

**AGENDA ITEM  
REQUEST/JUSTIFICATION FORM**  
*(To be completed by requesting Department)*  
*Forward all requests to Sharon Bourke, LC2 Civic Center*  
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY**  
**Before the Tuesday meeting**

Agenda item: APPROVAL

Date to be on agenda: AUGUST 2, 2016

Exact wording to be used for the agenda:

Approval of Agreement with Nebraska Department Of Agriculture for reimbursement of 80% of inspection fees and late fees to DCHD for inspections of food establishments and food processing plants. (budgeted).

Action being requested by the County Board: APPROVAL

Amount requested: \$ 80% reimbursement & late fee Object Code: \_\_\_\_\_

Is item in current year's budget? Yes x No \_\_\_\_\_

Does this item commit funds in future years? Yes \_\_\_\_\_ No x

If yes, explain: \_\_\_\_\_

If an agreement or contract, has the County Attorney reviewed and approved?

Yes x No \_\_\_\_\_

Previous action taken on this item if any: Approved by Board of Health

Recommendations and rationale for action: n/a

Will anyone speak on behalf of this item, if so who? Health Director or Designee

If this is a rush agenda item, please explain why: n/a

Submitted by (Name & Department): Adi M. Pour, Ph. D., Health Director Ext: 7471  
Douglas County Health Department

Date Submitted: 07/27/2016

List Attachments: Resolution and 2 original contracts

*(Attach resolution and all pertinent documentation, i.e., contract, agreement, memorandums, etc.)*

*Certified Resolution can be obtained at the County Clerks' website:*

*<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>*

<i>Completed by receiving office</i>		
Received in Administrative Office:	Date: <u>7/27/16</u>	Time:

**BOARD OF COUNTY COMMISSIONERS  
DOUGLAS COUNTY, NEBRASKA**

*Resolved*

**WHEREAS,** the Douglas County Board of Health met on July 20, 2016 to review and consider contracts and Agreements or Addendums, thereto, submitted in furtherance of the objectives of the Douglas County Health Department (DCHD); and,

**WHEREAS,** at said meeting the Board of Health voted to approve the following:

Agreement with Nebraska Department of Agriculture regarding reimbursement of 80% of inspection fees and late fees to DCHD for inspections of food establishments and food processing plants; and,

**WHEREAS,** said Agreement has been executed by the President of the Douglas County Board of Health and the Director of the Douglas County Health Department and is forwarded to this Board of Commissioners for review and consideration; and,

**WHEREAS,** this Board of Commissioners has reviewed and considered said Agreement as evidenced and desires to approve said Agreement.

**NOW THEREFORE BE IT RESOLVED BY THIS BOARD OF DOUGLAS COUNTY COMMISSIONERS** that the Agreement evidenced is hereby approved and the Chair of this Board is hereby authorized to sign the necessary documents to execute said Agreement.

**Dated** on this 2<sup>nd</sup> day of August, 2016.

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**DOUGLAS COUNTY HEALTH DEPARTMENT**

**#18-03-002**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter "Department") and the Douglas County Health Department, the local public health department for Douglas County, Nebraska (hereafter, "DCHD").

**PURPOSE:** The purpose of this Agreement is to conduct a cooperative program of inspection and regulation of: food establishments, food processing plants, and salvage operations (hereafter, "Establishments")

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Pure Food Act, Neb. Rev. Stat. §§81-2,239 to 81-2,292 (hereafter, Act). The provisions of the Act are to apply to all activities conducted under the terms of this Agreement. Those provisions are hereby incorporated into this Agreement by this reference thereto, as if they were fully set forth herein.

**SUPPLEMENTAL PROVISIONS:** Supplemental technical provisions are described and set forth in Attachment A which is attached and incorporated into this Agreement (hereafter, Attachment A). Attachment A includes Procedures for Evaluating Retail Food Protection Programs.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**A. DESCRIPTION OF WORK**

1. DCHD agrees to:
  - a. Be responsible for the inspection and regulation, in conformance with the Act and this Agreement, of all food establishments located within Douglas County (hereafter, Jurisdiction Area);
  - b. Perform the regulatory activities described in Attachment A;

- c. Notify the Department immediately of the existence of any case of suspected foodborne illness which may have been caused by conditions regulated by the provisions of the Act and of any food recalls in effect in Jurisdiction Area, regardless of who initiates the recall. When requested, DCHD shall assist the Department in gathering information concerning recalls including follow-up research and investigation to ensure the recall product is not entering the food chain;
  - d. Only allow Establishments which have complied with the permit requirements described in Attachment A to operate in Jurisdiction Area;
  - e. Maintain a satisfactory Retail Food Protection Program sanitation level within Jurisdiction Area, participate in a sanitation level survey as directed by the Department, and provide for the standardization of environmental health specialists as set forth in Attachment A;
  - f. Inspect all Establishments at the frequency set by the Act;
  - g. Provide the Department with current information relative to the status of all Establishments located within Jurisdiction Area. This information will be needed to enable the Department to maintain the Establishment listing in a current and accurate condition;
  - h. Provide the Department inspection reports as set forth in Attachment A; and
  - i. Report back to the Department regarding the findings and dispositions of complaints referred to DCHD by the Department.
2. The Department agrees to:
- a. Retain the regulatory functions as described in Attachment A;
  - b. Notify DCHD of any food recalls in effect in its Jurisdiction Area, regardless of who initiates the recall, and forward to DCHD information on national recalls when the Department is notified of such a recall by another state or a federal agency;

- c. Provide DCHD with a listing of Establishments in its Jurisdiction Area. The listing shall contain current information regarding the licensing, sanitation, and general regulatory status of the Establishments;
- d. Upon the request of DCHD, supply DCHD with all of the report forms needed to conduct inspections; and
- e. Refer to DCHD any complaints regarding conditions at Establishments in its Jurisdiction Area.

**B. ALLOWABLE COSTS and PAYMENTS**

1. The Department shall reimburse DCHD for inspecting and regulating Establishments which are not required to pay local license or inspection fees to DCHD. The Department agrees to pay DCHD an amount equal to 80% (eighty percent) of the inspection and late fees paid to the Department under the Act by these Establishments. Additionally, the Department agrees to pay DCHD in an amount equal to 80% (eighty percent) of the fees collected from Establishments for failing to apply for a permit prior to beginning operation. The Department further agrees to reimburse DCHD for expenses associated with any training that is deemed necessary and provided by the Department in accordance with the policies of the Department;
2. The Department agrees to make payments to DCHD twice per calendar year. Payments shall be made within thirty (30) days following June 30 for the period January 1 to June 30, and within thirty (30) days following January 1 for the period July 1 to December 31. The amount of payment shall be based upon the fees paid to the Department during those time periods;
3. The source of funding to the Department for this Agreement is the Pure Food Cash Fund. Payment is contingent upon this funding availability;
4. DCHD agrees not to seek reimbursement for inspecting and regulating Establishments which are required to pay local license or inspection fees to DCHD; and
5. DCHD agrees funds provided under this Agreement by the Department shall be used only for the purposes enumerated herein and any funds not fully earned pursuant to this Agreement during the Agreement period nor properly supported by the documentation required shall be returned to the Department.

C. AGREEMENT PERIOD:

The term of this Agreement is from July 1, 2016, to June 30, 2017, unless sooner terminated.

D. AGREEMENT PROVISIONS

1. Termination:

- a. The Department may immediately terminate this Agreement, in whole or in part, if DCHD fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow DCHD to cure a failure or breach within the Department's specified period of time. Allowing DCHD time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of DCHD, the Department may contract from other sources.
- b. This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to DCHD, except that the Department agrees to pay DCHD for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by DCHD's termination.

2. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.

3. Relationship of Parties: The relationship of the Department and DCHD under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and DCHD that DCHD is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.

4. Assignable: This Agreement is not assignable without the express written approval of the Department.

5. **Governing Law:** This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
6. **Indemnification:**
  - a. **General.** DCHD, without waiving sovereign immunity and to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (hereafter "claim"), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of DCHD, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;
  - b. **Personnel.** DCHD shall, without waiving sovereign immunity and to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by DCHD. DCHD's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law.
7. **Authority to Enter Agreement:** DCHD warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind DCHD accordingly.
8. **Severability:** If any term or condition of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be

construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

9. **Penalty for Breach:** In the event that either party fails to perform any substantial obligation under this Agreement, the other party may withhold all monies due, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. **Records Available:** The books of account, files, and other records of DCHD which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of DCHD. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, DCHD shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. **Auditing Standard:** The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include DCHD providing recent audit reports to evaluate prior audit experiences and audit findings; the Department reviewing the subrecipient control environment; the Department requiring additional oversight reports; and DCHD providing copies of invoices detailing how the Department funds were expended.
3. **Confidentiality:** The Department agrees that any information marked as confidential or proprietary information including but not limited to protected health information, business operation information and client lists which is received by the Department from DCHD for the purposes of this Agreement shall be kept confidential to the extent allowed by law.

#### F. COMPLIANCE PROVISIONS

1. **Nondiscrimination:**

- a. DCHD, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. DCHD guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. DCHD shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if DCHD is found to be in violation of this clause by a tribunal or court of competent jurisdiction, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
  3. Worker's Compensation: DCHD and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
  4. Drug Free: DCHD, and any and all subcontractors, shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:
    - a. A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in the DCHD's workplace;
    - b. The specific actions that will be taken against employees for violating the policy; and
    - c. A requirement that each employee receive a copy of the policy.

5. Immigration Verification: DCHD, and any and all subcontractors, shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of newly hired employees.
  
6. Early State Agreement Termination or Certification Regarding Debarment: DCHD certifies that DCHD is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). DCHD further certifies that DCHD has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If DCHD has had an agreement terminated early by the State of Nebraska, DCHD shall provide the agreement number, along with an explanation of why the agreement was terminated early. DCHD also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. DCHD shall immediately notify the Department if, during the term of this Agreement, the DCHD becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing DCHD written notice if DCHD becomes debarred or if DCHD has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement.

DEPARTMENT OF AGRICULTURE

Date June 21, 2016

Greg Ibach  
 Greg Ibach, Director

For

DOUGLAS COUNTY HEALTH DEPARTMENT

Date July 1, 2016

Adi M. Pour  
 Adi M. Pour, Ph.D., Director

DOUGLAS COUNTY BOARD OF  
COMMISSIONERS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Ann Borgeson, Chairwoman

DOUGLAS COUNTY BOARD OF HEALTH

\_\_\_\_\_  
Date

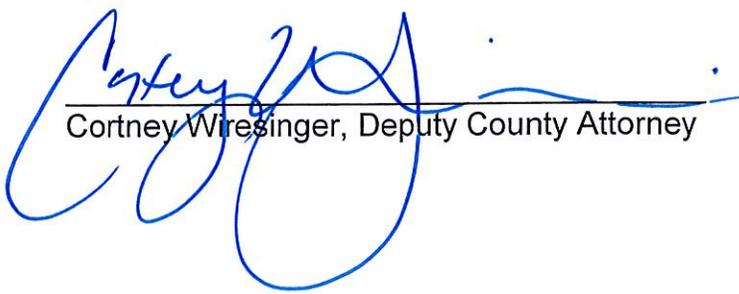
7/20/16

  
\_\_\_\_\_  
Chris Rodgers, President

Approved as to Form:

\_\_\_\_\_  
Date

7/20/16

  
\_\_\_\_\_  
Cortney Wiresinger, Deputy County Attorney

## ATTACHMENT A

### Supplemental Technical Provisions

#### **Regulatory Activities/Functions**

- A. The regulatory activities which DCHD is authorized to perform shall include the following:
1. The regulation of Establishments in the manner set out in the applicable portions of the Act.
  2. The detection of adulteration violations.
  3. The detection of misbranding violations.
  4. The detection of deceptive packaging violations.
  5. The detection of false advertising violations.
  6. The performance of inspections.
  7. The taking of samples.
  8. The checking of records.
  9. The photocopying of documents.
  10. The photographing of conditions.
  11. The preparation, handling, and filing of reports and records.
  12. The issuance of warning letters.
  13. The issuance and enforcement of stop-sale, stop-use, or removal orders.
  14. The performance of any other related activities authorized or required by the Act.
- B. The regulatory functions which the Department will retain and for which DCHD shall not be responsible are as follows:
1. The issuance, suspension and revocation of State Department of Agriculture permits and orders of probation.
  2. The performance of laboratory work.
  3. Inspections conducted under the authority of the Department's agreements with the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA).

**Permit Requirements**

- A. DCHD shall not allow an Establishment to operate within its Jurisdiction Area until the permit required by the Nebraska Pure Food Act has been applied for and approved by DCHD. DCHD may verify that the permit has been issued by contacting the Department.
- B. In accordance with Neb. Rev. Stat. §§4-108 through 4-114, DCHD shall not allow an Establishment operating as a sole proprietorship to operate within its jurisdiction until a United States Citizenship Attestation Form is completed by the applicant and the applicant can verify lawful presence in the United States. Information required is as follows:

<b>United States Citizenship Attestation Form</b>		
For the purpose of complying with <u>Neb. Rev. Stat. §§4-108 through 4-114</u> , I attest as follows:		
<input type="checkbox"/> I am a citizen of the United States.		
<b>or</b>		
<input type="checkbox"/> I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows: _____ . A copy of my USCIS documentation is attached.		
I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate, and I understand that this information may be used to verify my lawful presence in the United States.		
_____ Print Name	_____ Signature	_____ Date

**Standardizations**

Environmental health specialists performing inspections of establishments regulated under this Agreement shall be standardized in food interpretations at least once every four (4) years.

- A. The environmental health specialists shall be standardized by a Certified Evaluation Officer (as defined on page 5 of this Attachment), a Food and Drug Administration Certified Field Food Specialist, or by a Lincoln/Lancaster County Health Department Standardization Officer who is standardized annually by a Certified Evaluation Officer.
- B. Independent inspections by the environmental health specialist and the standardization officer shall be made of at least eight (8) food establishments.

- C. The last regular inspection made by the environmental health specialist of an establishment used for standardization will be reviewed and the results compared to the inspection made during standardization.
- D. DCHD shall request such standardization and offer available dates for the standardization. The request shall be made in writing at least three (3) months prior to the suggested dates so quarterly scheduling can be accomplished.

### **Inspection Reports**

- A. Duplicate copies of all handwritten inspection reports prepared by DCHD shall be sent to the Department so that the information can be put into the computer for use in producing the establishment listing. These copies are to be sent to the Department within two (2) weeks after the date of the inspection. The specific days on which the duplicate copies are to be sent shall be designated by the Department.
- B. Records of all electronic inspection reports prepared by DCHD shall be sent to the Department, so the information can be entered into the State database for use in producing the establishment listing and other information tables. The electronic transfer of inspection records is to be sent to the Department on a monthly basis.

### **Sanitation Level**

- A. It shall be the responsibility of the DCHD to maintain a satisfactory Retail Food Protection Program sanitation level within as established by the attached Procedures for Evaluating Retail Food Protection Programs. The sanitation level shall be determined by periodic evaluations of the contractor's inspection program.
- B. In the event that a Retail Food Protection Program survey (see below) reveals an unsatisfactory sanitation level within DCHD's Jurisdiction Area, a follow-up survey will be conducted by the Department no less than six (6) and no more than nine (9) months following completion of the previous survey. If the second survey reveals an unsatisfactory sanitation level, this Agreement shall terminate as of the date of completion of the second survey.

### **Sanitation Level Surveys**

- A. The Department may, at any time it deems appropriate, determine the sanitation level of the food protection program conducted by DCHD. Such a determination shall be made on the basis of a survey conducted by or at the direction of the Department.
- B. The Department may, upon the request of DCHD, conduct a mini-survey of the food protection program. A mini-survey shall consist of field inspections of no more than 25 nor no fewer than 10 randomly selected food establishments within the jurisdiction of DCHD. Mini-surveys shall be conducted no more than once every calendar year.

## Procedures for Evaluating Retail Food Protection Programs

### Based Food and Drug Administration Recommendations

#### I. INTRODUCTION

A main thrust of the Retail Food Protection Program is to achieve uniformity throughout the State and local jurisdictions in the enforcement of the state's food safety laws. To this end, FDA recommends that State and local governments adopt FDA model ordinances and related procedures, or otherwise revise their sanitation requirements and program procedures to conform substantially with the FDA recommendations.

It is essential that food protection programs periodically have a formal, objective evaluation to determine their strengths and weaknesses. Such evaluations should cover all aspects of program administration, program objectives, and program accomplishments. However, the validity of the program evaluation will be directly related to the evaluator's ability to accurately and uniformly apply this recommended procedure.

In 1980, the Public Health Service and FDA published a model procedure for evaluating food service sanitation programs. This procedure was referred to as the "Procedure for Evaluating Food Service Sanitation Program." It was written to cover both food service (including vending) and retail food store sanitation programs. This procedure was adapted by the Nebraska Department of Agriculture (NDA) for the evaluation of local programs. This document is a modification of those Procedures.

#### II. SCOPE AND PURPOSE

This Procedure is designed for use in evaluating the objectives, capabilities, effectiveness, and overall management of the retail food protection program(s) in any jurisdiction. The procedure has two distinct segments, one for evaluating Administration of the program and one for measuring the Sanitation Level achieved in retail food establishments covered by the program. The Procedure is designed for evaluation of both food service and retail food store programs. In some cases, the food service and retail food store program elements are under a single administrator. In such cases, both program elements can be evaluated together.

Viewed objectively by the program administrator, information obtained from a program evaluation becomes a valuable resource in program development, maintenance, and improvement. Evaluation reports can be extremely useful in obtaining legislative and budgetary support needed for upgrading program resources, upgrading qualification of program personnel, and achieving greater overall effectiveness of the program.

### III. DEFINITIONS

- A. Retail Food Protection Program means all retail segments of the food industry, i.e., food service (commercial and institutional), food vending, and retail food stores.
- B. Retail Food Establishment means a food establishment as defined in the Nebraska Pure Food Act.
- C. Certified Evaluation Officer (evaluator) is a person trained and certified by FDA in the inspectional techniques and administrative review techniques used by FDA and recommended for other governments' use in evaluating retail food protection programs.

### IV. PROCEDURE FOR MEASURING SANITATION LEVEL

- A. The level of sanitation achieved in retail and food establishments is an important end product of program administration. Thus, it is important in program evaluation that the evaluator inspects a representative sample of the jurisdiction's establishments and computes a Sanitation Level, which is a comparison of the jurisdictional historical inspectional results to the evaluators' inspectional results. A maximum of 25 establishments will be inspected during the evaluation. This comparison is reported in the Sanitation Discussion portion of the evaluators' report.

- B. Selecting the Sample

The method used to select the sample will be uniformly applied and will provide a sample that is representative of the total number of retail food establishments in the community, as well as a representative sample of each type of facility found in the community.

The sampling technique utilizes a data processing system. When this procedure is used, all of the establishments in the program must be subject to sampling. To determine the inspection frequency, the total number of retail food establishments subject to the evaluation is divided by the number of establishments needed for the sample. (For example, if there are 200 establishments within the evaluation area and a sample of 50 is needed, the frequency interval would be 200 divided by 50, or 4. Thus, every fourth establishment shall be selected to make up the sample.)

An individual list of each type of facility (restaurant, retail grocery store, convenience store, bakery, and licensed beverage establishment) subject to evaluations will be printed. The number of establishments in each category will be divided by the number of available establishments in the

jurisdiction to determine each facilities percentage of the total. For example, if there are 200 firms available for inspection, and there are 110 restaurants, 12 grocery stores, 40 convenience stores, 23 licensed beverage establishments, and 15 bakeries, 55% of the sample would be restaurants – 110/200; 6% would be grocery stores – 12/200; 20% convenience stores – 40/200; 8% bakery – 15/200; and 12% licensed beverage establishments – 23/200.

In order to maintain the desired random quality of the sample, the lists should be entered in a random fashion. To establish a starting point when using a frequency interval of 4, write numbers 1 to 4, inclusive, on separate strips of paper, and draw one slip at random. The number appearing on that strip of paper represents the first establishment to be drawn. If the number drawn is four, then the fourth entry in each list would be the first establishment in the sample. The second establishment would be the 8<sup>th</sup> entry, the third establishment would be the 12<sup>th</sup> entry, and so forth, until the total number for each facility type is drawn.

C. Supplemental Sampling

When a selected establishment is not open for business, an alternate establishment will be inspected. The alternate establishment shall be an establishment of comparable size and function, geographically near the selected establishment.

D. Establishment Inspections

During inspections, good judgment and sound public health principles must be applied to determine whether any observed condition does, in fact, constitute a significant deviation from requirements of the Code. Items of sanitation determined to be in violation will be recorded on a "Food Service Establishment Inspection Report."

E. Comparing Evaluation Inspections with Inspection History Files

The evaluator will compare results of the evaluation inspections with one or more prior inspections conducted in the same establishments by the jurisdiction being evaluated. The purpose of this comparison is to determine the quality of inspections performed by the jurisdiction and their potential value in assuring adequate sanitation in establishment operations. Particular emphasis will be placed on repeated operation, facility, and equipment violations of public health significance. Such emphasis should also be considered for instructions and time frames given the establishment by the jurisdiction for correction of violations, and on follow-up to assure correction of violations.

## V. PROCEDURE FOR EVALUATING ADMINISTRATION

### A. Purpose

A primary purpose of program evaluation is to examine management of the program to determine how effectively assigned authorities and responsibilities are carried out. The evaluator or evaluation team reviews all aspects of program administration, identifies its strengths and weaknesses objectively, and develops recommendations for reducing or correcting observed weaknesses.

### B. Methodology

Administration aspects of retail food protection program can be evaluated by a single evaluator or by a team of professionals' assigned specific segments of the evaluation. The results obtained in measuring Sanitation Level, as outlined, will be correlated with the evaluation of Administration aspects for the purpose of preparing the evaluation report described in Section VI.

The evaluator(s) conceivably can perform an adequate program evaluation without a checklist or a written procedure.

## VI. THE EVALUATION REPORT

### A. Verbal Report

The evaluator(s) will conduct an exit interview with appropriate representatives of the regulatory jurisdiction to provide them a general summary of program evaluation results. This summary should reveal all items of significance that will be included in the written (final) report and observations of lesser importance which deserve mention. Preliminary findings and observations are to be discussed with program administrators to assure completeness and understanding of the report.

### B. Written Report

A final report will be written as soon as practicable after completion of the evaluation and transmitted to the appropriate official(s) of the program evaluated. A copy of the written report will be retained in the files of the office conducting the evaluation. The report will be written as outlined below, although the various sections need not be identified as sections.

1. Introduction

The Introduction will clearly identify the official requesting the evaluation, the evaluator(s), the geographic area or jurisdiction evaluated, the regulatory authority responsible for the program, the program administrator, inclusive dates of the evaluation and any acknowledgements of assistance. The Introduction should also include specific legislation authorizing program enforcement, the adoption and effective date of the current ordinance/regulation, and the total number of food establishments under the control of the jurisdiction. If appropriate, the Introduction should delineate reasons for the evaluation, potential benefits to the program, and any special circumstances that may influence the evaluation procedure.

2. Sanitation Level/Discussion

This section of the report will deal with the Sanitation Level of retail food establishments that are a responsibility of the program being evaluated. The report should contain a discussion of the significant violations marked by the evaluator and emphasize the public health reasoning and recommendations for correcting those violations. When appropriate, the report also should contain a discussion of differences between violations marked by the evaluator and violations recorded from previous inspections of the same establishment. While it is recognized that some elements of an establishment's sanitation practices may vary from day to day causing occasional sanitation violations, there are key factors that should be relatively constant. As appropriate, the report should cite specific examples of repetitive violations of the same specific requirements, deficiencies in marking violations, or inconsistencies in marking violations between inspectional personnel or between geographic areas.

3. Administration

This section of the report will deal with Administration aspects of the program. Discussion should provide the program administrator a general evaluation of how effectively the program is currently operating in the context of legal authority and responsibilities assigned for protection of the public health. Specific comment should be provided on strengths and weaknesses, in sufficient detail to support the evaluator's judgment.

4. Recommendations

This section of the report will contain all recommendations to the regulatory jurisdiction for improvement of its program, considering both Administration and Sanitation Level.

5. Positive Aspects of the Program

The report should also include an acknowledgement of the positive aspects of the program that should be continued and/or strengthened. It is suggested that these appear in the Introduction or at the end of the report, following the Recommendations section.

VII. FOLLOW-UP

A. Frequency of Evaluations

For most retail food protection programs, a comprehensive evaluation every four years is desirable. A lesser time interval between evaluations may be justified (1) when the initial evaluation indicated the Sanitation Level and/or Administration aspects to be inadequate, and substantial improvements have been made, or (2) when changes are made in key personnel or regulatory responsibility and it is desirable to establish a new base for the program. An interval greater than four years is discouraged, since the benefits derived from evaluations decrease as the time interval between evaluations increases.

B. Activities Between Evaluations

Since the evaluation agency frequently serves in an advisory and consultative capacity, the interim between evaluations should be used by the evaluator to render assistance to the jurisdiction in those food protection program areas noted in the evaluation report as significantly deficient. Major deficiencies should be reviewed or re-evaluated within a reasonable time agreed upon by the jurisdiction's regulatory authority and the evaluator.

Retail Food Program Administration Evaluation Guide

I. Purpose

*This Evaluation Guide is designed for use in evaluating Administration aspects of the retail food protection program(s) in any jurisdiction. It is designed for evaluation of both food service and retail store sanitation programs.*

A primary purpose for program evaluation is to provide assistance to the program administrator in management of the program. Evaluation methodology is one of examining program administration to determine how effectively authorities and responsibilities are carried out. The evaluator or evaluation team reviews all aspects of program administration, identifies its strengths and weaknesses objectively, and develops recommendations for alleviating observed weaknesses.

The Evaluation Guide provides a step-by-step procedure to be used by the evaluator or evaluation team. It is not necessarily all inclusive, but should lead the evaluator(s) to consider the important aspects of program management. Normally, conversations with staff members of the program will reveal the program's strengths and weaknesses, but, because cyclical program evaluations (once every four years) are recommended, a guide such as this is considered essential to the achievement of uniformity.

## II. Scope of Responsibilities and Authorities

Under Scope of Responsibilities and Authorities, the evaluator examines the law, ordinances, or regulations under which the program operates to determine what responsibilities are assigned and whether or not authorities granted the program administrator are adequate for effective enforcement of the law. Ideally, there should be one set of sanitation requirements for food service that are identical throughout the State; all establishments (commercial or institutional) should be under a single State agency which has responsibility for standardization of all inspectional personnel regardless of their administrative alignment. Effective enforcement procedures should be available and used for each category or establishment. However, this situation often does not exist, and the evaluator should compare the actual assignment of responsibilities. In so doing, consideration should be given the following questions.

- A. Does the administrator have responsibility for the inspection of all food service establishments?
- B. Does the administrator have sufficient authority under the law to effectively carry out program responsibilities?  
If not, what additional authority is needed?

What action is being taken to obtain the authority?

If local units are permitted to adopt their own standards, are local standards required to be at least as stringent as State standards?

Do local standards contain requirements not included in uniform standards that may be an unnecessary burden to industry?

- C. Do the legal sanctions and regulatory procedures available to the administrator(s) permit enforcement of standards throughout the jurisdiction?

Is enforcement responsibility totally delegated to local units or is this responsibility shared?

Are enforcement requirements substantially equivalent to FDA recommendations?

III. Goals and Standards

Each regulatory jurisdiction should establish written goals and performance standards as guides to supervisors and staff. These serve to hold the team together and make it a more efficient and effective unit. They set the "target" for performance and favorably influence the attitudes of staff members.

A. Has the administrator established goals or objectives for the program?

Are the staff and top management aware of these?

Are the goals or objectives reasonably attainable and measurable? Some examples might be:

1. Improving overall sanitation level
2. Conducting timely follow-up inspections.
3. Upgrading quality of new and remodeled establishments at time of opening.
4. Investigating complaints or repeat violations.
5. Improving recordkeeping systems.
6. Improving staff competence.
7. Improving consumer or industry relations.
8. Increasing emphasis on most critical sanitation violations.
9. Changing inspection methodology to increase effectiveness.
10. Initiating voluntary compliance programs.

B. Performance Standards

1. Staff Training

- a. Is an orientation program provided for new inspection personnel?

Does this program include "classroom" discussion, as well as field training with experienced staff persons?

What is the content of the orientation course?

How long is orientation?

What important topics are not being included?

- b. Is the staff given initial and continuing training on uniform interpretation of sanitation requirements and use of inspection form and related procedures?

Have all retail food supervisors of field inspectional staff been trained for inspection uniformity\* by a state or Federal Certified Evaluation Officer(s)?

Have all retail food inspectional staff been trained for inspection uniformity\* by their supervisors or by state or Federal Evaluation Officer(s)?

Does the training include case development and other enforcement or compliance procedures?

- c. Does the program foster and encourage continuing education of all staff, including supervisors?

Do supervisors and staff participate in continuing education opportunities, including participation in professional organizations on a regular basis each year?

- d. Does the inspection staff have access to basic reference materials including professional trade journals?

Are basic textbooks available on food protection and general sanitation?

\*Training for inspection uniformity should consist of joint inspections of at least eight retail food establishments by the inspector. These inspections shall be conducted as routine inspections.

## 2. Establishment Inspections

- a. How are inspections scheduled?

Is frequency mandated by law?

Is there an attempt to cover all establishments on an equal basis or are priorities established based on past performance history of the establishment?

- b. Does unit planning include follow-up and complaint inspections?

Does the unit conduct these inspections according to plan?

- c. Do inspection personnel discuss their inspection results with the establishment owner or supervisor in the course of the inspection?
- d. Are inspection reports completed?

Are violative conditions concisely described and recommendations for corrections, with time frames for correction, understandable?

### 3. Enforcement

- a. Does the regulatory authority issue permits/licenses to all retail food operations within its jurisdiction; or at least exercise final control of their issuance?
- b. Are all plans for newly constructed or extensively remodeled retail food establishments reviewed for approval?
- c. Are pre-opening inspections conducted on newly constructed or extensively remodeled retail food establishments to ensure compatibility with sanitary requirements?
- d. How are supervisors informed of inspection results?

Do supervisors review all reports?

Are reports reviewed on an exception basis, e.g., are only critical violations or repeat violations reviewed?

What triggers follow-up investigation or enforcement actions?

- e. Is the unit consistent in implementing follow-up investigations or enforcement actions; i.e., is a logical sequence of administrative and legal actions available and consistently used on a timely basis?

- f. Is there a flow chart or written procedure which clearly details how enforcement responsibilities are divided among the field inspector, field supervisor, and program administrator?
- g. Has the jurisdiction's overall sanitation level improved in recent years? If so, is there evidence that this results from positive actions on the part of the jurisdiction? If no improvement, why not?
- h. How do establishment rating scores recorded in agency records compare with rating scores of establishments inspected by the evaluator?

#### IV. Discussion With Administration

The evaluator examines resources, staff, procedures, capability, and performance records of the program under evaluation. The purpose of this is to determine general readiness and willingness of program officials to carry out responsibility and authority assigned by law. In preparation for the Discussion, questions may be submitted to the program administrator in advance of the actual evaluation. This will allow the administrator time to gather any information needed in order to answer the questions. Areas of discussion include, but are not limited to:

- A. How many full-time (or equivalent) positions are there assigned to the retail food program in the following categories? Inspection Personnel, Supervisors, Support Personnel.

What is the ratio between number on staff and number of food establishments?

What staffing deficiencies, if any, does the program administrator identify?

- B. How are operating procedures made known to staff members? Are they documented?

Are they maintained current? How are changes to operating procedures disseminated?

Does staff understand operating procedures?

Identify any specific deficiencies noted in the communications system used between supervisors and staff (up and down).

C. Are inspectional personnel individually provided the necessary equipment to perform their inspections, such as dial, metal bayonet-type thermometers; maximum registering thermometers and/or paper thermometers; chemical test kits or test strips for measuring the strength of sanitizing solutions; flashlights; light meters?

D. Does the jurisdiction have workable relations with other departments or external offices that facilitate carrying out its responsibility?

E. Is field inspection work assigned and monitored?

Does the administrator continually revise inspection schedules on the basis of past results?

F. Are reports and records maintained so that essential management information is retrievable in useable form? Can the administrator easily compare inspection results by geographic area, between sanitarians, by category or establishment or by type of violation?

G. Are deliberate efforts made to create and maintain good relations with industry and the public? What are they?

Is the jurisdiction involved in industry training? If so, what kind (e.g., foodservice manager training/certification, employee training, etc.)? Does the jurisdiction mandate operator or manager training?

Does the jurisdiction involve industry and the public in planning policy making or other program activities? How, and to what extent?

H. Does the jurisdiction have a formal, documented plan of operation for the investigation of foodborne disease outbreaks and contingency plans covering disruptions of normal retail food establishment operations?

Have basic responsibilities been assigned to specific individuals or job incumbents?

Is there evidence that all concerned offices or persons are aware of the plan?

In what areas is the plan deficient?

I. Are laboratory facilities capable of performing necessary microbiological and chemical analyses available and accessible on short notice when needed?

Are they used?

J. Does the jurisdiction have a formal system for receiving, recording, and acting on suspected foodborne illness cases?

Are suspected cases investigated in accordance with uniform recognized procedures?

Are all findings reported to the appropriate local, state, and federal office(s) through appropriate channels?

V. Accomplishments

In considering Accomplishments of the jurisdiction under evaluation, the evaluator is in effect confirming and testing his/her observations. He/she is comparing the capabilities and performance of the jurisdiction with requirements of the law and objectives of the program. The evaluator needs to determine how well the unit is doing, what it is doing, and also whether the things the unit is doing are actually related to the achievement of its goals. Also consider:

- Sanitation requirements of the law;
- Capabilities of the jurisdiction evaluated;
- Initiative and aggressiveness in improving the program;
- Incidence of foodborne illness complaints and investigation;
- The jurisdiction's inspection rating scores;
- The jurisdiction's enforcement record; and
- The evaluation must be tailored and personalized to the jurisdiction being evaluated.

The bottom line, judgment is whether or not the jurisdiction is doing an effective job of protecting the public and, if not, what specific deficiencies need to be resolved.