



**North Carolina Department of Health and Human Services
Division of Public Health**

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State Health Director

August 31, 2012

MEMORANDUM

To: Registered Environmental Health Specialists, Program Supervisors, and Managers

From: Larry D. Michael, Food Protection Program Head

Subject: Changes to North Carolina's Food Protection Rules—Effective September 1, 2012

September 1, 2012 ushers in a new era for North Carolina's food protection standards and practices. With the adoption of the 2009 FDA Food Code, including amendments from the 2011 Supplement, North Carolina now has one of the most progressive food safety programs in the nation. This provides a regulatory foundation that better protects public health and a uniform code that is consistent with other jurisdictions. We appreciate your support, patience, and understanding as we transition to the new Code.

Amendments to **15A NCAC 18A .2600**, referred to as *Rules Governing the Food Protection and Sanitation of Food Establishments*, include:

1. Repeal of Rules .2601 through .2645 and adoption of Rules .2650 through .2676;
2. Adoption by reference of the 2009 FDA Food Code with amendments, deletions, and additions as specified in Rules .2650 through 2658 that has been developed into a field guide, the *North Carolina Food Code Manual*; and
3. Rule revisions that are unique to NC food establishments.

The **NC Food Code Manual** will serve as the primary field guide for evaluating food establishments. On the *Food Establishment Inspection Report*, it is recommended to include the corresponding citation when documenting the violation. Use the marking instructions to ensure the violation has been cited on the inspection report using the appropriate item number. For example, if the wash solution used for manual warewashing is 80°F, it would be a violation of Section 4-501.19 and would be cited as item #46 on the inspection report. Please continue to document violations and corrective actions as you currently do.

In addition to the NC Food Code Manual, **15A NCAC 18A .2600** rules must be referenced when taking enforcement actions. For example, an establishment has no hot water and an immediate suspension is necessary; therefore, the violation must be cited on *Form 4009B* as follows: *No hot water available; Violation of Section 5-103.11 of the Food Code as amended by Rule .2655.*

Two rules have delayed effective dates and noncompliance should be documented through the phase-in period:

1. Rule .2652(4)(C), Certified Food Protection Manager (CFPM), will become effective on January 1, 2014. Please note that the two-point bonus for food safety training ends effective September 1, 2012.
2. Rules .2653(14)(b)(i) and (ii) requiring the cold holding temperature of 41°F will not go into effect until January 1, 2019. The current cold holding temperature of 45°F will be allowed until that time.



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The adoption of the 2009 FDA Food Code has resulted in multiple changes to the NC food safety rules including new concepts such as no bare hand contact, date marking, and employee health policies. Therefore, each food establishment should be given a reasonable time period to comply with the new rules. Please use the first inspection as an educational opportunity with the establishment. Familiarize them with the changes and do not deduct points for violations that were not in the current .2600 Rules. However, such violations must be marked out of compliance and zero points deducted.

Previous standards from the .2600 Rules have been revised and codified in the new *Rules Governing the Food Protection and Sanitation of Food Establishments*.

1. Mobile Food Units, Pushcarts, and Limited Food Establishments will be subject to grading and inspections are to be completed using the *Food Establishment Inspection Report*. Grade cards for Mobile Food Units and Pushcarts must be maintained on these units as specified under .2660(c).
2. Rule .2663, Outdoor Dining and Beverage Facilities, addresses the protection of food, utensils, and equipment in outdoor dining areas.
3. Rule .2664, Supplemental Cooking Rooms, clarifies facility requirements for cooking on grills, pits, or fireplaces and includes the addition of a handwashing sink.
4. Rule .2673, Congregate Nutrition Sites, addresses limited food preparation to assist with challenges created when food is not properly transported or a delivery is interrupted. The name was changed from Catered Elderly Nutrition Sites to be consistent with the NC Division of Aging and Adult Services terminology.
5. Rules .2665 through .2669 are revised Temporary Food Establishment (TFE) regulations. There are significant changes to the TFE Rules. Please see the attached document that summarizes the major changes.

Adoption of the 2009 FDA Food Code will prompt the dissolution and creation of new committees and workgroups to systematically address issues related to implementing the new rules. Initial committee changes and additions include:

1. A *Variance Committee* is required in Section 8-103 of the Code as amended by Rule .2658. This committee will develop policies and procedures for submission and approval of variance requests. Unless there are concerns regarding the safety of a product or process that requires a variance under Section 3-502.11, please allow establishments to continue the food handling process until further guidance is provided by the Department.
2. The current *Time in lieu of Temperature Committee* will be called the *Time as a Public Health Control Committee* and will amend current State approved applications and review new applications. Counties will need to amend local approvals and continue to approve individual establishment requests.
3. The *Food Safety Managers Education (Two-Point Bonus) Committee* will be dissolved since the CFPM requirement must be ANSI-accredited. The Department will no longer print certificates since ANSI-accredited programs are identified by a seal on the certificate.

The Food Protection Program is in the process of developing a web page dedicated to Food Code resources that will include links to the rules, manual, ANSI-accredited CFPM programs, guidance documents, committee information and contacts, and other resources available to help make this transition as smooth as possible. In addition, all current memos will be reviewed and revised or rescinded as needed.

Please contact your Environmental Health Regional Specialist if you have any questions or concerns regarding implementation of the new rules.

Useful links:

NC Rules, NC Food Code Manual and inspection form:

<http://ehs.ncpublichealth.com/>

FDA 2009 Food Code and Annexes:

<http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/>

Attachment

Temporary Food Establishments

Summary of Rule Changes

15 A NCAC 18A .2651, .2665 -.2669

Effective September 1, 2012

Definitions (.2651)

- Temporary Food Establishment (TFE) definition has been revised to increase the days of operation from 15 to 21 days to allow for advance preparation at the same location. Language “‘affiliated with and endorsed by’ a transitory fair, circus, carnival or public exhibition” added to clarify TFE must be associated with the corresponding event.
- Temporary Food Establishment Commissary (TFEC) added to allow a TFE preparation kitchen to operate off-site under TFE rules. The TFEC can only operate within seven days of the commencement of the affiliated TFE and no more than 21 consecutive days as clarified in .2665. Must comply with TFE rules.

TFE and TFEC Commissary Permit Requirements (.2665)

- The TFE may operate consecutive or non-consecutive days on one permit as long as the days of operation do not exceed 21 days.
- Lists provisions that must be included on the permit.
- Requires permit applications to be submitted prior to the event.
- Applications shall be submitted at least 15 days prior to the commencement of the event.
- Lists provisions to be contained in the application.
- Allows for substitute vendor applications at least three days prior to the event.
- Allows provision for documentation and contractual agreements as necessary to ensure compliance with the rules.

TFE Food Handling Requirements (.2666)

- Requires food sources and food protection to meet Chapter 3 of the 2009 Food Code as amended by Rule .2653. This includes practices such as no-bare hand contact, date-marking, time as a public health control and consumer advisory.
- Allows cutting and skewering of food products if adequate preparation areas and equipment are provided.
- Salads using ingredients that are cooked and properly cooled are allowed to be served but not prepared on site.
- Clarifies off-site preparation options at either a TFEC or a permitted Food Establishment.
- Food must be secured to protect from tampering and contamination at all times.
- Drainage ports are required on insulated coolers used to store refrigerated foods.
- Cooling and reheating of PHF/TCS will be allowed ONLY when it can be accomplished in accordance with parameters contained in the food protection rules.
- The regulatory authority may include additional restrictions based on the adequacy of facilities, equipment, utensils, and utilities.
- Food prepared at a prior event may not be served at a subsequent event.



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TFE Employee Requirements (.2667)

- Must comply with good hygienic practices under Part 2-4 of the Code, including food contamination prevention, hair restraints, and animals.
- Employee health policy required in accordance with Subpart 2-201 as amended by Rule .2652.

TFE Equipment and Utensil Requirements (.2668)

- Multi-use utensils must be washed in a cleaning solution at a water temperature of at least 110°F, rinsed, and sanitized.
- Conditions for allowing use of multi-use eating and drinking utensils and approved washing, rinsing, and sanitizing facilities are provided.
- The one vat sink requirement is changed to three basins for washing, rinsing, and sanitizing. Drainboard, table or counter space is required for air-drying. Equivalent products and procedures as specified in Part 4-7 of the Code may be used.
- A food preparation sink must be provided when washing produce.
- Food shields or other effective barriers are required to protect food and food-contact surfaces from contamination.

TFE Physical Requirements, Miscellaneous (.2669)

- Public access is limited to dining areas.
- Overhead protection required to protect all food, utensils, and equipment, with the exception of cookers with attached lids being used to cook bulk food such as roasts, shoulders, and briskets.
- Modifies the language for walls, screens, fans, and ground covering to improve protection from sources of contamination such as dust, mud, insects, and animals.
- Handwashing facilities must be at least a two-gallon minimum container with unassisted free-flowing faucet, wastewater receptacle, and warm water.
- Procedures for conveyance of potable water and wastewater have been added, including labeling requirements.
- An evaluation for adequacy of portable wastewater containers based on potable water volume is now required.
- Shielded or shatterproof lighting fixtures are required.
- Necessary utility provisions required at all times food is prepared, served, or stored in the TFE.
- Toxic materials must be handled in a manner to prevent contamination of food, equipment, and utensils.

We will need to work with TFE vendors during the initial permitting occurrence after the effective date of these rules to allow time to make the necessary modifications required by these rules as long as the non-compliant items do not pose a risk to public health. You may also follow your current agency protocol for application submittals during the initial permitting process.

If you have any additional questions regarding implementation please contact your Environmental Health Regional Specialist.