordance with section 33-33-04-64 and in such a way that a public health hazard or nuisance is not created.

33-33-04-125. Temporary food establishment. A temporary food establishment shall comply with the requirements of this chapter, except as otherwise provided in this section. The department may impose additional requirements to protect against health hazards, related to the conduct of the temporary food establishments, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter relating to temporary food establishments.

33-33-04-126. Temporary food establishment - Restricted operations.

1. This section is applicable whenever a temporary food establishment is permitted, under the provisions of section 33-33-04-125 to operate without complying with all the requirements.
2. Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous 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. This prohibition does not apply to any potentially hazardous 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 forty-one degrees Fahrenheit [5 degrees Celsius] or below or at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above in facilities meeting the requirements of this chapter, and is served directly in the unopened container in which it was packaged.

33-33-04-127. Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this chapter. 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.

33-33-04-128. Equipment.

1. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
2. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

33-33-04-129. Single-service articles. All temporary food establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

33-33-04-130. Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

33-33-04-131. Wet storage. Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

33-33-04-132. Waste. All sewage, including liquid waste, shall be disposed of according to law.

33-33-04-133. Handwashing. A convenient handwashing facility shall be available for employee handwashing. At a minimum, this facility shall consist of warm running water, soap, and individual paper towels. 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.

33-33-04-134. Floors. Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. However, dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings, or other approved materials effectively treated to control dust.

33-33-04-135. Walls and ceilings of food preparation areas.

1. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least sixteen mesh to the inch [2.54 centimeters].
2. Counter-service openings shall be no larger than necessary for the particular operation conducted. These openings must be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

33-33-04-136. Inspection report form FD 2420. Repealed effective July 1, 1997.

33-33-04-137. Submission of plans. Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling, or conversion must be submitted to the department for review and approval before construction, remodeling, or conversion is begun. The plans and specifications must indicate the intended menu, anticipated volume of food to be stored, prepared, and sold or served, proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the types and models of proposed fixed equipment and facilities. The department shall approve the plans and specifications if they meet the requirements of this chapter. No food establishment may be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the department.

33-33-04-138. Preoperational inspection. Whenever plans and specifications are required by section 33-33-04-137 to be submitted to the department, the department shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this chapter.

33-33-04-138.1. Routine inspections. The department and its inspectors shall have free access and may enter any food establishment at any reasonable time to determine

compliance with this chapter. For the purposes of enforcement of this chapter, the department may enter, inspect, photograph, and secure any sample, photographs, or other evidence from, any such establishment, for the purpose of enforcing this chapter. It is a violation of this chapter for any person or establishment to refuse or permit entry or inspection, the taking of samples or other evidence, the taking of photographs, or access to copy any record as authorized by this chapter, or to conceal any samples or evidence, or withhold evidence concerning them. The department shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this code and the establishment's potential as a vector of foodborne illness evaluating:

1. Past performance, for nonconformance with code or HACCP plan requirements that are critical;
2. Past performance, for numerous or repeat violations of code or HACCP plan requirements that are noncritical;
3. Past performance, for complaints investigated and found to be valid;
4. The hazards associated with the particular foods that are prepared, stored, or served;
5. The type of operation, including the methods and extent of food storage, preparation, and service;
6. The number of people served; and
7. Whether the population served is a highly susceptible population.

33-33-04-139. Modifications and waivers. The department may grant a variance by modifying or waiving the requirements of this code if in the opinion of the department a health hazard will not result from the variance. If a variance is granted, the department shall retain the information specified in section 33-33-04-140 in its records for the food establishment.

33-33-04-140. Documentation of proposed variance and justification. Before a variance from a requirement of this code is approved by the department, the information that must be provided by the person requesting the variance and retained by the department's file on the food establishment includes:

1. A statement of the proposed variance of the code requirement citing relevant code section numbers;
2. An analysis of the rationale for how the potential public health hazards addressed by the relevant code sections will be alternatively addressed by the proposal; and
3. A HACCP plan if required as specified in subsection 1 of section 33-33-04-142 which includes the information specified in section 33-33-04-143 so it is relevant to the variance requested.

33-33-04-141. Conformance with approved procedures.* If the department grants a variance as specified in section 33-33-04-139, or a HACCP plan is otherwise required as specified in section 33-33-04-142, the license holder shall:

1. Comply with the HACCP plans and procedures that are submitted and approved as specified in section 33-33-04-143 as a basis for the modification or waiver.

2. Maintain and provide to the department, upon request, records specified in subsection 3 of section 33-33-04-143 which demonstrate that the following are routinely employed:
 - a. Procedures for monitoring critical control points.
 - b. Monitoring the critical control points.
 - c. Verification of the effectiveness of an operation or process.
 - d. Necessary corrective actions if there is failure at a critical control point.

33-33-04-142. When a HACCP plan is required.

1. Before engaging in an activity that requires a HACCP plan, a license applicant or licenseholder shall submit to the department for approval a properly prepared HACCP plan as specified under section 33-33-04-143 and the relevant provisions of this code if:
 - a. Submission of a HACCP plan is required according to law;
 - b. A variance is required as specified under section 33-33-04-18.1; ~~or~~ subsection 4(d) of section 33-33-04-11; or
 - c. The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under section 33-33-04-137, an inspectional finding, or a variance request.
2. A license applicant or licenseholder must have a properly prepared HACCP plan as specified under section 33-33-04-18.1.

33-33-04-143. Contents of a HACCP plan. For a food establishment that is required under section 33-33-04-142 to have a HACCP plan, the plan and specifications must indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;
2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
 - a. Ingredients, materials, and equipment used in the preparation of that food; and
 - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
3. A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - a. Each critical control point;
 - b. The critical limits for each critical control point;
 - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
 - d. 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;
 - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
 - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

4. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

33-33-04-144. Sanitation and safety. Every food establishment must be operated with strict regard for the health and safety of its patrons. The following sanitary and safety regulations must be followed:

1. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near the food establishment.
2. Neither the dining room nor the kitchen of any food establishment may be used as a sleeping or dressing room by any employee of the restaurant or by any other person.

Consumer Advisories

Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.

Appendix A-1. Links to the Code of Federal Regulations:

21 CFR 173.315 – Chemicals used in washing or to assist in the peeling of fruits and vegetables

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=173.315>

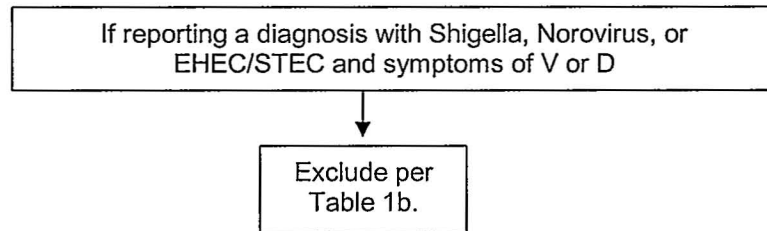
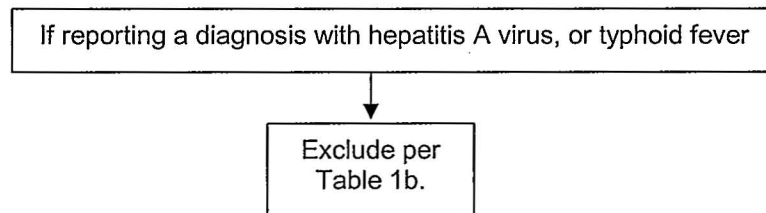
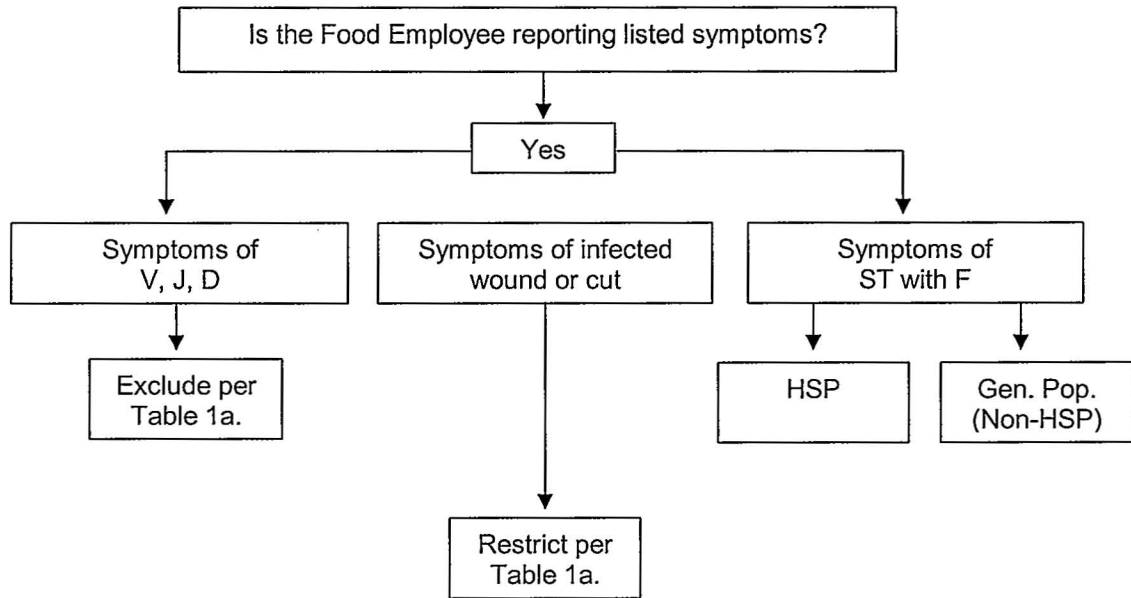
21 CFR 173.368 – Ozone as an antimicrobial agent in the treatment of fruits and vegetables

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=173.368>

21 CFR 178.1010 – Approved sanitizer solutions

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=178.1010>

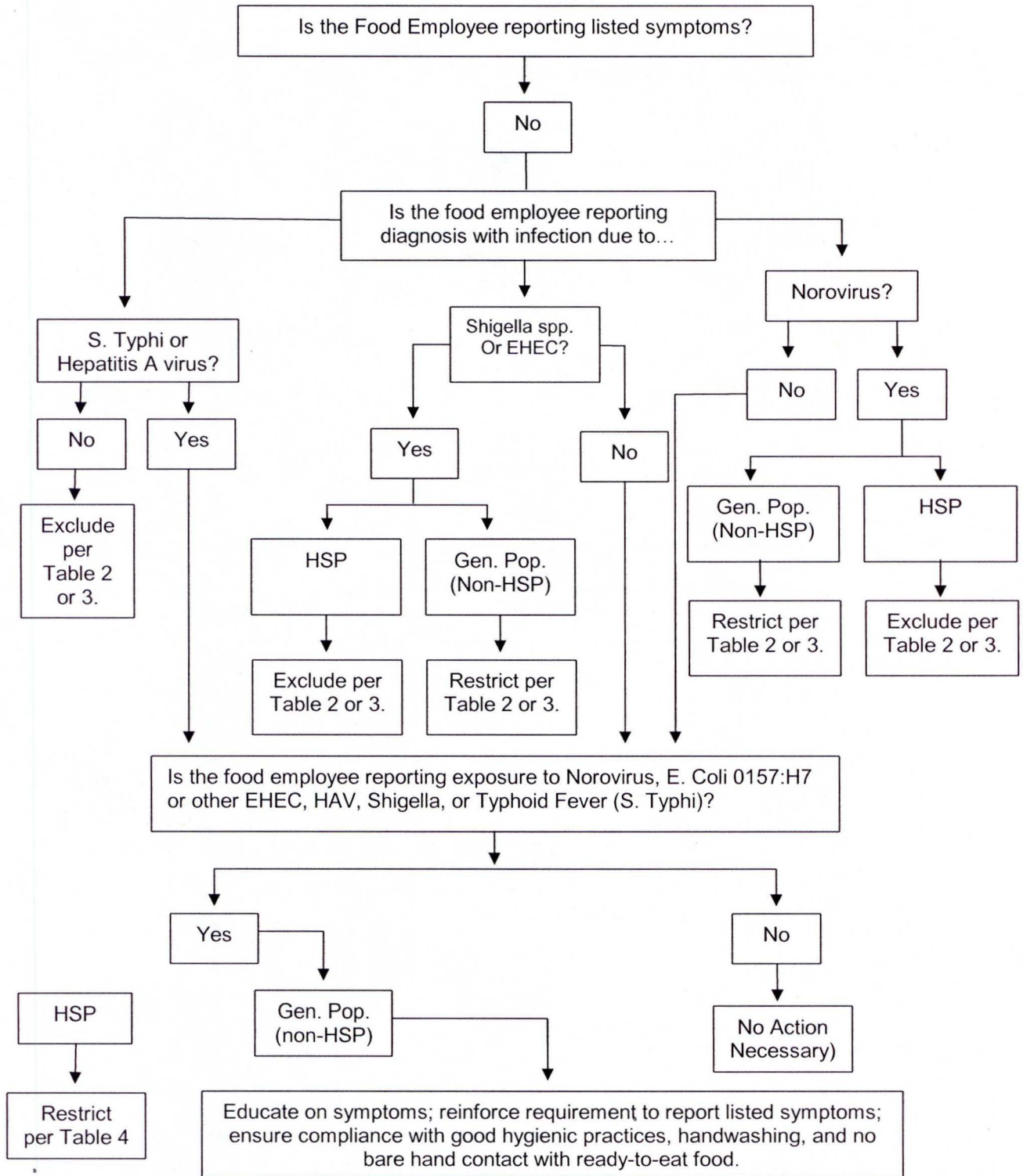
Appendix B-1. Decision Tree 1. When to Exclude or Restrict a Food Employee who Reports a Symptom and When to Exclude a Food Employee Who Reports a Diagnosis with Symptoms Under the Food Code



Key:

Listed symptoms for Reporting: (V) Vomiting; (J) Jaundice; (D) Diarrhea; (ST and F) Sore Throat with Fever; (HSP) Highly Susceptible Population; (Gen. Pop.) General Population

Appendix B-2. Decision Tree 2. When to Exclude or Restrict a Food Employee Who is Asymptomatic and Reports a Listed Diagnosis and When to Restrict a Food Employee who Reports a Listed Exposure Under the Food Code.



Key:
 (HSP) Highly Susceptible Population; (Gen. Pop.) General Population

Table 1a: Summary of Requirements for Symptomatic Food Employees

Food employees and conditional employees shall report symptoms Immediately to the person in charge				
The person in charge shall prohibit a conditional employee that reports a listed symptom from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a symptomatic food employee.				
Symptom	EXCLUSION/OR RESTRICTION		Removing symptomatic food employees from exclusion or restriction	RA Approval Needed to Return to Work?
	Facilities Serving a HSP	Facilities not Serving a HSP		
Vomiting	EXCLUDE 33-33-04-28.10(1)(a)	EXCLUDE 33-33-04-28.10(1)(a)	When the excluded food employee has been asymptomatic for at least 24 hours or provides medical documentation 33-33-04-28.11(1)(a). Exceptions: If diagnosed with Norovirus, Shigella spp., E. Coli 0157:H7 or other EHEC, HAV, or typhoid fever (S. Typhi) (see Tables 1b & 2).	No if not diagnosed
Diarrhea	EXCLUDE 33-33-04-28.10(1)(a)	EXCLUDE 33-33-04-28.10(1)(a)	When the excluded food employee has been asymptomatic for at least 24 hours or provides medical documentation 33-33-04-28.11(1) Exceptions: If diagnosed with Norovirus, E. Coli 0157:H7 or other EHEC, HAV, or S. Typhi (see Tables 1b & 2).	No if not diagnosed
Jaundice	EXCLUDE 33-33-04-28.10(2)(a) if the onset occurred within the last 7 days	EXCLUDE 33-33-04-28.10(2)(a) if the onset occurred within the last 7 days	When approval is obtained from the RA 33-33-04-28.11(2), and: <ul style="list-style-type: none"> • Food employee has been jaundiced for more than 7 calendar days 33-33-04-28.11(2)(a), or • Provides medical documentation 33-33-04-28.11(2)(c). 	Yes
Sore Throat with Fever	EXCLUDE 33-33-04-28.10(7)(a)	RESTRICT 33-33-04-28.10(7)(b)	When food employee provides written medical documentation 33-33-04-28.11(7)(a)-(c)	No
Infected wound or pustular boil	RESTRICT 33-33-04-28.10(8)	RESTRICT 33-33-04-28.10(8)	When the infected wound or boil is properly covered 33-33-04-28.11(8)(a)-(c)	No

Key for Tables 1, 2, 3, and 4:

RA = Regulatory Authority

EHEC = Enterohemorrhagic, or Shiga toxin-producing Escherichia coli

HAV = Hepatitis A virus

HSP = Highly Susceptible Population

Table 1b: Summary of Requirements for Diagnosed, Symptomatic Food Employees

Food employees and conditional employees shall report a listed diagnosis with symptoms immediately to the person in charge			
The person in charge shall notify the RA when a food employee is jaundiced or reports a listed diagnosis			
The person in charge shall prohibit a conditional employee that reports a listed diagnosis with symptoms from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed, symptomatic food employee.			
Diagnosis	EXCLUSION Facilities Serving HSP or not Serving HSP	Removing diagnosed, symptomatic food employees from exclusion	RA Approval Needed to Return to Work?
Hepatitis A virus	EXCLUDE if within 14 days of any symptom, or within 7 days of jaundice 33-33-04-28.10(2)(b)	When approval is obtained from the RA 33-33-04-28.11(2), and: <ul style="list-style-type: none"> The food employee has been jaundiced for more than 7 calendar days 33-33-04-28.11(2)(a), or The anicteric food employee has had symptoms of more than 14 days 33-33-04-28.11(2)(b), or The food employee provides medical documentation 33-33-04-28.11(2)(c) (also see Table 2) 	Yes
Typhoid Fever (S. Typhi)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a); and: <ul style="list-style-type: none"> Food employee provides medical documentation that states the food employee is free of a S.Typhi infection 33-33-04-28.11(3)(b) (also see Table 2) 	Yes
E. coli 0157:H7 or other EHEC/STEC	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	<ol style="list-style-type: none"> Serving Non-HSP facility: 33-33-04-28.11(1)(d)(2): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: Serving HSP facility: 33-33-04-28.11(1)(d)(2): Remains excluded until meeting the requirements listed below: <ul style="list-style-type: none"> Approval is obtained from RA 33-33-04-28.11(6), and Medically cleared 33-33-04-28.11(6)(a), or More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(6)(b) (also see Table 2) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
Norovirus	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	<ol style="list-style-type: none"> Serving non-HSP facility: 33-33-04-28.11(1)(b)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: Serving HSP facility: 33-33-04-28.11(1)(b)(2): Remains excluded until meeting the requirements listed below: <ul style="list-style-type: none"> Approval is obtained from the RA 33-33-04-28.11(4), and Medically cleared 33-33-04-28.11(4)(a), or More than 48 hours have passed since the food employee became asymptomatic 33-33-04-28.11(4)(b) (also see Table 2) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

(continued)

Shigella spp.	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	<ol style="list-style-type: none">1. Serving Non-HSP facility: 33-33-04-28.11(1)(C)(1): May only work on a restricted basis 24 hours after symptoms resolve, and remains restricted until meeting the requirements listed below:2. Serving HSP facility: 33-33-04-28.11(1)(C)(2): Remains excluded until meeting the requirements listed:<ul style="list-style-type: none">• Approval obtained from the RA 33-33-04-28.11(5),• Medically cleared 33-33-04-28.11(5)(a), or• More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(5)(b) (also see Table 2)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
---------------	--------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------

Table 2: Summary of Requirements for Diagnosed Food Employees with Resolved Symptoms

Food employees and conditional employees shall report a listed diagnosis immediately to the person in charge				
The person in charge shall notify the RA when a food employee reports a listed diagnosis				
The person in charge shall prohibit a conditional employee that reports a listed diagnosis from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed food employee.				
Pathogen Diagnosis	Facilities Serving HSP	Facilities Not Serving HSP	Removing Diagnosed Food Employees	RA Approval Required to Return to Work
Typhoid fever (S. Typhi) including previous illness with S. Typhi (see 33-33-04-28.9(1)(c))	EXCLUDE 33-33-04-28.10(3)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a), and: <ul style="list-style-type: none"> Food employee provides medical documentation that states the food employee is free of a S. Typhi infection 33-33-04-28.11(3)(b) (also see Table 1b) 	Yes
Shigella spp.	EXCLUDE 33-33-04-28.10(5)(a)	RESTRICT 33-33-04-28.10(5)(b)	<ol style="list-style-type: none"> Serving Non-HSP facility: 33-33-04-28.11(1)(c)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: Serving HSP facility: 33-33-04-28.11(1)(c)(2): Remains excluded until meeting the requirements listed below: <ul style="list-style-type: none"> Approval is obtained from the RA 33-33-04-28.11(5), and: Medically cleared 33-33-04-28.11(5)(a), or More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(5)(c)(1) (see Table 1b) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis on a non-HSP facility
Norovirus	EXCLUDE 33-33-04-28.10(4)(a)	RESTRICT 33-33-04-28.10(4)(b)	<ol style="list-style-type: none"> Serving Non-HSP facility: 33-33-04-28.11(1)(b)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: serving HSP facility: 33-33-04-28.11(1)(b)(2): Remains excluded until meeting the requirements listed below: <ul style="list-style-type: none"> Approval is obtained from the RA 33-33-04-28.11(4), and: Medically cleared 33-33-04-28.11(4)(a); or More than 48 hours have passed since the food employee became asymptomatic 33-33-04-28.11(4)(b) (also see Table 1b) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis on a non-HSP facility

(continued)

Pathogen Diagnosis	Facilities Serving HSP	Facilities Not Serving HSP	Removing Diagnosed Food Employees	RA Approval Required to Return to Work
E. coli 0157:H7 or other EHEC/ STEC	EXCLUDE 33-33-04-28.10(6)(a)	RESTRICT 33-33-04-28.10(6)(b)	<ol style="list-style-type: none"> 1. Serving Non-HSP facility: 33-33-04-28.11(1)(d)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: 2. Serving HSP facility: 33-33-04-28.11(1)(d)(2): Remains excluded until meeting the requirements listed below: <ul style="list-style-type: none"> • Approval is obtained from the RA 33-33-04-28.11(6); and: • Medically cleared 33-33-04-28.11(6)(a), or • More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(6)(b) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis on a non-HSP facility
Hepatitis A virus	EXCLUDE if within 14 days of any symptom, or within 7 days of jaundice 33-33-04-28.10(2)(b)	EXCLUDE if within 14 days of any symptom, or within 7 days of jaundice 33-33-04-28.10(2)(b)	When approval is obtained from the RA 33-33-04-28.11(2), and <ul style="list-style-type: none"> • The food employee has been jaundiced for more than 7 calendar days 33-33-04-28.11(2)(a), or • The anicteric food employee has had symptoms for more than 14 days 33-33-04-28.11(2)(b), or • The food employee provides medical documentation 33-33-04-28.11(2)(c) (see also Table 1b) 	Yes

Table 3: Summary of Requirements for Diagnosed Food Employees Who Never Develop Gastrointestinal Symptoms

Food employees and conditional employees shall report a listed diagnosis immediately to the person in charge				
The person in charge shall notify the RA when a food employee reports a listed diagnosis				
The person in charge shall prohibit a conditional employee that reports a listed diagnosis from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed food employee				
Pathogen Diagnosis	Facilities Serving HSP	Facilities Not Serving HSP	Removing Diagnosed Food Employees Who Never Develop Gastrointestinal Symptoms from Exclusion or Restriction	RA Approval Required to Return to Work
Typhoid Fever (S. Typhi) including previous illness with S. Typhi (see 33-33-04-28.9(1)(c))	EXCLUDE 33-33-04-28.10(3)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a), and: Food employee provides medical documentation, specifying that the food employee is free of a S. Typhi infection 33-33-04-28.11(3)(b)	Yes
Shigella spp.	EXCLUDE 33-33-04-28.10(5)(a)	RESTRICT 33-33-04-28.10(5)(b)	Remains excluded or restricted until approval is obtained from the RA, and <ul style="list-style-type: none"> Medically cleared 33-33-04-28.11(5)(a), or More than 7 calendar days have passed since the food employee was last diagnosed 33-33-04-28.11(5)(c) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
Norovirus	EXCLUDE 33-33-04-28.10(4)(a)	RESTRICT 33-33-04-28.10(4)(b)	Remains excluded or restricted until approval is obtained from the RA 33-33-04-28.11(4), and <ul style="list-style-type: none"> Medically cleared 33-33-04-28.11(4)(a) or More than 48 hours have passed since the food employee was diagnosed 33-33-04-28.11(4)(c). 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

(continued)

E. coli 0157:H7 or other EHEC/ STEC	EXCLUDE 33-33-04- 28.10(6)(a)	RESTRICT 33-33-04- 28.10(6)(b)	Remains excluded or restricted until approval is obtained from the RA 33-33-04-28.11(6), and: <ul style="list-style-type: none">• Medically cleared 33-33-04-28.11(6)(a), or• More than 7 calendar days have passed since the food employee was diagnosed 33-33-04-28.11(6)(c)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
Hepatitis A virus	EXCLUDE 33-33-04- 28.10(2)(c)	EXCLUDE 33-33-04- 28.10(2)(c)	When approval is obtained from the RA 33-33-04-28.11(2), and <ul style="list-style-type: none">• The anicteric food employee has had symptoms for more than 14 days 33-33-04-28.11(2)(b), or• The food employee provides medical documentation 33-33-04-28.11(2)(c)	Yes

Key for Tables 1, 2, 3, and 4:

RA = Regulatory Authority

EHEC = Enterohemorrhagic, or Shiga toxin-producing Escherichia coli

HAV = Hepatitis A virus

HSP = Highly Susceptible Population

Table 4: History of Exposure, and Absent Symptoms of Diagnosis

Food employees and conditional employees shall report a listed exposure to the person in charge				
The person in charge shall prohibit a conditional employee who reports a listed exposure from becoming a food employee in a facility serving a HSP until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of an exposed food employee				
The person in charge shall reinforce and ensure compliance with good hygienic practices, symptom reporting requirements, proper handwashing and no BHC with RTE foods for all employees that report a listed exposure				
Pathogens Diagnosis	Facilities Serving HSP	Facilities Not Serving HSP	When Can the Restricted Food Employee Return to Work?	RA Approval Needed
Typhoid Fever (S. Typhi)	RESTRICT 33-33-04-28.10(9)	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	33-33-04-28.10(9)(c) When 14 calendar days have passed since the last exposure, or more than 14 days has passed since the food employee's household contact became asymptomatic	No
Shigella spp.	RESTRICT 33-33-04-28.10(9)	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	33-33-04-28.10(9)(b) When more than 3 calendar days have passed since the last exposure, or more than 3 days has passed since the food employee's household contact became asymptomatic	No
Norovirus	RESTRICT 33-33-04-28.10(9)	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	33-33-04-28.10(9)(a) When more than 48 hours have passed since the last exposure, or more than 48 hours has passed since the food employee's household contact became asymptomatic	No
E. coli 0157:H7 or other EHEC/ STEC	RESTRICT 33-33-04-28.10(9)	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	33-33-04-28.10(9)(b) When more than 3 calendar days have passed since the last exposure, or more than 3 days has passed since the food employee's household contact became asymptomatic	No

(continued)

Hepatitis A virus	RESTRICT 33-33-04-28.10(9)	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	33-33-04-28.10(9)(d) When any of the following conditions is met: <ul style="list-style-type: none">❖ The food employee is immune to HAV infection because of a prior illness from HAV, Vaccination against HAV, or IgG administration; or❖ More than 30 calendar days have passed since the last exposure; or since the food employee's household contact became jaundiced; or❖ The food employee does not use an alternative procedure that allows BHC with RTE food until at least 30 days after the potential exposure, and the employee receives additional training.	No
-------------------	--------------------------------------	----------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

Key for Table 4:

GHP = Good Hygienic Practices

RTE = Ready-to-Eat foods

BHC = Bare Hand Contact

**CHAPTER 33-33-06
BED AND BREAKFAST FACILITIES**

Section

- 33-33-06-01 Definitions
- 33-33-06-02 Water Supply
- 33-33-06-03 Sewage
- 33-33-06-04 Food Supplies
- 33-33-06-05 General Food Protection
- 33-33-06-06 Food Service Equipment and Utensils Materials
- 33-33-06-07 General Employee Health
- 33-33-06-08 Lighting and Ventilation
- 33-33-06-09 Toilet, Handwashing, Laundry, and Bathing Facilities
- 33-33-06-10 Beds, Linens, and Furniture
- 33-33-06-11 Insect and Rodent Control
- 33-33-06-12 General Requirements
- 33-33-06-13 Swimming Pools and Spas
- 33-33-06-14 Fire Safety
- 33-33-06-15 Inspection - Records Kept [Repealed]
- 33-33-06-16 License - Application [Repealed]
- 33-33-06-17 Failure to Comply With Provisions of Chapter
- 33-33-06-18 License Fees

33-33-06-01. Definitions.

1. "Approved" means acceptable to the department based on a determination as to conformance with appropriate standards and good public health practice.
2. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food cleaning compounds, and sanitizing solutions which may contact it.
3. "Department" means the state department of health or its designated agent.
4. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
5. "Employee" means the permitholder, individuals having supervisory or management duties, and any other person working in a bed and breakfast facility.
6. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a bed and breakfast facility.
7. "Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service

- containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.
8. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
 9. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
 10. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
 11. "Kitchenware" means all multiuse utensils other than tableware.
 12. "Lodging unit" means a room with one or more beds for an unspecified number of persons.
 13. "Perishable food" means any food of such type or in such condition as may spoil.
 14. "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.
 15. "Private home" means a place of residence of an individual or family.
 16. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.
 17. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.
 18. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.
 19. "Tableware" means multiuse eating and drinking utensils.
 20. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

33-33-06-02. Water supply. The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject

to examination by the department. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
2. Each private water source shall be sampled initially for nitrate analysis. Seasonal operations shall be sampled during the peak operating season.
3. Additional bacteriological or chemical tests may be required by the department.
4. Initially each private source shall be inspected for location, source protection, and design standards.
5. No cross connections with unapproved water supplies may exist.
6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

33-33-06-03. Sewage. All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring, no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.
2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the department. If the system is adequate, then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the department, water supply and pollution control division, for review and approval prior to construction.
3. The department may require that the septic tank be opened to check its construction. If the department determines that pumping of the tank is necessary, the department may require this to occur.
4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home).

33-33-06-04. Food supplies. Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law.

Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

33-33-06-05. General food protection.

1. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation and chemicals. The temperature of potentially hazardous food must be ~~forty-five~~ one degrees Fahrenheit [~~7.2~~ 5 degrees Celsius] or below or one hundred ~~forty~~ thirty-five degrees Fahrenheit [~~60~~ 57.2 degrees Celsius] or above at all times, except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of ~~forty-five~~ one degrees Fahrenheit [~~7.2~~ 5 degrees Celsius] or below; or quick-thawed as part of the cooking process. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.
2. Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.
3. Live pets are not allowed in any room or area in which food is being prepared for guests.

33-33-06-06. Food service equipment and utensils materials. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion-resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles may not impart odors, color, or taste, nor contribute to the contamination of food. Multiuse eating and drinking utensils, kitchenware, and tableware used in the facility shall be sanitized after each use or, single-service items may be used.

Acceptable means of dishwashing/sanitization shall be:

1. Manual cleaning and sanitizing utilizing a sink with two or three compartments with approved chemical sanitizer. Utensils shall be air-dried.
2. Mechanical home style dishwasher with a one hundred sixty degrees Fahrenheit [71.1 degrees Celsius] water supply provided by a booster heater or sanitizing cycle.

33-33-06-07. General employee health.

1. No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such employee contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
2. Bed and breakfast employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. Employees shall thoroughly wash their hands with soap and warm water before preparing or serving food.

33-33-06-08. Lighting and ventilation. Rooms and areas used in conjunction with bed and breakfast facilities shall be lighted and ventilated as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

33-33-06-09. Toilet, handwashing, laundry, and bathing facilities.

1. Bed and breakfast facilities shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast facilities, shall be kept clean and in good repair.
2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.
3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].
4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

33-33-06-10. Beds, linens, and furniture.

1. Furniture, mattresses, curtains, and draperies, etc., shall be kept clean and in good repair.
2. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.
3. Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

33-33-06-11. Insect and rodent control. Effective measures intended to minimize the presence of rodents, flies, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Openings to the outside shall be protected effectively

against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, or other means.

33-33-06-12. General requirements.

1. Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.
2. Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.
3. Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.
4. Bed and breakfast facilities shall be kept in a clean and sanitary condition.

33-33-06-13. Swimming pools and spas. When swimming pools and spas are provided for use by bed and breakfast facility guests, ~~they shall be operated in accordance with article 33-29 (Pool Facilities in North Dakota).~~ must be designed, constructed, and maintained to protect the health and safety of its guests. A colorimetric test kit is required for the monitoring and adjusting of disinfectant levels and pH in swimming pools, spas, or other water recreational facilities. A weekly log of disinfection levels and pH must be maintained by the owner of the facility.

33-33-06-14. Fire safety. Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The department shall report to the state fire marshal violations of any provision of the code which might constitute a fire hazard in the premises so inspected. The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.
 - a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. In addition, a smoke detection device shall be mounted in every room used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.
 - b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.
 - c. The owner of the facility shall test the battery operated smoke detectors at least weekly and hard-wired detectors at least monthly and shall maintain written records which detail the date and results of the test.

2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.
3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters]. Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.
4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].
5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

33-33-06-17. Failure to comply with provisions of chapter. Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by the department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

33-33-06-18. License fees. The annual license fee paid to the department by proprietors of bed and breakfast facilities is thirty-five dollars. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

ARTICLE 33-43

Nurse Aide Training, Competency Evaluation, and Registry

Chapter	
33-43-01	Nurse Aide Training, Competency Evaluation, and Registry
Sections	
33-43-01-01	Definitions
33-43-01-02	Conflict of With Federal Requirements
33-43-01-03	Responsibilities of Training Programs for Screening of Potential Students
33-43-01-04	Nurse Aide Training Program Requirements
33-43-01-05	Nurse Aide Competency Evaluation
33-43-01-06	Administration of Department Approved Nurse Aide Competency Evaluation Programs
33-43-01-07	Withdrawal and Approval of Nurse Aide Training Program Status
33-43-01-08	Completion of the Nurse Aide Competency Evaluation Program
33-43-01-09	Registry Information
33-43-01-10	Disclosure of Information
33-43-01-11	Initial Certified Nurse Aide, Home Health Aide and Nurse Aide Registration and Renewal
33-43-01-12	Supervision and Delegation of Nursing Interventions
33-43-01-13	Medication Assistant Requirements for Supervision
33-43-01-14	Medication Assistant I Training and Competency Evaluation Program Requirements
33-43-01-15	Medication Assistant II Training and Competency Evaluation Program Requirements
33-43-01-16	Specific Delegation of Medication Administration
33-43-01-17	Routes or Types of Medication Administration
33-43-01-18	Pro re Nata Medications
33-43-01-19	Medication Interventions that May Not be Delegated
33-43-01-20	Medication Assistant I and II Initial Registration and Renewal
33-43-01-21	Complaint Investigations
33-43-01-22	Disciplinary Actions
33-43-01-23	Hearing Process for Individuals on the Nurse Aide Registry
33-43-01-24	Review Process for Findings of Neglect Placed on an Individual Nurse Aide's Registry Listing
33-43-01-25	Grandfather Provisions
33-43-01-26	Waiver Provision

33-43-01-01. Definitions.

1. "Abuse" includes mental, physical, sexual, and verbal abuse. "Mental abuse" includes humiliation, harassment, threats of punishment, or deprivation. "Physical abuse" includes hitting, slapping, pinching,

kicking, and controlling behavior through corporal punishment. "Sexual abuse" includes sexual harassment, sexual coercion, sexual contact, or sexual assault. "Verbal abuse" includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.

2. "Agency" means home health agency.
3. "Certified nurse aide" means an individual who has successfully completed the requirements for the department-approved certified nurse aide training and competency evaluation program, or department-approved certified nurse aide competency evaluation program to provide nursing or nursing related services to residents and is entered on the department's nurse aid registry as a certified nurse aide.
4. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.
5. "Delegation" means the authorization for performance of selected nursing interventions from a licensed nurse to a certified nurse aide, home health aide, nurse aide, or medication assistant I or II.
6. "Deny" means the department's refusal to issue or renew a current registration on the nurse aide registry.
7. "Department" means the state department of health.
8. "Encumber" means to place on probation.
9. "Health care facility" means any health care facility licensed by the department which provides nursing related services to consumers of nursing care other than nursing facilities.
10. "Home health aide" means an individual who renders personal related service under the supervision of a licensed registered nurse and is registered on the department's nurse aide registry as a home health aide.
11. "Letter of concern" means a statement of the department's concerns regarding the conduct of a registrant.
12. "Medication administration" means the delivery of medication by an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.

13. "Medication assistant" means an individual who is registered on the nurse aide registry as a certified nurse aide or nurse aide who has successfully completed the requirements of a department approved medication assistant program for a specific employment setting. Upon successful completion of a medication assistant program, the certified nurse aide or nurse aide is eligible to be registered on the department's nurse aide registry as a medication assistant I or a medication assistant II.
 - a. Medication assistant I is a person who has completed all the requirements for a department approved medication assistant I program. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.
 - b. Medication assistant II is a person who has completed all the requirements for a department approved medication assistant II program. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.
14. "Medication assistant training program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets the department's requirements.
15. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent, taking or use of a resident's belongings or money, or both, without the resident's consent.
16. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel, failure to give proper attention to residents, or failure to carry out resident services through careless oversight.
17. "Nurse aide" means any individual who is registered on the nurse aide registry and who has successfully completed the competency requirements identified by the department to provide nursing or nursing-related services to an individual in a health care facility or other setting and is registered on the department's registry as a nurse aide.
18. "Nurse aide competency evaluation" means a department-approved testing mechanism consisting of both a written or oral and a manual skills component, testing the necessary knowledge needed by a certified nurse aide or nurse aide to provide safe care in a nursing facility, other health care facility, or other setting.
19. "Nurse aide registry" means a listing of individuals who the department has determined to have successfully completed the requirements

established by the department to be designated as a certified nurse aide, home health aide, nurse aide or medication assistant I or II.

20. "Nurse aide training program" means a program to train nurse aides offered by a public or private organization that has been approved by the department.
21. "Nursing facility" means a nursing facility licensed by the department, and does not include any institution that is for the care and treatment of persons with intellectual disabilities or persons with related conditions.
22. "Other misconduct" means a conviction of a crime or proof of behavior which has a direct bearing on the individual's ability to care for others or is a threat to the health and safety of patients or clients.
23. "Other setting" includes settings such as a clinic, outpatient service provider, or individual home where the individual on the department's nurse aide registry is employed to provide nursing related services.
24. "Qualified instructor for a certified nurse aide training program" means a licensed registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services. Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a nursing facility based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program. Other health-related professions who have a minimum of one year experience in their field may supplement the instructor.
25. "Qualified instructor for a home health aide training program" is a licensed registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health care services. Other professionals may be used to provide instruction under the supervision of the qualified instructor.
26. "Qualified instructor for a nurse aide training program" is a licensed nurse.
27. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where nursing care is continuously delivered.
28. "Revoke" means the withdrawal by the department of the registration of an individual to be employed as a certified nurse aide, home health aide, nurse aide, or medication assistant I or II for a specified period of time of no less than one year. If no specified period of time is identified by the

department, revocation is permanent. For a certified nurse aide, a finding of abuse or neglect will result in permanent revocation, although the finding of neglect may be requested to be removed after one year under 33-43-01-24.

29. "Routine, regularly scheduled medication" means the components of an identified medication regimen for an individual or groups of individuals with stable conditions which are administered on a routine basis and do not require determination of need, drug calculation, or dosage conversion.
30. "Significant requirements" means federal certification or state licensure requirements that have a serious or measurable impact on the health and safety of the resident in the facility. This includes a nursing waiver. Significant requirements shall be determined to be out of compliance based on the following considerations: severity of the noncompliance issue, frequency of the noncompliance issue, and history of prior noncompliance issues.
31. "Stable" means a situation in which the patient or client's clinical and behavioral status and nursing care needs are determined by the licensed registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
32. "Supervised practical skills training" means manual skills training in a laboratory or other setting in which the nurse aide demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed registered nurse or licensed nurse under the general supervision of a qualified instructor.
33. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the patient or client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing the nursing or nursing related care.
 - a. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the patient or client area and is available to assess, evaluate, and respond immediately.
 - b. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.

34. "Suspend" means the withholding or withdraw by the department of the registration of an individual on the department's nurse aide registry for a specified or indefinite period of time not to exceed one year.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-01, 23-44-02

Law Implemented: NDCC 23-44-01, 23-44-01

33-43-01-02. Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements, the more stringent shall apply. Such a finding or determination shall be made by the department and shall not affect the remainder of this chapter.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-03, 23-01-11, 23-44-02

Law Implemented: NDCC 23-01-11, 23-44-02

33-43-01-03. Responsibilities of training programs for screening of potential students.

1. Certified nurse aide, home health aide, nurse aide, and medication assistant training programs must screen potential students or individuals seeking entry into a training program. This screening should be completed prior to beginning the training program and should occur in sufficient advance of the training to minimize delays and allow for changes in career choices in a timely manner.
2. Those applicants with a history including conviction of a crime substantially related to the qualification, functions, or duties of a certified nurse aide, home health aide, nurse aide or medication assistant or a finding on a state nurse aide registry or federal registry should be informed they might not be allowed to begin the training program or take the test without providing specific information relating to their background, criminal history, or impairment.
3. The training program is responsible to provide sufficient screening to identify those individuals that would be a risk to the vulnerable populations served by the certified nurse aide, home health aide, nurse aide or medication assistant and to submit that information to the department for review prior to entering the individual into a program.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-04. Nurse aide training program requirements.

1. Any individual employed by a nursing facility to provide nursing or nursing related services who is not a licensed nurse or volunteer or pursuing nurse aide certification and entry on the nurse aid registry must successfully complete a department-approved certified nurse aide training program consisting of a minimum of seventy-five hours and a department-approved competency evaluation or a department-approved competency evaluation.
 - a. The certified nurse aide training program must be under the general supervision of a qualified instructor.
 - (1) A qualified instructor for a certified nurse aide training is a licensed registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services.
 - (2) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides.
 - (3) In a nursing facility based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program.
 - (4) Other health-related professions who have a minimum of one year experience in their field may supplement the instructor.
 - b. Individuals employed by nursing facilities pursuing registration as a certified nurse aide must complete a minimum of sixteen hours of classroom training in the following areas from a department-approved nurse aide training program prior to any hands-on contact with residents or patients. The areas are:
 - (1) Communication and interpersonal skills;
 - (2) Infection control;
 - (3) Safety and emergency procedures, including the Heimlich maneuver;
 - (4) Promoting residents' independence; and
 - (5) Respecting residents' rights.

- c. The remainder of the seventy-five hour approved training and competency evaluation program must be completed within four months of the date of first employment in the facility as a nurse aide and must include at least sixteen hours of supervised practical training.
 - d. Other areas that are required to be addressed in the certified nurse aide training program include:
 - (1) Basic nursing skills;
 - (2) Personal care skills;
 - (3) Mental health and social service needs;
 - (4) Care of residents or clients with cognitive impairments;
 - (5) Basic restorative services; and
 - (6) Resident or patient rights.
 - e. Individuals may not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse.
 - f. Individuals trained and determined proficient by the instructor to provide specific services to residents who have not completed the competency evaluation program shall provide these services under the general supervision of a licensed registered nurse or a licensed nurse.
 - g. The certified nurse aide training program must ensure that individuals in the training program who are employed by or have an offer of employment from a nursing facility to work as a certified nurse aide are not charged for any portion of the nurse aide training program including fees for textbooks or other required course materials.
2. Any individual employed by a home health agency to provide home health aide services directly or by contract must successfully complete a home health aide training and competency evaluation program or competency evaluation program.
- a. The training program must total at least seventy-five clock hours, with at least sixteen of the seventy-five hours being devoted to classroom training prior to initiating the supervised practical

training. At least sixteen hours of the total program hours must be devoted to supervised practical training.

- b. The training, including supervised practical training, of the home health aides must be performed under the general supervision of a qualified instructor.
 - (1) A qualified instructor for a home health training program is a licensed registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health care services.
 - (2) Other professionals may be used to provide instruction under the supervision of the qualified instructor.
- c. The training must, at a minimum, include the following topics:
 - (1) Communication skills;
 - (2) Observation, reporting, and documentation of patient status and care or services furnished;
 - (3) Reading and recording of temperature, pulse, and respirations;
 - (4) Basic infection control procedures;
 - (5) Basic elements of body functioning and changes in body functioning that must be reported to an aide's supervisor;
 - (6) Maintenance of a clean, safe, and healthy environment;
 - (7) Recognizing emergencies and knowledge of emergency procedures;
 - (8) The physical, emotional, and developmental needs of and ways to work with the patients served;
 - (9) Patient rights;
 - (10) Appropriate and safe techniques in personal hygiene and grooming which include:

- (a) Bed bath;
 - (b) Sponge, tub, or shower bath;
 - (c) Shampoo, sink, tub, or bed;
 - (d) Oral hygiene; and
 - (e) Nail or skin care.
- (11) Safe transfer techniques and ambulation;
 - (12) Normal range of motion and positioning;
 - (13) Adequate nutrition and fluid intake; and
 - (14) Any other tasks the agency may choose to have the home health aide perform.
- d. The agency must maintain sufficient documentation to demonstrate that the requirements for the training of home health aides of this section are met.
3. Any individual who is employed by a health care facility or other setting that is not a nursing facility or a home health agency, directly or by contract, to provide nursing or nursing related services must successfully complete a nurse aide training under the direction of a qualified instructor and competency evaluation or competency evaluation.
- a. A qualified instructor for a nurse aide training program is a licensed nurse.
 - b. The training program must, at a minimum, include the following areas:
 - (1) Infection control;
 - (2) Safety and emergency procedures;
 - (3) Collection and documentation of basic subjective and objective client data including vital signs;

- (4) Activities of daily living (bathing, dressing, personal hygiene, oral hygiene, transfer, ambulation, toileting, eating) applicable to setting;
 - (5) Decision making skills;
 - (6) Client rights including freedom from abuse, neglect, misappropriation of client property, respect, privacy, dignity, and confidentiality;
 - (7) Communication and interpersonal skills; and
 - (8) Care of the client with cognitive impairments.
- c. The nurse aide may not need to be re-trained for each client cared for by the nurse aide, provided the nurse aide's knowledge and skills are maintained.
 - d. Additional training must be provided to nurse aides by a qualified instructor for clients whose needs or conditions would require variation from the typical manner the nursing related task would be performed.
 - e. The nurse aide shall perform the delegated nursing related task only on the client for whom the delegation is specified, exactly as taught, and in accordance with employers' policies or directives.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02,

Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-05. Nurse aide competency evaluation.

- 1. Any individual employed by a nursing facility to provide nursing or nursing related services, who is not a licensed nurse or volunteer, must successfully complete a department-approved certified nurse aide competency evaluation program to be eligible to apply to be placed on the department's nurse aide registry.
 - a. The department-approved certified nurse aide competency evaluation program must allow a nurse aide the option of establishing competency through written or oral and manual skills examination.
 - b. The written or oral examination must address all areas required in the department-approved training program.

- c. The written or oral examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.
 - d. The competency evaluation program must include a demonstration of the randomly selected tasks the individual will be expected to perform as part of the individual's function as a nurse aide.
 - e. The competency evaluation program must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations.
 - f. The competency evaluation program must ensure that nurse aides employed by or having an offer of employment from a facility are not charged for any portion of the competency evaluation program.
2. Any individual employed by a home health agency to provide home health aide services must complete a home health competency evaluation program to be eligible to apply to be placed on the department's nurse aide registry. The competency evaluation program consists of the following:
- a. The competency evaluation must be conducted by a licensed registered nurse who possesses a minimum of two years of nursing experience; at least one year must be in the provision of home health care.
 - b. The competency evaluation must address each of the items listed in subdivision c of subsection 2 of section 33-43-01-04.
 - (1) The items listed in paragraphs 3, 10, 11, and 12 of subdivision c of subsection 2 of section 33-43-01-04 must be completed by observation of the aide's performance of the tasks with a patient or other live individual.
 - (2) All other items listed in subdivision c of subsection 2 of section 33-43-01-04 can be evaluated through written or oral examination or observation of the aide with a patient.
 - c. A home health aide is not considered to have successfully passed a competency evaluation program if the aide has an unsatisfactory rating in more than one of the required areas.
 - (1) A home health aide cannot perform any task for which the aide is evaluated to perform unsatisfactorily unless under the direct supervision of a licensed nurse.

- (2) The home health aide must receive training in the areas determined unsatisfactory and pass a subsequent evaluation satisfactorily prior to performing a task without supervision.
 - d. The agency must maintain documentation that the competency evaluation requirements of this subsection have been met by each home health aide.
3. Any individual who is employed by a health care facility or other setting that is not a nursing facility or a home health agency directly or by contract must successfully complete a nurse aide competency evaluation program to be eligible to apply to be placed on the department's nurse aide registry.
- a. The competency evaluation program must be completed by a licensed nurse or employer.
 - b. The competency evaluation must, at a minimum, address the areas listed in subdivision a of subsection 3 of section 33-43-01-04.
 - c. A nurse aide is not considered to have successfully passed a competency evaluation program if the individual has an unsatisfactory rating in a required area identified in subdivision a of subsection 3 of section 33-43-01-04.
 - d. A nurse aide may perform tasks for which the aide has been competency evaluated to perform, and may not perform tasks for which the competency evaluation was unsatisfactory unless under the direct supervision of a licensed nurse.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02

Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-06. Administration of department approved nurse aide competency evaluation programs.

- 1. A certified nurse aide competency evaluation must be administered and evaluated by the department or a department-approved entity that is not a nursing facility licensed by the department.
 - a. The entity that administers the competency evaluation must advise the individual in advance that a record of the successful or unsuccessful completion of the evaluation will be included on the department's nurse aide registry.

- b. The skills demonstration portion of the test must be administered in the facility or laboratory setting comparable to the setting in which the individual will function.
 - c. The skills demonstration portion of the test must be administered and evaluated by a licensed registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age.
 - d. The department may permit the written or oral examination to be proctored by facility personnel if the department determines that the procedure adopted assures the competency evaluation is:
 - (1) Secure from tampering.
 - (2) Standardized and scored by a testing, educational, or other organization approved by the department.
 - (3) Exempt from any scoring by facility personnel.
 - e. The department shall retract the right to proctor nurse aide competency evaluations from facilities in which the department finds any evidence of impropriety, including tampering by facility personnel.
2. A home health aide competency evaluation program must be administered consistent with the requirements in subsection 2 of section 33-43-01-05 and may be evaluated for compliance periodically by the department. However, the department may permit the use of a home health aide competency evaluation program that is standardized and scored by a testing, educational, or other organization approved by the department.
 3. A nurse aide competency evaluation program must be administered consistent with the requirements in subsection 3 of section 33-43-01-05 and may be evaluated as determined necessary by the department.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02, 23-17.3-08

Law Implemented: NDCC 23-44-02, 23-17.3-05, 23-17.3-08

33-43-01-07. Withdrawal and approval of nurse aide training program status.

1. Certified nurse aide training program status withdrawal and approval of status is as follows:

- a. The department shall withdraw approval of a nursing facility based certified nurse aide training program when a determination has been made that the facility has been found to be out of compliance with significant federal certification or state licensure requirements. The facility may apply for reinstatement after providing evidence of remaining in compliance with significant requirements for a period of twenty-four consecutive months.
 - b. The department shall withdraw approval of a certified nurse aide training and competency evaluation program if the entity providing the program refuses to permit announced or unannounced visits by the department to ascertain compliance with program requirements.
 - c. Approval of a nurse aide training and competency evaluation program shall be granted by the department for a period not to exceed two years.
 - d. The department may approve only those certified nurse aide training programs that meet the requirements in subsection 1 of section 33-43-01-04.
2. Home Health aide training program status withdrawal and approval of training program status is as follows:
- a. A home health aide training program must meet the requirements of subsection 2 of section 33-43-01-04 to be considered approved by the department.
 - b. Home health agencies that have had state or federal enforcement action, other than the citation of deficiencies, filed against them in the past two years, are not eligible to operate a home health aide training program.
3. Nurse aide training withdrawal and approval of training status is as follows:
- a. Nurse aide training must meet the requirements of subsection 3 of section 33-43-01-04 to be considered approved by the department.
 - b. Failure to meet the requirements of subsection 3 of section 33-43-01-04 may result in a determination by the department that the entity can no longer provide nurse aide training until the requirements are met.

History: Effective July 1, 2011.

General Authority: NDCC 23-17.3-08, 23-44-02

Law Implemented: NDCC 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-08. Completion of the nurse aide competency evaluation program.

1. To complete the competency evaluation successfully the individual shall, at a minimum, successfully complete the competencies in subsection 1, 2, or 3 of section 33-43-01-05.
2. A record of successful completion of the competency evaluation for Individuals seeking registration as a certified nurse aide, home health aide, or nurse aide must be included in the nurse aide registry within fourteen days of the date the individual was found to be competent.
3. If the individual fails to complete the evaluation satisfactorily, the competency evaluation program must advise the individual of the areas in which the individual was adequate or inadequate, and that the individual has not more than three opportunities to take the competency evaluation.
4. If the individual seeking certification fails the competency evaluation on the third attempt, the individual must enroll in and complete a department approved certified nurse aide training program, home health aide training program, or nurse aide training program prior to taking the competency evaluation again.

History: Effective July 1, 2011.

General Authority: NDCC 23-17.3-08, 23-44-02

Law Implemented: NDCC 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-09. Registry information.

1. The department is responsible for the entering of individual names on the nurse aide registry upon receipt of information verifying completion of a department-approved certified nurse aide training and competency evaluation program or a department-approved certified nurse aide competency evaluation program, a home health aide training and competency evaluation program or a home health aide competency evaluation program, or a nurse aide competency evaluation program.
2. Upon the completion of a department approved medication assistant I competency evaluation program, or department approved medication assistant II competency evaluation program and application to the department, the department will add information to the certified nurse aide or nurse aide's registry listing verifying the completion of the medication assistant I or II program.
2. Information included on the registry must include name, address, social security number, birth date, registry categories, the date the nurse aide became eligible for entry on the registry, and the place of employment.

The social security number will not be included in registry information released to the public.

3. The department shall include documentation of validated findings of abuse, neglect, misappropriation of resident property, or other misconduct by the certified nurse aide, home health aide, nurse aide, medication assistant I or II on the registry when validated by the department.
4. Certified Nurse Aide applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be granted reciprocity and entered on the nurse aide registry and may use the title "certified nurse aide". The individual must meet North Dakota requirements for active registry status.
5. Nurse aides meeting the waiver provisions of twenty-four months of continuous employment as a nurse aide prior to December 19, 1989, granted by the department will be listed on the registry with a special designation. This designation will signify the nurse aide has been waived from training and testing requirements but is not certified.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02

Law Implemented: NDCC 23-01-11, 23-17.3-08, 23-44-02

33-43-01-10. Disclosure of information.

1. Information contained in the registry will be disclosable to any medicare or medicaid participating facility, nursing facility, home health agency, hospital, basic care facility, assisted living facility, ombudsman, other representative of an official agency or other individuals requesting information, upon request.
2. Upon request, the department shall provide the requester with the following information regarding individuals on the registry:
 - a. The date the individual's name was eligible for entry on the registry.
 - b. Any documented validated findings of abuse, neglect, misappropriation, or other misconduct including the nature of the allegation and summary of the evidence supporting the validated finding, the date and outcome of the hearing if one occurred, and any statement by the individual disputing the allegation that led to the validated finding.
 - c. Any additional information that the department deems necessary.

3. All information contained on the registry regarding a certified nurse aide, home health aide, nurse aide, or mediation assistant I or II will be provided to that individual upon written request to the department.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-11. Initial certified nurse aide, home health aide, and nurse aide registration and renewal. No individual may be employed to provide nursing or nursing related services as a certified nurse aide, home health aide, or nurse aide, or hold themselves out to be a certified nurse aide, home health aide, or nurse aide unless the individual is registered on the department's nurse aide registry according to this chapter.

1. An individual who applies for initial registry status as a certified nurse aide shall submit a completed certified nurse aide application and verification of successful completion of a department approved certified nurse aide training and competency evaluation program or competency evaluation program. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of certified nurse aide.
 - a. An individual who is enrolled in a department approved certified nurse aide training and competency evaluation program may be employed to perform nursing or nursing related services under the supervision of a nurse for no more than four months without obtaining registry status.
 - b. An individual who is not enrolled in a department approved certified nurse aide training program may not be employed in a nursing facility to provide nursing or nursing related services until the individual obtains registry status as a certified nurse aide.
 - c. Individuals who have met the requirements for registry listing as a certified nurse aide in other states, have a current registry status, and no validated finding may be endorsed onto the department's registry as a certified nurse aide.
 - d. Registry status is limited to twenty four months. Upon receipt of a completed certified nurse aide renewal application, and verification of employment within the immediate past twenty-four months, the certified nurse aide registry status will be updated to indicate current status.
 - e. A certified nurse aide who has not performed at least eight hours of nursing or nursing-related services for pay within a continuous twenty-four month period, shall complete a department-approved

training and competency evaluation program or a department-approved competency evaluation to renew current registry status.

- f. An individual seeking initial certified nurse aide registry status or registry renewal as a certified nurse aide on the department's nurse aide registry may not be charged a fee.
2. An individual who applies for initial registry status as a home health aide shall submit a completed home health aide application, a non-refundable fee of twenty-five dollars, and an attestation from a qualified instructor that the individual has successfully completed a home health aide training and competency program or home health aide competency program. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of home health aide.
 - a. An individual who is in a home health aide training and competency program may be employed to perform nursing or nursing related services under the supervision of a licensed nurse for no more than four months without obtaining registry status.
 - b. An individual who is not in a home health aide training program may not be employed by the home health agency to provide home health aide services until the individual obtains registry status as a home health nurse aide.
 - c. Initial registry listing will be subject to renewal on or before September thirtieth of the second year and every two years thereafter.
 - d. Upon receipt of a completed home health aide renewal application and a non-refundable fee of twenty-five dollars, the home health aide registry status will be updated to indicate current status.
 3. An individual who applies for initial registry status as a nurse aide shall submit a completed nurse aide application including documentation of verification of competency and a non-refundable fee of twenty-five dollars. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of nurse aide.
 - a. An individual who is in a nurse aide training and competency evaluation program may be employed to perform nursing or nursing related services under the supervision of a licensed nurse for no more than four months without obtaining registry status.

- b. An individual who is not in a nurse aide training program may not be employed as a nurse aide until the individual obtains registry status as a nurse aide.
- c. Initial registry listing will be subject to renewal on or before September thirtieth of the second year and every two years thereafter.
- d. Upon receipt of a completed nurse aide renewal application including verification of competence and a non-refundable fee of twenty-five dollars, the nurse aide registry will be updated to indicate current status.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02

Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-12. Supervision and delegation of nursing interventions. An individual on the department's nurse aide registry may perform nursing interventions which have been delegated by a licensed nurse. Individuals on the department's nurse aide registry as delegated and supervised by a licensed nurse:

- 1. Contributes to the assessment of the health status of clients, including interactions of clients with family members or group members by:
 - a. Collecting basic subjective and objective data from observations and interviews, including taking vital signs; and
 - b. Reporting and recording the collected data.
- 2. Identifies basic signs and symptoms of deviations from normal health status and provides basic information which licensed nurses use in identification of problems and needs.
- 3. Contributes to the development of the plan of care for individuals by reporting basic data.
- 4. Participates in the giving of direct care by:
 - a. Assisting with activities of daily living and encouraging self-care;
 - b. Providing comfort measures and emotional support to the client whose condition is stable and predictable;
 - c. Assisting with basic maintenance and restorative nursing;
 - d. Supporting a safe and healthy environment;

- e. Documenting and communicating completion of delegated nursing interventions and client responses; and
 - f. Seeking guidance and direction when appropriate.
5. Contributes to the evaluation by:
- a. Documenting and communicating client responses; and
 - b. Assisting with collection of data.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16.1

Law Implemented: NDCC 23-44-02, 43-12.1-16.1

33-43-01-13. Medication assistant requirements for supervision. An individual on the department's nurse aide registry may perform medication administration that has been delegated by a licensed nurse.

- 1. In a nursing facility, the licensed nurse must be on the unit and available for immediate direction.
- 2. In a health care facility where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must be available for direction.
- 3. In any other setting where the licensed nurse delegates the intervention of medication administration to another individual, the licensed nurse must establish in writing the process for providing the supervision in order to provide safeguards for the individual receiving the medication.
- 4. Delegation of medication administration in acute care settings or for individuals with unstable or changing nursing care needs is precluded by these rules.
- 5. The medication assistant requirements in this chapter do not apply to an individual who provides medication administration that is not registered under this chapter and is:
 - a. Within a correctional facility, in compliance with section 12-44.1-29;
 - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code 75-03-17;

- c. Within a treatment or care center for intellectual or developmentally disabled persons licensed under chapter 25-16;
- d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code 75-03-16;
- e. Within the developmental center at Westwood Park, Grafton, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services; or
- f. Within a human service center licensed under chapter 50-06.

History: July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16

Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-14. Medication assistant I training and competency evaluation program requirements. The medication assistant I program requirements are applicable to settings in which a licensed nurse is not regularly scheduled and provides direct or indirect supervision. The medication assistant I program consists of the theoretical concepts of medication administration and supervised clinical administration of medication. The curriculum must meet the requirements established by the department and include, at a minimum:

- 1. Instructor. A licensed registered nurse is responsible for the development of the theory, the laboratory or clinical component, and supervision of the medication assistant training program.
- 2. Course objectives. Described in terms of student outcome competencies, including the following:
 - a. Utilize the principles of safety in the administration of medication;
 - b. Define terms related to the administration of medications;
 - c. Correctly interpret abbreviations commonly used in administration of medications;
 - d. Know and apply laws related to medication administration;
 - e. Keep accurate records; and
 - f. Identify legal parameters of the medication assistant role.

3. Curriculum. The medication assistant program I curriculum for delegated medication administration must include:
 - a. Medication concepts:
 - (1) Terminology and standardized abbreviations;
 - (2) Classification of medications;
 - (3) Generic and trade names;
 - (4) Dosage, range, and action;
 - (5) Side effects;
 - (6) Medication routes; and
 - (7) References and sources of information.
 - b. Roles, responsibilities, legal aspects, and limitations of medication assistant I and licensed nurse:
 - (1) Scope of duties for a medication assistant I;
 - (2) Licensed nurse responsibilities in relationship to a medication assistant I;
 - (3) Client rights, including the right to refuse medication; and
 - (4) Knowledge of organization policy related to medication administration.
 - c. Methods for medication packaging.
 - d. Storage and disposal of medication.
 - e. Administering and charting medication:
 - (1) Preparation and administration of medications;
 - (2) Safety and six rights of medication administration;
 - (3) Use of medication administration record to:
 - (a) Administer medications; and
 - (b) Document of medication administration;

- (4) Prevention of medication errors; and
 - (5) Causes and reporting of medication errors.
- f. Standard precautions for infection control.
 - g. An overview of the major classes of medications related to body systems.
 - h. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.
 - i. Clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.
- 4. Medication assistant I program students must complete the clinical portion of the medication assistant program within six months of completion of the theory portion. Failure to do so will render the individual ineligible to administer medications.
 - 5. A passing score of eighty-five percent is required on the theory test with an opportunity to retake the test one time. If a student fails on a retake, additional instruction is required before further testing is allowed.
 - 6. Medication assistant I program students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the clinical skills checklist.
 - 7. During the clinical learning experience, the licensed nurse shall:
 - a. Provide direct over-the-shoulder supervision with initial medication pass;
 - b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and
 - c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.
 - 8. The medication assistant I program coordinator is required to submit to the department, within two weeks of completion of the course, a list of students successfully completing the medication assistant I program. The information submitted to the department for initial medication assistant I registration for each student must include:
 - a. Name and location of the institution and course title;

- b. Date of completion;
 - c. Full name, address, and social security number of the student;
 - b. The name and qualifications of the instructors;
 - c. The clinical facility or employer and address;
 - d. The facility clinical coordinator of each student who successfully completes the course;
 - e. Copies of the completed theoretical curriculum and clinical performance testing results for the student;
 - f. A copy of a certificate of successful completion, if awarded by the teaching institution;
 - h. A completed medication assistant I application; and
 - i. A non-refundable fee of twenty-five dollars.
9. Medication assistant I programs shall maintain records that are available for a period of seven years. Those records must include:
- a. Program records, including curriculum and evaluation tools for student performance, both theory and clinical.
 - b. Student records, including course start and completion date; clinical skills checklist; examination scores; and copy of certificate of successful completion.
10. The medication assistant I program will submit a renewal application for review by the department for a determination on continued approval at least every four years.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-15. Medication assistant II training and competency evaluation program requirements. The medication assistant II program requirements are applicable to settings in which a licensed nurse may or may not be regularly scheduled. The medication assistant II program consists of a minimal time frame: forty hours of theory, eight hours of laboratory, and thirty-two hours of clinical learning experience. The curriculum must meet the requirements in this section, and include at a minimum:

1. Instructor. A licensed registered nurse is responsible for the development of the theory, laboratory component, and supervision of the medication assistant II program. All medication administration as a part of the clinical learning experience must be supervised by a licensed nurse.
2. Course objectives. Described in terms of student outcome competencies, including the following:
 - a. Utilize the principles of safety in the administration of medication;
 - b. Define terms related to the administration of medications;
 - c. Correctly interpret abbreviations commonly used in administration of medications;
 - d. Know and apply laws related to medication administration;
 - e. Keep accurate records; and
 - f. Identify legal parameters of the medication assistant role.
3. Curriculum: The medication assistant program II curriculum for delegated medication administration must include:
 - a. Medication concepts:
 - (1) Terminology and standardized abbreviations;
 - (2) Classification of medications;
 - (3) Generic and trade names;
 - (4) Dosage, range, and action;
 - (5) Side effects;
 - (6) Medication routes; and
 - (7) References and sources of information.
 - b. Roles, responsibilities, legal aspects, and limitations of medication assistant II and licensed nurse:
 - (1) Scope of duties for a medication assistant II;
 - (2) Licensed nurse responsibilities in relationship to a medication assistant II;

- (3) Client rights, including the right to refuse medication;
 - (4) Laws related to medication administration; and
 - (5) Knowledge of organization policy related to medication administration.
- c. Methods for medication packaging.
- d. Storage and disposal of medication.
- e. Administering and charting medications:
- (1) Preparation and administration of medications;
 - (2) Safety and six rights of medication administration;
 - (3) Use of medication administration record to:
 - (a) Administer medications; and
 - (b) Document medication administration;
 - (4) Prevention of medication errors; and
 - (5) Causes and reporting of medication errors.
- f. Standard precautions for infection control.
- g. Major classes of medications related to body systems, including:
- (1) Cardiovascular;
 - (2) Endocrine;
 - (3) Gastrointestinal;
 - (4) Integumentary;
 - (5) Musculoskeletal;
 - (6) Nervous;
 - (7) Reproductive;
 - (8) Respiratory;

- (9) Sensory; and
 - (10) Urinary.
- h. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.
 - i. Laboratory and clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.
4. Medication assistant program II students who complete the classroom portion of the medication assistant program have six months from the completion of classroom instruction to successfully complete the clinical portion of the program. Failure to do so will render the individual ineligible to complete the clinical portion of the program, unless the individual has performed duties.
 5. Tests are developed for each unit in the curriculum, including a final test. A passing score of eighty-five percent is required on each unit test with an opportunity to retake each test one time. If a student fails on retake, additional instruction is required before further testing is allowed. The theory portion of the course must be successfully completed before beginning the clinical portion.
 6. Medication assistant students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the laboratory skills and clinical skills checklist.
 7. During the clinical learning experience, the licensed nurse shall:
 - (1) Provide direct over-the-shoulder supervision with initial medication pass;
 - (2) Observe and evaluate the student's performance until a ninety percent performance standard on the clinical checklist is obtained; and
 - (3) Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.
 8. The medication assistant II program coordinator is required to submit to the department, within two weeks of completion of the course, a list of students successfully completing the medication assistant II program. The information submitted to the department for initial medication assistant II registration for each student must include:

- (1) Name and location of the institution and course title;
 - (2) Date of completion;
 - (3) Full name, address, and social security number of the student;
 - (4) The name and qualifications of the instructors;
 - (5) The clinical facility or employer and address;
 - (6) The facility clinical coordinator of each student who successfully completes the course;
 - (7) Copies of the completed theoretical curriculum and clinical performance testing results for the student;
 - (8) A copy of a certificate of successful completion;
 - (9) A completed medication assistant II application; and
 - (10) A non-refundable fee of twenty-five dollars.
9. Medication assistant II programs shall maintain records that are available for a period of seven years. Those records must include:
- a. Program records, including curriculum and evaluation tools for student performance, both theory and clinical; and
 - b. Student records, including course start and completion date; laboratory and clinical skills checklist; examination scores; and copy of certificate of successful completion.
10. The medication assistant II program will submit a renewal application for review by the department for a determination on continued approval at least every four years.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-16. Specific delegation of medication administration. An individual on the department's nurse aide registry may be delegated the delivery of specific medication for a specific client by a licensed nurse if the following steps are followed:

1. Supply organization procedural guidelines for the certified nurse aide, home health aide, nurse aide, or medication assistant I or II to follow in the administration of medication by specific delegation.

2. Teach each certified nurse aide, home health aide, nurse aide or medication assistant I or II for each specific client's medication administration which includes verbal and written instruction for the specific client's individual medications including:
 - a. The medication trade name and generic name;
 - b. The purpose of the medication;
 - c. Signs and symptoms of common side effects, warnings, and precautions;
 - d. Route and frequency of administration; and
 - e. Instructions under which circumstances to contact the licensed nurse or licensed health care practitioner.
3. Observe the certified nurse aide, home health aide, nurse aide, or medication assistant I or II administering the medication to the specific client until competency is demonstrated.
4. Verify the certified nurse aide, home health aide, nurse aide, or medication assistant I or II's competency through a variety of methods, including oral quizzes, written tests, and observation. The licensed nurse verifies that the medication assistant:
 - a. Knows the six rights for each medication for the specific client: Right client, right medication, right dosage, right route, right time, and right documentation;
 - b. Knows the name of the medication and common dosage;
 - c. Knows the signs and symptoms of side effects for each medication;
 - d. Knows when to contact the licensed nurse;
 - e. Can administer the medication properly to the client; and
 - f. Documents medication administration according to organization policy.
5. Document the training of the medication assistant related to the specific delegation of medication administration for each client.

6. Evaluate the client when medication orders change and determine if further instruction for the certified nurse aide, home health aide, nurse aide or medication assistant I or II is necessary to implement the change.

History: July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16

Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-17. Routes or types of medication administration.

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to the organization policy.
2. Medication assistant students and medication assistants may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to the organization policy:
 - a. Oral, sublingual, and buccal medications;
 - b. Eye medications;
 - c. Ear medications;
 - d. Nasal medications;
 - e. Rectal medications and enemas;
 - f. Vaginal medications;
 - g. Skin ointments, topical medications, including patches and transdermal medications;
 - h. Metered hand-held inhalants; and
 - i. Unit dose nebulizers.
3. Medication assistants I and II may administer medications by the following routes only when specifically delegated by a licensed nurse for a specific client:
 - a. Gastrostomy;
 - b. Jejunostomy;
 - c. Subcutaneous; and

- d. Premeasured injectable medication for allergic reactions.
4. Medication assistant students and medication assistants I and II may not administer medications by the following routes:
- a. Central lines;
 - b. Colostomy;
 - c. Intramuscular injection;
 - d. Intravenous;
 - e. Intravenous lock;
 - f. Intrathecal;
 - g. Nasogastric tube;
 - h. Nonmetered inhaler;
 - i. Intradermal;
 - j. Nonunit dose aerosol or nebulizer; or
 - k. Urethral catheter.
5. Medication assistant students and medication assistants I and II may not administer the following kinds of medications:
- a. Barium and other diagnostic contrast media;
 - b. Chemotherapeutic agents except oral maintenance chemotherapy; or
 - c. Through any medication pumps, or assume responsibility for medication pumps, including client controlled analgesia.

History: July 1, 2011.

General Authority: NDCC 23-44-02.

Law Implemented: NDCC 23-44-02.

33-43-01-18. Pro re nata medications.

- 1. The decision to administer pro re nata medications cannot be delegated in situations where an onsite assessment of the client is required prior to administration.

2. Some situations allow the administering of pro re nata medications without directly involving the licensed nurse prior to each administration.
 - a. The decision regarding whether an onsite assessment is required is at the discretion of the licensed nurse.
 - b. Written parameters specific to an individual client's care must be written by the licensed nurse for use by the medication assistant when an onsite assessment is not required prior to administration of a medication. The written parameters:
 - (1) Supplement the physician's pro re nata order; and
 - (2) Provide the medication assistant with guidelines that are specific regarding the pro re nata medication.

History: July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16

Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-19. Medication interventions that may not be delegated. The medication assistant I or medication assistant II, or other individual listed on the department's nurse aide registry, may not perform the following acts even if delegated by a licensed nurse:

1. Conversion or calculation of medication dosage;
2. Assessment of client need for or response to medication; and
3. Nursing judgment regarding the administration of pro re nata medications.

History: July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16

Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-20. Medication assistant I and II initial registration and renewal. No individual may be employed as a medication assistant I or medication assistant II or hold themselves out to be a medication assistant I or medication assistant II unless the individual holds a registration as a medication assistant I or medication assistant II on the department's nurse aide registry. Individuals with delegated responsibility for administration of medication to a client as a Medication assistant I or II must hold current a current status on the department's registry as a certified nurse aide or nurse aide.

1. An application for registration as a medication assistant I or II and a non-refundable twenty-five dollar fee must be submitted to the department. Upon receipt of the required information, the department shall issue a medication assistant I or II registration consistent with the type of training and competency program completed.
 - a. A medication assistant I may work in settings where the licensed nurse is not regularly scheduled, however, may not work in a nursing facility or acute care setting, including clinics.
 - b. A medication assistant II may work in the same settings as the medication assistant I and nursing facilities, however, may not work in acute care settings, including clinics.
2. Individuals may obtain initial medication assistant I registration by successfully completing a department approved medication assistant I program.
3. Individuals may obtain initial medication assistant II registration by successfully completing a department approved medication assistant II program.
4. A certified nurse aide's initial and renewal medication assistant I or II registry listing will be subject to renewal on the same date as the individual's certified nurse aide registration, not to exceed two years. An initial medication assistant status will be submitted for renewal on the same date as the individual's nurse aide registration status, on or before September thirtieth of the second year and every two years thereafter.
 - a. The individual must submit a non-refundable twenty-five dollar renewal fee along with a completed medication assistant renewal application form including verification of continued competency by a licensed nurse.
 - b. Upon receipt and approval of the required information, the department will update the nurse aide registry to reflect current registration status.

History: July 1, 2011.

General Authority: NDCC 23-44-02, 43-12.1-16

Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-21. Complaint investigations.

1. The department will investigate a complaint reported involving individuals registered on the department's nurse aide registry.

2. The complaint investigation will be conducted according to the department's established complaint investigation policies and procedures.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-22. Disciplinary actions.

1. The department may deny, suspend, revoke or encumber the registration status of, or issue a letter of concern against, an individual listed on the department's nurse aide registry who:
 - a. Has obtained or attempted to obtain registration as a nurse aide by fraud, deceit, or intentional misrepresentation;
 - b. Has been convicted of a crime substantially related to the qualifications, functions, or duties of a nurse aide;
 - c. Has impersonated a licensed nurse or other licensed health care provider;
 - d. Has intentionally or negligently engaged in conduct that has resulted in a significant risk to the health or safety of a client or in injury to a client;
 - e. Is incapable of working with reasonable skill, competence, and safety for the public; or
 - f. Has misappropriated the property of, abused, or neglected a client.
2. An individual denied registration or an individual on the department's registry will be notified of their right to request a hearing regarding the department's decision to deny registration, revoke, suspend, or encumber the individual's registry status within 30 days of the notification.
3. If the employer continues to use the individual during the investigation process, the employer must take reasonable steps to prevent further harm to residents or clients.
4. If an individual listed on the department's nurse aide registry is determined to have practiced with an expired registration, the following actions will be taken:
 - a. If an individual on the department's nurse aide registry is identified as performing nursing related services for pay with an expired registration status of thirty days or less, the department will notify

the individual and the individual's employer, if known, that the individual must immediately cease to work until the renewal application process is completed and the individual's registry status becomes current.

- b. If an individual on the department's nurse aide registry is identified as performing nursing related services for pay with an expired registration of more than thirty days to six months, the department will notify the state survey agency, the employer, and the individual that the individual must immediately cease to work until the renewal application process is completed and the individual's registry status becomes current.
- c. If an individual on the department's nurse aide registry is identified as performing nursing related services for pay with an expired registration of more than six months, the department will notify the state survey agency, the employer, and the individual that the individual must immediately cease to work. The individual's registry status will no longer be recognized by the department. To obtain current registry status again, the individual must follow the process for initial application for registry status.

History: July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-23. Hearing process for individuals on the nurse aide registry.

- i. Individuals who have been denied registry status will be informed of the reasons why and provided an opportunity to a hearing consistent with this section.
- ii. Individuals registered on the department's registry against whom allegations of abuse, neglect, misappropriation of resident property or other misconduct are made will be:
 - a. Informed by the department of the allegations;
 - b. Informed of the investigation results; and
 - c. If the allegations are found valid, notified of their right to request a hearing regarding the department's decision to revoke, suspend, or encumber the individual's registry status within 30 days of the notification.

2. If a hearing is not timely requested, the department's finding will be final and the department will submit information specific to validated allegations to the registry.
3. If a hearing is timely requested, the department will apply to the office of administrative hearings for appointment of an administrative law judge. The office of administrative hearings will notify the accused of the date set for the hearing.
4. The administrative law judge will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If, through the department's investigation process, there is evidence that abuse, neglect, misappropriation of resident property, or other misconduct has occurred, the department will notify law enforcement officials and other officials as determined appropriate.
5. Allegations of abuse, neglect, misappropriation of resident property, or other misconduct by an individual on the department's nurse aide registry, validated by the department or through the hearing process, shall:
 - a. Be identified in the nurse aide registry within ten days of the validation; and
 - b. Remain on the registry permanently, unless the validation was made in error, the individual was found not guilty in a court of law, or the department is notified of the nurse aide's death. After a period of one year, an individual with a finding of neglect placed on the individual's registry listing may petition the state to have the finding removed from the individual's registry listing consistent with the process identified in section 33-43-01-24, if determined eligible by the department.
6. Within thirty days following the addition of information regarding a validation to the registry, the department will provide the individual on the department's nurse aide registry with a copy of all information which will be maintained in the registry.
7. Within thirty days of mailing the notification of a finding adverse to an individual on the department's nurse aide registry, the individual may contact the department and correct any misstatements or inaccuracies in the information regarding the individual maintained by the registry.
8. Any medicare or medicaid participating nursing facility, home health agency, hospital, basic care facility, assisted living facility, ombudsman, other representative of an official agency, or other individual with a need to

know may receive information contained in the registry by making a written request.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02, 28-32-02(1)

Law Implemented: NDCC 23-44-02

33-43-01-24. Review process for findings of neglect placed on an individual nurse aide's registry listing.

1. An individual on the department's nurse aide registry with a finding of neglect placed on the individual's nurse aide registry listing may petition the department in writing to have the finding removed from the individual's registry listing. The individual must provide the department with authorization for any releases of information the department deems appropriate in conducting the investigation. The department will consider whether to remove the finding from the registry when:
 - a. The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect. For the purposes of this section, a pattern is defined as two or more occurrences of abusive or neglectful behavior towards another individual which resulted in the potential for a negative outcome or an actual negative outcome to the other individual;
 - b. The neglect involved in the original finding was a singular occurrence that resulted in a potential or actual negative resident outcome; and
 - c. A background check, including a criminal history investigation or report, reveals no history of mistreatment findings, including instances of domestic abuse, the granting of a restraining order which has not been overturned, an adverse finding entered on any child abuse information index, or any conviction of any crime involving violence or the threat of violence.
2. Once a determination has been made by the department that the individual has met the criteria identified in subsection 1 and is eligible for review, the following steps will be taken:
 - a. The individual requesting the review must submit a written statement to the department, in a format prescribed by the department, which includes:
 - (1) An explanation of the incident;
 - (2) Why the individual believes the individual would not repeat

the incident;

- (3) Why the individual believes the individual is now competent; and
 - (4) Why the department should remove the finding from the individual's nurse aid registry listing, including any education or rehabilitation efforts that the individual has completed since the finding of neglect was placed on the individual's registry listing.
- b. The original incident, the written information submitted to the department under subdivision a, and any other information collected by the department shall be reviewed by a committee consisting of a staff member of the health department, a provider representative, and the state ombudsman.
- (1) The committee may consult with the department's attorney as deemed necessary.
 - (2) Information obtained by the department from sources other than the petitioning individual and the department's file regarding the original incident will be provided to the individual, who will have thirty days after mailing to respond to the committee in writing.
- c. The petition, all information contained in the department's file regarding the original incident, and information received by the department will be reviewed by the committee with consideration given to the following factors:
- (1) The degree of negligence;
 - (2) The severity of the potential negative resident outcome;
 - (3) The severity of the actual negative resident outcome;
 - (4) The forthrightness and cooperation of the individual;
 - (5) The opinion of the individual's employer at the time of the incident regarding removing the finding from the individual's registry listing, including the employer's willingness to rehire the individual;
 - (6) The resident's opinion as to willingness to be cared for by this individual again, if available;

- (7) Any rehabilitation or education completed by the individual since the incident; and
 - (8) Any other factors or considerations the committee determines to be pertinent to its decision. The committee may request additional information from the individual if more information is required to make a determination or if the committee deems a matter not addressed by the individual to be relevant.
 - d. Based on the review by the committee, with consideration given to the factors identified in subdivision c, the committee may:
 - (1) Remove the finding from the individual's registry listing;
 - (2) Require the individual demonstrate successful completion of a state-approved training and competency evaluation program prior to the finding being removed from the registry;
 - (3) Require the individual to complete a rehabilitation or education program as identified by the committee prior to the finding being removed from the registry;
 - (4) Require the individual to provide the committee with documentation that a nursing facility or health care facility has offered to employ the individual once the finding is removed from the individual's registry listing and that the nursing facility or health care facility is willing to monitor the resident care services provided by the individual;
 - (5) Identify an additional timeframe the finding will remain on the registry. The additional timeframe identified by the committee may range anywhere from one month to permanent placement on the registry;
 - (6) Take other action as identified appropriate by the committee;
or
 - (7) Implement any combination of the above actions.
3. The department must provide the individual and the registry with written results of the review within one hundred twenty days from the time the department has determined the individual is eligible for review and has received the written information submitted by the individual consistent with subdivisions a and b of subsection 1 and any additional information collected by the department.

4. The individual has only one opportunity to request the department to review the permanent placement of the neglect finding on their registry and to request the department remove the finding.
5. The review must be conducted based on written documentation submitted to the department. A face-to-face meeting with the individual may be requested by the committee as determined necessary.
6. The committee shall issue a written statement of fact, conclusions of law, and its order based upon findings and conclusions. This statement must be mailed to the individual requesting the review. An appeal for reconsideration of the order must be filed with the department within thirty days from the date the order is mailed. The department may allow a petition for reconsideration of the order if the petition is received within fifteen days after the statement is mailed. If the department is petitioned for reconsideration, the department will review and reconsider the determination. Upon completion of the review, the determination will become the final order for purposes of appeal.
7. If a new finding of neglect is placed on the individual's registry listing after the previous finding of neglect has been removed, the new finding will remain on the registry permanently with no opportunity for review.

History: Effective July 1, 2011.

General Authority: NDCC 23-44-02, 28-32-02(1)

Law Implemented: NDCC 23-01-03, 23-44-02, 28-32-05.2

33-43-01-25. Grandfather provisions. The department will grandfather the approval and current registry status of the nurse aides, home health aides, and medication assistants I and IIs and related training programs transferred from the North Dakota board of nursing to the North Dakota department of health July 1, 2011 until the next renewal date consistent with this chapter.

History: July 1, 2011.

General Authority: NDCC 23-44-02

Law Implemented: NDCC 23-44-02

33-43-01-26. Waiver provision. Any provisions of this chapter may be waived by the department for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the clients and would result in unreasonable hardship upon the entity requesting the waiver. A waiver may be granted for a specific period of time not to exceed one year and shall expire on December thirty-first of the year issued.

History: Effective July 1, 2011.

General Authority: NDCC 23-01-03, 23-44-02, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02, 23-44-02

Chapter 33-33-09 Assisted Living Facilities

Section

- 33-33-09-01 Emergency Lighting
- 33-33-09-02 Fire/Evacuation Drills
- 33-33-09-03 Automated Defibrillators
- 33-33-09-04 Sprinkler Systems

33-33-09-01. Emergency lighting. Emergency lighting for means of egress shall be provided in all assisted living facilities with more than twenty-five rooms. Emergency illumination shall be provided for not less than 1 ½ hours in the event of failure of normal lighting. Emergency lighting facilities shall be arranged to provide initial illumination that is not less than an average of one foot-candle (10 lux). Where each sleeping room has a direct exit to the outside of the building at ground level, no emergency lighting shall be required.

33-33-09-02. Fire evacuation plan/drills. All assisted living facilities must have a current, written emergency disaster plan. That plan must contain a plan for evacuation, addresses elements of sheltering in place, identifies temporary relocation sites, and details staff assignments in the event of a disaster or an emergency. The emergency disaster plan must be posted prominently in the facility and be available to emergency responders.

33-33-09-03. Automated defibrillators. All assisted living facilities with seventeen or more beds are required to have an automated defibrillator.

33-33-09-04. Sprinkler systems. If sprinkled, systems should be inspected and maintained according to NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. Smoke detection systems shall be installed and maintained as specified in NDAC chapter 33-33-05.