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

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

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

(1) Sections 26B-1-202, and 26B-7-402 authorize this rule.

(2) The purpose of this rule is to safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented by:

(a) setting standards for management, personnel, food operations, equipment, and facilities; and

(b) providing conditions for food establishment plan review, permit issuance, inspection, employee health, and permit enforcement.

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

(1) "Agritourism food establishment" has the same meaning as defined in Section 26B-7-401.

(2) "Department" means the Department of Health and Human Services.

(3) "FDA Food Code" or "Food Code" means the version of U.S. Public Health Service, Food and Drug Administration, Model Food Code as incorporated by reference with exceptions and amendments in this rule.

(4) "Local health department" has the same meaning as defined in Section 26A-1-102.

(5) "Microenterprise home kitchen" has the same meaning as defined in Section 26B-7-401.

(6) "Mobile food business" means a food truck or food cart as defined in Rule R392-102

(7) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(8) "Recovery residence" has the same meaning as defined in Subsection 26B-2-101(36).

(9) "Residential support program" has the same meaning as defined in Subsection 26B-2-101(38).

(10) "Residential treatment" has the same meaning as defined in Subsection 26B-2-101(39).

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

(1) The following food service establishments are exempt from the requirements of this rule:

(a) a mobile food business;

(b) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children;

(c) a residential treatment program, residential support program, or recovery residence, as defined in this rule and in Rule R392-110, that provides a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider;

(d) an agritourism food establishment; and

(e) a microenterprise home kitchen.

(2) A mobile food business operator shall comply with Rule R392-102.

(3) The following shall comply with Rule R392-110:

(a) certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children;

(b) residential treatment programs;

(c) residential support programs; and

(d) recovery residences providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider.

(4) An agritourism food establishment operator shall comply with Rule R392-105.

(5) A microenterprise home kitchen shall comply with Rule R392-106.

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

(1) The department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342; and

(b) The 2022 version of the U.S. Food and Drug Administration Food Code (Food Code), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments as established in Subsections R392-100-4(2) and R392-100-4(3).

(2) The following provisions of the Food Code are not incorporated into this rule:

(a) Paragraph 5-203.15(B);

(b) Paragraphs 5-402.11(B), (C) and (D);

(c) Section 8-302.14;

(d) Paragraph 8-304.11(K);

(e) Annex 1, Section 8-909-20; and

(f) Annex 1, Paragraph 8-911.10(B).

(3)(a) This rule incorporates by reference Paragraph 1-201.10(B) of the Food Code with the following amendments:

(i) "Core Item(1)" is amended to read, "'Core Item' also referred to as "non-critical" means a provision in the Food Code that is not designated as a Priority Item or a Priority Foundation Item;

(ii) "Food Establishment(2)" is amended to add Subparagraph (c) to read:

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

(iii) "Food Establishment(3)" is amended to add Subparagraph (h), (i), (j), (k), (l), (m), and (n) to read:

"(3)(h) an agritourism food establishment

(3)(i) a mobile food business;

(3)(j) a microenterprise home kitchen

(3)(k) a certified or licensed childcare facility, including a residence, that provides care for 16 or fewer children;

(3)(l) a residential treatment program;

(3)(m) a residential support program; and

(3)(n) a recovery residence providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider."

(iv) "Person in charge" is amended to read:

"'Person in charge' means:

(1) the certified food safety manager; or

(2) a designated individual who is:

(a) knowledgeable in:

(i) day-to-day operations of the food establishment;

(ii) foodborne disease prevention principles; and

(iii) the requirements of this rule;

(b) responsible for monitoring and managing food safety operations; and

(c) authorized to take appropriate preventive and corrective actions to ensure compliance with this rule."

(v) A definition of "potentially hazardous food" is added to read:

"'Potentially hazardous food' means the same as 'time/temperature control for safety food.'"

(vi) "Priority Item(1)" is amended to read:

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

(vii) "Priority Foundation Item(1)" is amended to read:

"'Priority foundation item', also referred to as 'critical 2', means a provision in the Food Code that supports, facilitates, or enables one or more Priority Items."

(viii) A definition of "small producer" is added to read:

"'Small producer' has the same meaning as provided in Subsection 4-4-103(11)."

(b) Paragraph 2-102.12(A) of the Food Code is amended to read:

"(A) At least one employee who has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food safety manager who has completed training and obtained certification as required under Section 26B-7-412 and Rule R392-101."

(c) After Section 2-102.12 of the Food Code, a new section is added to read:

"2-102.13 Food Employee Training. Food employees shall complete training in food safety as required under Section 26B-7-413 and Rule R392-103."

(d) Paragraph 3-201.16(A) of the Food Code is amended to read:

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

(e) Section 3-202.13 of the Food Code is amended to read:

"(A) Shell eggs shall be received in a clean and sound condition.

(B) Except for shell eggs that are purchased from a small producer, shell eggs may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified by Rule R70-410.

(C) Shell eggs may not be addled or moldy, and may not contain any:

(1) black spot;

(2) black rot;

(3) white rot;

(4) blood ring;

(5) adherent yolk; or

(6) bloody or green albumen."

(f) Section 5-101.12 of the Food Code is amended to read:

"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. This process shall be completed in accordance with the American National Standards Institute (ANSI) and American Water Works Association (AWWA) C651-14 (February 1, 2015) for disinfection and testing."

(g) Section 5-202.13 of the Food Code is amended to label the existing paragraph "(A)" and include Paragraph (B) to read:

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

(h) Section 5-202.14 of the Food Code is amended to read:

"A backflow or backsiphonage prevention device shall be constructed, installed, and tested according to the requirements in Plumbing Code. Each backflow or backsiphonage prevention device shall be maintained in good working order."

(i) Section 5-203.14 of the Food Code is amended to read:

"(A) A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached, by:

(1) providing an air gap as specified under Section 5-202.13; or

(2) installing an approved backflow prevention device as specified under Section 5-202.14; and

(B) Each chemical dispenser shall connect to a separate dedicated water supply line, and not downstream of an atmospheric vacuum breaker."

(j) Paragraph 5-203.15(A) of the Food Code is amended to read:

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

(i) carbonated beverage dispenser;

(ii) coffee machine; or

(iii) noncarbonated beverage dispenser."

(k) Paragraph 5-402.11(A) of the Food Code is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(l) Section 6-202.14 of the Food Code is amended to read:

"A toilet room shall be completely enclosed and provided with a solid self-closing door, except where a toilet room:

(A) is located outside a food establishment;

(B) does not open directly into the food establishment such as a toilet room that is provided in a shopping mall; or

(C) does not open directly into the food preparation area, food service area, or a hallway leading directly into a food preparation or food service area."

(m) Paragraph 6-501.115(B) is amended to read:

"(B) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result:

(1) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(2) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(3) in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(4) pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(a) effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(b) condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(c) dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

(5) in areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and

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

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

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

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

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

(ii) are at least 8 inches by 10 inches in size with lettering that is high contrast and at least 5/8 of an inch in height;

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

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

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

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

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

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

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

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

(n) Section 8-103.10 of the Food Code is amended to label the existing paragraph "(A)" and include Paragraph (B) to read:

"(B) A food establishment seeking a variance from Food Code requirements that has a retail food facility location in more than one local health department jurisdiction in the state shall submit a variance request, as described in Subsection R392-100-4(3)(o), to the department."

(o) Section 8-103.11 of the Food Code is amended to read:

"Before a variance from a requirement of this code is approved, the person requesting the variance shall provide the following information, which shall be retained in the regulatory authority's file on the food establishment:

(a) the name of the business for which the variance is being requested;

(b) a designated point of contact and contact information of the business for which the variance is being requested;

(c) the location of the facility or establishment for which the variance is being requested;

(d) the citation of each Food Code section or paragraph for which the variance is being requested;

(e) a statement as to why the applicant cannot comply with the Food Code section or subsection for which the variance is being requested;

(f) the nature and duration of the variance being requested;

(g) a statement of how the intent of the code will be met and the reasons why the public health or safety, or the environment, would not be endangered or jeopardized if the variance were to be granted;

(h) technical justification or a detailed explanation of the variance conditions that provide the protection of public health and safety, and the environment, for each applicable Food Code section or paragraph;

(i) a full description of any policies, procedures, active managerial controls, or equipment that the applicant proposes to use to rectify any potential increase in health or safety risks created by granting the variance; and

(j) operation and maintenance requirements of the variance condition including a HACCP plan if required as specified under Paragraph 8-201.13(A) that includes the information specified under Section 8-201.14 as it is relevant to the variance requested."

(p) Section 8-302.14 of the Food Code is amended to read:

(i) "The application, in conjunction with any supplemental risk assessment documents, shall include:

(A) the name, mailing address, email address if applicable, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;"

(ii) Paragraphs 8-302.14(B), 8-302.14(C), 8-302.14(D), 8-302.14(E), 8-302.14(F), 8-302.14(G), and 8-302.14(H) of the Food Code are not amended.

(q) Paragraph 8-304.10(A) is amended to read:

"(A) At the time a permit is first issued, the local health department shall provide to the permit holder a notice or a referral regarding how to access a copy of FDA Food Code adopted in Rule R392-100, according to the policy of the local health department."

(r) Subparagraph 8-401.10(B)(2) is amended to read:

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

(s) Section 8-501.10 is amended to add Paragraph (C) to read:

"(C) Complying with reporting requirements specified in Rule R386-702 and Rule R386-703."

(t) Annex 1, Section 8-601.10 is amended to read:

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

(u) Annex 1, Section 8-801.30 is amended to read;

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

(B) A local health department may establish its own service and notice procedures in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraph 8-801.30(A)."

(v) Annex 1, Section 8-903.10 is amended to add Paragraph (C) to read:

"(C) A local health department is authorized to impound adulterated food products as provided by Section 26B-7-414."

(w) Annex 1, Section 8-903.60 is amended to read:

"A local health department may examine, sample, and test food to determine its compliance with the Food Code."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

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

(y) Annex 1, Paragraph 8-905.10 is amended to add Paragraph (E) to read:

"(E) A local health department may establish its own administrative hearing basis and time for response requirements in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraphs 8-905.10(A), 8-905.10(B), 8-905.10(C), and 8-905.10(D)."

(z) Annex 1, Paragraph 8-905.20 is amended to add Paragraph (D) to read:

"(D) A local health department may establish its own response form and contents requirements in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraphs 8-905.20(A), 8-905.20(B), and 8-905.20(C)."

(aa) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in Paragraph (B) of this section, within five calendar days after receiving a written request for an appeal hearing from:"

(bb) Annex 1, Subparagraph 8-905.50(A)(2) is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in Paragraph 8-905.10(C) or for matters as determined necessary by the local health department."

(cc) Annex 1, Paragraph 8-905.50 is amended to add Paragraph (C) to read:

"(C) A local health department may establish its own appeal proceeding procedures in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraphs 8-905.50(A) and 8-905.50(B)."

(dd) Annex 1, Paragraph 8-905.60 is amended to add Paragraph (B) to read:

"(B) A local health department may establish its own hearing notice requirements in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraph 8-905.60."

(ee) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public except under compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other privacy matter that is protected under federal or state law."

(ff) Annex 1, Paragraph 8-905.90 is amended to add Paragraph (C) to read:

"(C) A local health department may establish its own hearing confidentiality policy in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraphs 8-905.90(A) and 8-905.90(B)."

(gg) Annex 1, Paragraph 8-906.30(B) is amended to read:

"(B) Unless a party appeals to the local health officer within ten calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(hh) Annex 1, Paragraph 8-906.30 is amended to add Paragraph (C) to read:

"(C) A local health department may establish its own hearing officer powers in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraphs 8-906.30(A) and 8-906.30(B)."

(ii) Annex 1, Paragraph 8-907.60 is amended to label the existing paragraph (A) and include Paragraph (B) to read:

"(B) A local health department may establish its own documentary evidence policy in accordance with Utah Code and constitutional requirements to supersede the requirements in Paragraph 8-907.60(A)."

(jj) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their right to a hearing on the matter, including judicial review."

(kk) Annex 1, Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates this rule may be assessed a civil penalty as provided in Section 26B-1-224."

(ll) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Section 8-911.10, or to being enjoined as specified in Section 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Sections 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding $5,000."

(mm) Annex 1, Section 8-913.10 is amended to add Paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

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

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

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

**Date of Last Change: May 8, 2024**

**Notice of Continuation: November 1, 2021**

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