WV Retail Food Program
New Sanitarian Training
WV 64 CSR 17

Jennifer Hutson, Food Program Manager
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The Conference of Food Protection and the WV Food Safety & Security Taskforce
• Meets biennially to review proposed changes to the FDA Model Food Code.
• Attendees are from academia, industry, and regulatory.
• Regulatory members vote on changes to be reviewed by FDA for adoption into code.
• New code is published every 4 years with a supplement being published in between codes.
WV Food Safety and Security Taskforce

- Was established to meet § 64-17-7 requiring Food Establishment Advisory Board
  - Board Member Make-Up
    - Academia
    - Industry
    - Citizens
    - Regulatory Officials (Local Health, PHS, Department of Agriculture)
  - Duties:
    - Interpretations of this rule
    - Reviews requests for waivers and variances
    - Investigates complaints from industry
    - Revisions of the rule
  - Uses Annexes 2 – 7 of Food Code as guidelines for duties.
Why a Model Food Code?

Public Health and Consumer Expectations

Food Code provides a system of prevention and safeguards to protect public health

Advantages of Uniform Standards

Regulatory officials “speak with one voice”

Establish what is required

Quality of life, state of health and public welfare are directly affected by how we protect our food.

Consistent with federal performance standards

Applies HACCP as a means of evaluation, variance, and active managerial control
WV 64 CSR 17
(Food Establishment Rule)
2.1. Commissioner  
2.2. Family Child Care Facility  
2.3. Family Child Care Home  
2.4. Retail Food Store – Any place, structure, premise, vehicle, or any part thereof in which food is sold retail, offered for retail sale, or served not to be consumed on the premises. The term “retail food store” does not include establishments that handle only prepackaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits or fresh vegetables; or the delicatessen operation of a retail food store.
3.1. Incorporates by reference with the following exceptions:

3.1.a. Replaces the definition of “food establishment” with the one in section 4 of this rule. (pg. 9)

3.1.b. Add “within one (1) year of the effective date of this rule” to the end of 2-102.12(A). (pg. 28)

3.1.c. Replaces 2-102.12(B) with “This section does not apply to: (1) retail food facilities where only commercially prepackaged food is handled and sold, and (2) temporary food establishments.”

3.1.d. Add “Within five years of the effective date of this rule, the refrigeration equipment in a retail food store used to hold cut leafy greens shall be repaired, upgraded, or replaced to maintain the cut leafy greens at a temperature of 5 C (41°F) or less, if not already capable of maintaining the required temperature” to 3-501.16(A)(2). (pg. 91)

3.1.e. Replaces 3-501.16(B) with “Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 5 C (41°F) or less.” (pg. 91)

3.1.f. Delete the word “milk” from 3-603.11(A). (pg. 104)

3.1.g. Replace 3.603.11(C)(3) with “Consuming raw or undercooked meats poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially for children, elderly, immunocompromised individuals, and persons with certain medical conditions.” (pg. 105)
3.1. Incorporates by reference with the following exceptions:

3.1.h. **8-102.10** (pg. 198) and **8-304.10** (pg. 207) Shall not apply

3.1.i. Adds, “All required plans shall be submitted at least 45 days prior to the start of construction, conversion, or remodeling.” to the end of **8-201.11(C)**. (pg. 200)

3.1.j. Deletes **8-405.11** (pg. 216) and replaces it with

“8-405.11 Timely Correction.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall at the time of inspection correct a violation of a PRORITY ITEM or PRIORITY FOUNDATION ITEM of this Code and implement corrective actions for a HACCP PLAN provisions that is not in compliance with its CRITICAL LIMIT. Pf

(B) Considering the nature of the potential HAZARD involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY shall agree to or specify a time frame, not to exceed:

(1) 72 hours after the inspection, for the PERMIT HOLDER to correct violation of a PRIORITY ITEM; or

(2) 10 calendar days after the inspection, for the PERMIT HOLDER to correct a PRIORITY FOUNDATION ITEM or HACCP PLAN deviations.

3.1. Incorporates by reference with the following exceptions:

3.1.k. Strike 8-6 (pg. 223) and 8-905 through 8-913 (pg. 233-245) of Annex 1.

3.1.l. Adds to 8-904.10 “The commissioner may also summarily suspend a permit to operate a food establishment if:

3.1.l.1. The food establishment has three or more immediately uncorrectable priority items in violation at the time of inspection; or

3.1.l.2. The permit holder has been determined by the commissioner to have obstructed or hindered the commissioner in the proper discharge of his or her duties; and

3.1.l.3. Enforcement shall be in accordance with W.Va. Code § § 16-1-1, et seq. And § 16-6-1, et seq.” (pg. 231)

3.2. Supplies Annexes 2-7 of the Food Code for interpretation of this rule.

3.3. Sends everyone to FDA’s website for copies of the Food Code.
4.3. Food establishment does not include:

4.3.a. An establishment that offers only prepackaged foods that are not time/temperature control for safety food and does not provide reusable table ware to the consumer;

4.3.c. A food processing plant including those located on the premises of a food establishment;

4.3.d. A kitchen in a private home if:

4.3.d.1. The food prepared in a kitchen in a private home for sale or service at a function such as a religious or charitable organization bake sale that is not time/temperature controlled for safety food (formerly “potentially hazardous food” (PHF)); and

4.3.d.2. If the consumer is informed by a clearly visible placard at the sales or service location the food is prepared in a kitchen that is not subject to regulation and inspection by the commissioner;
§ 64-17-5 Modified Requirements for Specific Types of Food Establishments

• Domestic type kitchen with residential-style equipment
  • Family Child Care Facility
  • Boarding House Style Facility with 12 or fewer occupants
  • B & B with
    • 6 or less rooms
    • Or if the excess rooms over 6 are used in aggregate 2 weeks a year
• Require at a minimum
  • Two compartment sink
  • Mechanical warewashing machine capable of sanitizing (when provided)
• Not Required
  • Hand sink
  • Mop sink
1. Currently permitted food establishments are eligible, future construction must comply with this rule.

2. New construction remodel previously approved must be in compliance with rule.

3. Commissioner shall provide training for local health department personnel.
Section 7 relates to Food Advisory Board
Section 8 requires Fees for Permits and Fees for Service be used to establish fees.
9.1. A permit applicant, a permit holder, an employee or other person may petition the commissioner in writing, as prescribed in the rule, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings,” 64 CSR 1, for a contested case hearing when the Commissioner has:
   9.1.a. Denied his or her application for a permit to operate;
   9.1.b. Suspended or revoked his or her permit to operate;
   9.1.c. Denied his or her request for a variance;
   9.1.d. Issued a hold order;
   9.1.e. Issued an employee restriction or exclusion order; or
   9.1.f. Otherwise adversely affected the rights, duties, interests or privileges of the petitioner.

9.2. Within 10 days after receipt of the written petition, the commissioner shall grant or deny a hearing on the matter in accordance with the rule, “Rules of Procedure for Contested Case Hearings and Declaratory Rulings,” 64 CSR 1.

9.3. The filing of a petition for a hearing shall not stay or suspend the execution of the notice or order issued by the commissioner.

Violation of the provisions of this rule is a misdemeanor. The commissioner may take enforcement actions for violation in accordance with W. Va. Code §§ 16-1-18, 16-6-23 and 16-6-24.
Other BPH State Rules Relating to Food and Public Health

• **Administrative Rules**
  • WV 64 CSR 01 Rules of Procedure for Contested Case Hearings
  • WV 64 CSR 30 Fees for Permit
  • WV 64 CSR 51 Fees for Service
  • WV Code Chapter 16, Article 1: Public Health System
  • WV Code Chapter 16, Article 2: Local Boards of Health

• **Food Rules**
  • WV 64 CSR 03 Bottled Water Rule
  • WV 64 CSR 43 Food manufacturing Facilities
  • WV Code Chapter 16, Article 6: Hotels and Restaurants
WV Department of Agriculture Rules

- WV 61 CSR 02 WV Apiary Law
- WV 61 CSR 04B Frozen Desserts and Imitation Frozen Desserts
- WV 61 CSR 07A Marketing of Eggs
- WV 61 CSR 08D Grades and Standards for Apples
- WV 61 CSR 10 Fresh Food Act
- WV 61 CSR 12 Certified Pesticide Applicator Rules
- WV 61 CSR 15 Grade “A” Pasteurized Milk
- WV 61 CSR 22 Generic State Management Plan for Pesticides and Fertilizers in Ground Water
- WV 61 CSR 23 Fish and Seafood
- WV 61 CSR 34 Captive Cervid Farming
- WV 61 CSR 35 Aquaculture Importation
- WV 61 CSR 36 Farm to Food Bank Tax Credit
- WV 61 CSR 38 Farmers Markets
• WV Code 19-2 Marketing Agricultural Products
• WV Code 19-2A Public Markets
• WV Code 19-2B Inspection of Meat and Poultry
• WV Code 19-2D Imitation Honey Production Law
• WV Code 19-2E Humane Slaughter of Livestock
• WV Code 19-2F Beef Industry Self-Improvement Assessment Program
• WV Code 19-2H Captive Cervid Farming Act
• WV Code 19-11 Bulk Milk Trade Law
• WV Code 19-11A Dairy Products and Imitation Dairy Products Law
• WV Code 19-11B Frozen Desserts and Imitation Frozen Desserts Law
• WV Code 19-11C Southern Dairy Compact
• WV Code 19-11D Traditional Cheese Production
• WV Code 19-11E Milk and Milk Products
• WV Code 19-30 Donated Food
• WV Code 19-32 Aquaculture Development
• WV Code 19-35 Farmers Markets
• WV Code 19-37 West Virginia Fresh Food Act
BPH Food Program Contacts

Jennifer Hutson, RS
Food Program Manager
350 Capitol Street, Room 313
Charleston, WV 25301-3731
Phone: 304-356-4339
Fax: 304-558-1071
Email: jennifer.eb.hutson@wv.gov

Wayne Powell, RS
Assistant Food Program Manager
350 Capitol Street, Room 313
Charleston, WV 25301-3731
Phone: 304-356-4283
Fax: 304-558-1071
Email: wayne.p.powel@wv.gov

James Casdorph, RS
Manufactured Food Program Coordinator
350 Capitol Street, Room 313
Charleston, WV 25301-3731
Phone: 304-356-5254
Fax: 304-558-1071
Email: james.e.casdorph@wv.gov

Emilee Melchior
Foodborne Illness RRT Coordinator
350 Capitol Street, Room 313
Charleston, WV 25301-3731
Phone: 304-356-4342
Fax: 304-558-1071
Email: emilee.j.melchior@wv.gov