



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

MEMORANDUM

DATE: May 28, 2021

TO: Rulemaking Interested Persons

FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and Director of Regulatory and Legal Affairs, Division of Public Health

RE: Notification of Proposed Rule Actions: 15A NCAC 18A .2650, .2651, .2652, .2653, .2654, .2655, .2661, .2670, and .2674

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Commission for Public Health (CPH) is proposing to amend 15A NCAC 18A .2651-.2655, .2661 and readopt with substantive changes rules 15A NCAC 18A .2650, .2670, and .2674. These rule actions are proposed in order to update these rules to align with the United States Food and Drug Administration's 2017 Food Code and Supplement as well as to reflect current requirements and practices, clarify language, and comply with the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. CPH has submitted notice of its intent to amend and readopt these rules to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for the proposed rules and approved by CPH. The proposed rules are expected to have an impact on state funds, local funds, and the private sector, which in aggregate is estimated to result in a substantial economic impact. The fiscal note was initially approved by the NC Office of State Budget and Management (OSBM) on April 20, 2021 with a revised version approved on April 29, 2021.

The notice of text that will be published in the NC Register on June 1, 2021 is attached to this memorandum and may be found on or after June 1, 2021 at OAH's website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rules and fiscal note may be found on the CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on these rules is scheduled for Monday, June 28, 2021 at 10:00 am. The public hearing will be held by teleconference. You may participate in the public hearing by dialing 919-715-0769. No access code is required.

CPH is accepting public comments on the proposed rules from June 1, 2021 through August 2, 2021. You may submit comments by email to cphcomment@lists.ncmail.net or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of these rules is October 1, 2021.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Should you have questions related to this memorandum, the proposed rules, or the fiscal note, please contact Mr. Shane Smith, Food Protection and Facilities Branch Head, Environmental Health Section, Division of Public Health at (919) 210-3663.

Attachment

cc: Dr. Ronald May, Chair, Commission for Public Health
Mr. Mark Benton, Assistant Secretary for Public Health, Division of Public Health
Mr. Larry Michael, Environmental Health Section Chief, Division of Public Health
Mr. Shane Smith, Food Protection and Facilities Branch Head, Division of Public Health
Ms. Kirsten Leloudis, Program Manager, Regulatory and Legal Affairs, Division of Public Health

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to amend the rules cited as 15A NCAC 18A .2651-.2655, .2661 and readopt with substantive changes the rules cited as 15A NCAC 18A .2650, .2670, and .2674.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://cph.publichealth.nc.gov/>

Proposed Effective Date: *October 1, 2021*

Public Hearing:

Date: *June 28, 2021*

Time: *10:00 a.m.*

Location: *This public hearing will be held by teleconference at (919) 715-0769 (no access code).*

Reason for Proposed Action: *The North Carolina Commission for Public Health is proposing to update these rules to align with the United States Food and Drug Administration's 2017 Food Code and Supplement as well as to reflect current requirements and practices and clarify language. In addition, 15A NCAC 18A .2650, .2670, and .2674 are being readopted with substantive changes pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

Comments may be submitted to: *Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net*

Comment period ends: *August 2, 2021*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

15A NCAC 18A .2650 GENERAL – ADOPTION BY REFERENCE

The ~~2009~~ 2017 Food Code, Code and the accompanying 2017 Food Code Supplement, not including subsequent amendments and editions, established by the U.S. Department of Health and Human Services, Food and Drug Administration (hereinafter referred to as the "Food Code") is are hereby incorporated by reference. ~~The~~ A copy of the Food Code is available online and free of charge at: www.fda.gov/food/fda-food-code/food-code-2017. ~~may be accessed from the internet at~~ www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm, ~~or a copy can be obtained by contacting the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available for inspection at the Division of Public Health, N.C. Department of Health and Human Services.~~

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012.

15A NCAC 18A .2651 DEFINITIONS

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 1, the following apply:

- (1) In Paragraph 1-201.10(B), add: "'Commissary' means a food establishment that services a mobile food unit or a pushcart."
- (2) In Paragraph 1-201.10(B), add: "'Congregate nutrition sites' means food establishments where food preparation is limited to same day service, reheating of ~~potentially hazardous food (time/temperature control for safety food),~~ time/temperature control for safety food, and operated under the rules of the Division of Aging and Adult Services, N.C. Department of Health and Human Services."
- (3) In Paragraph 1-201.10(B), add: "'Department' means the N.C. Department of Health and Human Services."
- (4) In Paragraph 1-201.10(B), "Equipment (1)" to read: "means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, or warewashing machine."
- ~~(4)~~(5) In Paragraph 1-201.10(B), amend "Food establishment (2)(b)" to read: "An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises."
- ~~(5)~~(6) In Paragraph 1-201.10(B), amend "Food establishment (3)" to read: "'Food establishment' does not include entities exempted as described in G.S. 130A-250 or establishments that only serve such items as dip ice cream, popcorn, candied apples, or cotton candy."
- ~~(6)~~(7) In Paragraph 1-201.10(B), add: "'Food stand' means a food establishment that prepares or serves food and that ~~does not only provide~~ provides seating facilities ~~for customers to use while eating or drinking-~~ as set forth in G.S. 130A-248(a6)."
- ~~(7)~~(8) In Paragraph 1-201.10(B), add: "'Good repair' means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654."
- ~~(8)~~(9) In Paragraph 1-201.10(B), amend "Imminent health hazard" ~~to:~~ to read: "'Imminent health hazard' means an imminent hazard as defined in G.S. 130A-2(3)."
- ~~(9)~~(10) In Paragraph 1-201.10(B), add: "'Limited food services establishment' means a food establishment as defined in G.S. 130A-247(7)."
- ~~(10)~~(11) In Paragraph 1-201.10(B), add: "'Local health director' means a local health director as defined in G.S. 130A-2(6)."
- ~~(11)~~(12) In Paragraph 1-201.10(B), amend "Meat" to read: "'Meat' means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goat, other edible animals, and as defined in G.S. 106-549.15(14), except fish, poultry, and wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4)."
- ~~(12)~~(13) In Paragraph 1-201.10(B), add: "'Mobile food unit' means a food establishment ~~or pushcart with no permanent utility connections, except for an onsite electrical connection, that is~~ designed to be readily moved and vend food. ~~food~~ food and that does not provide seating facilities for customers to use while eating or drinking."
- ~~(13)~~(14) In Paragraph 1-201.10(B), amend "Person" ~~to:~~ to read: "'Person' means person as defined in G.S. 130A-2(7)."
- ~~(14)~~(15) In Paragraph 1-201.10(B), amend "Poultry (1)" to read: "Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry, and G.S. 106-549.51(26); and"
- ~~(15)~~(16) In Paragraph 1-201.10(B), add: "'Pushcart' means a mobile piece of equipment or vehicle used to vend food."
- ~~(16)~~(17) In Paragraph 1-201.10(B), add: "'Registered Environmental Health Specialist' means a Registered Environmental Health Specialist as defined in G.S. 90A-51(2b) and 90A-51(4) and authorized agent of the Department."
- ~~(17)~~(18) In Paragraph 1-201.10(B), ~~add:~~ amend "Regulatory Authority" to read: "'Regulatory Authority' means the Department or authorized agent of the Department."
- ~~(18)~~(19) In Paragraph 1-201.10(B), add: "'Restaurant' means a food establishment that prepares or serves food and provides seating."
- ~~(19)~~(20) In Paragraph 1-201.10(B), add: "'Supplemental cooking room' means a separate attached or detached structure in that food is cooked on grills, pits, or fireplaces and no other processing occurs."
- ~~(20)~~(21) In Paragraph 1-201.10(B), amend "Temporary food establishment" ~~to:~~ to read: "(1) "Temporary 'Temporary food establishment' means a food establishment that operates for a period of time not to exceed 21 days in one location, affiliated with and endorsed by a transitory fair, carnival, circus, festival, or public exhibition. Food establishments that operate in the same event location for more than 21 days per calendar year are not eligible for a temporary food establishment permit. Domestic yard sales and businesses such as auctions, flea markets, or farmers' markets are not eligible for a temporary food establishment permit." as defined in G.S. 130A-247(8).(2) 'Temporary food establishment' does not include domestic yard sales and businesses such as auctions and flea markets."
- ~~(21)~~(22) In Paragraph 1-201.10(B), add: "'Temporary food establishment commissary' means a food establishment affiliated with a temporary food establishment that prepares food in advance ~~of or off-site.~~ off-site from the event. The temporary food establishment commissary permit shall be valid for no more than ~~21 consecutive days~~ the time period described in G.S. 130A-247(8) and shall be permitted no more than 7 days prior to commencement of the event. Food establishments that operate in the same location for more than ~~21 days~~ the time period described in G.S. 130A-247(8) per calendar year are not eligible for a temporary food establishment commissary permit. Food shall not be sold directly from the temporary food establishment commissary. The temporary food establishment commissary shall comply with all temporary food establishment requirements."
- ~~(22)~~(23) In Paragraph 1-201.10(B), add: "'Transitional Permit' means ~~a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment~~

~~problems that do not represent an immediate threat to public health, as defined at G.S. 130A-248(c). The transitional permit shall expire 180 days after the date of issuance."~~

~~(23)(24)~~ In Paragraph 1-201.10(B), delete the definition of "Vending machine."

~~(24)(25)~~ In Paragraph 1-201.10(B), delete the definition of "Vending machine location."

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2652 MANAGEMENT AND PERSONNEL

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 2, the following apply:

- (1) In Paragraph 2-101.11(B), amend to read: "In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises."
- (2) In ~~Section Paragraph 2-102.11, 2-102.11(A)~~, amend ~~the last sentence in the first paragraph to:~~ to read: "The person in charge shall demonstrate this knowledge by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program. The person in charge is not required to be a certified food protection manager when the food establishment is not operating and food is not being prepared, packaged, or served for immediate consumption." "Complying with this code by having no violations of priority items during the current inspection; or"
- (3) In Section 2-102.11, delete (A), (B), and (C).
- (4) In Subpart 2-102, add Section 2-102.12, Certified Food Protection Manager, to read: "2-102.12 Certified Food Protection Manager.
(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 protection manager who has shown proficiency of required information through passing a test that is part of an American National Standards Institute (ANSI) accredited program.~~
(B) ~~This section does not apply to congregate nutrition sites and Risk Category I food establishments as defined in 10A NCAC 46 .0213."~~
(C) ~~The requirements of this section are effective on January 1, 2014.~~
- ~~(5)(3)~~ In Section 2-102.20, replace "~~Paragraph 2-102.11(B)~~" with "Section 2-102.11." In Paragraph 2-102.12(B), amend to read: "This section does not apply to congregate nutrition sites and Risk Category I food establishments as defined in 10A NCAC 46 .0213."

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2653 FOOD

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 3, the following apply:

- (1) In Paragraph 3-201.11(A), add at the end: "Food from food establishments in states adjacent to North Carolina may be sold within North Carolina if the food establishments are under jurisdiction of the local or state enforcement body in that originating state and approved by the regulatory authority in North ~~Carolina~~. Carolina in accordance with G.S. 130A-248(b). To determine the extent of compliance with this Code, the regulatory authority shall obtain reports regarding compliance and compliance history from responsible authorities in other jurisdictions where the food establishments are located."
- (2) In Paragraph 3-301.11(B), amend to read: "Except when washing fruits and vegetables as specified under Section 3-302.15 or as specified in Paragraphs (D) and (E) of this section, food employees may not contact exposed ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single use gloves, or dispensing equipment."
- (3) In Paragraph 3-301.11(D), amend to read: "Paragraph (B) of this section does not apply to a food employee who contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 74°C (165°F)."
- (4) In Section 3-301.11, redesignate existing Paragraph (D) as new Paragraph (E).
- (5) In Subparagraph 3-301.11(D)(7), replace "~~(D)(1)-(6)~~" with "(E)(1)-(6)."
- ~~(6)(2)~~ Delete Section 3-305.13.
- ~~(7)(3)~~ In Section 3-306.12, delete (B).

- (8) In Paragraph 3-403.11(D), amend to read: "Reheating for hot holding as specified under Paragraphs (A) through (C) of this section shall be completed within 2 hours and the time the food is between 5°C (41°F) or 7°C (45°F) and the temperatures specified under Paragraphs (A) through (C) of this section may not exceed 2 hours."
- (9) In Paragraph 3-501.12(A), amend to read: "Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b)."
- (10) In Paragraph 3-501.13(A), amend to read: "Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b)."
- (11) In Paragraph 3-501.13(B), amend to read:
 "Completely submerged under running water:
 (1) At a water temperature of 21°C (70°F) or below,
 (2) With sufficient water velocity to agitate and float off loose particles in an overflow,
 (3) Such that for ready to eat food, the temperature of thawed portions do not rise above 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b), and
 (4) Such that for raw animal food requiring cooking as specified under Paragraph 3-401.11(A) or (B), thawed portions are not above 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b), for more than 4 hours including:
 (a) The time the food is exposed to the running water and the time needed for preparation for cooking, or
 (b) The time it takes under refrigeration to lower the food temperature to 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b);"
- (12) In Subparagraph 3-501.14(A)(2), amend to read: "Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b)."
- (13) In Paragraph 3-501.14(B), amend to read: "Potentially hazardous food (time/temperature control for safety food) shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b) if prepared from ingredients at ambient temperature such as reconstituted foods and canned tuna."
- (14) In Subparagraph 3-501.16(A)(2), amend to read:
 "At a temperature specified in the following:
 (a) 5°C (41°F) or less; or
 (b) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:
 (i) The equipment is in place and in use in the food establishment; and
 (ii) On or before, January 1, 2019, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."
- (15) In Paragraph 3-501.17(A), amend to read:
 "(A) Except when packaging food using a reduced oxygen packaging method as specified under Section 3-502.12, and except as specified in Paragraphs (D) and (E) of this section, refrigerated, ready to eat, potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be 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 below. The day of preparation shall be counted as Day 1.
 (1) 5°C (41°F) or less for a maximum of 7 days; or
 (2) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) for a maximum of 4 days in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:
 (a) The equipment is in place and in use in the food establishment, and
 (b) On or before, January 1, 2019, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."
- (16) In Paragraph 3-501.19(B), amend to read: "If time without temperature control is used as the public health control up to a maximum of 4 hours:"
- (17) In Subparagraph 3-501.19(B)(1), amend to read: "The food shall have an initial temperature of 5°C (41°F) or less, or 7°C (45°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control;"
- (18) In Paragraph 3-301.11(D), amend to read: "Food employees may not contact ready to eat food as specified under Paragraphs 3-301.11(B) and (E)."

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2654 EQUIPMENT, UTENSILS, AND LINENS

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 4, the following apply:

- (1) Delete Sections 4-204.14, 4-204.19, 4-204.111, 4-204.121, and 4-204.123.
- (2) In Section 4-205.10, amend to read: "Except for toasters, mixers, microwave ovens, water heaters, and hoods, food equipment shall be used in accordance with the manufacturer's intended use and certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program. If the equipment is not certified

or classified for sanitation, the equipment shall ~~meet~~ comply with Parts 4-1 and 4-2 of the Food Code as amended by this Rule. Nonabsorbent wooden shelves that are in good repair may be used in dry storage areas."

- (3) In Section 4-301.14, amend to read: "Ventilation hood systems and devices shall prevent grease or condensation from collecting on equipment, walls, and ceilings."
- (4) In Section 4-502.14, amend to read: "Except as permitted under G.S. 130A-248(c3), mollusk and crustacea shells shall not be used more than once as serving containers."

History Note: Authority G.S. 130A-248; S.L. ~~2011-394, Section 15(a); 2019-129;~~
Eff. September 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2655 WATER, PLUMBING, AND WASTE

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 5, the following applies: ~~Delete Paragraph 5-203.11(C) and Section 5-501.14.~~

- (1) In Paragraph 5-202.12(A), change the risk designation from "priority foundation item" to "core item."
- (2) Delete Section 5-501.14.

History Note: Authority G.S. 130A-248; S.L. ~~2011-394, Section 15(a); 2019-129;~~
Eff. September 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2661 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a food establishment, the regulatory authority shall provide identification and the purpose in visiting that establishment. The regulatory authority shall inquire as to the identity of the person in charge and invite the person in charge to accompany the regulatory authority during the inspection. If no employee is identified as the person in charge, the regulatory authority shall invite an employee to accompany the regulatory authority on the inspection. Following the inspection, the regulatory authority shall offer to review the results of the inspection with the person in charge or employee, as applicable.

(b) The grading of food establishments shall be conducted using an inspection form furnished by the regulatory authority. The form shall provide for the following information:

- (1) ~~The the~~ name and mailing address of the food establishment;
- (2) ~~The the~~ name of the permit holder;
- (3) ~~The the~~ permit status and score given;
- (4) ~~Standards standards~~ of construction and operation as listed in .2651 through .2677 of this Section;
- (5) ~~An an~~ explanation for all points deducted;
- (6) ~~The the~~ signature of the regulatory authority; and
- (7) ~~The the~~ date.

(c) The grading of food establishments shall be based on the standards of operation and construction as set forth in Rules .2650 through .2676 of this Section.

(d) The Food Establishment Inspection form shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to person in charge present, demonstration of knowledge, certification by accredited program or performs duties shall equal no more than ~~2 points.~~ 1 point.
- (2) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to the person in charge being a certified food protection manager by having certification from an accredited program shall equal no more than 1 point.
- ~~(2)~~(3) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to management awareness, policy present, and allergy awareness shall equal no more than 3 points.
- ~~(3)~~(4) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to proper use of reporting, restriction, and exclusion shall equal no more than 3 points.
- (5) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to procedures responding to vomiting and diarrheal events shall equal no more than 1 point.
- ~~(4)~~(6) Violation of Chapters 2 and 3 of the Food Code as amended by Rules .2652 and .2653 of this Section related to proper eating, tasting, drinking, or tobacco use shall equal no more than ~~2 points.~~ 1 point.
- ~~(5)~~(7) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to no discharge from eyes, nose, and mouth shall equal no more than 1 point.
- ~~(6)~~(8) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to hands clean and properly washed shall equal no more than 4 points.
- ~~(7)~~(9) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to no bare hand contact with ready-to-eat food or approved alternate method properly followed shall equal no more than ~~3~~ 4 points.
- ~~(8)~~(10) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to handwashing facilities supplied and accessible shall equal no more than 2 points.

- ~~(9)~~(11) Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to food obtained from an approved source shall equal no more than 2 points.
- ~~(10)~~(12) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food received at proper temperature shall equal no more than 2 points.
- ~~(11)~~(13) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food in good condition, safe, and unadulterated shall equal no more than 2 points.
- ~~(12)~~(14) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to required records available, shellstock tags, and parasite destruction shall equal no more than 2 points.
- ~~(13)~~(15) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food separated and protected shall equal no more than 3 points.
- ~~(14)~~(16) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to food-contact surfaces cleaned and sanitized shall equal no more than 3 points.
- ~~(15)~~(17) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to disposition of returned, previously served, reconditioned, and unsafe food shall equal no more than 2 points.
- ~~(16)~~(18) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooking time and temperatures shall equal no more than 3 points.
- ~~(17)~~(19) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to reheating for hot holding shall equal no more than 3 points.
- ~~(18)~~(20) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooling time and temperatures shall equal no more than 3 points.
- ~~(19)~~(21) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to hot holding temperatures shall equal no more than 3 points.
- ~~(20)~~(22) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cold holding temperatures shall equal no more than 3 points.
- ~~(21)~~(23) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to date marking and disposition shall equal no more than 3 points.
- ~~(22)~~(24) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to time as a public health control procedures and records shall equal no more than ~~2~~ 3 points.
- ~~(23)~~(25) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to consumer advisory provided for raw or undercooked foods shall equal no more than 1 point.
- ~~(24)~~(26) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized foods used and prohibited foods not offered shall equal no more than 3 points.
- ~~(25)~~(27) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food additives approved and properly used shall equal no more than 1 point.
- ~~(26)~~(28) Violation of Chapter 7 of the Food Code as amended by Rule .2657 of this Section related to toxic substances properly identified, stored, and used shall equal no more than 2 points.
- ~~(27)~~(29) Violation of Chapters 3, 4 and 8 of the Food Code as amended by Rules .2653, .2654, and .2658 of this Section related to compliance with variance, specialized process, and HACCP plan shall equal no more than 2 points.
- ~~(28)~~(30) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized eggs used where required shall equal no more than 1 point.
- ~~(29)~~(31) Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to water from an approved source shall equal no more than 2 points.
- ~~(30)~~(32) Violation of Chapter 8 of the Food Code as amended by Rule .2658 of this Section related to variance obtained for specialized processing methods shall equal no more than ~~1 point~~ 2 points.
- ~~(31)~~(33) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to proper cooling methods used or adequate equipment for temperature control shall equal no more than 1 point.
- ~~(32)~~(34) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to plant food properly cooked for hot holding shall equal no more than 1 point.
- ~~(33)~~(35) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to approved thawing methods used shall equal no more than 1 point.
- ~~(34)~~(36) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to thermometers provided and accurate shall equal no more than 1 point.
- ~~(35)~~(37) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food properly labeled or original container shall equal no more than 2 points.
- ~~(36)~~(38) Violation of Chapters 2 and 6 of the Food Code as amended by Rules .2652 and .2656 of this Section related to insects and rodents not present or no unauthorized animals or persons shall equal no more than 2 points.
- ~~(37)~~(39) Violation of Chapters 3 and 6 of the Food Code as amended by Rules .2653 and .2656 of this Section related to contamination prevented during food preparation, storage, and display shall equal no more than 2 points.
- ~~(38)~~(40) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to personal cleanliness shall equal no more than 1 point.
- ~~(39)~~(41) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to wiping cloths properly used and stored shall equal no more than 1 point.

- ~~(40)~~(42) Violation of Chapters 3 and 7 of the Food Code as amended by Rules .2653 and .2657 of this Section related to washing fruits and vegetables shall equal no more than 1 point.
- ~~(41)~~(43) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to in-use utensils properly stored shall equal no more than 1 point.
- ~~(42)~~(44) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to utensils, equipment, and linens properly stored, dried and handled shall equal no more than 1 point.
- ~~(43)~~(45) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to single-use and single-service articles properly stored and used shall equal no more than 1 point.
- ~~(44)~~(46) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to gloves used properly shall equal no more than 1 point.
- ~~(45)~~(47) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to equipment, food and non-food contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than ~~2 points~~. 1 point.
- ~~(46)~~(48) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to warewashing facilities installed, maintained, used, and test strips shall equal no more than 1 point.
- ~~(47)~~(49) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to non-food contact surfaces clean shall equal no more than 1 point.
- ~~(48)~~(50) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to hot and cold water available and adequate pressure shall equal no more than ~~2 points~~. 1 point.
- ~~(49)~~(51) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to plumbing installed and proper backflow devices shall equal no more than 2 points.
- ~~(50)~~(52) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to sewage and wastewater properly disposed shall equal no more than 2 points.
- ~~(51)~~(53) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to toilet facilities properly constructed, supplied, and cleaned shall equal no more than 1 point.
- ~~(52)~~(54) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to garbage and refuse properly disposed and facilities maintained shall equal no more than 1 point.
- ~~(53)~~(55) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to physical facilities installed, maintained, and clean shall equal no more than 1 point.
- ~~(54)~~(56) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to meets ventilation and lighting requirements and designated areas used shall equal no more than 1 point.

(e) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The regulatory authority shall take zero, one-half, or a full deduction of points depending upon the severity or the recurring nature of the core item violations. Priority items or priority foundation items may be corrected during the inspection and no more than one-half of the total point value shall be deducted when the violation meets the following criteria:

- (1) ~~The the~~ priority item or priority foundation item violation was not documented on the previous inspection; and
- (2) ~~Correction~~ correction of the item is documented on the inspection form.

(f) At the time of inspection, if a priority item or priority foundation item violation is observed and not corrected, the regulatory authority shall take one-half or a full deduction of points depending upon the severity or the recurring nature of the violation. ~~The regulatory authority shall specify a time frame of no more than 10 calendar days to correct the priority items or priority foundation items.~~

(g) In determining whether items or areas of a food establishment are clean for purposes of enforcing the rules set forth in this Section and grading a food establishment, the regulatory authority shall consider, among other things:

- (1) ~~The the~~ age of the accumulated material;
- (2) ~~The relative percentage of items which are clean and not clean;~~
- ~~(3)~~(2) ~~The the~~ cleaning practices of the food establishment; and
- ~~(4)~~(3) ~~The the~~ health risk posed by the circumstances.

(h) Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of a food establishment that requests an inspection for the purpose of raising the alphabetical grade, and that holds an unrevoked permit, the regulatory authority shall make an unannounced inspection within 15 calendar days from the date of the request.

(i) In the case of food establishments that have been closed for failure to comply with the rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be scheduled by ~~made at the earliest convenience~~ of the regulatory authority.

(j) In Section 8-304.11 of the Food Code delete (K).

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019.

15A NCAC 18A .2670 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS

Notwithstanding the provisions set forth in Rules .2671 and .2672, pushcarts and mobile food units shall comply with all requirements in this Section with the following exceptions:

- ~~(a)~~(1) A permit shall be issued by the regulatory authority that inspects the commissary from which a pushcart or mobile food unit is to operate ; if the regulatory authority determines that the pushcart or mobile food unit complies with the

rules of this Section. The permit shall be maintained on the pushcart or mobile food unit and made available to the regulatory authority upon request.

- ~~(b)(2)~~ The regulatory authority that issues the permit shall be provided by the permit holder a list of counties and locations where each pushcart or mobile food unit will operate.
- ~~(c)(3)~~ Prior to initiating food service operations in a particular county, the pushcart or mobile food unit permit holder shall provide the regulatory authority in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.
- ~~(d)(4)~~ Pushcarts or mobile food units shall operate in conjunction with a permitted commissary and shall report at least daily to the commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin, and other contamination. Water faucets used to supply water for pushcarts or mobile food units shall be protected to prevent contact with chemicals, splash, and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the commissary premises.

~~(e) All food shall be obtained from sources that comply with Chapter 3 of the Food Code as amended by Rule .2653 of this Section.~~

~~(f) All potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653 of this Section. A metal stem type thermometer accurate to 1°C (2°F) shall be available to check food temperatures.~~

- ~~(g)(5)~~ Single service articles shall be used for serving customers. ~~Single service articles shall be purchased in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination.~~

~~(h) All garbage and other solid waste shall be stored and disposed in an approved manner.~~

~~(i) Employees shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652 of this Section.~~

~~(j) Employees shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652 of this Section.~~

~~(k) Equipment and utensils shall meet the requirements in Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654 of this Section.~~

~~(l) The pushcart or mobile food unit shall be kept clean and free of flies, roaches, rodents, and other vermin.~~

History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); 2019-129; Eff. September 1, 2012.

15A NCAC 18A .2674 LIMITED FOOD SERVICES ESTABLISHMENTS

Limited food services establishments shall comply with all the requirements in Rules .2650 through .2662 of this Section, except as follows: that the following provisions apply in lieu of Rules .2654(2) and .2659(a) and (b), Section 5-204.11(b) of the Food Code as amended by Rule .2655 of this Section, and Sections 8-201.11 and 8-201.12 of the Food Code as amended by Rule .2658 of this Section:

- (1) The permit for a limited food services establishment shall be posted in a conspicuous place where it can be readily seen by the public at all times. Permits for limited food services establishments shall expire ~~on December 31 of each year~~ one year from the date of issuance. A new permit from the regulatory authority shall be obtained before the limited food services establishment shall be allowed to operate each year. Transitional permits shall not be issued.
- (2) The permit application shall be submitted to the local health department at least 30 days prior to construction or commencing operation. The permit application shall include a proposal for review and approval by the local health department that includes a menu, plans, and specifications for the proposed limited food services establishment, and ~~location~~ location, hours, and dates of operation.
- (3) Limited food services establishments shall not prepare any ~~potentially hazardous food (time/temperature control for safety food)~~ time/temperature control for safety food prior to the day of sale.
- (4) ~~Potentially hazardous food (time/temperature control for safety food)~~ Time/temperature control for safety food that has been heated at the limited food services establishment and remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (5) All meats, poultry, and fish shall be purchased in a pre-portioned and ready-to-cook form.
- (6) Equipment in the limited food services establishment that is not certified or classified for sanitation by an ANSI-accredited certificate program ~~that is in good repair and operating properly~~ may be used. At least a two-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. At least one drainboard, table, or counter space shall be provided for air-drying.
- (7) Only single-service articles shall be ~~used~~ used as tableware as defined in Chapter 1 of the Food Code.
- (8) Limited food services establishments may ~~prepare~~ reheat pre-cooked and cook food in accordance with the overhead protection requirements set forth in Rule .2669(b) of this Section.
- (9) Floors, walls, and ceilings of limited food services establishments shall meet the requirements of this Section, except those limited food services establishments preparing food in accordance with Rule .2669(b) of this Section. ~~Limited food establishments shall use dustless methods of floor cleaning and all, except emergency floor cleaning, shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.~~
- (10) All areas in which food is handled, prepared, or in which utensils are washed, shall be provided with artificial lighting that complies with Section 6-202.11 of the Food Code as amended by Rule .2656 of this Section.
- (11) A handwashing sink shall be provided in food service areas for use by employees only.

- (12) Toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds of the facility where the ~~associated amateur athletic~~ event is taking place are acceptable. Toilet facilities for the public are not required.

History Note: Authority G.S. 130A-248; S.L. ~~2011-394, Section 15(a); 2019-129;~~
Eff. September 1, 2012.