

NEBRASKA PURE FOOD ACT



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Food Safety and Consumer Protection
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NEBRASKA PURE FOOD ACT

- Administration:** This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-3422.
- Revisions:** The provisions of this Act were last revised during the 2012 session of the Nebraska Legislature. The changes are effective March 8, 2012.
- Rules:** No regulations have been promulgated under this Act.
- Adopted Provisions:** The provisions of this Act adopt certain federal guidelines by reference. They are as follows:
1. 2009 Recommendations of the United States Public Health Service, Food and Drug Administration, Food Code.
 2. The Association of Food and Drug Officials and U.S. Department of Health and Human Services' 1984 Model Food Salvage Code.
 3. Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food, 21 C.F.R. part 110, as it exited on April 1, 2011.

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81-2,239. Nebraska Pure Food Act; provisions included; how cited. Sections 81-2,239 to 81-2,292 and the provisions of the Food Code, the Food Salvage Code, and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

81-2,240. Definitions, where found. For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to 81-2,254.01 shall be used. In addition, the definitions found in the codes and practice adopted by reference in sections 81-2,257.01 and 81-2,259 shall be used.

81-2,241. Advertising, defined. Advertising shall mean all representations disseminated in any manner, other than labeling, intended or likely to induce the purchase or use of food, including a menu.

81-2,242. Bed and breakfast establishment, defined. Bed and breakfast establishment shall mean any place of lodging that provides rented rooms to ten or fewer people, that is the personal residence of the owner, that is occupied by the owner at the time of rental, and in which the only meal served to renters is breakfast.

81-2,242.01. Caterer, defined. Caterer shall mean a person in the business of providing food to a customer for parties, banquets, or other similar functions at a location owned, rented, or otherwise controlled by the customer.

81-2,242.02. Commissary, defined. Commissary shall mean a food establishment where food, food containers, or food supplies are kept, handled, prepared, packaged, or stored for use in mobile food units, pushcarts, or vending machines.

81-2,242.03. Convenience store, defined. Convenience store shall mean a food establishment or section of an establishment where the food offered to the consumer is intended for off-premise consumption and there are no meat processing or produce processing areas.

81-2,242.04. Commercial food establishment, defined. Commercial food establishment means an operation with a permanent sales location and such location has more than one hundred cubic feet of area containing food.

81-2,243. Department, defined. Department shall mean the Department of Agriculture.

81-2,244. Director, defined. Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

81-2,244.01. Food Code, defined. Food Code shall mean the 2009 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment and sections 2-103.11(K), 3-301.11(B), (C), and (D), 3-304.13, 3-501.16, 3-501.17, 3-501.18, 3-502.11, 3-502.12, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C), 5-104.11, 6-301.14, 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not include the annexes of such federal recommendations.

81-2,245.01. Food establishment, defined. Food establishment shall mean an operation that stores, prepares, packages, serves, sells, vends, or otherwise provides food for human consumption. The term does not include:

(1) An establishment or vending machine operation that offers only prepackaged soft drinks, carbonated or noncarbonated; canned or bottled fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, that are not potentially hazardous foods;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

- (3) A food processing plant;
- (4) A salvage operation;
- (5) A private home where food is prepared or served for personal use, a small day care in the home, or a hunting lodge, guest ranch, or other operation where no more than ten paying guests eat meals in the home;
- (6) A private home or other area where food that is not potentially hazardous food is prepared: (a) For sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or (b) for sale directly to the consumer at a farmers market if the consumer is informed by a clearly visible placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;
- (7) A private home or other area where food is prepared for distribution at a fundraising event for a charitable purpose if the consumer is informed by a clearly visible placard at the serving location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority. This subdivision does not apply to a caterer or other establishment providing food for the event if the caterer or establishment receives compensation for providing the food;
- (8) The location where food prepared by a caterer is served so long as the caterer only minimally handles the food at the serving location;
- (9) Educational institutions, health care facilities, nursing homes, and governmental organizations which are inspected by a state agency or a political subdivision other than the regulatory authority for sanitation in the food preparation areas;
- (10) A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not potentially hazardous or foods described in subdivision (1) of this section; and
- (11) An establishment which is not a commercial food establishment and which sells only commercially packaged foods that are not potentially hazardous foods.

81-2,246.01. Food processing plant, defined. Food processing plant shall mean a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to the consumer.

81-2,247. Food Salvage Code, defined. Food Salvage Code shall mean the 1984 Recommendation of the Association of Food and Drug Officials and United States Department of Health and Human Services entitled Model Food Salvage Code, as it exists on June 8, 1985, except sections 1-102(h), 6-401, 6-501, 8-101, 8-201, 11-101, 12-101 through 12-106, 12-201, 12-202, 12-301, 12-401, 12-402, and 12-601 of such code.

81-2,248. Itinerant food vendor, defined. Itinerant food vendor shall mean a person that sells prepackaged, potentially hazardous food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

81-2,251. Labeling, defined. Labeling shall mean the display of written, printed, or graphic matter upon the immediate container of an article of food or which accompanies the article at the time of sale.

81-2,251.01. Limited food vending machine, defined. Limited food vending machine shall mean a vending machine which does not dispense potentially hazardous food.

81-2,251.02. Licensed beverage establishment, defined. Licensed beverage establishment shall mean an establishment that serves alcoholic beverages and may or may not provide limited food service.

81-2,251.03. Limited food service establishment, defined. Limited food service establishment shall mean an establishment that serves or otherwise provides only snack items or commercially prepared and wrapped foods that require little or no preparation.

81-2,251.04. Mobile food unit, defined. Mobile food unit shall mean a vehicle mounted food establishment designed to be readily movable that returns to a commissary daily for cleanup and service.

81-2,251.05. Person in charge, defined. Person in charge shall mean the individual who is responsible for the operation of the food establishment and who is present at the establishment or is readily accessible to communicate with employees and the regulatory authority.

81-2,251.06. Pushcart, defined. Pushcart shall mean a non-self-propelled vehicle limited to serving food which is not potentially hazardous or commissary wrapped food maintained at temperatures in compliance with the Nebraska Pure Food Act or limited to the preparation and serving of frankfurters.

81-2,252. Regulatory authority, defined. Regulatory authority shall mean the department or a political subdivision or state agency under contract with the department to perform regulatory functions authorized pursuant to the Nebraska Pure Food Act.

81-2,253.01. Salvage operation, defined. Salvage operation shall mean an operation which reconditions, sells, distributes, brokers, or otherwise supplies any distressed or salvaged food.

81-2,254. Single event food vendor, defined. Single event food vendor shall mean a temporary food establishment that operates at no more than one event per calendar year for a period of no more than two days.

81-2,254.01. Temporary food establishment, defined. Temporary food establishment shall mean a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

81-2,257. Priority items; designation. Priority items are designated in the Food Code and sections 81-2,272.10, 81-2,272.24, 81-2,272.25, and 81-2,272.27.

81-2,257.01. Food Code; adoption. The Legislature hereby adopts by reference the Food Code as defined in section 81-2,244.01 as a part of the Nebraska Pure Food Act.

81-2,258. Food Salvage Code; adoption. The Legislature hereby adopts by reference the Food Salvage Code as defined in section 81-2,247 as a part of the Nebraska Pure Food Act.

81-2,259. Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food; adoption. The Legislature hereby adopts by reference the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it existed on April 1, 2011.

81-2,262. Codes and practice; where filed. Certified copies of the codes and practice adopted by reference pursuant to sections 81-2,257.01 to 81-2,259, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

81-2,263. Inconsistencies; sections control. If there is an inconsistency between sections 81-2,239 to 81-2,292 and any of the codes adopted by reference, the requirements of the sections shall control.

81-2,267. Food establishment, food processing plant, or salvage operation; construction, conversion, or remodeling; plans and specifications; requirements.

Prior to construction of, conversion to, or remodeling of a food establishment, food processing plant, or salvage operation, properly prepared plans and specifications for such construction, conversion, or remodeling shall be submitted to the regulatory authority for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, type and model of proposed fixed equipment and facilities, and description of the type of food to be served or sold. The regulatory authority shall treat such plans and specifications as confidential or trade secret information and shall approve the plans and specifications if they meet the requirements of the Nebraska Pure Food Act. No food establishment, food processing plant, or salvage operation shall be constructed, converted, or remodeled except in accordance with plans and specifications approved by the regulatory authority. This section does not apply to food establishments which are temporary food establishments.

81-2,268. Food establishment, food processing plant, or salvage operation facilities and equipment; design and fabrication requirements. Food establishment, food processing plant, or salvage operation facilities and equipment in use or new facilities and equipment for which contractual obligations are incurred before September 13, 1997, and which do not meet fully all the design and fabrication requirements of the Nebraska Pure Food Act shall be acceptable if they are in good repair and capable of being maintained in a sanitary condition and the food-contact surfaces are of safe

materials. A food establishment, food processing plant, or salvage operation which has a change of ownership or extensive remodeling after September 13, 1997, shall comply with all applicable facility and equipment requirements of the act.

81-2,270. Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions.

(1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit or notifying the regulatory authority, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (1) of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year regardless of when the initial permit was obtained.

(4) (a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories.

(b) The maximum fees are:

Food Handling Activity	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	Unit Or Units Annual Inspection Fee
Convenience Store	\$86.19	\$86.19	\$43.09	N/A
Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
Licensed Beverage Establishment	\$86.19	\$86.19	\$37.18	N/A
Limited Food Service Establishment	\$86.19	\$86.19	\$37.18	N/A
Temporary Food Establishment	\$86.19	\$86.19	\$37.18	N/A
Mobile Food Unit (for each unit)	\$86.19	N/A	N/A	\$43.09
Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
Vending Machine Operations:	\$86.19			
One to ten units		N/A	N/A	\$17.23
Eleven to twenty units		N/A	N/A	\$34.46
Twenty-one to thirty units		N/A	N/A	\$51.69
Thirty-one to forty units		N/A	N/A	\$68.92
Over forty units		N/A	N/A	\$86.15
Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
Commissary	\$86.19	\$120.64	\$43.09	N/A
All Other Food Establishments	\$86.19	\$120.64	\$43.09	N/A

(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the

department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

(9) A person holding a permit or license and regulated under the Nebraska Milk Act and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

81-2,271. Food establishment, food processing plant, or salvage operation; permit; posting; change of ownership or location; duties; movement authorized; mobile food unit or pushcart; copy of permit.

(1) The permit required by section 81-2,270 shall be posted in a location in the food establishment, food processing plant, or salvage operation which is conspicuous to the public. A salvage operation shall also have a copy of the permit in each vehicle.

(2) The permit is not transferable to any other person or location. Any permit issued lapses automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permitholder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. The permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive the notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

(3) A mobile food unit, pushcart, or vending machine may be moved if the permitholder is able to provide the location of such unit, pushcart, or machine to the regulatory authority upon request and the person authorized by the permitholder to receive notices and orders of the department maintains a permanent mailing address on file with the department.

(4) Every mobile food unit or pushcart operator shall have a copy of their permit to operate available at the mobile food unit or pushcart when in operation.

81-2,272. Food establishment, food processing plant, or salvage operation; inspection; denial of permit; hearing. Before approving an application for a permit pursuant to section 81-2,270, the regulatory authority shall inspect the food establishment, food processing plant, or salvage operation to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 81-2,273. An applicant found to qualify to hold a permit pursuant to such subsection shall be issued a permit. An applicant who does not receive a permit shall be afforded the opportunity of a hearing to present evidence that the applicant is qualified to hold a permit pursuant to such subsection and should be issued a permit. All such hearings shall be in accordance with the Administrative Procedure Act.

81-2,272.01. Potentially hazardous food (time and temperature control for safety food); temperature; equipment. (1) Except during preparation, cooking, or cooling or when time is used as the public health control as specified under the Nebraska Pure Food Act and except as specified under subsection (2) of this section, potentially hazardous food (time and temperature control for safety food) shall be maintained:

(a) At one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) or above, except that roasts cooked to a temperature and for a time specified in the Nebraska Pure Food Act or reheated as specified in the act may be held at a temperature of one hundred thirty degrees Fahrenheit (fifty-four degrees Celsius) or above; or

(b) At:

(i) Forty-one degrees Fahrenheit (five degrees Celsius) or less; or

(ii) Forty-five degrees Fahrenheit (seven degrees Celsius) or between forty-one degrees Fahrenheit (five degrees Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius) in existing refrigeration equipment that is not capable of maintaining the food at forty-one degrees Fahrenheit (five degrees Celsius) or less if:

(A) The equipment is in place and in use in the food establishment; and

(B) Refrigeration equipment that is not capable of meeting a cold holding temperature of forty-one degrees Fahrenheit (five degrees Celsius) that is in use on March 8, 2012, shall, upon replacement of the equipment or at a change of ownership of the food establishment, be replaced with equipment that is capable of maintaining foods at forty-one degrees Fahrenheit (five degrees Celsius) or below.

(2) 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-five degrees Fahrenheit (seven degrees Celsius) or less.

(3) Potentially hazardous food (time and temperature control for safety food) in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified in the act.

81-2,272.10. Food employees; hand washing; food contact; restrictions.

(1) Food employees shall wash their hands as specified in the Nebraska Pure Food Act.

(2) Food employees shall be trained to wash their hands as specified in the act.

(3) Except when washing fruits and vegetables, food employees shall minimize bare hand and arm contact with exposed food. This may be accomplished with the use of suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment.

(4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if they have washed their hands as specified in the act prior to handling the food.

81-2,272.24. Potentially hazardous food; date marking; sale, consumption, or discard requirements

(1) Except when packaging food using a reduced oxygen packaging method as specified in section 81-2,272.27 and except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date of preparation. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(2) Except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and packaged by a food processing plant and held refrigerated at such food establishment, shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date the food container was opened. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

This subsection does not apply to fermented sausages which retain an original casing or shelf stable salt-cured products produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" or to shelf stable, dry, fermented sausages when the face has been cut, but the remaining portion is whole and intact.

(3) A refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety 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.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method approved by the regulatory authority for refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety 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;

(b) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, if the marking system is disclosed to the regulatory authority upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) Subsection (2) of this section 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 C.F.R. part 110, Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food, as such part existed on January 1, 2007;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. part 131, Milk and cream, as such part existed on January 1, 2007, 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, as defined in 21 C.F.R. part 114, Acidified foods, as such part existed on January 1, 2007;

(f) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007, and which retain the original casing on the product; and

(g) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007.

81-2,272.25. Potentially hazardous food; discard; when. (1) A food specified under subsections (1) and (2) of section 81-2,272.24 shall be discarded if such food:

(a) Exceeds either of the temperature and time combinations specified in subsection (1) of section 81-2,272.24, except time that the food 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 subsection (1) of section 81-2,272.24.

(2) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control shall be discarded if it exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

81-2,272.27. Food establishment; reduced oxygen packaging method; when. A food establishment may use a reduced oxygen packaging method if a variance has been granted by the regulatory authority or under the following conditions:

(1) A food establishment shall only use a reduced oxygen packaging method with potentially hazardous food that does not support the growth of the bacteria *Clostridium botulinum* because it:

(a) Has an AW (water activity) of ninety-one hundredths or less;

(b) Has a pH of four and six-tenths or less; or

(c) Is a meat product cured and processed in the food establishment that at the time of processing had a concentration of sodium nitrite of one hundred twenty milligrams per liter or higher and has a brine concentration of at least three and one-half percent.

(2) A food with a high level of competing organisms such as raw meat, raw poultry, or semi-soft cheese containing live active starter culture organisms may be packaged using a reduced oxygen method. Such products shall be labeled with a "sell by" or "use by" date not to exceed fourteen days and shall be discarded if not sold by that date.

(3) Products packaged using a reduced oxygen method shall be maintained at forty-one degrees Fahrenheit (five degrees Celsius) or below.

(4) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be discarded if not sold within thirty days from processing if the food is processed at the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be discarded if not sold within fourteen days from packaging by the food establishment or the original manufacturers "sell by" or "use by" date, whichever occurs first.

(5) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be labeled with a "sell by" or "use by" date which is not more than thirty days from the date it was processed by the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be labeled with a "sell by" or "use by" date which is not more than fourteen days from the date it was repackaged by the food establishment or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(6) Food establishments which process and package food using a reduced oxygen method shall have written policies for operational procedures that:

(a) Prohibit contacting ready-to-eat foods with bare hands without proper handwashing;

(b) Identify a designated area for reduced oxygen packaging which separates raw foods and ready-to-eat foods to minimize cross contamination;

(c) Restrict access to the processing equipment to only responsible trained personnel familiar with the potential hazards of the operation; and

(d) Delineate cleaning and sanitation procedures for food contact surfaces.

(7) Food establishments which package food using a reduced oxygen method shall have a training program to ensure that the individual responsible for the reduced oxygen packaging operation understands the requirements of the Nebraska Pure Food Act and the procedures, equipment, and facilities required for safe operation.

(8) A food establishment shall not package fish using a reduced oxygen method unless the fish remains frozen before, during, and after packaging or a variance has been granted by the regulatory authority.

81-2,272.31. Water supply; requirements. Except in response to a temporary interruption of a water supply in the food establishment, any food establishment which is not a mobile food unit or temporary food establishment shall:

(1) Have water under pressure provided to all fixtures, equipment, and nonfood equipment that are required to use water;

(2) Receive water through the use of an approved water main;

(3) Have a permanent plumbing system; and

(4) Have at least one toilet which is permanent, convenient, and accessible.

81-2,272.32. Food employee; fingernail requirements. (1) Except as provided under subsection (2) of this section, a food employee shall keep his or her fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good condition, a food employee shall not wear fingernail polish or artificial fingernails when working with exposed food.

(2) This section does not apply to a food employee such as a counter staff person who only serves beverages and wrapped or packaged foods, a host staff person, or a wait staff person if he or she presents a minimal risk of contaminating exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

81-2,272.34. Linens and cloth napkins; requirements. Except for raw dough being prepared prior to being cooked, linens and cloth napkins shall 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. Linens and cloth napkins which are used in contact with food and cloth napkins used by consumers shall be laundered between each use.

81-2,273. Permitholder; duties; disciplinary action; effect; hearing; reinstatement of permit. (1) A holder of a permit issued under the Nebraska Pure Food Act shall comply with the act, the rules and regulations adopted pursuant thereto, and any order of the director issued pursuant thereto. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director after: (a) The

director determines the permit holder has not complied with subsection (1) of this section; (b) the permit holder is given written notice to comply and written notice of the right to a hearing to show cause why an order of probation should not be issued; and (c) the director finds that issuing an order of probation is appropriate based on the hearing record or on the available information if the hearing is waived by the permit holder.

(3) A permit may be suspended after: (a) The director determines the permit holder has not complied with subsection (1) of this section; (b) the permit holder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permit holder.

(4) A permit may be immediately suspended and the director may order the permit holder's food establishment, food processing plant, or salvage operation closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in or is caused by the permit holder's food establishment, food processing plant, or salvage operation; and (b) the permit holder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permit holder may request, in writing, a date for a hearing and the director shall consider the interests of the permit holder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permit holder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and shall notify the permit holder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permit holder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permit holder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permit holder.

(6) Any food establishment, food processing plant, or salvage operation for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any food establishment, food processing plant, or salvage operation for which the permit has been revoked shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permit holder to an order of probation at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permit holder may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

81-2,274. Notice or order; service; contents; hearings; procedure. (1) Any notice or order provided for in the Nebraska Pure Food Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply provided for in section 81-2,273 shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 81-2,273. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of probation, or that the permit may be suspended and the permitholder subject to an order of probation, if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of probation if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 81-2,273, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 81-2,273, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

81-2,275. Food establishment, food processing plant, or salvage operation; unlawful operation. It is unlawful for a person to operate a food establishment, food processing plant, or salvage operation in any manner which is not in conformity with the Nebraska Pure Food Act or the rules and regulations adopted and promulgated pursuant thereto or to interfere with the duties of the department or any final order of the director pursuant to such act.

81-2,276. Food establishment, food processing plant, or salvage operation regulation. It is the responsibility of the department to regulate the operation of food establishments, food processing plants, and salvage operations in the manner set out in the Nebraska Pure Food Act.

81-2,277. Food processing plants; compliance required. Food processing plants shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it existed on April 1, 2011.

81-2,281. Department; enforce act; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom.

(1) The department shall enforce the Nebraska Pure Food Act. The department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

(2) It shall be the responsibility of the regulatory authority to inspect food establishments and food processing plants as often as required by the act. An inspection of a salvage operation shall be performed at least once every three hundred sixty-five days of operation. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(3) All inspections conducted pursuant to the act shall be performed by persons who are provisional environmental health specialists or registered environmental health specialists as defined in section 38-1305 or 38-1306.

(4) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(5) Regulatory activities performed by a political subdivision or state agency under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 81-2,273.

81-2,282. Adulteration of food; prohibited; adulteration, defined. (1) It shall be unlawful for any person to adulterate any food or for any person to manufacture, distribute, offer for sale, or sell any adulterated food.

(2) Food shall be deemed to be adulterated if:

(a) It bears or contains any substance which may render it injurious to health, considering the quantity of such substance in or on the food;

(b) It consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance or is otherwise unsafe for use as food;

(c) It has been manufactured, processed, packaged, stored, or held under insanitary conditions where it may have become unsafe for use as food;

(d) It is the product of a diseased animal or one that has died by any means other than slaughter;

(e) Its container is so constructed as to render the food unsafe or otherwise injurious to health; or

(f) Any valuable constituent of the food has been wholly or partially omitted or abstracted.

81-2,283. Misbranded food; prohibited; misbranded, defined.

(1) It shall be unlawful for any person to misbrand any food or distribute, offer for sale, or sell any misbranded food.

(2) A food shall be deemed to be misbranded if:

(a) It does not bear labeling clearly stating (i) the identity of the food in terms likely to be easily and accurately understood by the consumer, (ii) the net quantity of contents of the food in terms authorized under the Weights and Measures Act, and (iii) the name and address of the manufacturer, distributor, or seller of the food; or

(b) Its labeling is false or misleading in any manner.

81-2,284. Deceptive packaging of food; prohibited; deceptively packed or packaged, defined. (1) It shall be unlawful for any person to deceptively pack or package any food or for any person to distribute, offer for sale, or sell any food that has been deceptively packed or packaged.

(2) A food shall be deemed to be deceptively packed or packaged if:

(a) Any substance has been added to, mixed with, or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear to be better or of greater value than it actually is; or

(b) Any inferiority or damage to the food has been concealed in any manner.

81-2,285. False advertisement regarding food; prohibited; false advertisement, defined.

(1) It shall be unlawful for any person engaged in the sale, merchandising, or

distribution of food to cause, with intent to deceive, the dissemination of a false advertisement regarding a food.

(2) An advertisement of a food shall be deemed to be false if it is false or misleading in any manner, including the following:

- (a) The advertising of food as that of another;
- (b) The advertising of food in a manner causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of such food;
- (c) The advertising of food in a manner causing the likelihood of confusion or misunderstanding as to affiliation, connection, or association with or certification by another;
- (d) The advertisement of food by use of deceptive representations or deceptive designation of geographic origin in connection with such food;
- (e) The advertisement of food by way of representations that the food has sponsorship, approval, characteristics, ingredients, benefits, uses, or qualities that it does not have or that a person or company has a sponsorship, approval status, affiliation, or connection that he, she, or it does not have;
- (f) The advertisement of food by way of a representation that the food is of a particular standard, quality, or grade when it is not;
- (g) The advertisement of food by disparaging the food of another by false or misleading representations of fact;
- (h) The advertisement of food with an intent not to sell it as advertised or an intent to sell an alternative food in substitution for the advertised food;
- (i) The advertisement of food with the intent not to supply a reasonably expectable public demand unless the advertisement imposes a limitation of quantity; or
- (j) The advertisement of food by making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

81-2,286. Regulatory authority; determination of violations; use of federal regulations; when. In determining whether food is being manufactured, processed, transported, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-2,282 to 81-2,285 or any other requirement of the Nebraska Pure Food Act which affects such food, the regulatory authority may utilize the appropriate definitions, standards, tolerances, standards of identity, standards of quality, or standards of fill of containers set out in the duly promulgated federal regulations applicable to food and food products if the regulatory authority finds that such federal regulations will adequately protect against the adulteration, misbranding, deceptive packaging, and false advertising of foods.

81-2,287. Regulatory authority; enforcement; issue stop-sale, stop-use, removal orders; procedure. If a regulatory authority finds that food is being manufactured, processed, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-2,282 to 81-2,285 or any other requirement of the Nebraska Pure Food Act which affects such food, such regulatory authority may issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such food if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. No food

subject to any such order shall be used, sold, or moved without permission from the regulatory authority. Such an order shall specifically describe the nature of the violation found and the precise actions needed to be taken to bring the food into compliance with the applicable provisions of the act. Such order shall clearly advise the person in charge of the food that he or she may request an immediate hearing before the director or his or her designee on the matter. No such order may direct the involuntary and immediate disposal or destruction of any food until the person in charge of such food has been afforded an opportunity to be heard on the matter and an opportunity to appeal any order of the director or his or her designee from such a hearing in accordance with the Administrative Procedure Act. The regulatory authority may issue a stop-sale, stop-use, or removal order against articles of food that are perishable, even if the practical result of such an order is to bring about the involuntary disposal of such food, when, in the opinion of the person issuing the order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

81-2,288. Department; adopt rules and regulations; contracts with federal agencies authorized; exemptions from act. (1) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the Nebraska Pure Food Act.

(2) The department may contract with agencies of the federal government for the performance by the department of inspections and other regulatory functions at food establishments, food processing plants, or salvage operations within the state which are subject to federal jurisdiction and may receive federal funds for work performed under such contracts.

(3) Except as provided in subsection (2) of this section, the provisions of the act shall not apply to establishments or specific portions of establishments regularly inspected for proper sanitation by an agency of the federal government.

81-2,288.01. Regulatory authority; inspection reporting requirements. (1) The regulatory authority shall document on an inspection report form:

(a) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, status of the permit, and personnel certificates that may be required;

(b) Specific factual observations of violative conditions, omissions, or other deviations from the requirements of the Nebraska Pure Food Act that require correction by the permitholder; and

(c) Whether the violations listed are critical or repeated.

(2) The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified in the Nebraska Pure Food Act.

(3) All procedures and requirements related to the inspection of food establishments in the act apply to food processing plants and salvage operations.

(4) The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

81-2,288.02. Regulatory authority; inspection intervals. The regulatory authority may increase the interval between inspections beyond six months if 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.

81-2,289. Restraining orders and injunctions; department; county attorney; duties.

(1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Pure Food Act, the rules and regulations adopted pursuant to the act, or a final order of the director. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the county attorney of the county in which any violation of the act occurs or is about to occur, when notified of such violation or threatened violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

81-2,290. Violations; penalty; county attorney; duties. (1) Any person violating any provision of the Nebraska Pure Food Act, the rules and regulations adopted pursuant to the act, or a final order of the director shall be guilty of a Class IV misdemeanor notwithstanding the existence of any other remedy at law.

(2) It shall be the duty of the county attorney of the county in which any violation of the Nebraska Pure Food Act occurs or is about to occur, when notified of such violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

81-2,291. Pure Food Cash Fund; created; use; investment. All fees paid to the department in accordance with the Nebraska Pure Food Act shall be remitted to the State Treasurer. The State Treasurer shall credit the fees to the Pure Food Cash Fund, which fund is hereby created. All money credited to such fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

81-2,292. Bed and breakfast establishments; exempt from act. The Nebraska Pure Food Act shall not apply to bed and breakfast establishments.