# 2013 Food Code

## Chapter 8

### Compliance and Enforcement

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8-1 CODE APPLICABILITY

Subparts

8-101 Use for Intended Purpose
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8-1 CODE APPLICABILITY

• 8-101.10 Public Health Protection.
  • The regulatory authority shall apply this code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.
  • In enforcing the provisions of this code, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this Code based on the following considerations:
    • Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
    • Whether food-contact surfaces comply with Subpart 4-101;
    • Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with § 4-301.11; and
    • The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under ¶ 8-304.11(G).
8-1 CODE APPLICABILITY

• 8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed

  • Struck by WV 64 CSR 17-3.1.h

• 8-103.10 Modifications and Waivers.

  • The regulatory authority may grant a variance by modifying or waiving the requirements of this code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment.
• **8-103.11 Documentation of Proposed Variance and Justification.**

• Before a variance from a requirement of this code is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:
  
  • A statement of the proposed variance of the Code requirement citing relevant Code section numbers; Pf
  
  • An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; Pf and
  
  • A HACCP plan if required as specified under ¶ 8-201.13(A) that includes the information specified under § 8-201.14 as it is relevant to the variance requested. Pf
8-103.12 Conformance with Approved Procedures.

If the regulatory authority grants a variance as specified in 8-103.10, or a HACCP plan is otherwise required as specified under 8-201.13, the permit holder shall:

- Comply with the HACCP plans and procedures that are submitted as specified under 8-201.14 and approved as a basis for the modification or waiver; and
- Maintain and provide to the regulatory authority, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed:
  - Procedures for monitoring the critical control points,
  - monitoring of the critical control points,
  - Verification of the effectiveness of the operation or process, and
  - Necessary corrective actions if there is failure at a critical control point.
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8-2 PLAN SUBMISSION AND APPROVAL

Subparts

8-201 Facility and Operating Plans
8-202 Confidentiality
8-203 Construction Inspection and Approval
8-201.11 Facility and Operating Plans When Plans Are Required.

• A PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:
  • The construction of a food establishment; Pf
  • The conversion of an existing structure for use as a food establishment; Pf or
  • The remodeling of a food establishment or a change of type of food establishment or food operation as specified under ¶ 8-302.14(c) if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this Code. Pf

• **WV 64 CSR 17-3.1.i:** Shall be submitted 45 days prior to construction, conversion, or remodeling.
8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under § 8-201.13, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Code provisions:

- Intended menu;
- Anticipated volume of food to be stored, prepared, and sold or served;
- Proposed layout, mechanical schematics, construction materials, and finish schedules;
- Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
- Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.
8-201.13 When a HACCP Plan is Required.

- Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under § 8-201.14 and the relevant provisions of this Code if:
  - Submission of a HACCP plan is required according to law;
  - A VARIANCE is required as specified under Subparagraph 3-401.11(D)(4), § 3-502.11, or ¶ 4-204.110(B);
  - The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under § 8-201.12, an inspectional finding, or a variance request.
- Before engaging in reduced oxygen packaging without a variance as specified under § 3-502.12, a permit applicant or permit holder shall submit a properly prepared HACCP plan to the regulatory authority.
8-2 PLAN SUBMISSION AND APPROVAL

8-201.14 Contents of a HACCP Plan.

For a food establishment that is required under § 8-201.13 to have a HACCP Plan, the plan and specifications shall indicate:

• A categorization of the types of time/temperature control for safety foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority; Pf

• A flow diagram by specific food or category type identifying critical control points and providing information on the following:
  • Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD, Pf and
  • Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved; Pf

• Food employee and supervisory training plan that addresses the food safety issues of concern; Pf
8-201.14 Contents of a HACCP Plan. CONTINUED...

For a food establishment that is required under § 8-201.13 to have a HACCP Plan, the plan and specifications shall indicate:

- A statement of standard operating procedures for the plan under consideration including clearly identifying:
  - Each critical control point, $^{Pf}$
  - The critical limits for each critical control point, $^{Pf}$
  - The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge, $^{Pf}$
  - The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points, $^{Pf}$
  - Action to be taken by the person in charge if the critical limits for each critical control point are not met, $^{Pf}$ and
  - Records to be maintained by the person in charge to demonstrate that the HACCP Plan is properly operated and managed; $^{Pf}$ and
- Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal. $^{Pf}$
8-2 PLAN SUBMISSION AND APPROVAL

- **8-202.10 Trade Secrets; Confidentiality.**
  - The REGULATORY AUTHORITY shall treat as confidential in accordance with LAW, information that meets the criteria specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

- **8-203.10 Construction Inspection and Approval; Preoperational Inspections.**
  - The REGULATORY AUTHORITY shall conduct one or more preoperational inspections to verify that the FOOD ESTABLISHMENT is constructed and equipped in accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with LAW and this Code.
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8-3 PERMIT TO OPERATE

Subparts

8-301 Requirement
8-302 Application Procedure
8-303 Issuance
8-304 Conditions of Retention
8-3 PERMIT TO OPERATE

• **8-301.11 Prerequisite for Operation.**
  A person may not operate a food establishment without a valid permit to operate issued by the regulatory authority.

• **8-302.11 Submission 30 Calendar Days Before Proposed Opening.**
  An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility.

• **8-302.12 Form of Submission.**
  A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.
8-302.13 Qualifications and Responsibilities of Applicants.

- To qualify for a permit, an applicant shall:
  - Be an owner of the food establishment or an officer of the legal ownership;
  - Comply with the requirements of this Code;
  - As specified under § 8-402.11, agree to allow access to the food establishment and to provide required information; and
- Pay the applicable permit fees at the time the application is submitted.
8-3 PERMIT TO OPERATE

8-302.14 Contents of the Application.

• The application shall include:
  • The name, birth date, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
  • Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
  • A statement specifying whether the food establishment:
    • Is mobile or stationary and temporary or permanent, and
    • Is an operation that includes one or more of the following:
      • Prepares, offers for sale, or serves time/temperature control for safety food:
        • Only to order upon a consumer's request,
        • In advance in quantities based on projected CONSUMER demand and discards food that is not sold or served at an approved frequency, or
        • Using time as the public health control as specified under § 3-501.19,
      • Prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,
      • Prepares food as specified under subparagraph (c)(2)(b) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,
      • Prepares food as specified under subparagraph (c)(2)(b) of this section for service to a highly susceptible population,
      • Prepares only food that is not time/temperature control of safety food, or
      • Does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;
8-3 PERMIT TO OPERATE

8-302.14 Contents of the Application.

The application shall include:

• The name, title, address, and telephone number of the person directly responsible for the food establishment;

• The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under ¶ (D) of this section such as the zone, district, or regional supervisor;

• The names, titles, and addresses of:
  • The persons comprising the legal ownership as specified under ¶ (B) of this section including the owners and officers, and
  • The local resident agent if one is required based on the type of legal ownership;

• A statement signed by the applicant that:
  • Attest to the accuracy of the information provided in the application, and
  • Affirms that the applicant will:
    • Comply with this Code, and
    • Allow the regulatory authority access to the establishment as specified under § 8-402.11 and to the records specified under § § 3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and

• Other information required by the regulatory authority.
8-3 PERMIT TO OPERATE

• 8-303.10 New, Converted, or Remodeled Establishments.
  • For food establishments that are required to submit plans as specified under § 8-201.11 the regulatory authority shall issue a permit to the applicant after:
    • A properly completed application is submitted;
    • The required fee is submitted;
    • The required plans, specifications, and information are reviewed and approved; and
    • A preoperational inspection as specified in § 8-203.10 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.
8-3 PERMIT TO OPERATE

• 8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.
  • The regulatory authority may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

• 8-303.30 Denial of Application for Permit, Notice.
  • If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:
    • The specific reasons and Code citations for the permit denial;
    • The actions, if any, that the applicant must take to qualify for a permit; and
    • Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.
8-3 PERMIT TO OPERATE

• **8-304.10 Responsibilities of the Regulatory Authority.**
  • WV 64 CSR 17-3.1.h: Strikes this.
  • Local Health does not have to provide a copy to the permit holder but should educate permit holder about where code can be found.

• **8-304.11 Responsibilities of the Permit Holder.**
  • Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:
    • Post the permit in a location in the food establishment that is conspicuous to consumers;
    • Comply with the provisions of this Code including the conditions of a granted variance as specified under § 8-103.12, and approved plans as specified under § 8-201.12;
    • If a food establishment is required under § 8-201.13 to operate under a HACCP Plan, comply with the plan as specified under § 8-103.12;
8-304.11 Responsibilities of the Permit Holder. Continued…

• Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

  • Immediately contact the REGULATORY AUTHORITY to report an illness of a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE as specified under ¶ 2-201.11(B);
  
  • Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist as specified under § 8-404.11;
  
  • Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under § 8-402.11;
8-3 PERMIT TO OPERATE

8-304.11 Responsibilities of the Permit Holder. Continued...

• Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:
  • Replace existing facilities and equipment specified in § 8-101.10 with facilities and equipment that comply with this Code if:
    • The regulatory authority directs the replacement because the facilities and equipment constitute a public health HAZARD or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
    • The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership, or
    • The facilities and equipment are replaced in the normal course of operation;
  • Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
8-3 PERMIT TO OPERATE

• **8-304.11 Responsibilities of the Permit Holder. Continued...**
  • Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:
    • Accept notices issued and served by the regulatory authority according to law; and
    • Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.
    • Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

• **8-304.20 Permits Not Transferable.**
  • A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under ¶ 8-302.14(C) and the change in operation is not approved.
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8-4  INSPECTION AND CORRECTION OF VIOLATIONS

Subparts

8-401  Frequency
8-402  Competency and Access
8-403  Report of Findings
8-404  Imminent Health Hazard
8-405  Violation of Priority Item or Priority Foundation Item
8-406  Core Item Violation
8-401.10 Establishing Inspection Interval.

• Except as specified in ¶¶ (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months.

• The regulatory authority may increase the interval between inspections beyond 6 months if:
  
  • The food establishment is fully operating under an approved and validated HACCP Plan as specified under § 8-201.14 and ¶¶ 8-103.12(A) and (B);
  
  • The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every 6 months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of food operation are not changed; or
  
  • The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.
8-4 INSPECTION AND CORRECTION OF VIOLATIONS

• 8-401.10 Establishing Inspection Interval. Continued
  • The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:
    • Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
    • Has inexperienced food employees.
8-401.20 Performance-and Risk-Based.

Within the parameters specified in § 8-401.10, the regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this code and the establishment's potential as a vector of foodborne illness by evaluating:

- Past performance, for nonconformance with Code or HACCP Plan requirements that are priority items or priority foundation items;
- Past performance, for numerous or repeat violations of code or HACCP Plan requirements that are core items;
- Past performance, for complaints investigated and found to be valid;
- The hazards associated with the particular foods that are prepared, stored, or served;
- The type of operation including the methods and extent of food storage, preparation, and service;
- The number of people served; and
- Whether the population served is a highly susceptible population.
• **8-402.10 Competency of Inspectors.**
  An authorized representative of the regulatory authority who inspects a food establishment or conducts plan review for compliance with this Code shall have the knowledge, skills, and ability to adequately perform the required duties.

• **8-402.11 Allowed at Reasonable Times after Due Notice.**
  After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this code by allowing access to the establishment, allowing inspection, and providing information and records specified in this code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.
8-402.20 Refusal, Notification of Right to Access, and Final Request for Access.

- If a person denies access to the regulatory authority, the regulatory authority shall:
  - Inform the person that:
    - The permit holder is required to allow access to the regulatory authority as specified under § 8-402.11 of this Code,
    - Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under ¶ 8-304.11(F), and
    - If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to LAW; and
  - Make a final request for access.
**8-402.30 Refusal, Reporting.**

If after the regulatory authority presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

**8-402.40 Inspection Order to Gain Access.**

If denied access to a food establishment for an authorized purpose and after complying with § 8-402.20, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in LAW.
8-4 INSPECTION AND CORRECTION OF VIOLATIONS

• 8-402.30 Refusal, Reporting.
  • If after the regulatory authority presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

• 8-402.40 Inspection Order to Gain Access.
  • If denied access to a food establishment for an authorized purpose and after complying with § 8-402.20, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in LAW.
8-403.10 Documenting Information and Observations.

The regulatory authority shall document on an inspection report form:

- Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(c), inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

- Specific factual observations of violative conditions or other deviations from this Code that require correction by the permit holder including:
  - Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code as specified under § 2-102.11,
  - Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under ¶¶ 2-201.11(B) and (D),
  - Nonconformance with priority items or priority foundation items of this Code,
  - Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under § 8-103.12,
  - Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP Plan as specified under Subparagraph 8-201.14(D)(6), and
  - Nonconformance with critical limits of a HACCP Plan.
8-4 INSPECTION AND CORRECTION OF VIOLATIONS

- **8-403.20 Specifying Time Frame for Corrections.**
  - The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, 8-405.11, and 8-406.11.

- **8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt.**
  - At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.
8-403.40 Refusal to Sign Acknowledgment.

The regulatory authority shall:

- Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in § 8-403.30 that:
  - An acknowledgment of receipt is not an agreement with findings,
  - Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and
  - A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and
- Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.
• **8-403.50 Public Information.**
  Except as specified in § 8-202.10, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

• **8-404.11 Ceasing Operations and Reporting.**
  Except as specified in ¶ (B) of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health. A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.
8-404.12 Resumption of Operations.

- If operations are discontinued as specified under § 8-404.11 or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

8-405.11 Timely Correction.

- Except as specified in ¶ (B) of this section, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item of this code and implement corrective actions for a HACCP Plan provision that is not in compliance with its critical limit. 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:
  - 72 hours after the inspection, for the permit holder to correct violations of a priority item; or
  - 10 calendar days after the inspection, for the permit holder to correct violations of a priority foundation item or HACCP Plan deviations.
8-405.20 Verification and Documentation of Correction.

- After observing at the time of inspection a correction of a violation of a priority item or priority foundation item or a HACCP Plan deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

- As specified under ¶ 8-405.11(B), after receiving notification that the permit holder has corrected a violation of a priority item or priority foundation item or HACCP Plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

8-406.11 Time Frame for Correction.

- 90 Days for core items
- Can extend if no health hazard exists and it agreed to.
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8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES

Subpart

8-501 Investigation and Control
• 8-501.10 Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

• Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

• Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.
8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit.

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee or permit holder instituting one or more of the following control measures:

- Restricting the food employee or conditional employee;
- Excluding the food employee or conditional employee; or
- Closing the food establishment by summarily suspending a permit to operate in accordance with law.
8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

- States the reasons for the restriction or exclusion that is ordered;
- States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
- Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.
8-501.40 Removal of Exclusions and Restrictions.

The regulatory authority shall release a food employee, or conditional employee from restriction or exclusion according to law and the conditions specified under § 2-201.13.
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8-7  AUTHORITY

8-701  Legal Authority
8-701.10 Legal Authority Adoption of Regulations.
• The regulatory authority shall have the requisite legal authority from the appropriate statute/ordinance making authority to adopt and enforce regulations to carry out the administrative and judicial enforcement provisions of the Code that are critical to the framework of a Food Establishment regulatory program, to include the requirement for the issuance of a Permit.

8-701.11 Implementation of Regulations.
• Appropriate modifications to the adoption forms (Form #2-A (Adoption by Reference short form) and #2-B (Adoption by Section-by-Section Reference)) in Annex 7, where used, shall be made consistent with said legal authority to enact regulations and enforce compliance of the Code, whether they are adopted as statutes or regulations.

8-701.20 Basis for Action.
• The regulatory authority shall clearly state and reference within the Code the legally sound basis for compliance and enforcement action, the responsibilities of the parties, sanctions for noncompliance and due process.
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8-801.10 Service of Notice: Proper Methods.
• (Note: Adoption of this section provides the basis for serving notice of inspectional findings as specified in § 8-403.30 and would be cited there.)
• A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:
  • The notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a food establishment without a permit;
  • The notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a food establishment without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired; or
  • The notice is provided by the regulatory authority in accordance with another manner of service authorized in law.

8-801.20 Restriction or Exclusion Order, Hold Order or Summary Suspension.
• An employee restriction or exclusion order, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or a summary suspension order shall be:
  • Served as specified in ¶ 8-801.10(A); or
  • Clearly posted by the regulatory authority at a public entrance to the food establishment and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the food, as appropriate.
8-801.30 When Notice is Effective.

Service is effective at the time of the notice's receipt or if service is made as specified in ¶ 8-801.20(B), at the time of the notice's posting.

8-801.40 Proof of Proper Service.

Proof of proper service may be made by affidavit of the person making service or by admission of the receipt signed by the permit holder, the person operating a food establishment without a permit to operate, or an authorized agent.
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• 8-901.10 Conditions Warranting Remedy.
  • The regulatory authority may seek an administrative or judicial remedy to
    achieve compliance with the provisions of this code if a person operating a
    food establishment or employee:
    • Fails to have a valid permit to operate a food establishment as
      specified under § 8-301.11;
    • Violates any term or condition of a permit as specified under § 8-
      304.11;
    • allows serious or repeated code violations to remain uncorrected
      beyond time frames for correction approved, directed, or ordered by
      the regulatory authority under ¶¶ 8-405.11(A) and (B), and ¶¶ 8-
      406.11(A) and (B);
    • Fails to comply with a regulatory authority order issued as specified in
      § 8-501.20 concerning an employee or conditional employee
      suspected of having a disease transmissible through food by infected
      persons;
    • Fails to comply with a hold order as specified in § 8-903.10;
    • Fails to comply with an order issued as a result of a hearing for an
      administrative remedy as specified in § 8-906.40; or
    • Fails to comply with a summary suspension order issued by the
      regulatory authority as specified in § § 8-801.20 and 8-904.10.
• **8-902.10 Gaining Access to Premises and Records.**

  (Note: Adoption of this section provides the basis for Subparagraph 8-402.20(A)(3) and § 8-402.40 and would be cited there.)

  The regulatory authority may order access for one or more of the following purposes, subject to law for gaining access:
  
  • If admission to the premises of a food establishment is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs;
  
  • To examine and sample the food; and
  
  • To examine the records on the premises relating to food purchased, received, or used by the food establishment.

• **8-902.20 Contents of Inspection Order.**

  The regulatory authority's inspection order shall:
  
  • Stipulate that access be allowed on or to the described premises, food, or records under the order's provisions;
  
  • Provide a description that specifies the premises, food, or records subject to the order; and
  
  • Specify areas to be accessed and activities to be performed.
8-9 REMEDIES

• **8-903.10 Hold Order, Justifying Conditions and Removal of Food.**
  
  (Note: Adoption of this section provides the basis for ¶ 3-202.18(B) and would be cited there.)
  
  According to time limits imposed by law, the regulatory authority may place a hold order on a food that:
  
  • Originated from an unapproved source;
  • May be unsafe, adulterated, or not honestly presented;
  • Is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or
  • Is otherwise not in compliance with this Code.
  
  If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the order to a place of safekeeping.

• **8-903.20 Hold Order, Warning or Hearing Not Required.**
  
  The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the food, as specified in § 8-903.10, without prior warning, notice of a hearing, or a hearing on the hold order.
• **8-903.30 Hold Order, Contents.**
  • The hold order notice shall:
    • State that food subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order from the regulatory authority;
    • State the specific reasons for placing the food under the hold order with reference to the applicable provisions of this code and the hazard or adverse effect created by the observed condition;
    • Completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, regulatory authority's tag or identification information, and location;
    • State that the permit holder has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in §§ 8-905.10 and 8-905.20;
    • State that the regulatory authority may order the destruction of the food if a timely request for an appeal hearing is not received; and
    • Provide the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.
8-9 REMEDIES

• 8-903.40 Hold Order, Official Tagging of Food.
  • The regulatory authority shall securely place an official tag or label on the food or containers or otherwise conspicuously identify food subject to the hold order.
  • The tag or other method used to identify a food that is the subject of a hold order shall include a summary of the provisions specified in § 8-903.30 and shall be signed and dated by the regulatory authority.

• 8-903.51 Hold Order, Food May Not Be Used or Moved.
  • Except as specified in ¶ (B) of this section, a food placed under a hold order may not be used, sold, served, or moved from the establishment by any person.
  • The regulatory authority may allow the permit holder the opportunity to store the food in an area of the food establishment if the food is protected from subsequent deterioration and the storage does not restrict operations of the establishment.
8-9 REMEDIES

• **8-903.60 Examining, Sampling, and Testing Food.**
  • The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code.

• **8-903.70 Hold Order, Removing the Official Tag.**
  • Only the regulatory authority may remove hold order tags, labels, or other identification from food subject to a hold order.

• **8-903.80 Destroying or Denaturing Food.**
  • If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the permit holder or other person who owns or has custody of the food to bring the food into compliance with this code or to destroy or denature the food under the regulatory authority's supervision.

• **8-903.90 Releasing Food from Hold Order.**
  • The regulatory authority shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the food if the hold order is vacated.
8-904.10 Conditions Warranting Action.

• The regulatory authority may summarily suspend a permit to operate a food establishment if it determines through inspection, or examination of employees, food, records, or other means as specified in this code, that an imminent health hazard exists.

• **WV 64 CSR 17-3.1.l adds:**

  • The commissioner may also summarily suspend a permit to operate a food establishment if:
    • The food establishment has three or more immediately uncorrectable priority items in violation at the time of the inspection; or
    • 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
  • Enforcement shall be in accordance with WV Code 16-1-1 et. seq. and 16-6-1 et. seq.
8-9 REMEDIES

- **8-904.20 Summary Suspension, Warning or Hearing Not Required.**
  - The regulatory authority may summarily suspend a person's permit as specified in § 8-904.10 by providing written notice as specified in § 8-801.20 of the summary suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a hearing.

- **8-904.30 Contents of the Notice.**
  - A summary suspension notice shall state:
    - That the food establishment permit is immediately suspended and that all food operations shall immediately cease;
    - The reasons for summary suspension with reference to the provisions of this Code that are in violation;
    - The name and address of the regulatory authority representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
    - That the permit holder may request an appeal hearing by submitting a timely request as specified in §§ 8-905.10 and 8-905.20.
• **8-904.40 Time Frame for Reinspection.**
  After receiving a written request from the permit holder stating that the conditions cited in the summary suspension order no longer exist, the regulatory authority shall conduct a reinspection of the food establishment for which the permit was summarily suspended within 2 business days, which means 2 days during which the regulatory authority's office is open to the public.

• **8-904.50 Term of Suspension, Reinstatement of Permit.**
  A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority through reinspection and other means as appropriate.
  The suspended permit shall be reinstated immediately if the regulatory authority determines that the public health hazard or nuisance no longer exists. A notice of reinstatement shall be provided to the permit holder or person in charge.
8-9 REMEDIES

• WV 64 CSR 17-3.1.k strikes: 8-905.10 – 8-913.10

• Is Replaced by WV 64 CSR 01 Rules of Procedure for Contested Case Hearings and Declaratory Rulings
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