



**COLORADO REVISED STATUTES**  
**FOOD PROTECTION ACT**  
**C.R.S. 25-4-1601 (2016)**

**25-4-1601. Legislative declaration**

- (1) The general assembly hereby finds, determines, and declares that it is in the public interest for the department of public health and environment to establish minimum standards and rules for retail food establishments in Colorado and to provide authority for the uniform statewide administration, implementation, interpretation, and enforcement of such minimum standards and rules. Such standards and rules are established to:
  - (a) Ensure the safety of food prepared, sold, or served in retail food establishments;
  - (b) Maximize public health protection;
  - (c) Identify hazards and potential sources of contamination and take measures to prevent, reduce, or eliminate the physical, chemical, or biological agents in food prepared, sold, or served in retail food establishments; and
  - (d) Improve the sanitary condition of all retail food establishments, reduce food-borne illness outbreaks, and control the spread of food-borne disease from retail food establishments.
- (2) This part 16 is deemed an exercise of the police powers of the state for the protection of the health and social welfare of the people of the state of Colorado.

**25-4-1602. Definitions**

As used in this part 16, unless the context otherwise requires:

- (1) "Automated food merchandising enterprise" means the collective activity of the supplying or preparing of food or drink for automated food merchandising machines.
- (2) "Certificate of license" means a grant to operate a retail food establishment without a fee, under the conditions set forth in section 25-4-1607 (9)
- (2.5) "County or district public health agency" means a county or district health department or a county or municipal board of health.
- (3) "Department" means the department of public health and environment, and its authorized employees.
- (4) "Food" means any 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.
- (5) "Fund" means the food protection cash fund created in section 25-4-1608

- (6) "HACCP plan" means a written document setting forth the formal procedures for following hazard analysis critical control point principles.
- (6.5) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries or illnesses and the nature, severity, and duration of the anticipated injury or illness.
- (7) "Inspection" means an inspection of a retail food establishment conducted by the department or a county or district board of health to ensure compliance by such establishment with rules promulgated by the department pursuant to this part 16.
- (8) "License" means a grant to a licensee to operate a retail food establishment.
- (9) "Licensee" means a person that is licensed or who holds a certificate of license pursuant to this part 16 and is responsible for the lawful operation of a retail food establishment.
- (10) (Deleted by amendment, L. 2009, (SB 09-223), ch. 255, p. 1151, § 2, effective May 15, 2009.)
- (11) "Modified atmosphere packaging" means 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 to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen.
- (12) "Nonpotentially hazardous" means any food or beverage that, when stored under normal conditions without refrigeration, will not support the rapid and progressive growth of microorganisms that cause food infections or food intoxications.
- (13) "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of such entities.
- (14) "Retail food establishment" means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. "Retail food establishment" does not mean:
  - (a) Any private home;
  - (b) Private boarding houses;
  - (c) Hospital and health facility patient feeding operations licensed by the department;
  - (d) Child care centers and other child care facilities licensed by the department of human services;
  - (e) Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;
  - (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

- (g) Motor vehicles used only for the transport of food;
  - (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;
  - (i) Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package;
  - (j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;
  - (k) Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;
  - (l) The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:
    - (I) Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and
    - (II) Takes place in the county in which such nonprofit or charitable organization resides or is principally located.
  - (m) A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the "Colorado Cottage Foods Act", section 25-4-1614.
- (15) "Safe food" means food that does not contain any poisonous, deleterious, or disease-causing substance or microorganisms that may render such food injurious to human health.
- (16) "Special event" means an organized event or celebration at which retail food establishments prepare, serve, or otherwise provide food for human consumption.
- (17) "Uniform statewide administration, implementation, interpretation, and enforcement" means the application of the rules adopted by the state board of health and the policy guidance of the department by state and county or district public health agencies responsible for implementation of the rules and policies. The uniform application shall not preclude county or district public health agencies from implementing administrative efficiencies or practices if the practices do not conflict with the state board of health rules or department policies.

#### **25-4-1603. Licensing, certification, and food protection agency**

The department is hereby designated the state licensing, certification, and food protection agency for the purpose of protecting the public health and ensuring a safe food supply in this state. In addition to such designation, the department is hereby authorized to regulate and control retail food establishments, promulgate rules governing the operation of such establishments, and uniformly enforce and administer this part 16.

#### **25-4-1604. Powers and duties of department - rules**

- (1) The department shall have the following powers and duties:
  - (a) To grant or refuse licenses and certificates of license pursuant to section 25-4-1606, or to suspend or revoke licenses and certificates of license pursuant to section 25-4-1609;
  - (b)
    - (I) To promulgate rules for adoption by the state board of health pursuant to article 4 of title 24, C.R.S., for the uniform statewide administration, implementation, interpretation, and enforcement of this part 16 and, as necessary, to ensure a safe food supply in retail food establishments. Such rules may include provisions for the initial and periodic medical examination by the department or other competent medical authority of all employees of retail food establishments and shall include provisions specifying and regulating the places and conditions under which food shall be prepared for consumption, a uniform code of sanitary rules, and such other rules as the department deems necessary. Such rules may be modified and changed from time to time.
    - (II) For purposes of this paragraph (b), a uniform code of sanitary rules means rules for the preparation, sale, and serving of food, including but not be limited to general overall retail food establishment and equipment design and construction; sanitary maintenance of equipment, utensils, and facilities for food preparation, service, and storage; wholesomeness of food and drink; source and protection of food and water; disposal of liquid and solid wastes; and other rules for the effective administration and enforcement of this part 16.
  - (c) To hear and determine all complaints against licensees or grantees of certificates of license and to administer oaths and issue subpoenas to require the presence of any person necessary to the determination of any such hearing;
  - (d) To uniformly enforce this part 16 and the rules promulgated pursuant to this section;
  - (e) To enter retail food establishments during business hours and at other times during which activity is evident to conduct inspections and other interventions related to food safety and the protection of public health;

- (f) To develop and enforce uniform statewide standards of program conduct and performance to be followed and adhered to by employees of the department and county or district boards of health;
  - (g) To provide technical assistance, equipment and product review, training and standardization, program evaluation, and other services necessary to assure the uniform statewide administration, implementation, interpretation, and enforcement of this part 16 and rules promulgated under this part 16;
  - (h) To review and approve HACCP plans submitted for evaluation to verify and ensure that food handling risks are reduced to prevent food-borne illness outbreaks;
  - (i) To delegate to any county or district board of health the powers and duties described in paragraphs (a), (c), (d), (e), and (h) of this subsection (1) at the request of such county or district board of health.
- (2) Subsection (1) of this section shall not apply to the city and county of Denver, which, by ordinance, may provide for the licensure of retail food establishments.

**25-4-1605. Submission of plans for approval - required**

- (1) An owner or operator of a retail food establishment shall submit plans and specifications to the department or a county or district board of health in the jurisdiction in which a retail food establishment is to be constructed or extensively remodeled before such construction or extensive remodeling is begun or any existing structure is converted for use as a retail food establishment. Such plans and specifications shall be submitted for review and approval, in such form as the department requires or approves, to ensure that the retail food establishment layout, equipment, and food handling procedures are conducive to providing a safe food product. Each plan and specification submission shall be accompanied by the fees set forth in section 25-4-1607. The department and a county or district board of health shall treat the plans and specifications as confidential trade secret information. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plants, construction materials of work areas, and the location, type, and model of proposed fixed equipment and facilities.
- (2) The construction, extensive remodeling, or conversion of any retail food establishment shall be in accordance with the plans and specifications submitted to and approved by the department or a county or district board of health. The department or a county or district board of health shall conduct preopening inspections of retail food establishments to assure compliance with the approved plans, as circumstances require.
- (3) An owner or operator of a retail food establishment shall submit an HACCP plan to the department or a county or district board of health for review and approval before beginning a modified atmosphere packaging process or other food preparation method that does not meet rules promulgated by the department. HACCP plans shall be submitted in such form as the department requires or approves. The submission shall ensure that food handling risks are reduced to prevent food-borne illness and outbreaks. The

department and any county or district board of health shall treat HACCP plans as confidential trade secret information.

- (4) The department or a county or district board of health shall respond to any plans and specifications submitted pursuant to subsection (1) of this section and to any HACCP plan submitted pursuant to subsection (3) of this section within fourteen working days after receipt. If a submitted HACCP plan or other plan or specification is deemed inadequate, the department or a county or district board of health shall respond in writing to the submitter of the plans or specifications with a statement describing how such deficiencies may be corrected.

#### **25-4-1606. Licensure - exception**

- (1) An application for a license or a certificate of license shall be filed with the department or a county or district board of health before any person may operate a retail food establishment in this state. The application shall be on a form supplied by the department and shall include such information as the department may require.
- (2) Before granting any license or certificate of license, the department or a county or district board of health may conduct an inspection of the retail food establishment to determine compliance with the rules promulgated by the department. If the applicant appears to be in compliance with the rules and with the applicable provisions of this part 16, the department or a county or district board of health shall approve the application for a license or certificate of license.
- (2.5) If a critical violation or a noncritical violation that is significant in nature is documented during a preoperational inspection, and the retail food establishment is unable to correct the violation while the inspector is on site, follow-up activities shall be conducted for the purpose of granting a license or certificate of license.
- (3) Every license and certificate of license granted pursuant to this section shall specify the date granted, the period of coverage, the name of the licensee, and the name and address of the licensed establishment. All licenses shall be conspicuously displayed at all times in the licensed establishment.
- (4) Licenses and certificates of license shall be valid for one calendar year or such portion thereof as remains after the granting of a license or certificate. When a license or certificate is valid for only a portion of a calendar year, there shall be no reduction of the fees required by section 25-4-1607. All licenses and certificates of license shall expire December 31 of the year in which they were granted and renewal applications shall be filed with the department during December of each year. Once a license or certificate of license has been granted, the department or a county or district board of health shall not refuse to renew such license or certificate unless the licensee has engaged in an unlawful act set forth in section 25-4-1610 or is in violation of any rules promulgated pursuant to this part 16.
- (5) Subsections (1) and (2) of this section shall not apply in the city and county of Denver, which, by ordinance, may provide for the licensure of retail food establishments.

## 25-4-1607. Fees

(1) Except as provided in paragraph (d.5) of this subsection (1) and subsection (14) of this section, effective January 1 of the year following the increases specified in paragraph (a) of subsection (1.5) of this section, each retail food establishment in this state shall be assessed an annual license fee as follows:

(a) A retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption shall be assessed an annual fee based on the following schedule:

<b>Seating Capacity</b>	<b>Fee</b>
0 to 100	\$ 385
101 to 200	430
Over 200	465

(a.5) A retail food establishment limited to preparing or serving food that does not require time or temperature control for safety, providing self-service beverages, offering prepackaged commercially prepared food and beverages requiring time or temperature control, or only reheating commercially prepared foods that require time or temperature control for safety for retail sale to consumers shall be assessed an annual fee of two hundred seventy dollars.

(b) A retail food establishment only offering prepackaged commercially prepared food and beverages, including those that are required to be held at refrigerated or frozen time or temperature control for safety for retail sale to consumers for off-premises consumption, shall be assessed an annual fee based on the following schedule:

<b>Square Footage</b>	<b>Fee</b>
Less than 15,001	\$ 195
over 15,000	353

(c) A retail food establishment offering food for retail sale to consumers for off-premises consumption and preparing or serving food in individual portions for immediate consumption either on- or off-premises shall be assessed an annual fee based on the following schedule:

<b>Square Footage</b>	<b>Fee</b>
Less than 15,001	\$ 375
over 15,000	715

(c.5) A retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed an annual fee of eight hundred fifty-five dollars.

- (d) A retail food establishment is subject to only one of the fees established in this subsection (1); except that effective September 1, 2016, the license fees established for retail food establishments at a special event, as defined in section 25-4-1602 (16), must be established by the county or district public health agency.
- (d.5) The fees established in this subsection (1) are effective September 1, 2018, for any new retail food establishment that was not licensed and in operation prior to that date.
- (e) (I) Retail food establishment license fees shall be established pursuant to this subsection (1); except that the city and county of Denver may establish such fees by ordinance.
- (II) Notwithstanding subparagraph (I) of this paragraph (e), the fees established in this subsection (1) or by ordinance of the city and county of Denver shall be the only annual license fees charged by the state or any county, district, local, or regional inspection authority and shall cover all inspections of a retail food establishment pursuant to this subsection (1) throughout an annual license period.
- (1.5) (a) Except as provided in subparagraph (VI) of this paragraph (a) and subsection (14) of this section, effective January 1, 2018, to December 31, 2018, each retail food establishment in this state shall be assessed an annual license fee as follows:
  - (I) A retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption shall be assessed an annual fee based on the following schedule:
 

Seating Capacity	Fee
0 to 100	\$ 360
101 to 200	400
Over 200	435
  - (II) A retail food establishment preparing or serving food that does not require time or temperature control for safety, providing self-service beverages, offering prepackaged commercially prepared food and beverages requiring time or temperature control or only reheating commercially prepared foods that require time or temperature control for safety for retail sale to consumers shall be assessed an annual fee of two hundred fifty-three dollars.
  - (III) A retail food establishment only offering prepackaged commercially prepared food and beverages, including those that are required to be held at refrigerated or frozen time or temperature control for safety for retail sale to consumers for off-premises consumption, shall be assessed an annual fee based on the following schedule:



Square Footage	Fee
Less than 15,001	\$ 183
Over 15,000	330

- (IV) A retail food establishment offering food for retail sale to consumers for off-premises consumption and preparing or serving food in individual portions for immediate consumption either on- or off-premises shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 15,001	\$ 350
Over 15,000	665

- (V) A retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed an annual fee of eight hundred dollars.
- (VI) The fees established in this subsection (1.5) are effective September 1, 2017, for any new retail food establishment that was not licensed and in operation prior to that date.

- (b) Except as provided in subparagraph (VI) of this paragraph (b), effective January 1, 2017, to December 31, 2017, each retail food establishment in this state shall be assessed an annual license fee as follows:

- (I) A retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption shall be assessed an annual fee based on the following schedule:

Seating Capacity	Fee
0 to 100	\$ 330
101 to 200	370
Over 200	405

- (II) A retail food establishment limited to preparing or serving food that does not require time or temperature control for safety, providing self-service beverages, offering prepackaged commercially prepared food and beverages requiring time or temperature control or only reheating commercially prepared foods that require time or temperature control for safety for retail sale to consumers shall be assessed an annual fee of two hundred thirty-five dollars.
- (III) A retail food establishment only offering prepackaged commercially prepared food and beverages, including those that are required to be held at refrigerated or frozen time or temperature control for safety for retail sale to consumers for off-premises consumption, shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 15,001	\$ 170
Over 15,000	305

- (IV) A retail food establishment offering food for retail sale to consumers for off-premises consumption and preparing or serving food in individual portions for immediate consumption either on- or off-premises shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 15,001	\$ 325
Over 15,000	620

- (V) A retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed an annual fee of seven hundred forty dollars.
- (VI) The fees established in this subsection (1.5) are effective September 1, 2016, for any new retail food establishment that was not licensed and in operation prior to that date. This subparagraph (VI) is repealed, effective January 1, 2017.
- (c) A retail food establishment is subject to only one of the fees established in this subsection (1.5) per year.
- (d) Retail food establishment license fees shall be established pursuant to this subsection (1.5); except that the city and county of Denver may establish such fees by ordinance.
- (2) At the time a plan is submitted for review, an application fee of one hundred dollars shall be paid to the department or a county or district board of health. The fee for plan review and preopening inspection of a new or remodeled retail food establishment shall be the actual cost of such review, which shall not exceed five hundred eighty dollars. Such costs shall be payable at the time the plan is approved and an inspection is completed to determine compliance.
- (3) At the time an equipment review is submitted, an application fee of one hundred dollars shall be paid to the department. The fee for equipment review by the department to determine compliance with applicable standards shall be the actual cost of such review, which shall not exceed five hundred dollars. Such costs shall be payable when the review is completed.
- (4) The fee for an HACCP plan review of a specific written process shall be the actual cost of such review, which shall not exceed one hundred dollars. The review of an HACCP plan for a process already conducted at a facility shall be the actual cost of such review, which shall not exceed four hundred dollars. Costs shall be paid at the time the plan is approved and an inspection is completed.

- (5) The fee for services requested by any person seeking department or county or district board of health review of a potential retail food establishment site shall be seventy-five dollars or the actual cost of such review, whichever is greater. Seventy-five dollars of such fee shall be billed at the time the review is requested, and the remainder shall be payable when services are completed.
- (6) The fee for food protection services provided to special events shall not exceed the actual cost of such services and shall be paid by the organizer of such special event when services are completed.
- (7) The fee for any requested service not specifically set forth in this section shall not exceed the actual cost of such service.
- (8) The actual cost of a service shall be established by the department or a county or district board of health, whichever provided the service.
- (9)
  - (a) A certificate of license may be issued to and in the name and address of any:
    - (I) Public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof;
    - (II) Penal institution;
    - (III) Nonprofit organization that provides food solely to people who are food insecure, including, but not limited to, a soup kitchen, food pantry, or home delivery service; and
    - (IV) Local government entity or nonprofit organization that donates, prepares, or sells food at a special event, including, but not limited to, a school sporting event, firefighters' picnic, or church supper, that takes place in the county in which the local government entity or nonprofit organization resides or is principally located.
  - (b) No institution or organization listed in paragraph (a) of this subsection (9) shall pay any fee imposed on a retail food establishment pursuant to this section.
- (10) County or district boards of health created in part 5 of article 1 of this title shall collect fees under this section if the county or district boards of health are authorized by the department to enforce this part 16 and any rules promulgated pursuant to this part 16.
- (11) (Deleted by amendment, L. 2009, (SB 09-223), ch. 255, p. 1155, § 7, effective May 15, 2009.)
- (12) Notwithstanding the amount specified for any fee in this section, the state board of health by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

- (13) Legislative declaration - disposition of fee revenue.
- (a) The general assembly does not intend for the fees paid by retail food establishments as outlined in subsections (1) and (1.5) of this section to subsidize inspection or other costs associated with entities exempt from fees under paragraph (a) of subsection (9) of this section.
  - (b) Counties may only spend the increased revenue from the increase of retail food establishment fees on retail food health-related activities. Supplanting funds for other county programs is prohibited.
- (14) (a) The fee increase in subsection (1.5) of this section does not take effect until the department and all local public health agencies contracted by the department to perform inspections and enforce regulations regarding retail food establishments prove compliance with section 25-4-1607.7 (2). If the department and all local public health agencies are not in compliance on January 1, 2018, the increase does not take effect until January 1 in the year following proven compliance.
- (b) The fee increase in subsection (1) of this section does not take effect until the department proves compliance with section 25-4-1607.9 (1). If the department is not in compliance on January 1 following the fee increase specified in subsection (1.5) of this section, the increase in subsection (1) does not take effect until January 1 in the year following proven compliance.
  - (c) The executive director of the department shall notify the revisor of statutes, in writing, when the conditions specified in paragraphs (a) and (b) of this subsection (14) have been satisfied.

**25-4-1607.5. Retail food establishment regulation - fees - investigations - stakeholder process**

- (1) The executive director of the department or his or her designee shall convene a stakeholder group, including representatives from Colorado associations representing county or district public health agencies, county commissioners, retail food establishments, and any other party that represents a retail food establishment and expresses interest in participating.
- (2) The department shall keep and maintain a list of stakeholders.
- (3) The department shall convene the first meeting with the stakeholders no later than June 15, 2015, and as needed thereafter. After submission of the report described in subsection (5) of this section, the department shall meet with the stakeholders at least once every three years.
- (4) The department shall meet with the stakeholders to study retail food establishments, retail food establishment license fees, and retail food inspection programs, including:
  - (a) Incidents of, and trends in, food-borne illnesses, including the correlation to inspections;

- (b) Uniform statewide administration, implementation, interpretation, and enforcement of the inspection program to include, at a minimum:
    - (I) Training;
    - (II) Application;
    - (III) Communication to the public;
    - (IV) Guidance documents; and
    - (V) Inspection frequency, including compliance strategies;
  - (c) Potential regulatory changes;
  - (d) Collaboration with the industry;
  - (e) A requested annual license fee adjustment with appropriate documentation, including costs of providing an inspection;
  - (f) An annual license fee charged for parochial, public, or private schools; charitable organizations and benevolent, nonprofit retail food establishments that assist elderly, incapacitated, or disadvantaged persons; and nonprofit or charitable organizations that donate, prepare, sell, or serve food in conjunction with an event or celebration;
  - (g) Alternative administrative actions;
  - (h) The current annual license fee structure and license categories;
  - (i) The review of risk-based inspection schedules; and
  - (j) The actual cost of inspections.
- (5) On or before December 1, 2015, and every three years thereafter, the executive director of the department or his or her designee shall prepare a report of the findings and conclusions of the study and shall present the report to all stakeholders and others upon request.

**25-4-1607.7. Health inspection results - development of a uniform system - communication to the public**

- (1) On or before January 1, 2017, the department shall solicit input from retail food establishments, contracted local public health agencies, county commissioners, and others with a vested interest in the retail food inspection program to establish a uniform system to communicate health inspection results to the public. The uniform system established pursuant to this section must provide meaningful and reasonably detailed information to the public and must not summarize the results of the inspection with a letter, number, or symbol grading system, or a similar, oversimplified method of quantifying results.

- (2) After July 1, 2017, the department or a local public health agency contracted by the department to perform inspections and enforce regulations regarding retail food establishments shall only utilize the system developed and approved by the department to communicate inspection results.

#### **25-4-1607.9. Department targets - audits - reporting**

- (1) On or before April 1, 2017, the department shall respond to all plans and specifications and HACCP plan reviews within fourteen working days after receipt, as required by section 25-4-1605 (4).
- (2) On or before December 31, 2019, the department shall ensure significant statewide compliance with the federal food and drug administration's voluntary national retail food regulatory program standards by verifying that:
  - (a) At least seventy percent of Colorado's retail food program staff meet the national criteria for appropriate training and education to adequately perform required inspections; and
  - (b) At least seventy percent of Colorado's retail food program staff meet the national criteria regarding the focus of inspections on critical item risk factors, the correction of documented deficiencies, and the focus of inspections on the highest-risk establishments.
- (3) To verify compliance with this section:
  - (a) The department shall audit any local public health agency that conducts inspections within its jurisdiction; and
  - (b) Local public health agencies shall audit the department regarding the jurisdictions where the department conducts inspections.
- (4) The results of the audits conducted pursuant to subsection (3) of this section must be documented and reported during each stakeholder process held pursuant to **section 25-4-1607.5**.

#### **25-4-1608. Food protection cash fund - creation**

- (1) Fees collected by the department pursuant to section 25-4-1607 shall be transmitted to the state treasurer who shall credit the same to the food protection cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate the moneys in the fund to the department for the payment of salaries and expenses necessary for the administration of this part 16.
- (2) Forty-three dollars of each fee collected by the department and a county or district board of health pursuant to section 25-4-1607 (1) (a), (1) (b), (1) (c), and (1) (c.5) shall be transmitted to the state treasurer, who shall credit such fee to the food protection cash fund created in subsection (1) of this section. This portion of the fee shall be used by the department to conduct the duties and responsibilities set forth in section 25-4-1604 (1) (a), (1) (b), (1) (c), (1) (f), (1) (g), and (1) (i). The remainder of such fee shall be retained

by the county or district board of health for deposit in the appropriate county or district public health agency fund in accordance with section 25-1-511 or, if the fee is collected by the department, it shall be deposited pursuant to subsection (1) of this section, and used to pay a portion of the cost of conducting a retail food establishment protection program.

- (3) Any interest derived from the deposit and investment of moneys in the food protection cash fund shall be credited to such fund. Any unexpended or unencumbered moneys remaining in such fund at the end of a fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state.

#### **25-4-1609. Disciplinary actions - closure - revocation - suspension - review**

- (1) The department or a county or district board of health may, on its own motion or complaint and after an investigation and hearing at which the licensee is afforded an opportunity to be heard, suspend or revoke a license or certificate of license for any violation of this part 16, any rule adopted pursuant to this part 16, or any of the terms, conditions, or provisions of such license or certificate of license. A written notice of suspension or revocation, as well as any required notice of hearing, shall be sent to the licensee by certified mail, or by one or more other methods that assure receipt, at the address contained in the license or certificate of license.
- (2) Except in cases of closure due to an imminent health hazard, proceedings for the revocation or suspension of a license or certificate of license may not be commenced until after the imposition of the penalties prescribed by section 25-4-1611. The maximum period of suspension is one month. When a license or certificate of license is suspended or revoked, no part of the fees paid for a license may be returned to the licensee.
- (2.5) The department or a county or district board of health may issue a cease-and-desist administrative order if a person or licensee has been issued a civil penalty in accordance with section 25-4-1611 (1) and remains in noncompliance.
- (3) Any suspension or revocation of a license or certificate of license may be reviewed by any court of general jurisdiction having jurisdiction over the retail food establishment for which the application for license or certificate of license was made. If such court determines that such suspension or revocation was without good cause, it shall order the department to reinstate such license or certificate of license.

#### **25-4-1609.5. Grievance process**

- (1) If a licensee believes that a county or district public health agency is taking regulatory action outside the scope of its authority, the licensee may file a written complaint with the department within thirty days after the licensee's knowledge of the regulatory action.
- (2) Within forty-five days after receipt of a written complaint pursuant to subsection (1) of this section, the department shall convene a dispute resolution panel that consists of one person from the department, one person from the retail food industry, and one person from a county or district public health agency who is not within the jurisdiction of the

licensee requesting resolution. The dispute resolution panel shall allow the licensee and the county or district public health agency to provide information related to the grievance. The dispute resolution panel shall make findings concerning the grievance and shall recommend to the county or district public health agency a resolution to the dispute. The county or district public health agency shall implement the recommendations within thirty days after receipt of the findings and recommendations from the dispute resolution panel. If the parties to the grievance resolve the complaint prior to review by the dispute resolution panel, the parties shall notify the department in writing and the grievance shall be dismissed.

- (3) If the county or district public health agency fails to implement the recommendations of the dispute resolution panel within thirty days after receipt of the recommendations, the county or district public health agency shall provide the licensee with the opportunity to request an administrative hearing in accordance with section 24-4-105, C.R.S.

#### **25-4-1610. Unlawful acts**

- (1) It is unlawful for:
  - (a) Any person to begin the construction or extensive remodeling of a retail food establishment unless such person has received department or county or district board of health approval of plans and specifications for such construction or remodeling pursuant to section 25-4-1605;
  - (b) Any person to operate a retail food establishment without a valid license or certificate of license from the department or a county or district board of health having jurisdiction over such establishment;
  - (c) Any person to violate this part 16 and any rules promulgated pursuant to this part 16;
  - (d) Any person or retail food establishment to refuse to permit entry to such establishment in accordance with sections 25-4-1604 (1) (e) and 25-4-1606 (2);
  - (e) Any retail food establishment to sell or serve food prepared in a private home to any person;
  - (f) Any person to fail to pay a civil penalty assessed by the department or a county or district board of health.

#### **25-4-1611. Violation - penalties**

- (1) If the department or a county or district board of health finds that a licensee or other person operating a retail food establishment was provided with written notification of a violation of section 25-4-1610 (1) (a), (1) (b), (1) (d), (1) (e), or (1) (f) and was given a reasonable time to comply but remained in noncompliance, such person shall be subject to a civil penalty of not less than two hundred fifty dollars and not more than one thousand dollars, assessed by the department or a county or district board of health.



- (2) (a) Upon a finding by the department or a county or district board of health that a retail food establishment is in violation of this part 16 or the rules promulgated pursuant to this part 16, and that the violation is sufficient to permit the department or a county or district board of health to establish a date and time for correction, the department or county or district board of health shall, in writing, advise the licensee or other person operating the establishment of the violation, provide the person with a reasonable time to comply, and conduct a follow-up inspection. If, at the time of the follow-up inspection, the establishment is found to be in violation of the same provisions, the department or a county or district board of health shall issue the person a written notification of noncompliance, provide the person with a reasonable time to comply, and conduct a second follow-up inspection.
- (b) (I) If, at a second follow-up inspection, a retail food establishment is found to be in compliance with the same provisions as were cited in the written notification issued pursuant to paragraph (a) of this subsection (2), the department or a county or district board of health shall advise the licensee or other person operating the establishment that noncompliance with such provisions at the next regular inspection shall result in the issuance of a second written notification of noncompliance.
- (II) If, at a second follow-up inspection, a retail food establishment is found to be in violation of the same provisions as were cited in the written notification of noncompliance issued pursuant to paragraph (a) of this subsection (2), the department or a county or district board of health shall issue a second written notification of noncompliance, advising the licensee or other person operating the establishment of the violation and potential civil penalties that may be assessed if the noncompliance continues. The department or a county or district board of health shall conduct a third follow-up inspection.
- (c) (I) If, at a third follow-up inspection, a retail food establishment is found to be in compliance with the same provisions as were cited in the second written notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars and shall advise the person operating the establishment in writing that future noncompliance with the cited provisions in the second notification of noncompliance shall result in the issuance of a third written notification of noncompliance and subject the establishment to an additional civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars.
- (II) If, at a third follow-up inspection, a retail food establishment is found to be in violation of the same provisions as were cited in the second written

notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than five hundred dollars nor more than one thousand dollars. When compliance with the provisions cited in the second written notification of noncompliance is obtained, the department or a county or district board of health shall notify the licensee or other person operating the establishment in writing that noncompliance with the cited provisions in the second notification of noncompliance at the next regular inspection will result in the issuance of a third written notification of noncompliance and may result in an additional civil penalty of not less than five hundred dollars nor more than one thousand dollars.

- (3) A maximum of three civil penalties may be assessed against a licensee or other person operating a retail food establishment in any twelve-month period. Whenever a third civil penalty is assessed in a twelve-month period, the department or a county or district board of health may initiate proceedings to suspend or revoke the license of the licensee pursuant to section 25-4-1609.
- (4) Neither the department nor a county or district board of health shall assess a civil penalty pursuant to this section if a disciplinary action is pending against the same licensee under section 25-4-1609.
- (5)
  - (a) All penalties collected by the department pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the food protection cash fund created in section 25-4-1608.
  - (b) Penalties collected by a county or district board of health shall be deposited in the appropriate county or district public health agency fund in accordance with section 25-4-1608, and shall be used to pay expenses related to the inspection of retail food establishments.
- (6) To obtain compliance with this part 16, the department or a county or district board of health may allow the owner of a retail food establishment to use any assessed penalty fee to pay for employee training or the cost of needed improvements to the establishment.
- (7) In addition to the remedies provided in this part 16 and other remedies provided by law, the department or a county or district board of health is authorized to apply to the county or district court of the county or district where a retail food establishment is located for a temporary or permanent injunction, and such court shall have jurisdiction to issue an injunction restraining any person from violating section 25-4-1610.

#### **25-4-1612. Judicial review**

Any person adversely affected or aggrieved by a department decision to refuse to grant a license or certificate of license may seek judicial review in the district court having jurisdiction over the retail food establishment for which the application for license or certificate of license was made. Any other final order or determination by the department or a county or district board of health pursuant to this part 16 shall be subject to judicial review in accordance with article 4 of title 24, C.R.S.