

CHAPTER 44:02:07
FOOD SERVICE CODE

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44:02:07:01. Definitions. Words defined in SDCL [34-18-1](#) have the same meaning when used in this chapter. In addition, the terms used in this chapter mean:

- (1) "Adulterated," one or more of the following conditions of food:
 - (a) Bears or contains a poisonous or deleterious substance in a quantity which may render it injurious to health;
 - (b) Bears or contains a poisonous or deleterious substance for which no safe tolerance has been established by law or is in excess of such a tolerance if one has been established;
 - (c) Consists in whole or in part of any filthy, putrid, or decomposed substance or otherwise is unfit for human consumption;
 - (d) Has been processed, prepared, packed, or held under unsanitary conditions, by which it may have become contaminated with filth or rendered injurious to health;
 - (e) Is in whole or in part the product of a diseased animal or an animal which has died otherwise than by slaughter; or
 - (f) Is contained in a container which is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health:

(2) "Approved," acceptable to the regulatory authority based on a determination of conformity with safe food manufacturing and processing methods;

(3) " a_w ," water activity which is a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature;

(4) "Certification number," a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program;

(5) "Clean-in-place," or "CIP," a method of cleaning equipment at its location by means of the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine, but not the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system;

(6) "C.F.R.," or "Code of Federal Regulations," the compilation of general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government;

(7) "Comminuted," reduced in size by methods that include chopping, flaking, grinding, or mincing; fish or meat products that are reduced in size and restructured or reformulated, such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats;

(8) "Commissary," a catering establishment, restaurant, or other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations from which mobile food units are directly supplied or serviced;

(9) "Consumer," a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment, and does not offer the food for resale;

(10) "Corrosion-resistant material," means a material that maintains an easily cleanable surface under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment;

(11) "Critical control point," a point or procedure in a specific food system where loss of control may result in an unacceptable health risk;

(12) "Critical item," a provision of this code that, if violated, is more likely than other violations to contribute to food contamination, illness, or environmental degradation;

(13) "Critical limit," the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur;

(14) "Dry storage area," a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items;

(15) "Easily cleanable," a characteristic of a surface that:

(a) Allows effective removal of soil by normal cleaning methods;

(b) Is dependent on the material, design, construction, and installation of the surface; and

(c) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use;

(16) "Easily movable," any item described as follows:

(a) Weighs 23 kilograms (50 pounds) or less; is mounted on casters, gliders, or rollers; or is provided with a mechanical means requiring no more than 23 kilograms (50 pounds) of force to safely tilt a unit of equipment for cleaning; and

(b) Has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area;

(17) "Employee," the license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment;

(18) "EPA," Environmental Protection Agency;

(19) "Equipment," items, other than utensils, used in the operation of a food establishment, including stoves, ranges, hoods, ovens, proof boxes, freezers, slicers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and mixers;

(20) "Exotic species," an animal that comes from or that is commonly found in another part of the world or in a foreign country;

(21) "Fish," fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals, including any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner;

(22) "Food," a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption;

(23) "Food borne disease outbreak," illness experienced by two or more persons after ingestion of a common food which an epidemiological analysis implicates as the source of the illness; a single case of illness from botulism or chemical poisoning;

(24) "Food-contact surface," those surfaces of equipment or utensils with which food normally comes in contact and those surfaces from which liquids or other substances may drain, drip, or splash into or onto food or surfaces normally in contact with food;

(25) "Food employee," an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces;

(26) "Food establishment," a food service establishment, mobile food service establishment, or temporary food service establishment;

(27) "Game animal," an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, poultry, fish, or bison;

(28) "General-use pesticide," a pesticide that is not classified by EPA for restricted use as specified in 40 C.F.R. 152.175, July 1, 1996;

(29) "HACCP plan," a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods in annex 5 of the Food Code, U.S. Public Health Service, 1995, pages 1 to 32, inclusive, printed September 1995;

(30) "Hazard," a biological, chemical, or physical property that may cause an unacceptable consumer health risk;

(31) "Hermetically sealed container," a container that is designed and made to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the sterility of its contents after processing;

(32) "Highly susceptible population," a group of persons who are more likely than other populations to experience foodborne disease because they have weak immune systems or are older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; children of preschool age in a facility that provides custodial care, such as a day care center;

(33) "Injected," manipulation of a meat that allows infectious or toxigenic microorganisms to be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat, such as with juices, which is referred to as "injecting," "pinning," or "stitch pumping";

(34) "Kitchenware," all multiuse utensils other than tableware used in the storage, preparation, conveying, or serving of food;

(35) "Law," applicable local, state, and federal statutes, regulations, and ordinances;

(36) "License," a document issued by the South Dakota Department of Health that authorizes a person or persons to operate a food service establishment, mobile food service establishment, or temporary food service establishment;

(37) "Linens," fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments, including cloth gloves;

(38) "Meat," the flesh of animals used as food, including the dressed flesh of cattle, swine, sheep, goats, bison, and other edible animals, except fish and poultry, that is offered for human consumption;

(39) "mg/L," milligrams per liter, which is the metric equivalent of parts per million (ppm);

(40) "Molluscan shellfish," any edible species of fresh or frozen oysters, clams, mussels, and scallops, or their edible portions, except the shucked adductor muscle of the scallop used alone;

(41) "Packaged," bottled, canned, cartoned, securely bagged, or securely wrapped, but not the wrapper, carry-out box, or other nondurable container used to contain food with the purpose of facilitating food protection during service and receipt of the food by the consumer;

(42) "Person," an association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency;

(43) "Person in charge," the individual present in a food establishment who is responsible for its food service operations;

(44) "Personal care items," items or substances that may be poisonous, toxic, or a source of contamination that are used to maintain or enhance a person's health, hygiene, or appearance, including medicines, first aid supplies, cosmetics, and toiletries such as toothpaste and mouthwash;

(45) "pH," the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution, with values between 0 and 7 indicating acidity, values between 7 and 14 indicating alkalinity, and the value of 7 considered neutral;

(46) "Physical facilities," the structure and interior surfaces of a food establishment, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system

vents;

(47) "Physician," a person licensed under SDCL chapter [36-4](#) to practice medicine in this state;

(48) "Poultry," any domesticated birds, such as chickens, turkeys, ducks, geese, or guineas, whether live or dead;

(49) "Premises," the physical facility, its contents, and the contiguous land or property under the control of the license holder; whether it is a stand-alone facility or whether it is only one component of a larger organization, such as a health care facility, hotel, motel, school, recreational camp, or prison;

(50) "Reconstituted," dehydrated food products combined with water or other liquids;

(51) "Reduced-oxygen packaging," the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21 percent oxygen, including altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging, including sous vide;

(52) "Refuse," solid waste not carried by water through the sewage system, including discarded organic matter, garbage, trash, and other waste materials resulting from the operation of a food establishment;

(53) "Regulatory authority," the local, state, or federal enforcement body or authorized representative that has jurisdiction over the food establishment;

(54) "Restricted-use pesticide," a pesticide product that contains the active ingredients specified in 40 C.F.R. 152.175, July 1, 1996, and that is limited to use by a certified applicator per article 12:56;

(55) "Safe material," an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(56) "Sanitization," the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logarithms, which is equal to 99.999 percent reduction, of representative foodborne disease microorganisms;

(57) "Sealed," free of cracks or other openings that allow the entry or passage of moisture;

(58) "Sewage," liquid waste containing animal or vegetable matter in suspension or solution; liquids containing chemicals in solution;

(59) "Shellstock," raw, in-shell molluscan shellfish;

(60) "Shucked shellfish," molluscan shellfish that have one or both shells removed;

(61) "Single-service articles," tableware, carry-out utensils, and other items, such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers, that are designed and constructed for one time, one person use;

(62) "Single-use articles," utensils and bulk food containers designed and constructed to be used once and discarded, including waxed paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils in § 44:02:07:43;

(63) "Smooth," food contact surfaces or nonfood contact surfaces that are easily cleanable and free of breaks, open seams, cracks, chips, pits, and similar imperfections, including floors, walls, or ceilings that have an

even or level surface with no roughness or projections that make it difficult to clean;

(64) "Support animal," a trained animal, such as a Seeing Eye dog, that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform;

(65) "Tableware," eating, drinking, and serving utensils for table use, such as flatware, including forks, knives, and spoons; hollowware, including bowls, cups, serving dishes, tumblers; and plates;

(66) "Temperature measuring device," a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water;

(67) "Utensil," a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices;

(68) "Warewashing," the cleaning and sanitizing of food-contact surfaces of equipment and utensils;

(69) "Water supply," a safe, accessible, and adequate source of water that meets requirements in article 74:04, Water Hygiene.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:02. Interpretation. Interpretation of the rules in this chapter must conform to the public health reasons given after the rules in annex 3, of the Food Code, U.S. Public Health Service, 1995, pages 1 to 69, inclusive, printed September 1995.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Reference: Pages 1 to 69 in annex 3, inclusive, of the 1995 Food Code, September 1995, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Pub. No. PB95-265492CEH. Copies are available from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703-487-4650) for \$25 and \$4 shipping and handling.

44:02:07:03. Person in charge. The license holder must be the person in charge or must designate a person in charge that oversees all food service operations in the food establishment. A person in charge must be designated for each work shift. At least one person in charge in each establishment must be a certified food service manager. Prior to opening, all new food service establishments and mobile food service establishments must have a certified food service manager as the person in charge. Upon a change of ownership of a food

service establishment or mobile food service establishment, a 90-day grace period from the date the ownership change takes place will be given to implement a certified food service manager as the person in charge. By July 1, 2000, all existing food service establishments and mobile food service establishments must have a certified food service manager as the person in charge. When a certified food service manager leaves an establishment, the establishment has a 90-day grace period to obtain another certified food service manager. Temporary food service establishments are exempt from the food service manager certification requirement.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: Food service manager certification, § 44:02:07:98.

44:02:07:04. Demonstration of knowledge by person in charge. Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request, the person in charge must be able to demonstrate to the regulatory authority, that the person has knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this chapter as it relates to the food operation. The person in charge must demonstrate this knowledge by means of the following:

- (1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
- (2) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;
- (3) Describing diseases that are transmissible through food and the symptoms associated with the diseases;
- (4) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;
- (5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
- (6) Stating the required food temperatures and times for safe cooking of potentially hazardous food, including meat, poultry, eggs, and fish;
- (7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;
- (8) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (a) Cross-contamination;
 - (b) Hand contact with ready-to-eat foods;
 - (c) Handwashing; and
 - (d) Maintaining the food establishment in a clean condition and in good repair;

(9) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

(10) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of;

(11) Identifying critical control points in the operation from purchasing through sale or service that may contribute to foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter; and

(12) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by this chapter, or an agreement between the regulatory authority and the establishment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Reference: Hazard Analysis Critical Control Point Principles, Annex 5, Food Code, U.S. Public Health Service, 1995, pages 1 to 32, inclusive, printed September 1995. Copies are available from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703-487-4650) for \$25 and \$4 shipping and handling.

44:02:07:05. Duties of person in charge. The person in charge must ensure that:

(1) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas;

(2) Employees and other persons, such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas, comply with this chapter;

(3) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

(4) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented;

(5) Employees are properly cooking potentially hazardous food as specified in § 44:02:07:28, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats;

(6) Employees are using proper methods to rapidly cool potentially hazardous foods as specified in § 44:02:07:32 that are not held hot or are not for consumption within four hours;

(7) Consumers who order raw or partially cooked foods of animal origin are informed that the food is not cooked sufficiently to ensure its safety;

(8) Employees are properly sanitizing cleaned multiuse equipment and utensils as specified in §§ 44:02:07:56 and 44:02:07:58 before they are reused; and

(9) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified in § 44:02:07:25.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:06. Employee health -- Reportable information. The license holder must require food employee applicants to whom a conditional offer of employment is made and current food employees to report information to the person in charge about their health and activities as they relate to diseases that are transmissible through food, including the date of onset of jaundice or of an illness specified in subdivision (1) of this section. A food employee or applicant must report the information in a manner that allows the person in charge to prevent the likelihood of food borne disease transmission. Information is reportable if the food employee or applicant meets any of the following conditions:

- (1) Is diagnosed with an illness due to:
 - (a) **Salmonella spp.;**
 - (b) **Shigella spp.;**
 - (c) **Escherichia coli O157:H7;**
 - (d) Hepatitis A virus; or
 - (e) Other diseases transmissible through food such as:
 - (i) Amebiasis;
 - (ii) Campylobacteriosis;
 - (iii) Cholera;
 - (iv) Norwalk virus;
 - (v) Giardiasis;
 - (vi) Staphylococcal or streptococcal infections; or
 - (vii) Yersiniosis;
- (2) Has a symptom caused by illness, infection, or another source that is:
 - (a) Associated with an acute gastrointestinal illness, such as the following:
 - (i) Diarrhea;
 - (ii) Fever;
 - (iii) Vomiting;

(iv) Jaundice; or

(v) Sore throat with fever; or

(b) A lesion containing pus, such as a boil or infected wound that is open or draining and is located as follows:

(i) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

(ii) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

(iii) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

(3) Had a past illness from an infectious agent specified in subdivision (1) of this section; or

(4) Meets one or more of the following high-risk conditions:

(a) Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by **Salmonella spp., Shigella spp., E. coli O157:H7**, hepatitis A virus illness, or other disease transmissible through food, including an outbreak at an event such as a family meal, church supper, or ethnic festival because the food employee or applicant:

(i) Prepared food implicated in the outbreak;

(ii) Consumed food implicated in the outbreak; or

(iii) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a carrier of the infectious agent; or

(b) Lives in the same household as a person who is diagnosed with a disease caused by **Salmonella spp., Shigella spp., E. coli O157:H7**, hepatitis A virus infection, or other disease transmissible through food; or

(c) Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by **Salmonella spp., Shigella spp., E. coli O157:H7**, hepatitis A virus infection, or other disease transmissible through food.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:07. Employee exclusions and restrictions. The person in charge must exclude an ill employee or advise the employee to seek medical diagnosis. Upon receipt of medical documentation, the person in charge must restrict or exclude the employee in the following manner:

(1) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subdivision 44:02:07:06(1);

(2) Except as specified under subdivision (3) of this section, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles in a food establishment if the food employee is:

(a) Suffering from a symptom specified in subdivision 44:02:07:06(2); or

(b) Is not experiencing a symptom of acute gastroenteritis specified in subdivision 44:02:07:06(2)(a) but has a stool that yields a specimen culture that is positive for **Salmonella spp.** or **Shigella spp.**;

(3) If the population served is a highly susceptible population, exclude a food employee who:

(a) Is experiencing a symptom of acute gastrointestinal illness specified in subdivision 44:02:07:06(2) and meets a high-risk condition specified in subdivisions 44:02:07:06(4)(a)-(c);

(b) Is not experiencing a symptom of acute gastroenteritis specified in subdivision 44:02:07:06(2)(a) but has a stool that yields a specimen culture that is positive for **Salmonella spp.**, **Shigella spp.**, or **Escherichia coli O157:H7**;

(c) Had a past illness from **Salmonella spp.** within the last three months; or

(d) Had a past illness from **Shigella spp.** or **E. coli O157:H7** within the last month; and

(4) For a food employee who is jaundiced;

(a) If the onset of jaundice occurred within the last seven calendar days, exclude the food employee for the food establishment; or

(b) If the onset of jaundice occurred more than seven calendar days before:

(i) Exclude the food employee from a food establishment that serves a highly susceptible population; or

(ii) Restrict the food employee from activities specified in subdivision 44:02:07:07(2) if the food establishment does not serve a highly susceptible population.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:08. Removal of employee exclusions for certain illnesses. The person in charge may remove an exclusion specified in subdivision 44:02:07:07(1) if the person in charge obtains approval from the regulatory authority or if the person excluded provides to the person in charge written medical documentation from a physician that specifies that the excluded person:

(1) May work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of:

(a) The infectious agent of concern; or

(b) Symptoms, if hepatitis A virus is the infectious agent of concern; or

(2) May only work in an unrestricted capacity in a food establishment that does not serve a highly susceptible population because the person:

(a) Is free of the symptoms specified in subdivision 44:02:07:06(2)(a); and

(b) Has a stool that yields a specimen culture that is negative for **Shigella spp.** or **Escherichia coli O157:H7**.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:09. Removal of employee restrictions for certain symptoms. The person in charge may remove restrictions as follows:

(1) A restriction specified in subdivision 44:02:07:07(2)(a) if the restricted person:

(a) Is free of the symptoms specified in subdivision 44:02:07:06(2) and no foodborne illness occurs that may have been caused by the restricted person;

(b) Is suspected of causing foodborne illness but is free of the symptoms specified in subdivision 44:02:07:06(2) and provides written medical documentation from a physician stating the following:

(i) That the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness; or

(ii) That the symptoms experienced result from a chronic noninfectious condition, such as ulcerative colitis or irritable bowel syndrome; or

(2) A restriction specified in subdivision 44:02:07:07(2)(b) if the restricted person provides written medical documentation that indicates the stools are free of **Salmonella spp.**

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:10. Removal of exclusions -- Highly susceptible population. The person in charge may remove an exclusion specified in subdivision 44:02:07:07(3) if the excluded person provides written medical documentation from a physician that the person is free of **Salmonella spp.**, **Shigella spp.**, **E. Coli O157:H7**, hepatitis A virus infection, or other disease transmissible through food, whichever is the infectious agent of concern.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:11. Removal of exclusions and restrictions for jaundice. The person in charge may remove an exclusion specified in subdivisions 44:02:07:07(4)(a) and (4)(b)(i) and a restriction specified in subdivision 44:02:07:07(4)(b)(ii) if:

(1) No foodborne illness occurs that may have been caused by the excluded or restricted person and the person:

(a) Provides written medical documentation from a physician stating that the person is free of hepatitis A virus; or

(b) Is no longer jaundiced; or

(2) The excluded or restricted person is suspected of causing foodborne illness and complies with (1)(a) and (b) of this section.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:12. Release of employee from restriction or exclusion by the regulatory authority. The regulatory authority may release an employee from restriction or exclusion based on medical documentation from a physician or the following conditions:

(1) An employee who was infected with **Salmonella spp.**, **Shigella spp.**, or **Escherichia coli O157:H7** if the employee's stools are negative for **Salmonella spp.**, **Shigella spp.**, or **E. coli O157:H7** based on testing of two consecutive stool specimen cultures that are taken:

(a) Not earlier than 48 hours after discontinuance of antibiotics; and

(b) At least 24 hours apart; or

(2) An employee who was infected with hepatitis A virus if:

(a) Symptoms cease a week after onset of jaundice; or

(b) At least two blood tests show falling liver enzymes.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:13. General employee cleanliness. Employees must vigorously wash their hands and the exposed portions of their arms with soap and warm water for at least 20 seconds at the following times:

- (1) Immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;
- (2) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
- (3) When switching between working with raw foods and working with ready-to-eat foods;
- (4) After handling soiled equipment or utensils;
- (5) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (6) After using the toilet room;
- (7) After eating, drinking, or smoking;
- (8) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (9) After caring for or handling support animals; or
- (10) After engaging in other activities that contaminate the hands.

Food employees must clean their hands in a handwashing lavatory and may not clean their hands in a sink used for food preparation or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:14. General employee practices. Employee practices must conform to the following requirements:

- (1) Food employees must keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough;
- (2) While preparing food, food employees may not wear jewelry on their arms and hands;
- (3) Food employees must wear clean outer clothing. If uniforms are not provided, clean outer coverings must be worn over clothing or the employee must change to clean clothing if their clothing is soiled;
- (4) A food employee may eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. However, an employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands; the container; exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles;
- (5) Food employees experiencing persistent sneezing, coughing, or runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles;
- (6) Food employees must wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair. The hair restraints must be designed and worn to effectively keep hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles; and

(7) Employees must maintain a high degree of personal cleanliness and must conform to the hygienic practices of this section during all working periods in the food establishment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:15. Food supplies. Food must be free from adulteration or other contamination and must be safe for human consumption. Food must be obtained from approved sources. Food in hermetically sealed containers must be obtained from a good processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant. Food prepared in a private home may not be used or offered for human consumption in a licensed food establishment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:16. Food source requirements. Food utilized in the food establishment must meet the following requirements for source of food:

(1) Fluid milk, dry milk, and milk products must be pasteurized and obtained from sources that comply with Grade A standards as specified in § 12:05:07:01. Frozen dairy products and cheese must comply with standards as specified in § 12:17:07:01;

(2) Fish may not be received for sale or service unless they are commercially harvested and processed. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subdivision 44:02:07:28(2) must be obtained from a supplier that freezes the fish as specified under § 44:02:07:30; or must be frozen on the premises as specified under § 44:02:07:30 and records shall be retained as specified under § 44:02:07:30;

(3) Fresh and frozen shucked shellfish (oysters, clams, or mussels) must be packed in nonreturnable packages identified with the name and address of the original shell processor, shucker-packer, or repacker and the interstate certification number. Shell stock and shucked shellfish must be kept in the container in which they are received until they are used. Each container of unshucked shell stock must be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quality of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency. Shell stock tags or labels must be retained for 90 days from the date the container is emptied. Molluscan shellfish that are caught for recreation may not be received for sale or service;

(4) Mushroom species picked in the wild must be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert;

(5) Only Grade B eggs or better meeting Grade standards in article 12:26 or pasteurized liquid, frozen, or dry eggs or dry egg products may be used. Pasteurized liquid, frozen, or dry eggs or egg products must be

substituted for eggs in the shell in the preparation of foods such as Caesar salad, hollandaise or bernaise sauce, noncommercial mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not cooked as specified in § 44:02:07:28. These products must also be used if eggs for a highly susceptible population are broken, combined in a container and not cooked immediately, or if the eggs are held before service following cooking;

(6) Game animals and exotic species may be received for sale or service if they are raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; and

(7) Ice for use as a food or a cooling medium must be made from an approved water supply. After use as a cooling medium, ice may no longer be used as a food.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:17. Food additives. Food may not contain unapproved food additives or additives that exceed amounts allowed in 20 C.F.R. 170-180, April 1, 1996, relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 C.F.R. 181-186, April 1, 1996, or pesticide residues that exceed provisions specified in 40 C.F.R. 185, July 1, 1996, administered by the EPA.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:18. Potentially hazardous food. Potentially hazardous food is a food that may be natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of *Clostridium botulinum*, or eggs in the shell, the growth of *Salmonella enteritidis*.

Potentially hazardous food includes a food of animal origin that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures. Potentially hazardous food does not include the following:

- (1) An air-cooled hard-boiled egg with shell intact;
- (2) A food with a water activity a_w value of 0.85 or less;
- (3) A food with a hydrogen ion concentration pH level of 4.6 or below when measured at 24°C (75°F);
- (4) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution; or

(5) A food for which a variance granted by the regulatory authority is based on laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of **Clostridium botulinum** cannot occur.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:19. Receiving temperature requirements of potentially hazardous food. Potentially hazardous foods must meet the following temperature requirements upon receipt:

(1) Except as specified in subdivision (3) of this section, refrigerated potentially hazardous food must be at a temperature of 5°C (41°F) or below when received;

(2) Potentially hazardous food that is cooked as required under §§ 44:02:07:28 and 44:02:07:29 and received hot must be received at a temperature of 60°C (140°F) or above;

(3) Potentially hazardous food may be received at the temperature specified in laws governing its distribution; and

(4) Potentially hazardous food must be free of evidence of previous temperature abuse.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:20. General food protection. Food must be protected at all times while being stored, prepared, displayed, served, or transported from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage, and overhead dripping from condensation. The storage temperature of potentially hazardous food must be at 5°C (41°F) or below or 60°C (140°F) or above at all times.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:21. Preventing contamination by employees. Employees in a food establishment must adhere to the following requirements to prevent contamination of food:

- (1) Wash hands as specified under § 44:02:07:13;
- (2) Avoid contact with exposed ready-to-eat food with bare hands by using utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. However, bare hand contact is allowed when washing fruits and vegetables or as otherwise authorized by the regulatory authority;
- (3) Minimize contact of bare hands and arms with exposed food that is not in a ready-to-eat form;
- (4) Use single-use gloves for only one task, such as working with ready-to-eat food or with raw animal food; use them for no other purpose; and discard them when they are damaged or soiled or when interruptions occur in the food operation; and
- (5) Use a utensil only once to taste food that is to be sold or served.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:22. Preventing contamination during storage. Food must be stored as follows to prevent potential contamination:

- (1) Food must be stored in a clean, dry location where it is not exposed to splash, dust, or other contamination and is at least 15 centimeters (6 inches) above the floor;
- (2) Food in packages and working containers may be stored less than 15 centimeters (6 inches) above the floor if it is stored on case lot handling equipment, such as dollies, racks, or pallets;
- (3) Pressurized beverage containers; food in waterproof containers, such as bottles or cans in cases; and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture;
- (4) Food may not be stored in locker rooms; toilet rooms; dressing rooms; garbage rooms; mechanical rooms; under sewer lines that are not shielded to intercept potential drips; under leaking water lines, including leaking automatic fire sprinkler heads; under lines on which water has condensed; under open stairwells; or under other sources of contamination;
- (5) Food packages must be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants;
- (6) Working containers holding food or food ingredients that are removed from their original packages, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, must be identified with the common name of the food. The labeling must be on the container or on a nondetachable lid. Those containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified;
- (7) Packaged food may not be stored in direct contact with water or undrained ice if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the water or ice;
- (8) Whole raw fruits or vegetables, cut raw vegetables such as celery or carrot sticks, cut potatoes, and tofu may be immersed in ice or water; and

(9) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:23. Preventing contamination of packaged and unpackaged food. Packaged and unpackaged food must be protected from cross-contamination by the following methods:

(1) Separating raw animal foods during storage, preparation, holding, and display from raw ready-to-eat food, including other raw animal food such as fish for sushi or molluscan shellfish; other raw ready-to-eat food, such as vegetables; and cooked ready-to-eat food;

(2) Separating types of raw animal foods from each other, such as beef, fish, lamb, pork, and poultry, during storage, preparation, holding, and display by any of the following methods:

(a) Using separate equipment for each type;

(b) Arranging raw animal products by cooking temperature, with those products requiring lower cooking temperatures at the top and those products requiring higher cooking temperatures at the bottom;

(c) Arranging each type of food in equipment so that cross-contamination of one type with another is prevented; or

(d) Preparing each type of food at different times or in separate areas;

(3) Cleaning and sanitizing equipment and utensils as specified under §§ 44:02:07:56 and 44:02:07:58;

(4) Storing food removed from its original container or package in a clean and sanitized covered container. Covers must be impervious and nonabsorbent, except that clean laundered linens or napkins may be used for lining or covering containers of bread or rolls. Quarters or sides of meat or whole and uncut processed meats may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat;

(5) Cleaning hermetically sealed containers of food of visible soil before opening; and

(6) Storing damaged, spoiled, or recalled products being held for credit, redemption, or return in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:24. Preventing contamination from equipment, utensils, and wiping cloths. Food must be protected from contamination by equipment, utensils, and wiping cloths by the following methods:

- (1) Preventing contact with probe-type price or identification tags;
- (2) Preventing contact with surfaces of utensils and equipment that are not cleaned and sanitized;
- (3) Ensuring in-use utensils are stored properly during pauses in food preparation or dispensing, as follows:
 - (a) Except as specified under subsection (b) of this subdivision, in the food with their handles above the top of the food and the container;
 - (b) In food that is not potentially hazardous with their handles above the top of the food in containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
 - (c) In running water of sufficient velocity to flush particulates to the drain, if the utensils are used with moist food such as ice cream or mashed potatoes;
 - (d) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or
 - (e) Clean, sanitized, and dry;
- (4) Preventing contact with wiping cloths that do not meet the following requirements:
 - (a) Cloths used for wiping food spills on tableware, such as plates, bowls, or carryout containers served to the consumer, must be clean, dry, and used for no other purpose;
 - (b) Cloths used for wiping food spills must be moist and laundered as required, stored in a chemical sanitizer, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment; or
 - (c) Dry or moist cloths that are used with raw animal foods must be kept separate from cloths used for other purposes, and the moist cloths used with raw animal foods must be kept in a separate sanitizing solution.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:25. Preventing contamination by consumers. Food on display for self-service by the consumer must be protected from contamination by the following methods:

- (1) The use of packaging; counter, service line, or salad bar food guards; display cases; or similarly effective means;
- (2) Providing suitable utensils or effective dispensing methods for self-service operations for ready-to-eat foods;
- (3) Not allowing self-service consumers to use soiled tableware, including single-service articles, to obtain additional food from display and serving equipment. However, cups and glasses may be reused if refilling

is a contamination free process. A sign similar to the one shown must be posted to inform the consumer of this requirement:

CONSUMER

Please obtain clean tableware before
obtaining additional food.

(4) Protecting condiments by using:

- (a) Dispensers that are designed to provide protection;
- (b) Food display units provided with proper dispensing utensils;
- (c) Original containers designed for dispensing; or
- (d) Individual packages or portions; and

(5) By not allowing food that has been served or sold and in the possession of a consumer and that is unused or returned by the consumer to be offered again as food for human consumption. However, food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold to that population that is not classified as highly susceptible.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Note: Signs required by this section may be obtained from the South Dakota Department of Health.

44:02:07:26. Refrigerated storage. Sufficient refrigeration facilities or other effectively insulated facilities that are conveniently located must be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food must be provided with a numerically scaled indicating thermometer, accurate to $\pm 1^{\circ}\text{C}$ (2°F), located to measure air temperature in the warmest part of the facility. Frozen foods must be maintained frozen and refrigerated potentially hazardous foods must be stored at 5°C (41°F) or below.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:27. Thawing potentially hazardous food. Potentially hazardous foods must be thawed in one of the following manners:

(1) Under refrigeration that maintains the food temperature at 5°C (41°F) or below;

(2) Completely submerged under running water as follows:

(a) At a water temperature of 21°C (70°F) or below with sufficient water velocity to agitate and float off loose particles in an overflow, for a period of time that does not allow thawed portions of ready-to-eat food to rise above 5°C (41°F); or

(b) For a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 5°C (41°F) for more than four hours, including the time the food is exposed to the running water and the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to 5°C (41°F);

(3) As part of a cooking process if the food that is frozen is cooked as required or thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(4) Using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:28. Cooking potentially hazardous food. Raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, must be cooked to heat all parts of the food to the following minimum requirements for temperature and time:

(1) A temperature of 63°C (145°F) or above for 15 seconds as shown in the following chart for eggs in the shell that are broken and prepared for immediate service in response to a consumer's order and for fish, seafood, beef, veal, lamb, and mutton:

Minimum Cooking Temperatures and Times

Temperatures	Time	Food
63°C (145°F)	15 seconds	Shell eggs for individual order, immediate service; Fish, seafood, beef, veal, lamb, mutton and buffalo
68°C (155°F)	15 seconds, or	Pork, game animals, ground or chopped
66°C (150°F)	1 minute, or	meat and fish, injected meats, eggs
63°C (145°F)	3 minutes	in multiserving batches

(2) A temperature of 68°C (155°F) for 15 seconds or the temperature specified in the previous chart that corresponds to the cooking time for pork and exotic species of game animals, comminuted fish and meats, injected meats, and eggs that are not prepared for immediate service to a consumer;

(3) At a temperature of 74°C (165°F) or above for 15 seconds for poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish, meat, or poultry;

(4) As specified for roasts of beef and corned beef cooked:

(a) In an oven that is preheated to the temperature specified for their weight in the following chart and that is held at or above that temperature; and

**Oven Parameters Required for Destruction of Pathogens
on the Surface of Roasts of Beef and Corned Beef**

Oven Type	Oven Temperature	
	Roast Weight	
	Less than or equal to 4.5 kg(10 lbs)	Greater than 4.5 kg (10 lbs)
Still Dry	177°C (350°F)	121°C (250°F)
Convection	163°C (325°F)	163°C (325°F)
High	Less than 121° C (250°F)	Less than 121°C (250°F)
Humidity*		
*Relative humidity greater than 90% for at least one hour as measured in the cooking chamber or exit the oven; or in a moisture-impermeable bag that provides 100% humidity.		

(b) To a food temperature as specified in the following chart and held for the corresponding amount of time specified in the following chart for that temperature:

**Minimum Holding Times Required at Specified Temperatures
for Cooking All Parts of Roasts of Beef and Corned Beef**

RARE					
MEDIUM RARE					
Temperature Time*		Temperature Time*		Temperature Time*	
°C (°F)		°C (°F)		°C (°F)	
54 (130)	121 minutes	58 (136)	32 minutes	61 (142)	8 minutes
56 (132)	77 minutes	59 (138)	19 minutes	62 (144)	5 minutes
57 (134)	47 minutes	60 (140)	12 minutes	63 (145)	3 minutes
*Holding time may include postoven heat rise.					

Except for food establishments serving a highly susceptible population, this section does not apply to raw or partially cooked foods, if the food is a raw animal food, such as raw marinated fish, raw molluscan shellfish, or steak tartare or a partially cooked food, such as lightly cooked fish, rare meat, and soft-cooked eggs, that is served or offered for sale in a ready-to-eat form and the consumer is informed that to ensure their safety the food should be cooked as required.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:29. Microwave cooking. Cooking of raw animal foods in a microwave oven must be as follows:

- (1) Food must be rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (2) Food must be covered to retain surface moisture;
- (3) Food must be heated an additional 14°C (25°F) above the temperature specified in § 44:02:07:28 to compensate for shorter cooking times; and
- (4) Food must be allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:30. Parasite destruction by freezing. Before service or sale in ready-to-eat form, raw, marinated, or partially cooked fish other than molluscan shellfish must be frozen throughout to a temperature of -20°C (-4°F) or below for 168 hours in a freezer, or -35°C (-31°F) or below for 15 hours in a blast freezer.

If raw, marinated, or partially cooked fish are served or sold in ready-to-eat form, the person in charge must record the freezing temperature and time to which the fish are subjected and must retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:31. Hot storage of potentially hazardous food. Sufficient hot food storage facilities must be provided to assure the maintenance of potentially hazardous food at the required temperature during storage. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under § 44:02:07:40, all potentially hazardous food must be maintained at 60°C (140°F) or above, except that roasts cooked to a temperature and for a time specified in subdivision 44:02:07:28(4) may be held at a temperature of 54°C (130°F).

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:32. Cooling of potentially hazardous food. The cooling of potentially hazardous food must be accomplished in the following manner:

- (1) Cooked potentially hazardous food must be cooled:
 - (a) From 60°C (140°F) to 21°C (70° F) within two hours; and
 - (b) From 21°C (70°F) to 5°C (41°F), or below, within four hours;
- (2) Potentially hazardous food must be cooled to 5°C (41°F) or below within four hours if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna;
- (3) A potentially hazardous food received in compliance with laws allowing a temperature above 5°C (41°F) during shipment from the supplier must be cooled to 5°C (41°F) or below within four hours;
- (4) Cooling must be accomplished in accordance with the time and temperature criteria specified in subdivisions (1)-(3), inclusive, of this section using one or more of the following methods based on the type of food being cooled:
 - (a) Placing the food in shallow pans;
 - (b) Separating the food into smaller or thinner portions;
 - (c) Using rapid cooling equipment;
 - (d) Stirring the food in a container placed in an ice water bath;
 - (e) Using containers that facilitate heat transfer;
 - (f) Adding ice as an ingredient; or
 - (g) Other effective methods; or
- (5) When placed in cooling or cold holding equipment, food containers in which food is being cooled must be arranged in the equipment to provide maximum heat transfer through the container walls and must be loosely covered. However, food may be uncovered if it is protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:33. Reheating food. Reheating food must meet the following conditions:

- (1) Potentially hazardous food that is cooked, cooled, and reheated for hot holding must be reheated rapidly so that parts of the food reach a temperature of at least 74°C (165°F) for 15 seconds. This temperature

must be reached within one hour;

(2) Food reheated for hot holding in a microwave oven must be covered, rotated, or stirred throughout or midway during cooking or according to label instructions during heating, heated to a temperature of at least 88°C (190°F), and allowed to stand covered two minutes after reheating;

(3) Ready-to-eat food taken from a commercially processed, hermetically sealed container or from an intact package from a food processing plant must be heated to a temperature of at least 60°C (140°F) for hot holding;

(4) Remaining unsliced portions of roasts of beef that are cooked as required may be reheated for hot holding as specified in subdivision 44:02:07:28(4).

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:34. Washing fruits and vegetables. Raw fruits and vegetables must be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals as specified in 21 C.F.R. 173.315, April 1, 1996. Any sink used to wash, prepare, store, or soak food must be indirectly connected to the sewer through an airbreak.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:35. Food display and service. Potentially hazardous food must be kept at an internal temperature of 5°C (41°F) or below or at an internal temperature of 60°C (140°F) or above during display and service with the exception of rare roast beef, which must be held for service at a temperature of at least 54°C (130°F).

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:36. Dispensing of milk, cream, and nondairy products. Dispensing of milk, cream, and nondairy products must conform to the following requirements:

(1) Milk and milk products for drinking purposes must be provided to the consumer in an unopened, commercially filled package not exceeding .473 liter (one pint or 16 fluid ounces) in capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. If a bulk dispenser for milk or milk products is not available and portions of less than one-half pint are required for mixed drinks, cereal, dessert service, or in a glass for drinking, milk and milk products may be poured from a commercially filled plastic container of 3.785 liters (one gallon) capacity;

(2) Cream or half-and-half must be provided in an individual service container or a protected dispenser that pours or it must be drawn from a refrigerated dispenser designed for such service. When dispensers that pour are emptied, they must be washed and sanitized as specified in § 44:02:07:56 or 44:02:07:58 before reuse; and

(3) Liquid nondairy creaming or whitening agents must be provided in an individual service container that must be at or below 5°C (41°F) during storage, display, or service.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:37. Ready-to-eat food. Ready-to-eat food is food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. Ready-to-eat food includes the following:

(1) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food;

(2) Raw, washed, or cut fruits and vegetables;

(3) Whole raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:38. Date marking and disposition of ready-to-eat potentially hazardous food. Date marking and disposition of ready-to-eat potentially hazardous food must be handled in the following manner:

(1) Refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than 24 hours in a food establishment must be marked with the date of preparation and must be discarded if not consumed within 10 calendar days from the date of preparation;

(2) A container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant must be marked to indicate the date by which the food must be consumed or it must be consumed or discarded within 10 calendar days after the original package is opened in a food establishment. This requirement does not apply to whole, unsliced portions of a cured and processed product with the original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing; and

(3) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of 5°C (41°F) must be discarded if not sold within 10 days. If the automatic shut-off control is activated at a temperature of 7°C (45°F), the food must be discarded if not sold within three days;

Subdivisions (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.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:39. Reduced-oxygen packaging. A food establishment that packages food using a reduced-oxygen packaging method must have a HACCP plan that contains the information specified under § 44:02:07:97 and that does the following:

(1) Identifies the food to be packaged;

(2) Limits the food packaged to a food that does not support the growth of **Clostridium botulinum** because it complies with one of the following:

(a) Has an a_w of 0.91 or less;

(b) Has a pH of 4.6 or less;

(c) Is a meat product cured at a food processing plant regulated by the U.S. Department of Agriculture using a combination of nitrites, nitrates, and salt that at the time of processing consists of 120 mg/L or higher concentration of sodium nitrite and a brine concentration of at least 3.50 percent and is received in an intact package; or

(d) Is a food with a high level of competing organisms such as raw meat or raw poultry;

(3) Specifies methods for maintaining food at 5° C(41° F) or below;

(4) Describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to maintain the food at 5°C (41°F) or below and to discard the food within 14 calendar days of its packaging if it is not served for on-premises consumption or, if served or sold for off-premises consumption it is not consumed;

(5) Limits the shelf life to no more than 14 calendar days from packaging to consumption or to the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(6) Includes operational procedures that do the following:

(a) Prohibit contacting food with bare hands;

(b) Identify a designated area and the method by which physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination and by which access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and

(c) Delineate cleaning and sanitization procedures for food-contact surfaces; and

(7) scribes the training program that ensures that the individual responsible for the reduced-oxygen packaging operation understands the following:

(a) Concepts required for a safe operation;

(b) Equipment and facilities; and

(c) Procedures specified in subdivision (6) of this section and § 44:02:07:97.

Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced-oxygen packaging method.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:40. Time as a public health control. Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if the following requirements are met:

(1) The food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;

(2) The food is served or discarded within four hours from the time when the food is removed from temperature control;

(3) Food in unmarked containers or packages, or for which the time expires, is discarded; and

(4) Written procedures are maintained in the food establishment and made available to the regulatory authority upon request to ensure compliance with subdivisions (1) to (3), inclusive, of this section and § 44:02:07:32 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

Once time is implemented as a control measure for potentially hazardous food, no other measures may be substituted.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:41. Variance requirement for specialized processing methods. A food establishment must obtain variance from the regulatory authority before smoking or curing food; using food additives as a method of food preservation rather than as a method of flavor enhancement; using a reduced-oxygen method of packaging food, except as specified in § 44:02:07:39, if a barrier to **Clostridium botulinum** exists; or preparing food by another method that is determined by the regulatory authority to require a variance.

The regulatory authority may grant a variance by modifying or waiving one or more of the requirements of this chapter if in the opinion of the regulatory authority a health hazard will not result from the variance. If a variance is granted, the regulatory authority must retain the following information in its records on the food establishment:

- (1) A statement from the petitioner of the proposed variance of the requirement, citing relevant section numbers;
- (2) A rationale from the petitioner explaining how the potential public health hazards addressed by the relevant sections will be alternatively addressed by the proposal; and
- (3) A HACCP plan, if required, that includes the information as it is relevant to the variance requested.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: Distress Food Act, SDCL [34-5-9](#) to [34-5-18](#), inclusive.

44:02:07:42. Contaminated food disposition. The requirements for the discarding of unsafe, adulterated, or contaminated food are as follows:

- (1) A food that is unsafe, adulterated, or not honestly presented as specified in § 44:02:07:15 must be discarded;
- (2) Food that is not from an approved source as specified in § 44:02:07:16 must be discarded;
- (3) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in § 44:02:07:07 must be discarded;
- (4) Food that is contaminated by food employees, consumers, or other persons through contact with their hands; bodily discharges, such as nasal or oral discharges; or other means must be discarded; and
- (5) Food that has been held for longer than four hours at temperatures between 5°C (41°F) and 60°C (140°F) is considered unsafe or adulterated and must be discarded. However, food that is cooled as per § 44:01:07:32 is allowed the holding time as prescribed.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: Distress Food Act, SDCL [34-5-9](#) to [34-5-18](#), inclusive.

44:02:07:43. General equipment and utensils -- Materials and design. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food. Under normal use conditions materials must be safe; durable; corrosion-resistant; nonabsorbent; sufficient in weight and thickness to withstand repeated warewashing; finished to have a smooth, easily cleanable surface; and resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:44. General equipment and utensils -- Use limitations of certain materials. Equipment and utensils must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions. The use of the materials listed in this section for equipments and utensils used in food preparation and service is limited as follows:

(1) Cast iron may not be used for utensils or food-contact surfaces of equipment except as a surface for cooking. However, cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service;

(2) Ceramic, china, crystal utensils, and decorative utensils, such as hand painted ceramic or china, that are used in contact with food must be lead-free or contain levels of lead not exceeding the following limits:

Lead Content in Utensils

Utensil Category	Description	Maximum Lead (mg/L)
Hot beverage mugs	Coffee mugs	0.5
Large hollowware	Bowls >1.1 L (1.16 QT)	1.0
Small hollowware	Bowls <1.1 L (1.16 QT)	2.0
Flat utensils	Plates, Saucers	3.0

(3) Copper and copper alloys, such as brass, may not be used in contact with a food that has a pH below 6, such as vinegar, fruit juice, or wine, or for a fitting or tubing installed between a backflow prevention device and a carbonator;

(4) Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used for beverages, acidic food, moist food, or hygroscopic food;

(5) Pewter may not be used as a food-contact surface. However, imitation pewter meeting the required characteristics of multiuse utensils as specified in § 44:02:07:43 may be used as a food-contact surface;

(6) Solder and flux containing lead in excess of 0.2 percent may not be used on surfaces that contact food;

(7) Wood and wood wicker may not be used as a food-contact surface except as provided in this subdivision. However, hard maple or an equivalently hard, close-grained wood may be used for cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and wooden paddles. Single-service items, such as chopsticks, stirrers, and wooden ice cream spoons, made from other wood materials may be used;

(8) Plastics must be of sufficient weight and thickness to permit repeated use and cleaning and sanitizing by normal methods as specified in §§ 44:02:07:56 and 44:02:07:58;

(9) Linens, napkins, and sponges may not be used in contact with food; however, linens and napkins may be used to line containers used for service of baked bread or bread products if the linens and napkins are replaced each time the container is refilled for a new consumer. Cloth gloves may be used in direct contact with food that is subsequently cooked as required, such as frozen food or a primal cut of meat. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces;

(10) Mollusc and crustacea shells may not be used more than once as serving containers; and

(11) Slash-resistant gloves that are used to protect hands during operations requiring cutting may be used in direct contact only with food that is subsequently cooked or with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove or single-use glove.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:45. Food-contact surfaces -- Design and construction. Multiuse food-contact surfaces must meet the following requirements for design and construction:

- (1) Smooth;
- (2) Free of breaks, open seams, cracks, chips, pits, and similar imperfections;
- (3) Free of sharp internal angles, corners, and crevices;
- (4) Finished to have smooth welds and joints; and
- (5) Accessible for cleaning and inspection by one of the following methods:
 - (a) Without being disassembled;
 - (b) By disassembling without the use of tools; or
 - (c) By easy disassembling with the use of only simple tools such as mallets, screw drivers, or wrenches that are kept near the equipment and are accessible for use.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:46. Nonfood-contact surfaces -- Design and construction. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning must be constructed of a corrosion-resistant, nonabsorbent, and smooth material. Nonfood-contact surfaces must be free of unnecessary ledges, projections, and crevices, and must be designed and constructed to allow easy cleaning and to facilitate maintenance.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:47. Clean-in-place (CIP) equipment -- Design and construction. Clean-in-place equipment must meet the characteristics specified in § 44:02:07:45 and must be designed and constructed so that cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces. The system must be self-draining or capable of being completely drained of cleaning and sanitizing solutions.

CIP equipment that is not designed to be disassembled for cleaning must be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:48. General equipment -- Design and construction. All equipment must be designed and constructed for durability under conditions of normal use. Equipment must also be designed to meet the following requirements:

- (1) "V" type threads may not be used on food-contact surfaces except for hot oil cooking or filtering equipment;
- (2) Equipment containing bearings and gears that require lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces;
- (3) Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice must be sloped to an outlet that allows complete draining; and
- (4) Equipment, such as dollies, pallets, racks, and skids, used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot must be designed to be moved by hand or by conveniently available equipment, such as hand trucks and forklifts.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:49. Ventilation hood systems -- Design and construction. A ventilation hood system must be provided over all cooking equipment which produces steam, excessive smoke, grease vapors, or odors. A ventilation hood system must meet the following requirements:

- (1) Ventilation hood systems and devices must be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings;
- (2) Filters or other grease-extracting equipment must be designed to be readily removable for cleaning and replacement if it is not designed to be cleaned in place;
- (3) Exhaust ventilation hood systems in food preparation and warewashing areas, including components such as hoods, fans, guards, and ducting, must be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles; and

(4) When vented to the outside, ventilation systems may not create a public health hazard.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: 1994 Uniform Mechanical Code, § 507.

44:02:07:50. Dispensing equipment -- Design and construction. Equipment that dispenses or vends liquid food or ice in unpackaged form must be designed and constructed as follows:

(1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed, using means such as barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(2) The delivery tube or chute and orifice must be protected from dust, insects, rodents, and other contamination by a self-closing door under the following conditions:

(a) The equipment is located in an outside area that does not afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants; or

(b) The equipment is available for self-service during hours that it is not under the full-time supervision of a food employee;

(3) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled;

(4) Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice except for cold plates that are constructed integrally with an ice storage bin; and

(5) Liquid waste drain lines may not pass through an ice machine or ice storage bin.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:51. Molluscan shellfish tanks. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure the following:

(1) Water used with fish other than molluscan shellfish does not flow into the molluscan tank;

(2) The safety and quality of the shellfish as they were received are not compromised by use of the tank; and

(3) The identity of the source of the shellstock is retained for 90 calendar days from the date the container is emptied into the display tank.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:52. Temperature measuring devices. Temperature measuring devices are required in all food establishments. Temperature measuring devices must meet the following requirements:

(1) Temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating, such as candy thermometers, may be used;

(2) Food temperature measuring devices must have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F;

(3) Food thermometers that are used to check food temperatures that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to $\pm 1^{\circ}\text{C}$ (2°F). Food thermometers that are scaled only in Fahrenheit must be accurate to $\pm 2^{\circ}\text{F}$;

(4) Thermometers that are used to measure ambient air and water temperatures that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to $\pm 2^{\circ}\text{C}$ (3°F) at the use range. Ambient air and water thermometers that are scaled only in Fahrenheit must be accurate to $\pm 3^{\circ}\text{F}$ at the use range;

(5) Temperature measuring devices must be designed to be easily readable;

(6) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device must be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit; and

(7) Cold or hot holding equipment used for potentially hazardous food must be designed to include and must be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display. This subdivision does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainsmarie, steam tables, insulated food transport containers, and salad bars.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:53. General equipment -- Installation and location. Equipment, a cabinet used for storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located in locker rooms; toilet rooms; garbage rooms; mechanical rooms; under sewer lines that are not shielded to intercept potential drips; under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed; under open stairwells; or under other sources of contamination. Equipment must be installed and located as described:

- (1) If a mechanical clothes washer or dryer is provided, it must be located only where there is no exposed food; no clean equipment, utensils, and linens; and no unwrapped single-service and single-use articles;
- (2) A unit of equipment that is fixed because it is not easily movable must be installed as follows:
 - (a) Spaced to allow access for cleaning along the sides, behind, and above the unit;
 - (b) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or 1/32 inch; or
 - (c) Sealed to adjoining equipment or walls if the unit is exposed to spillage or seepage;
- (3) Table-mounted equipment that is not easily movable must be installed to allow cleaning of the equipment and areas underneath and around the equipment by being sealed to the table or elevated on legs as specified under subdivisions (4) or (5) of this section;
- (4) Floor-mounted equipment that is not easily movable must be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment. If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches). This subdivision does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store if the floor under the units is kept clean; and
- (5) Table-mounted equipment that is not easily movable must be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:54. General equipment and utensils -- Maintenance and operation. All equipment and utensils must be maintained in a state of good repair and sound condition that meets the following requirements:

- (1) Equipment components such as doors, seals, hinges, fasteners, and kick plates must be kept intact, tight, and adjusted in accordance with manufacturers' specifications;
- (2) Cutting or piercing parts must be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened;
- (3) Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized or discarded if they are not capable of being

resurfaced; and

(4) All kitchenware and food contact surfaces of equipment must be maintained free of breaks, cracks, chips, pits, and similar imperfections.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:55. Cleaning frequency of equipment and utensils. All equipment, food-contact surfaces, nonfood-contact surfaces, and utensils must be clean to sight and touch. The frequency of cleaning is as follows:

(1) Food-contact surfaces of equipment and utensils must be cleaned as follows:

- (a) Before each use with a different type of raw animal food, such as beef, fish, lamb, pork, or poultry;
- (b) Each time there is a change from working with raw foods to working with ready-to-eat foods;
- (c) Between uses with raw fruits or vegetables and with potentially hazardous food;
- (d) Before using or storing a food temperature measuring device; and

(e) At any time during the operation when contamination may have occurred or there is an interruption of operations;

(2) If used with potentially hazardous food, equipment food-contact surfaces and utensils must be cleaned throughout the day at least every four hours;

(3) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours under the following conditions:

(a) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified in § 44:02:07:20 and the containers are cleaned when they are empty;

(b) Utensils and equipment are used to prepare food in a refrigerated room that maintains the utensils, equipment, and food under preparation at required temperatures as specified in § 44:02:07:26 and the utensils and equipment are cleaned at least every 24 hours;

(c) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the required temperatures and is intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(d) The food-contact surfaces of cooking and baking equipment are cleaned at least every 24 hours; and

(e) The cavities and door seals of microwave ovens are cleaned at least every 24 hours;

(4) Tableware must be cleaned and sanitized after each use; and

(5) Nonfood-contact surfaces of equipment must be cleaned at a frequency necessary to preclude accumulation of dust, dirt, food residue, and other debris.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:56. Manual cleaning and sanitizing requirements. Manual cleaning and sanitizing must meet the following requirements:

(1) A sink with at least three compartments must be provided for manually washing, rinsing, and sanitizing equipment and utensils. Sink compartments must be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative method approved by the regulatory authority must be used;

(2) Drainboards, utensil racks, movable carts, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation must be provided for necessary utensil holding before cleaning and after sanitizing. Attached drainboards of warewashing sinks must be self-draining;

(3) Utensils and equipment must be scraped, preflushed, presoaked, or scrubbed with abrasives to remove large quantities of food wastes;

(4) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing and rinsing must be conducted in the following manner:

(a) Sinks must be thoroughly cleaned before each use or at a frequency necessary to prevent recontamination of equipment and utensils;

(b) Equipment and utensils must be thoroughly washed in the first compartment of the three compartment sink with a hot detergent solution that is kept clean and maintained at not less than 43°C (110°F). The wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent must be used according to the cleaning agent manufacturer's label instructions; and

(c) Equipment and utensils must be rinsed free of detergent and abrasives with clean water in the second compartment of the sink;

(5) Equipment and utensils must be sanitized in the third compartment of the sink in one of the following manners:

(a) Immersion in hot water for sanitizing in which the temperature of the water is maintained at 77°C (171°F) or above and immersion is maintained for at least 30 seconds. When this method is used, the sanitizing compartment of the sink must meet the following requirements:

(i) Be designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F);

(ii) Be provided with a temperature measuring device that is readily accessible for frequently measuring the washing and sanitizing temperatures; and

(iii) Be provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water;

(b) Immersion in a clean sanitizing solution containing an approved sanitizer as listed in 21 C.F.R. 178.1010, April 1, 1996, used in accordance with the manufacturer's label and as follows:

(i) In a chlorine solution for an exposure time of at least 10 seconds and at a temperature of 38°C (100°F) and a concentration of 50 mg/L or at a temperature and concentration as indicated on the following chart:

Chlorine Solution Concentration and Temperature		
Minimum	Minimum Temperature	
Concentration		
mg/L	pH 10 or less	pH 8 or less
	°C (°F)	°C (°F)
25	49 (120)	49 (120)
50	38 (100)	24 (75)
100	13 (55)	13 (55)

(ii) In an iodine solution for an exposure time of at least 30 seconds and at a minimum temperature of 24° C(75°F); a pH level of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher pH limit of effectiveness; and a concentration between 12.5 mg/L and 25 mg/L; or

(iii) In a quaternary ammonium compound solution at a minimum temperature of 24° C(75° F), at a concentration specified in 21 C.F.R. 178.1010, April 1, 1996, and used only in water with 500 mg/L hardness or less; or

(c) Immersion in a clean solution containing another sanitizing agent allowed under 21 C.F.R. 178.1010, April 1, 1996, at a temperature of at least 24° C(75° F) for an exposure time as specified by the manufacturer's use directions;

(6) Equipment and utensils too large to be sanitized by immersion must be sanitized in place by a method approved by the regulatory authority;

(7) A warewashing sink may not be used for handwashing or dumping mop water;

(8) If the third compartment of a warewashing sink is used to wash produce or thaw food, it must be provided with a physical air break on the drain line; and the sink must be cleaned and sanitized between uses; and

(9) After sanitizing, equipment and utensils must be air-dried or may be used after adequate draining as specified in 21 C.F.R. 178.1010, April 1, 1996, before contact with food.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:57. Sanitizing solution testing devices. A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions must be provided.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:58. Mechanical cleaning and sanitizing requirements. Mechanical cleaning and sanitizing of equipment and utensils must meet the following requirements:

(1) A warewashing machine must be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications, including the temperatures required for washing, rinsing, and sanitizing; pressure required for the fresh water sanitizing rinse, unless the machine is designed to use only a pumped sanitizing rinse; and conveyor speed for conveyor machines or cycle time for stationary rack machines. A warewashing machine and its auxiliary components must be operated in accordance with the machine's data plate and other manufacturer's instructions;

(2) The wash and rinse tanks of warewashing machines must be equipped with baffles, curtains, or other means to minimize internal cross-contamination of the solutions in wash and rinse tanks;

(3) A warewashing machine must be equipped with a temperature measuring device that indicates the temperature of the water in each wash and rinse tank, and as the water enters the hot water sanitizing final rinse manifold or the chemical sanitizing solution tank;

(4) A 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve must be provided immediately downstream or upstream from the fresh hot water sanitizing rinse control valve of a warewashing machine to allow checking the flow pressure of the sanitizing rinse. This subdivision does not apply to a machine that uses only a pumped sanitizing rinse. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 6.80 kilograms per 6.45 centimeters (15 pounds per square inch) or more than 11.34 kilograms per 6.45 centimeters (25 pounds per square inch) as measured in the water line immediately upstream from the fresh hot water sanitizing rinse control valve;

(5) Drainboards, utensil racks, movable carts, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation must be provided for necessary utensil holding before cleaning and after sanitizing. Attached drainboards of warewashing sinks must be self-draining. The location and construction of drainboards may not interfere with the proper use of the warewashing machine;

(6) Equipment and utensils must be flushed or scraped and, if necessary, soaked to remove food particles and soil before being washed in a warewashing machine unless a prewash cycle is a part of the machine operation. Equipment and utensils must be placed in racks, trays, or baskets or on conveyors in a way that exposes food-contact surfaces to the unobstructed application of detergent wash and clean rinse waters and that permits free draining;

(7) Warewashing machines must thoroughly wash all equipment and utensils using a clean wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions. The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:

(a) For a single-tank, stationary-rack, single-temperature machine, 74°C (165°F);

(b) For a single-tank, conveyor, dual-temperature machine, 71°C (160°F);

(c) For a single-tank, stationary-rack, dual-temperature machine, 66°C (150°F);

(d) For a multitank, conveyor, multitemperature machine, 66°C (150°F); or

(e) For a single-tank, pot, pan, and utensil washer, either stationary or moving-rack, 60°C (140°F);

(8) Mechanical warewashing machines that use hot water to sanitize must achieve a surface temperature on the equipment or utensils of 71°C (160°F) as measured by an irreversible temperature indicating device. The temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90°C (194°F) or less than 74°C (165°F) for a single-tank, stationary-rack, single-temperature machine or at least 82°C (180°F) for all other machines;

(9) Mechanical warewashing machines that use chemicals to sanitize must meet the following requirements:

(a) The temperature of the wash water must be at least 49°C (120°F);

(b) Chemicals added for sanitization purposes must be automatically dispensed;

(c) The chemical sanitizing rinse water temperature must be at least 24°C (75°F) or not less than the manufacturer's specifications for the machine; and

(d) The chemical sanitizer used in a sanitizing solution must contain an approved sanitizer as listed in 21 C.F.R. 178.1010, April 1, 1996, and must be used in accordance with the manufacturer's label instructions and as specified in subdivision 44:02:07:56(5)(b)(i);

(10) After sanitization, all equipment and utensils must be air-dried;

(11) All warewashing machines must be thoroughly cleaned at least once a day or more often if necessary to maintain them in a satisfactory operating condition; and

(12) Homestyle warewashing machines are prohibited in a food establishment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:59. Storage of cleaned equipment and utensils. Cleaned equipment and utensils must be stored as follows:

(1) In a clean, dry location;

(2) Where they are not exposed to splash, dust, or other contamination;

(3) At least 15 centimeters (6 inches) above the floor. However, items that are kept in closed packages may be stored less than 15 centimeters (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as required by subdivision 44:02:07:48(4);

- (4) In a self-draining position that permits air drying; and
- (5) Either covered or inverted.

Cleaned and sanitized equipment and utensils may not be stored in locker rooms, toilet rooms, garbage rooms, or mechanical rooms; under sewer lines that are not shielded to intercept potential drips, leaking water lines including leaking automatic fire sprinkler heads, or lines on which water has condensed; in open stairwells; or in places subject to or under other sources of contamination.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:60. Handling of clean equipment and utensils. Clean equipment and utensils must be handled in the following manner:

- (1) Equipment must be reassembled so that food-contact surfaces are not contaminated;
- (2) Lubricants meeting the requirements specified in 21 C.F.R. 178.3570, April 1, 1996, must be applied to food-contact surfaces or on equipment bearings or gears that require lubrication in a manner that minimizes incidental food contact;
- (3) Cleaned and sanitized utensils must be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented;
- (4) Knives, forks, and spoons that are not prewrapped must be presented so that only the handles are touched by employees or by consumers if consumer self-service is provided;
- (5) Soiled tableware must be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated; and
- (6) Tableware may be preset under the following conditions:
 - (a) It is protected from contamination by being wrapped, covered, or inverted;
 - (b) Unused settings are removed when a consumer is seated; or
 - (c) It is exposed, unused settings are not removed when a consumer is seated, and it is cleaned and sanitized before further use.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:61. Single-service and single-use articles. Single-service and single-use articles must meet the following requirements:

- (1) Must be made from materials that are safe and clean and do not allow the migration of deleterious substances or impart colors, odors, or tastes to food;
- (2) Must be used in a food establishment without facilities for cleaning and sanitizing kitchenware and tableware. Single-use articles are to be used by food employees and single-service articles are to be used by the consumer;
- (3) May be used only once and may not be reused;
- (4) Must be handled, displayed, and dispensed so that contamination of food- or lip-contact surfaces is prevented;
- (5) Must be stored in their original protective package or stored by using other means that afford protection from contamination until used; and
- (6) May not be stored in locker rooms, toilet rooms, garbage rooms, or mechanical rooms; under sewer lines that are not shielded to intercept potential drips, leaking water lines including leaking automatic fire sprinkler heads, or lines on which water has condensed; in open stairwells; or in places subject to or under other sources of contamination.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:62. Laundering of linens. Laundry facilities in a food establishment are restricted to the washing and drying of linens, cloths, uniforms, and aprons necessary to the operation. Laundry equipment must consist of a mechanical clothes washer and dryer installed as required by subdivision 44:02:07:53(1). Separate laundry facilities located on the premises for the purpose of general laundering, such as the linens for institutions providing boarding and lodging, may also be used for laundering food establishment items. If on-premises laundering is limited to wiping cloths intended to be used moist, a mechanical clothes washer must be provided and the wiping cloths stored in a sanitizing solution after laundering. Laundering facilities are not required if all linens are commercially laundered outside the establishment.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:63. Linen storage. Soiled linens must be kept in clean, nonabsorbent receptacles or washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, clean linens, and single-service and single-use articles.

Clean linens must be stored in a clean, dry location where they are not exposed to splash, dust, or other contamination. They must be stored at least 15 centimeters (6 inches) above the floor.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:64. Water supply. A safe supply of water must be obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to article 74:04. A nonpublic water system must submit samples monthly to an EPA-certified laboratory for bacteriological analysis while the food establishment is in operation. A yearly nitrate test is also required.

The water source and system must be of sufficient capacity to meet the demands for water of the food establishment. Water under pressure must be provided to all fixtures, equipment, and nonfood equipment that are required to use water. Hot water generation and distribution systems must be provided that are sufficient to meet the peak hot water demands throughout the food establishment.

Bottled drinking water used or sold in a food establishment must be obtained from approved sources and must be dispensed from their original containers.

A cross-connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality is prohibited.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:65. Sewage disposal. Sewage must be disposed of through an approved facility that is a public sewage treatment plant or an individual sewage disposal system that is sized, constructed, maintained, and operated according to chapter 74:53:01.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:66. Plumbing system. A plumbing system must be designed, constructed, installed, operated, and maintained according to article 20:54.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:67. Backflow prevention. The prevention of backflow or back siphonage must be accomplished in the following manner:

(1) A plumbing system must be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment by providing an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and is not less than 25 millimeters (1 inch) or by installing a backflow prevention device;

(2) Carbonating devices must be installed with adequate backflow prevention as required by the device manufacturer;

(3) A direct connection may not exist between the sewage system and drain originating from equipment in which food, portable equipment, or utensils are placed. However, certain equipment may be equipped with a direct connection as specified in article 20:54; and

(4) A backflow prevention device must be located so that it may be easily serviced and maintained.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:68. Handwashing lavatories. Handwashing lavatories must meet the following requirements:

(1) Handwashing lavatories must be located to allow convenient use by employees in food preparation, food dispensing, waitress stations, and warewashing areas and must be located in, or immediately adjacent to, toilet rooms;

(2) At least one handwashing lavatory must be provided in the food preparation area, and additional handwashing lavatories may be required as determined by the regulatory authority;

(3) Handwashing lavatories must be kept clean and maintained so that they are easily accessible at all times for employee use. Handwashing lavatories may not be used for purposes other than handwashing.

(4) Handwashing lavatories must be equipped to provide water at a temperature not over 49°C (120°F) through a mixing valve or combination faucet. A steam mixing valve may not be used at a handwashing lavatory. A self-closing, slow-closing, or metering faucet must provide a flow of water for at least 15 seconds without the need to reactivate the faucet; and

(5) A sink used for food preparation or utensil washing or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes may not be used as a handwashing lavatory.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:69. Handwashing lavatory supplies. Each handwashing lavatory must be provided with the following:

(1) A supply of hand cleaning liquid, powder, or bar soap;

(2) Individual disposable towels, a continuous towel system that supplies the user with a clean towel, or a heated-air hand drying device; and

(3) A waste receptacle if individual disposable towels are provided.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:70. Prep/vegetable sink. A designated prep sink or vegetable sink must be provided if food preparation procedures require washing, soaking, or rinsing of food items. Either a separate sink or the third compartment of the three-compartment sink may be utilized for this operation. The sink must be plumbed with a physical air break on the drain line.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:71. Service/janitor's sink. At least one service sink or curbed cleaning facility equipped with a floor drain must be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:72. Toilet facilities. At least one toilet, but not fewer than the number of toilets required by law must be provided. Toilet facilities must meet the following requirements:

- (1) A toilet room located on the premises must be completely enclosed and provided with a tight-fitting and self-closing door;
- (2) Toilet rooms must be conveniently located and accessible to employees during all hours of operation;
- (3) Toilet rooms and fixtures must be kept clean and in good repair. A supply of toilet tissue must be provided at each toilet at all times. Easily cleanable waste receptacles must be provided for refuse materials. Toilet rooms used by women must have a least one covered waste receptacle; and
- (4) Each toilet room must be provided with mechanical ventilation of sufficient capacity to effectively remove odors and vapors from the room.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

Cross-Reference: State Plumbing Code, art 20:54.

44:02:07:73. Receptacles for refuse, recyclables, and returnables. Receptacles used for refuse, recyclables, and returnables must meet the following requirements:

- (1) A receptacle must be provided in each area of the food establishment or premises where refuse is generated or commonly discarded or where recyclables or returnables are placed;
- (2) Equipment and receptacles for refuse, recyclables, and returnables and for use with materials containing food residue must be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent;
- (3) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment or within closed outside receptacles;

(4) Equipment and receptacles inside the food establishment for refuse, recyclables, and returnables must be kept covered when they are not in continuous use and after they are filled;

(5) Equipment and receptacles for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment must be designed and constructed to have tight-fitting lids, doors, or covers. Equipment and receptacles equipped with drain plugs must have the drain plugs in place;

(6) Equipment for refuse and recyclables, such as an on-site compactor, must be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the equipment is not installed flush with the base pad, under the unit;

(7) Equipment and receptacles for refuse, recyclables, and returnables must be thoroughly cleaned. Liquid wastes generated by the cleaning operation must be disposed of in a sewage system that complies with chapter 74:53:01; and

(8) Soiled equipment and receptacles for refuse, recyclables, and returnables must be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:74. Storage areas for refuse, recyclables, and returnables. A storage area for refuse, recyclables, and returnables must meet the requirements specified:

(1) An inside storage room or area, an outside storage area or enclosure, and individual receptacles must be of sufficient number and capacity to hold refuse, recyclables, and returnables that accumulate;

(2) The floors, floor coverings, walls, wall coverings, and ceilings of an inside storage area must be designed and constructed so they are smooth, nonabsorbent, and easily cleanable;

(3) An outdoor storage surface for refuse, recyclables, and returnables must be constructed of nonabsorbent material such as concrete or asphalt and must be smooth, durable, and sloped to drain;

(4) If used, an outdoor enclosure for refuse, recyclables, and returnables must be constructed of durable and cleanable materials;

(5) Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables must be maintained in good repair;

(6) Refuse, recyclables, and returnables must be stored in equipment, refuse receptacles, storage areas, or enclosures so that they are inaccessible to insects and rodents;

(7) Refuse receptacles not meeting the requirements specified in § 44:02:07:73, such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue, may not be stored outside; and

(8) The location of equipment, receptacles, storage areas, or enclosures for refuse, recyclables, and returnables may not create a public health nuisance.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:75. Removal frequency of refuse, recyclables, and returnables. Refuse, recyclables, and returnables must be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:76. Design and construction of floors, walls, and ceilings. The floors, floor coverings, walls, wall coverings, and ceilings must be designed, constructed, and installed so they are smooth, nonabsorbent, and easily cleanable. However, antislip floor coverings or applications may be used for safety reasons. The design and construction of floors, walls, and ceilings must meet the following requirements:

(1) Floors, walls, and ceilings must be designed and constructed so that utility service lines and pipes are not unnecessarily exposed. If exposed utility service lines and pipes are necessary, they must be installed so as not to obstruct or prevent cleaning of the floors, walls, or ceilings. Exposed horizontal utility service lines and pipes may not be installed on the floor;

(2) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures must be coved and closed to no larger than 1 mm (one thirty-second inch);

(3) The floors in food establishments in which water flush cleaning methods are used must be provided with drains and graded to drain, and the floor and wall junctures must be coved and sealed;

(4) Carpeting may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture. Carpeting may be installed as floor covering in other areas if it is closely woven, properly installed, easily cleanable, and maintained in good repair;

(5) Mats and duckboards may be used but must be designed to be removable and must be nonabsorbent, grease-resistant, and easily cleanable;

(6) Sawdust, wood shavings, peanut hulls, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors. However, a variance may be granted by the regulatory authority for the use of these materials in customer seating areas only;

(7) Wall and ceiling covering materials must be light-colored and must be attached so that they are smooth, nonabsorbent, and easily cleanable. Concrete, porous blocks, or bricks used for indoor wall construction must be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface;

(8) Attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall-mounted fans, decorative items, and other attachments must be easily cleanable and maintained in good repair; and

(9) Studs, joists, and rafters may not be exposed.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:77. Cleaning and maintenance of floors, walls, and ceilings. The cleaning and maintenance of floors, walls, and ceilings must be accomplished in the following manner:

(1) The physical facilities must be maintained in good repair;

(2) The physical facilities must be cleaned as often as necessary to keep them clean. Cleaning must be done during periods when the least amount of food is exposed such as after closing; and

(3) Only dustless methods of cleaning may be used, including wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:78. Lighting. Lighting must meet the following specifications for intensity and protective shielding:

(1) The light intensity must be as follows:

(a) In walk-in refrigeration units and dry food storage areas, and in other areas and rooms during periods of cleaning, at least 110 lux (10 foot candles) at a distance of 75 centimeters (30 inches) above the floor;

(b) In areas where fresh produce or packaged foods are sold or offered for consumption, areas used for handwashing, warewashing, and equipment and utensil storage and in toilet rooms, at least 220 lux (20 foot candles) at a distance of 75 centimeters (30 inches) above the floor; and

(c) At a surface where a food employee is working with unpackaged potentially hazardous food or with food, utensils, and equipment such as knives, slicers, grinders, or saws where employee safety is a factor, at least 540 lux (50 foot candles);

(2) Lighting must have protective shielding as follows:

(a) Light bulbs must be shielded or coated or must be otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils, linens, or unwrapped single-service and single-use articles;

(b) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if the integrity of the packages cannot be affected by falling broken glass and the packages are capable of being cleaned of debris from broken bulbs before the packages are opened; and

(c) An infrared or other heat lamp must be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:79. Heating, ventilation, and air conditioning. Heating, ventilation, and air conditioning must be provided as necessary and must be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment, or utensils. Intake and exhaust air ducts must be cleaned and filters changed as often as necessary to prevent contamination by dust, dirt, and other materials.

Mechanical ventilation must be provided of sufficient capacity to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. When vented to the outside, ventilation systems may not create a public health hazard.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:80. Employee dressing areas and lockers. If employees routinely change their clothes in the establishment, dressing rooms or dressing areas must be provided.

Lockers or other suitable facilities must be provided for the orderly storage of employees' clothing and other possessions.

Dressing areas and locker areas must be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles will not occur.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:81. General premises. The general premises of all food establishments must meet the following requirements:

- (1) Perimeter walls and roof of a food establishment must effectively protect the establishment from the weather and the entry of insects, rodents, and other animals;
- (2) Openings to a portion of a building that is not part of the food establishment or to the outdoors must be protected against the entry of insects and rodents as follows:
 - (a) By filling or closing holes and other gaps along floors, walls, and ceilings;
 - (b) By using closed, tight-fitting windows; or
 - (c) By using solid self-closing, tight-fitting doors;
- (3) If windows or doors are kept open for ventilation or other purposes, the openings must be protected against the entry of insects and rodents by the use of 16 mesh to 25.4-millimeters (16 mesh to 1-inch) screens, properly designed and installed air curtains, or other effective means;
- (4) Exterior walking and driving surfaces must be graded to drain and must be surfaced with materials that minimize dust, prevent muddy conditions, and facilitate maintenance;
- (5) Food establishments and all parts of property used in connection with their operations must be kept free from litter;
- (6) Only articles necessary for the operation and maintenance of the food establishment may be stored on the premises; and
- (7) The traffic of unauthorized persons through the food preparation, food storage, and warewashing areas is prohibited.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:82. Living and sleeping quarters. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations. Living or sleeping quarters located on the premises of a food establishment must be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:83. Storage and handling of maintenance items. Maintenance equipment, supplies, and tools such as brooms, mops, vacuum cleaners, and similar items must be stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles. Maintenance items must be stored in an orderly manner that facilitates easy cleaning of the storage location.

Wet-use maintenance items, such as mops, must be placed in a position that allows them to air-dry without soiling walls or other equipment and supplies.

Maintenance items must be cleaned before storage. Cleaning of maintenance items must be accomplished in a manner so as not to contaminate food, equipment, utensils, linens, and single-service and single-use articles. Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:84. Poisonous and toxic materials. Poisonous and toxic materials are not intended for ingestion and include the following:

(1) Cleaners and sanitizers, including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(2) Pesticides including insecticides and rodenticides;

(3) Substances necessary for the operation and maintenance of the establishment, such as nonfood-grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:85. Handling and storage of poisonous and toxic materials. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, are allowed in a food establishment. Original containers of poisonous or toxic materials and personal care items must bear a legible manufacturer's label. Working containers used for storing poisonous or toxic materials, such as cleaners and

sanitizers taken from bulk supplies, must be clearly and individually identified with the common name of the material.

Poisonous or toxic materials must be stored so they may not contaminate food, equipment, utensils, linens, and single-service and single-use articles. Detergents, sanitizer, and other related cleaning or drying agents must be stored separately from pesticides by a partition constructed of nonabsorbent and cleanable materials or stored in a separate location in the establishment. Poisonous or toxic materials may not be stored above food, equipment, utensils, linens, and single-service or single-use articles.

The requirement for separate storage does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:86. Use of poisonous and toxic materials. Poisonous or toxic materials must be used according to the following:

- (1) This chapter;
- (2) The manufacturer's use directions included in labeling and, for a pesticide, the manufacturer's label instructions that state that use is allowed in a food establishment;
- (3) The conditions of certification in article 12:56, if certification is required, for use of the pest control materials; and
- (4) Any additional conditions established by the regulatory authority.

Poisonous or toxic materials must be applied in a way that does not constitute a hazard to employees or other persons and that prevents contamination, including toxic residues caused by drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles.

Drying agents used in conjunction with sanitization must be strictly used according to the manufacturer's label instructions and for the specific application for which it is intended.

Restricted-use pesticides may be applied only by a certified applicator as required by article 12:56.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:87. Control of insects, rodents, and other pests. Insects, rodents, and other pests must be controlled to minimize their presence within the physical facility and its contents. The presence of insects, rodents, and other pests must be controlled as follows:

- (1) By routinely inspecting incoming shipments of food and supplies;
- (2) By routinely inspecting the premises for evidence of pests;
- (3) By eliminating harborage conditions;
- (4) By using methods, such as trapping devices or extermination, as follows:
 - (a) Devices used to electrocute flying insects must be designed to have escape-resistant trays;
 - (b) Devices used to electrocute flying insects, impel insects or insect fragments, or trap insects by adherence, must be installed as follows:
 - (i) Devices may not be located over a food preparation area; and
 - (ii) Dead insects and insect fragments may not be impelled onto or fall on exposed food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles;
 - (c) Rodent bait must be contained in a covered, tamper-resistant bait station;
 - (d) A tracking powder pesticide may not be used in a food establishment;
 - (e) A general-use pesticide must be applied according to the manufacturer's instructions;
 - (f) A restricted-use pesticide must be applied by a certified applicator as specified in article 12:56; or
 - (g) Automatic insecticide dispensers may not be located within a 12-foot radius of open food or food-contact surfaces and may not be located above food, clean equipment and utensils, food contact surfaces, and single-service and single-use articles; and
- (5) Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, and the attraction of pests.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:88. Storage of personal care items, medicines, and first aid supplies. Personal care items, medicines, and first aid supplies must be stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

Only those medicines that are necessary for the health of the employees may be allowed in a food establishment. Medicines for the employees' use must be labeled. Medicines belonging to employees that require

refrigeration and are stored in a food refrigerator must be stored in a package or container that is covered and leakproof and is located on the lowest shelf.

First aid supplies that are in a food establishment for the employees' use must be labeled and stored separately.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:89. Prohibiting animals. Live animals may be allowed on the premises of a food establishment only as follows and only if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles does not result:

- (1) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
- (2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas and sentry dogs running loose in outside fenced areas;
- (3) In areas that are not used for food preparation, such as dining and sales areas, support animals that are trained to assist an employee or other person who is disabled, are controlled by the disabled employee or person, and are not allowed to be on seats or tables, such as guide dogs; and
- (4) Decorative animals in the dining areas as long as they are confined away from the tables and consumers, and the animal's living quarters are kept clean.

Live or dead fish bait must be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles does not result.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:90. Mobile food service establishment. A mobile food service establishment consists of any enclosed trailer, van, pushcart, recreational vehicle, or similar enclosed mobile facility that is transported from site to site for the purpose of dispensing food to the public. A mobile food service establishment must comply with all the requirements of this chapter, except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation and may prohibit the sale of some or all potentially hazardous food. The regulatory authority may, when no health hazard will result, waive or modify requirements of this chapter relating to physical facilities. A mobile food service establishment must meet the following requirements:

- (1) The department shall review menu items for mobile food service establishments individually and shall approve dependent upon the facilities provided on board the mobile unit;
- (2) All foods must be prepared in the mobile unit or secured from an approved source;
- (3) Potentially hazardous food must be stored, cooked, held, and reheated to the proper temperatures as identified in §§ 44:02:07:26 to 44:02:07:38, inclusive;
- (4) Only single-service articles may be provided to the consumer;
- (5) Mobile units must operate from a commissary or other fixed food establishment and must report at least daily to that location for all supplies and for all cleaning and servicing operations. This requirement may be waived if warewashing facilities and storage facilities are provided on board the mobile unit;
- (6) Mobile units must be completely enclosed and constructed of weather-resistant materials that protect the interior from the weather and windblown dust and debris;
- (7) The floors, floor coverings, walls, wall coverings, and ceilings must be designed, constructed, and installed so they are smooth, nonabsorbent, and easily cleanable;
- (8) Protective screens or movable windows must be provided for customer service windows and openings;
- (9) All work surfaces which are used for food preparation must be nonabsorbent, easily cleanable, and durable;
- (10) A safe and adequate supply of water must be provided in the mobile unit to furnish hot and cold water for handwashing, warewashing, and food preparation;
- (11) A water supply tank must be installed in the mobile unit and must be designed and constructed as follows:
 - (a) From safe, durable, corrosion-resistant, and nonabsorbent materials;
 - (b) Enclosed from the filling inlet to the discharge outlet;
 - (c) Sloped to an outlet that allows complete drainage of the tank;
 - (d) Provided with a tank inlet that is 19.1 millimeters (3/4 inch) in inner diameter or less, with a hose connection of a size or type that will prevent its use for any other service, and with a cap to cover the inlet at all times;
 - (e) Positioned so that the water tank inlet is protected from contaminants such as waste discharge, road dust, oil, and grease;
 - (f) For gravity-flow or pump-provided systems only, provided with a water tank vent which terminates in a downward direction and is covered with 16 mesh to 25.4-millimeter (16 mesh to 1-inch) screen or equivalent when the vent is in a protected area or a protective filter when the vent is in an area that is not protected from windblown dirt and debris;
 - (g) For pressurized compressed air systems only, provided with a filter that does not pass oil or oil vapors and that is installed in the air supply line between the compressor and water system; and
 - (h) Provided with permanent plumbed lines from the water tank to fixtures in the mobile unit as required by article 20:54;

(12) A hot water heater must be provided in the mobile unit to provide a sufficient amount of hot water at a maximum temperature of 49°C (120°F) for handwashing and warewashing;

(13) A handwashing sink with hot and cold running water, hand soap, and paper towels must be provided in the mobile unit;

(14) A three-compartment warewashing sink with drainboard area must be provided in the mobile unit for washing equipment and utensils. However, a warewashing sink is not required if the mobile unit operates out of a commissary or other fixed food establishment that has warewashing facilities and returns at least daily to it;

(15) A sewage holding tank must be provided in a mobile unit and must be designed and constructed as follows:

(a) Sized 15 percent larger in capacity than the water supply tank;

(b) Sloped to a drain that is 25 millimeter (1 inch) in inner diameter or greater, equipped with a shut-off-valve;

(c) Installed so that the drain shut-off valve is lower than the water supply tank inlet; and

(d) Provided with permanently plumbed lines from fixtures to the holding tank that are installed according to article 20:54;

(16) Adequate lighting as per § 44:02:07:78, that is shielded must be provided; and

(17) A mechanical ventilation system as specified in § 44:02:07:49, consisting of a metal hood with removable metal grease-collecting filters must be provided over all cooking equipment producing smoke, steam, or grease vapors.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:91. Mobile food service establishment servicing operations. Those mobile food service units requiring serving operations must return daily to a servicing area at a commissary or fixed food establishment for normal servicing operations. The servicing area must include at least overhead protection for any supplying, cleaning, or servicing operations. The floor surface of the servicing area must be constructed of a smooth, nonabsorbent material such as concrete or machine-laid asphalt that is sloped to drain and is maintained clean and in good repair. If mobile units contain waste holding tanks, there must be a location within the servicing area for the flushing and draining of liquid wastes that is totally separate from other operations.

The normal servicing operations of a mobile food service establishment include the following:

(1) Flushing and sanitizing the water tank, pump if provided, water lines, and hoses;

(2) Dumping sewage and flushing the waste retention tank;

(3) Cleaning and sanitizing equipment, utensils, food-contact surfaces, and nonfood-contact surfaces;

(4) Repairing or replacing equipment and utensils; and

(5) Replenishing supplies, including food items, single-service articles, paper goods, soaps, and chemicals.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:92. Limited-menu mobile food service establishment. A limited-menu mobile food service establishment must comply with all the requirements of this chapter, except as otherwise provided in this section and in §§ 44:02:07:90 and 44:02:07:91. If only one utensil is used, such as a scoop, spoon, dipper, or tongs, the warewashing requirements are waived and the utensil may be cleaned and sanitized in the handwashing sink.

A limited-menu mobile food service establishment may only serve a limited menu that contains food and beverage that are not potentially hazardous and require no special handling or holding facilities. Items normally served from a limited menu include popcorn, cotton candy, snow cones, shaved ice, peanuts, soft drinks, mini donuts, caramel corn, taffy, and caramel apples. However, hot dogs, frankfurters, and precooked sausages that are prepared on-site and are held and dispensed at the required temperatures using only a single utensil may be served. Items not included on a limited menu are products that have added toppings, such as chili or cheese, and corndogs or other specialty items.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:93. Temporary food service establishment. A temporary food service establishment consists of a temporary food stand set up in a fixed location during a temporary event that does not exceed 14 days. A temporary food service establishment must comply with all the requirements of this chapter, except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a temporary operation and may prohibit the sale of some or all potentially hazardous food. The regulatory authority may, if no health hazard will result, waive or modify requirements of this chapter. A temporary food service establishment must meet the following requirements:

(1) Menu items for a temporary food service establishment will be reviewed individually and will be approved by the department dependent upon the facilities provided. Only those foods requiring limited preparation and handling may be served;

(2) All foods must be prepared in the temporary stand or secured from an approved source;

(3) Potentially hazardous food must be stored, cooked, held, and reheated to the proper temperatures identified in §§ 44:02:07:26 to 44:02:07:36, inclusive;

(4) Ice used in the temporary stand may be obtained only in chipped, crushed, or cubed form in plastic or wet-strength paper bags filled and sealed at the point of manufacture and until it is dispensed must be stored in

these bags to prevent contamination;

(5) Dry storage items must be stored 15 centimeters (6 inches) above the floor on pallets or shelving and protected from contamination;

(6) Adequate cold storage must be provided either by refrigeration units or insulated containers to keep potentially hazardous foods at the required temperatures as specified in § 44:02:07:26;

(7) Only single-service articles may be provided to the consumer;

(8) A temporary stand must be constructed of wood, canvas, or other material that effectively protects the food service area from the weather and other elements, such as dust and debris;

(9) The floor in the temporary stand must consist of concrete, machine-laid asphalt, wood, or other similar cleanable material that covers the entire food service area;

(10) All work surfaces used for food preparation must be nonabsorbent, easily cleanable, and durable;

(11) A safe and adequate supply of hot and cold water must be provided;

(12) A handwashing sink or a temporary handwashing setup must be provided along with hand soap and paper towels. A temporary handwashing setup requires a minimum of a two-gallon insulated container with a spigot, filled with hot water, and a catch basin;

(13) A three-compartment warewashing sink or a temporary warewashing setup large enough to accommodate all utensils and equipment must be provided. A temporary warewashing setup requires three plastic tubs or pails for washing, rinsing, and sanitizing;

(14) Adequate drainboards must be provided to air-dry all utensils and equipment; and

(15) Wastewater generated in the stand must be disposed of in a sanitary sewer system or suitable storage device.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-17](#), [34-18-18](#), [34-18-19](#), [34-18-22](#), [34-18-25](#).

44:02:07:94. Variances. The regulatory authority may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the regulatory authority a health hazard will not result from the variance. If a variance is granted, the regulatory authority may require the following information for its records on the food establishment:

(1) A statement by the petitioner of the proposed variance citing relevant section numbers;

(2) A rationale by the petitioner explaining how the potential public health hazards addressed by the relevant sections will be alternatively addressed by the proposal;

(3) A HACCP plan, if one is required, from the person requesting the variance that includes the information required for a HACCP plan and its relevance to the variance requested.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:95. Demonstration of conformance with variance. If the regulatory authority grants a variance, the license holder must demonstrate conformance with approved procedures as follows:

- (1) Comply with the HACCP plan, if one is required, or procedures that are submitted and approved as a basis for the modification or waiver; and
- (2) Maintain and provide to the regulatory authority, upon request, records that demonstrate that the following are routinely employed:
 - (a) Procedures for monitoring critical control points;
 - (b) Monitoring of the critical control points;
 - (c) Verification of the effectiveness of an operation or process; and
 - (d) Necessary corrective actions if there is failure at a critical control point.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:96. Submission of a HACCP plan. A HACCP plan must be submitted to the regulatory authority under the following conditions:

- (1) A HACCP plan is required by this chapter;
- (2) A variance is required for a specialized processing method, specialized food handling method, or specialized food; or
- (3) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal, an inspectional finding, or a variance request.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:97. Contents of a HACCP plan. A food establishment that is required to submit a HACCP plan must develop a plan within 30 days of notification that contains the following information:

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

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

44:02:07:98. Food service manager certification. A certified food service manager must have had a minimum of eight hours of classroom instruction and passed a certifying test from an approved food service manager certification course that is equivalent to or exceeds the requirements as set forth in the 1995 ServSafe Serving Safe Food certification course of the Educational Foundation of the National Restaurant Association.

The regulatory authority may approve certification from another food service certification course or from another state if documentation and instructional course content is provided which is substantially the same as

that of the Educational Foundation of the National Restaurant Association.

A food service manager must be recertified every four years by attending a minimum of four hours of classroom instruction and passing a recertification test from an approved food service manager recertification course that is equivalent to or exceeds the requirements as set forth in the 1996 ServSafe Serving Safe Food - Food Safety Review recertification course of the Educational Foundation of the National Restaurant Association.

Temporary food service establishments are exempt from the Food Service Manager Certification requirements.

Source: 23 SDR 195, effective May 26, 1997.

General Authority: SDCL [34-1-17](#), [34-18-22](#).

Law Implemented: SDCL [34-18-22](#), [34-18-25](#).

References:

"ServSafe Serving Safe Food Certification Coursebook," 1995 edition, The Educational Foundation of the National Restaurant Association. Copies are available from The Educational Foundation of the National Restaurant Association, Technical Education Department, 250 South Wacker Drive, Suite 1400, Chicago, IL 60606-5834 (312-715-1010) for \$50 and \$2.50 shipping and handling.

"ServSafe Serving Safe Food - Food Safety Review Coursebook," 1996 edition, The Educational Foundation of the National Restaurant Association. Copies are available from The Educational Foundation of the National Restaurant Association, Technical Education Department, 250 South Wacker Drive, Suite 1400, Chicago, IL 60606-5834 (312-715-1010) for \$32 and \$1.60 shipping and handling.

Note: Courses offered by the Restaurant Division of the South Dakota Retailers Association, PO Box 638, Pierre, SD 57501 (1-800-658-5545).

44:02:07:99. Annual license fees. Repealed.

Source: 23 SDR 195, effective May 26, 1997; repealed, 36 SDR 31, effective August 18, 2009.