

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

Aug 4 3 31 PM '99

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Health

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-1-7

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

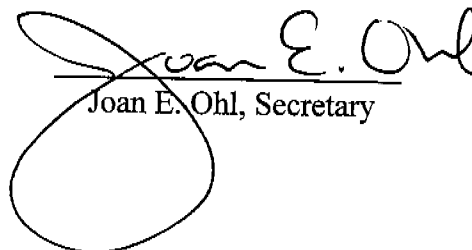
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Food Establishments

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Joan E. Ohl, Secretary

## **Brief Summary of the Rules to be Replaced**

### **64CSR17 Food Establishments**

The proposed legislative rule will replace two existing rules:

64 CSR 17     Food Service Sanitation Regulations  
Effective August 1, 1980

64 CSR 20     Retail Food Store Sanitation  
Effective April 22, 1992

These existing rules governing food service establishments and retail food stores are outdated (based on 1976 and 1982 federal model codes) and no longer provide the requirements necessary to protect the public from foodborne disease.

## **Statement of Circumstances Which Require the Proposed Rule**

Existing rules governing food establishments are outdated (based on 1976 and 1982 federal model codes) and no longer provide the requirements necessary to protect the public from foodborne disease.

The proposed rule adopts by reference the Food Code, 1999 Recommendations of the U.S. Public Health Service, Food and Drug Administration. The current model code, first issued in 1993 and updated biennially since then, represents the latest and best scientifically-based food safety advice. The WV Division of Health established a committee of local and state public health professionals and representatives from the restaurant, nursing home, and retail food store industries to review the model food code for use in West Virginia. The committee evaluated the model code and recommended its adoption.

Nationally, the following governmental agencies and industry organizations have endorsed the model food code and recommended its adoption: Centers for Disease Control and Prevention; U.S. Department of Agriculture Food Safety Inspection Service; National Restaurant Association; Food Marketing Institute; Association of Food and Drug Officials; National Environmental Health Association; and the Conference for Food Protection. Approximately thirty local, state, tribal, and federal jurisdictions have adopted the model food code to date, with another thirty jurisdictions close to adoption.

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 4, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health  
FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources  
State Capitol Complex, Building 3, Room 265, Charleston, WV 25305  
Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Food Establishments, 64CSR17

1. Authorizing statute(s) citation: WV Code Section § 16-1-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 1999

b. What other notice, including advertising, did you give of the hearing?

Press Release, and a copy of the proposed rule will be mailed to organizations including each local health department, the WV Hospitality & Travel Ass'n, WV Retailers Ass'n, WV Department of Agriculture, WV Department of Education, and Mountain State Ass'n of Bed & Breakfasts.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1999



description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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# FISCAL NOTE FOR PROPOSED RULES

Rule Title: Food Establishments, 64CSR17

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Health  
Department of Health and Human Resources

Address: Building 3, Capitol Complex  
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Revenue			0	0	

## 2. Explanation of above estimates.

This proposed rule will not require additional funds.

## 3. Objectives of this rule:

The purpose of the proposed rule is to update and consolidate requirements contained in existing rules, 64 CSR 17, Food Service Sanitation, and 64 CSR 20, Retail Food Store Sanitation.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

None.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.**


None. The facilities covered by the scope of these proposed rules are currently being inspected by health departments.

**C. Economic Impact on Citizens/Public at Large.**

None.

**Date:**

**Signature of Agency Head or Authorized Representative**

  
Joan E. Ohl, Secretary  
Department of Health and Human Resources



**TITLE 64  
DIVISION OF HEALTH  
LEGISLATIVE RULES**

**SERIES 17  
FOOD ESTABLISHMENTS**

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**FOR REVIEW BY THE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

64CSR17

**TITLE 64  
DIVISION OF HEALTH  
LEGISLATIVE RULES**

**SERIES 17  
FOOD ESTABLISHMENTS**

Aug 4 3 21 PM '99

OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES  
SECRET - STATE

**§64-17-1. General.**

1.1. Scope. -- This legislative rule establishes the minimum requirements for the design, construction, management and operation of food establishments.

1.2. Authority. -- W. Va. Code § 16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rules. -- This legislative rule repeals and replaces Division of Health rule, "Food Service Sanitation Rules," 64CSR17, filed June 13, 1980 and effective August 1, 1980, and repeals Division of Health rule "Retail Food Store Sanitation," 64CSR20, filed April 22, 1992 and effective April 22, 1992.

1.6. Applicability. -- This rule applies to the owners and operators of food establishments.

1.7. Enforcement. -- This rule is enforced by the Director of the Division of Health.<sup>1</sup>

**§64-17-2. Incorporation By Reference of Federal Model Food Code.**

2.1. The following portions of the Food Code, 1999 Recommendations of the United States Public Health Service, Food and Drug Administration as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, are incorporated by reference as the Food Code:

2.1.a. Chapter 1, except for the definition of "food establishment" in paragraph 1-

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<sup>1</sup>The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

## **64CSR17**

201.10(B)(31);

2.1.b. Chapter 2;

2.1.c. Chapter 3;

2.1.d. Chapter 4;

2.1.e. Chapter 5;

2.1.f. Chapter 6;

2.1.g. Chapter 7;

2.1.h. Chapter 8, except for paragraph 8-102.10, "Preventing Health Hazards, Provision for Conditions Not Addressed"; and paragraph 8-304.10, "Responsibilities of the Regulatory Authority," with the following addition to paragraph 8-201.11:

2.1.h.1. The permit applicant shall submit plans and specifications to the Director at least forty-five (45) days prior to the start of construction, conversion, or remodeling.

2.1.i. Except for part 8-6 and subparts 8-805 through 8-813, Annex 1 with the following addition to paragraph 8-804.10, "Conditions Warranting Action":

2.1.i.1. The Director may also summarily suspend a permit to operate a food establishment if:

2.1.i.1.A. The food establishment has five (5) or more immediately correctable critical items in violation at the time of inspection; or

2.1.i.1.B. The permit holder has been determined by the Director to have obstructed or hindered the Director in the proper discharge of his or her duties.

2.2. The Food Code is available on the internet at:  
<http://vm.cfsan.fda.gov/~dms/foodcode.html>.

### **§64-17-3. Definitions.**

3.1. Director. -- Director of the Division of Health or his or her lawful designee.

3.2. Family Day Care Facility. -- A child care center which is used to provide nonresidential

## 64CSR17

child care for seven (7) to twelve (12) children, including children who are living in the household who are less than (6) years of age.

3.3. Family Day Care Home. -- A facility which is used to provide nonresidential child care for less than seven (7) children, including children who are living in the household who are less than (6) years of age.

3.4. Food Establishment. -- The definition of "food establishment" in 1-201.10(B)(31) of the Food Code, slightly adapted as follows: An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

3.4.a. Such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

3.4.b. That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

3.4.c. Food establishment includes:

3.4.c.1. An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location obtains a permit to operate in accordance with section 3 of this rule; and

3.4.c.2. An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

3.4.d. Food establishment does not include:

3.4.d.1. An establishment that offers only prepackaged foods that are not potentially hazardous and does not provide reusable tableware to the consumer;

3.4.d.2. A produce stand that only offers whole, uncut fresh fruits and vegetables;

3.4.d.3. A food processing plant;

3.4.d.4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale

## **64CSR17**

and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Director;

3.4.d.5. An area where food that is prepared as specified in paragraph 3.4.d.4 of this definition is sold or offered for human consumption;

3.4.d.6. A kitchen in a family day care home; or

3.4.d.7. A private home that receives catered or home-delivered food.

### **§64-17-4. Exceptions.**

4.1. A domestic-type kitchen with residential-style equipment is acceptable in the following types of food establishments:

4.1.a. A family day care facility;

4.1.b. A residential care facility with a maximum capacity of twelve (12) occupants, such as a personal care home, a residential board and care facility, a group home, a halfway house, or a work release center; and

4.1.c. A bed and breakfast inn that provides sleeping accommodations of six (6) or fewer rooms, or that provides sleeping accommodations of more than six (6) rooms if the entire inn or those rooms numbering above six (6) are used on an aggregate of two (2) weeks or less per year.

4.2. The food establishments identified above in subdivisions 4.1.a, 4.1.b, and 4.1.c shall provide a sink in the kitchen with at least two (2) compartments. Any mechanical warewashing machine utilized shall be capable of sanitizing. A separate lavatory located in the kitchen for hand washing is not required.

### **§64-17-5. Fees.**

5.1. All the fees established in the Division of Health rule, "Fees for Permits," 64CSR30, for a mobile food unit, a temporary food establishment, a retail food store and a food service establishment, as those terms are defined in that rule, shall be applicable to those establishments governed by this rule.

### **§64-17-6. Hearings and Administrative Due Process.**

6.1. A permit applicant, a permit holder, an employee or other person may petition the

## **64CSR17**

Director in writing, as prescribed in the Division of Health's rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, for a contested case hearing when the Director has:

- 6.1.a. Denied their application for a permit to operate;
- 6.1.b. Suspended or revoked their permit to operate;
- 6.1.c. Denied their request for a variance;
- 6.1.d. Issued a hold order;
- 6.1.e. Issued an employee restriction or exclusion order; or
- 6.1.f. Otherwise adversely affected their rights, duties, interests or privileges.

6.2. Within ten (10) days after receipt of the written petition, the Director shall grant or deny a hearing on the matter in accordance with the Division of Health's rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1.

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

### **§64-17-7. Penalty for Violating Provisions of Rule.**

7.1. Any person who violates any provision of this rule is guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days or both fine and imprisonment.

## **PUBLIC COMMENTS AND DEPARTMENT RESPONSES**

### **FOOD ESTABLISHMENTS, 64CSR17**

A public comment period on the proposed rule, Food Establishments, 64CSR17, was held beginning on June 30, 1999 and ending July 30, 1999. There were three commenters. Comments are summarized below, and the Department's responses and changes to the rule are detailed.

**Comment:** FDA changes the model code biennially without seeking review, input, or comment from affected industries, local regulators, or other interested parties. Conference for Food Protection (CFP) recommendations are considered, but the CFP is primarily composed of state regulatory officials. Recommend FDA allow review and comment of code changes before biennial publication of model food code.

**Response:** Revision of the model Food Code is a function of the U.S. Food and Drug Administration and is not governed by a WV Division of Health rule. FDA does, however, revise the code in collaboration with the CFP, industry representatives, academia, consumers, and state and local officials (see "Joint Introduction"). Section 9 of the preface to the food code explains FDA's code revision process and advises that concerns and recommendations may be received from any individual or organization. FDA is "... especially responsive to those needed policy and technical changes raised by an organization that uses a democratic process for addressing problems and concerns. Included are organizations that provide a process that encourages representative participation in deliberations by government, industry, academic and consumer interests, followed by public health ratification such as a state-by-state vote by officially designated delegates. The Conference for Food Protection (retail food issues), the National Conference on Interstate Milk Shipments (milk and dairy products issues), and the Interstate Shellfish Sanitation Conference (molluscan shellfish issues) are examples of such organizations."

The structure of the CFP provides a representative and equitable partnership among regulators, industry, academia, professional organizations and consumers. Industry is fully represented on all councils, committees, and the Executive Board. The Executive Board has 22 members: 6 state regulatory, 6 local regulatory, 6 industry, one FDA, one FSIS (USDA), one academia, and one consumer. The three Councils each have 22 members. Council I (Laws and Regulations) and Council II (Administration, Education, and Certification) each have 10 industry representatives (1 from food processing, 2 food service, 2 retail food stores, and 1 food vending). Either the Chair or Vice-Chair of Councils I and II must be an industry representative. Council III (Science and Technology) includes 5 industry representatives.

**Comment:** Recommend that Annexes 2 through 7 be incorporated by reference.

**Response:** Annex 1 is in codified form and intended to be adopted as an extension of Chapter 8. It is numbered to sequentially follow Chapter 8 and provides additional compliance and enforcement requirements. Annexes 2 through 7 are not in codified form and do not include

any provisions or requirements. They are intended to provide guidance and assistance to the user and will serve as an important reference in applying the provisions of the rule.

**Comment:** Have new forms been developed yet (plan review application, permit application, inspection forms, etc.) and will local health departments have an opportunity to comment on them?

**Response:** Applicable forms will be developed after the rule is promulgated. Local health departments will be provided an opportunity to comment on them.

**Comment:** The rule should provided a permit expiration date.

**Response:** WV Code Chapter 16, Article 6, Section 4, Hotels and Restaurants, establishes a fixed expiration date of June 30.

**Comment:** Since there are no longer separate definitions for food service, retail food store, and mobile food service, the local health departments will not be able to require separate permits and collect separate permit fees. A new fee schedule is needed.

**Response:** In order to clarify that local health departments may continue to collect all applicable fees, a new section 5 has been added to read, "All the fees established in the Division of Health rule, 'Fees for Permits,' 64CSR30, for a mobile food unit, a temporary food establishment, a retail food store and a food service establishment, as those terms are defined in that rule, shall be applicable to those establishments governed by this rule."

**§2.1.a. Comment:** What definition will replace "food employee"?

**Response:** Incorrect definition was referenced. Section 2.1.a. has been changed to incorporate Chapter 1, except for the definition of "food establishment" in paragraph 1-201.10(B)(31).

**§2.1.b. Comment:** Demonstration of knowledge is required of food managers, but not food safety inspectors. Recommend incorporating a requirement for mandatory certification of local food safety inspectors.

**Response:** Mandatory certification of local inspectors is unnecessary; existing training requirements are more than satisfactory to assure that food safety inspectors are knowledgeable. Sanitarians (inspectors) must register with the WV Board of Registration for Sanitarians. Registration requires that they successfully complete the Department's Eight Week Sanitarian Training Course and receive at least 15 hours of continuing education each year. The Sanitarian Training Course covers microbiology and epidemiology and includes one week of classroom training on the food rules. Each trainee is also standardized during a week of one-on-one training in the field conducting food establishment inspections. The Department will provide training



## **Response to Comments 64CSR17**

courses on the new rule, and sanitarians will be required to successfully complete the course prior to conducting inspections.

**§2.1.b. Comment:** Recommend that an “or” be inserted between each component in section 2-201.11, second sentence, to read, “The person in charge shall demonstrate this knowledge by compliance with this Code, **or** by being a certified food protection manager . . . , or by responding correctly to the inspector’s questions as they relate to the specific food operation.”

**Response:** Additional “or” unnecessary. When a sentence includes a series of items separated by commas with “or” before the last item, it is generally understood that the “or” applies to each item in the series.

**§2.1.c. Comment:** The elimination of all bare hand contact with ready-to-eat foods is unattainable, unenforceable, and unnecessary.

**Response:** Infected food employees are the source of contamination in approximately one in five foodborne disease outbreaks reported in the United States with a bacterial or viral cause. One example is a recent outbreak of Hepatitis A in West Virginia’s northern panhandle which has been traced to a restaurant food worker. Elimination of bare hand contact with ready-to-eat foods is necessary to prevent foodborne illness and has been successfully implemented in one West Virginia county. Four years ago the Cabell County Health Department initiated a program prohibiting food service employees from contacting ready-to-eat foods with bare hands. The program has been very well received by both the food service industry (500+ establishments) and the public, and has been credited in one instance with preventing secondary cases of Hepatitis A from an infected employee. Also, public notification was not required of the establishment due to its history of strict compliance with the program.

**§2.1.c. Comment:** The required maintenance temperature of 41°F for cold foods is costly and may not be fully justified. Most open-top and prep-line refrigeration units will have to be replaced. Recommend a time and temperature standard instead for short-term food storage.

**Response:** Commenter’s concerns are adequately addressed in chapter 3 of the food code. Time may be used as a public health control as outlined in section 3-501.19. A five-year phase-in period is allowed for the upgrading or replacement of existing equipment (section 3-501.16). During the phase-in period, a storage time of four (4) days is allowed for cold foods in existing equipment with temperatures between 41°F and 45°F. Seven (7) days storage is allowed at 41°F or below. The difference is because the growth of some bacteria, such as *Listeria monocytogenes*, is significantly slowed but not stopped by refrigeration.

**§2.1.c. Comment:** Delete or revise requirement for consumer advisory. A written consumer advisory for undercooked pinned steaks is not necessary for consumer safety. Consumer

## **Response to Comments 64CSR17**

advisories impart little useful information and are generally unwanted by consumers at retail level. FDA is now advising states to put the food code on hold until a consumer advisory brochure is developed.

**Response:** Pathogenic organisms on the external surface of the meat may be carried or pushed to the interior beef muscle during pinning and would not be destroyed by surface cooking. Requirement is based on advice from the National Advisory Committee for Microbiological Criteria for Foods (NACMCF) and the U.S. Department of Agriculture (USDA); see page 275 of Annex 3, Public Health Reasons, in the food code. FDA is urging states to hold off on enforcement of the consumer advisory provisions until guidelines are completed in October. Before final promulgation, the food rule will be revised, if necessary, to reflect these guidelines.

**§2.1.c. Comment:** Reduce hot food holding temperature from 140°F to 130°F based on science, state government experience and USDA studies.

**Response:** USDA, FDA, and the Centers for Disease Control and Prevention (CDC) have endorsed the 1999 Food Code and stated in the “Joint Introduction” that they have “. . . updated the 1999 Food Code to reflect the most current science . . .” Annex 3, page 280, states, “Bacterial growth and/or toxin production can occur if potentially hazardous food remains in the temperature Danger Zone of 41°F to 140°F too long.”

**§2.1.c. Comment:** In Chapter 3, there are several references for approved food sources as allowed by “LAW”. Where can this information be found?

**Response:** “LAW” refers to the applicable state or federal law for the food item in question. Meat and meat products are governed by USDA laws and regulations. Non-meat food products are governed by FDA laws and regulations. Milk and milk products are governed by state and federal milk regulations. Requirement is the same as section 5.1.1 in current rule which states in part, “Food shall be obtained from sources that comply with all laws relating to food and food labeling.”

**§2.1.h. Comment:** Recommend deleting requirement in section 8-304.10 for regulatory authority to provide a copy of the food code to each establishment; too costly.

**Response:** Agree. Section 8-304.10 will not be adopted.

**§2.1.h. Comment:** Recommend adding a requirement in section 8-201.11 that plans be submitted at least 15 days prior to the start of construction, conversion or remodeling.

**Response:** Agree. Section reworded so as to require submission of plans at least 45

## **Response to Comments 64CSR17**

days prior to construction, conversion, or remodeling. Forty-five (45) days is the standard for submission of plans in existing public health rules.

**§2.1.i. Comment:** Recommend that section 2.1.i.1.A be deleted or revised to read, “The food establishment has five (5) or more immediately uncorrectable critical items in violation at the time of the inspection.”

**Response:** Agree. Section 2.1.i.1.A revised accordingly.

**§2.1.i. Comment:** Recommend section 2.1.i.1.B be deleted (allows permit suspension for repeated violations of critical items). Closure should be based on imminent health hazards only.

**Response:** Agree. Section 2.1.i.1.B deleted. Repeat violations are adequately addressed by increasing inspection frequency per section 8-401.20.

**§2.1.i. Comment:** Recommend section 2.1.i.1.C be deleted (allows permit suspension if permit holder has obstructed or hindered the Director in the proper discharge of his or her duties). Closure should be based on imminent health hazards only.

**Response:** Section 2.1.i.1.C is less stringent than section 3.2.7 of current rule which allows revocation of permit “. . . for the interference with the Director in the performance of his duties.” Also, paragraph 8-304.11(F) of the food code states that the permit holder, in order to retain the permit, shall, “Allow representatives of the regulatory authority access to the food establishment . . . .”

**§2.1.i. Comment:** Recommend adopting part 8-6 and subparts 8-805 through 8-813, Annex 1. Part 8-6 is necessary to protect an operator’s right to equal protection and due process. Subparts 8-805 through 8-813 provide administrative options for hearings.

**Response:** An individual’s “constitutional protection” in part 8-6 is understood and provided by federal law. The “Rules of Procedure for Contested Case Hearings and Declaratory Rulings,” 64CSR1, are applicable to all Division of Health rules and adequately provide for administrative hearings and right of appeal.

**§4.1.b. Comment:** Section allows domestic-type kitchen in residential care facility with a maximum capacity of ten (10) occupants. Recommend increasing maximum capacity from ten (10) to twelve (12) occupants to economically assist small business owners and to be consistent with the maximum capacity allowed in a family day care facility.

**Response:** Agree. Section 4.1.b revised accordingly.

### **Response to Comments 64CSR17**

**§6.1. Comment:** Recommend deletion of penalty section. Provision criminalizes health code violations.

**Response:** Penalties in section 6.1 are established by state law, WV Code, Chapter 16, Article 1, Section 18, and cannot be revised or exempted in a rule. The penalties apply to all Division of Health rules, including the current food rule, and have been in effect since 1949.



2003 QUARRIER STREET  
CHARLESTON, WV 25311

PHONE 304-342-6511  
FAX 304-345-1538

ADDRESS CORRESPONDENCE TO:  
P.O. Box 2391  
CHARLESTON, WV 25328

HAND-DELIVERED JULY 30, 1999

Beth Marquart, Director, Regulatory  
Department of Health & Human Resources  
Capitol Complex – Building 3, Room 265  
Charleston, WV 25301-2616

Re: 1999 Food Code Rules & Regulations  
Title 64; WV Code Section 16-1-7; Legislative Rule-Food Establishments

Dear Ms. Marquart:

Thank you for forwarding our association a copy of the new rules and regulations relating to the Legislative Rule on Food Establishments, WV Code Section 16-1-7.

As you are aware, food safety is the number one priority for the restaurant industry, so in many ways we are partners with a common goal. I was glad to see you at the December Servsafe seminar and I hope we can continue to improve our partnership in the future through increased cooperation and communication.

As you are probably aware also, the National Restaurant Association (NRA) has been working since 1997 to expand restaurant acceptance and encourage state adoption of the FDA Model Food Code. Our association also had a representative (Reed Embry of Oliver's) on the Health Department's committee to revamp West Virginia's code into the FDA code. According to the NRA in five years, only about 16 states have adopted the FDA model.

Additionally, I attended a legislative summit July 18-21, 1999 of the International Society of Restaurant Association Executives where Jane E. Henney, M.D., Commissioner of Food and Drugs spoke and stated the present Food Code has shortcomings and (as the enclosed news release from the NRA states) that the FDA is now working on the development of the consumer advisory and advises the states to put the Food Code on hold until the brochure is available.

Several items still remain unresolved which I list below. And I must admit this is only our first blush on the rules. I am in no way communicating that these are our only issues. I am still awaiting input and response from our members.

1. The FDA Food Code requires the absolute elimination of all bare hand contact with ready-to-eat foods. This requirement is generally viewed by many in industry and regulatory committees as unattainable and unenforceable. Scientific studies have shown that food contact with clean washed hands poses little risk to the dining public.

However, the FDA has maintained this absolute prohibition even where there is effective hand washing management. A reasonable resolution, which recognizes the importance of limiting bare hand contact, effective hand washing management and the proper use of gloves, is sorely needed.

2. The FDA Food Code requirement that all cold foods be maintained at a temperature of 41 degrees F is costly and may not be fully justified. This is both an economic and scientific view shared by many. It is commonly agreed that long term storage at 41 degrees F is appropriate and desirable. However, to apply this regulatory standard to short-term food storage is costly and may not improve food safety. The difference between a 45 degree F standard and a 41 degree F standard may seem insignificant; however, it is extremely challenging in open top refrigeration and small prep units designed for short-term food storage. This requirement would necessitate the near wholesale replacement of every open top and prep-line refrigeration unit before 1998. We strongly support the application of HACCP in this situation. Refrigeration should be viewed as a time and temperature standard, which would allow the continued use of millions of refrigeration units with operational controls in place.
3. The 1999 FDA Food Code requires that a written consumer advisory be provided for undercooked (rare and medium rare) pinned steaks. Recent Kansas State University research has clearly shown that the surface cooking of pinned steaks removes pathogens of significance. Accordingly, the safety of these steaks is no different than unpinned steaks. Therefore, there is little increased risk to the consumer to necessitate a written consumer advisory. In fact, based upon recent FDA research, written consumer advisories at retail are generally ineffective and unwanted by consumers.
4. The FDA Food Code requires a minimum temperature of 140 degrees F hot holding of potentially hazardous foods. Again, the science, state government experience and USDA studies have shown that 130 degree F for hot holding is safe. We would like to see this issue resolved based upon clearly undisputed food science.
5. Demonstration of knowledge, or certification, is not mandatory for federal, state, and local food safety inspectors. The FDA Food Code does require a demonstration of knowledge or certification of food managers, which assures that food managers have a minimum level of food safety knowledge. There is currently no corresponding requirement in the FDA Food Code to guarantee that local inspectors enforcing the requirement in the FDA Model Food Code have any basic food safety knowledge. We recommend that FDA support and incorporate a requirement for mandatory certification of local food safety inspectors.
6. The FDA currently changes the FDA Model Food Code biannually without seeking review, input or comment from affected industries, local regulators or other interested parties. FDA does consider recommendations from the Conference for Food Protection, however the Conference is a body primarily composed of state regulatory officials. We strongly recommend that the FDA open up its Food Code development process for review and comment *before* publication, and strive to avoid incorporating provisions which have not had at least a draft review by affected parties.

Additions to the Code by the West Virginia Division of Health and Human Services.

1. Section 64-17-6. Penalty for Violating Provisions of Rule, 6.1.

This section provides that any person who violates any provision of the Code (Rule) is guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days or both fine and imprisonment.

*We strongly recommend* that this section be *deleted*. This provision, in effect, criminalizes health code violations and makes operators vulnerable to criminal prosecution for failing to meet minimum Code requirements. This is not an acceptable solution to operator non-compliance. Those operators who do not comply with the Code are not criminals. In addition, this provision will destroy the working relationship that inspectors and operators have. The operator will view the inspector as a “health cop” rather than as an educational source for food safety information.

2. Section 2.1.1.1.A. – Proposed Addition to Annex 1 paragraph 8-804.10, “Condition Warranting Action”

This section would allow the Director to summarily suspend an operator’s permit if the food establishment has five (5) or more critical items in violation at the time of inspection. We would agree that operators must meet minimum food safety standards. However, having five or more critical violations at the time of an inspection does not necessarily indicate an eminent health hazard that would require closure. Any restaurant closure must be justified and taken on a case-by-case basis. If a facility has five critical violations that can be corrected immediately at the time of the inspection, then the health hazard has been removed and closure would not be necessary or justified. We recommend that this section be deleted or changed to read “The food establishment has five (5) or more immediately uncorrectable critical items in violation at the time of the inspection.”

3. Section 2.1.1.1.B. – Proposed Addition to Annex 1 paragraph 8-804.10, “Conditions Warranting Action”

This section would allow the Director to summarily suspend an operator’s permit if the food establishment has repeated violations of critical items. Again, any restaurant closure must be justified based on eminent health hazard. Simply having repeated critical violations may not create an eminent health hazard. We recommend that this section be deleted.

4. Section 2.1.1.1.C. – proposed Addition to Annex 1 paragraph 8-804.10, “Conditions Warranting Action”

This section would allow the Director to summarily suspend an operator’s permit if the permit holder has been determined by the Director to have obstructed or hindered the Director in the proper discharge of his or her duties. As noted repeatedly above, restaurant closures must be based on public health concerns. This type of action by a

304 722 4712

Jul-30-99 12:10P Vineyard's

304 722 4712

P.01

Barbara E. Vineyard  
PO Box 109 St. Albans, WV 26177  
304-722-4712

59 JUL

Vineyard's Personal  
Care Home

CR  
WV  
AD

# Fax

To: Linda Jones

From: Barbara E. Vineyard

Fax: 556-0691

Date: July 30, 1999

Phone:

Pages: 1

Re: Proposed Food Rule 64CSR17 CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Reply

**Comments:**

As a care home operator, the proposed Food Rule has an effect on our establishments. It would be very beneficial to many small care homes if 4.1.b could be changed to a maximum capacity of twelve (12) occupants.

This would also be consistent with 3.2 which permits up to 12 children in a Family Day Care Facility.

The cost of operating a small business continues to increase. This would enable care home operators to provide care for up to two more residents without the cost of some commercial equipment that would thousands of dollars. It is a struggle for small business and we need help from our State government.

Please contact me if you have questions.

*Barbara E. Vineyard*



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCESJoan Ohl  
SecretaryCecil H. Underwood  
Governor

## FAX TRANSMITTAL SHEET

DATE: 7/30/99NUMBER OF PAGES: 2  
(including this sheet)

TO:

Name:

Martha Barnett

Company:

Reg. Dev.

Fax No.:

558-6051

FROM:

Name:

Linda Jones

Section:

Fax No.:

558-0691

COMMENTS:

attached comment on proposed good order  
rec'd today from Barbara Vineyard.

BUREAU FOR PUBLIC HEALTH  
Office of Environmental Health Services  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301-2616  
Telephone (304) 558-2981

## Jefferson County Health Department

EARL D. ALLARA, M.D.  
HEALTH OFFICER44-1 WILTSHIRE ROAD  
KEARNEYSVILLE, W. VA.  
25430  
ENVIRONMENTAL: 728-8415  
MEDICAL: 728-8416

TO: WV DEPT. OF HEALTH & HUMAN RESOURCES

FROM: JEFFERSON COUNTY HEALTH DEPARTMENT

DATE: JULY 28, 1999

RE: COMMENTS ON PROPOSED FOOD ESTABLISHMENT RULE

The Jefferson County Health Department would like to make the following comments and/or ask the following questions in regards to the proposed food establishment rules:

1. If you are not using the definition of "food employee" as in paragraph 1-201.10(B)(30), then what definition will be used?
2. In Chapter 3, there are several references for approved food sources as allowed by "LAW". Where do we find this information?
3. Section 8-304.10 states that the regulatory authority will provide a copy of the food code to each food service establishment. Who will pay for these copies? Jefferson County has over 200 food service establishments. It will cost us approximately \$11,500 the first year alone. There is no money in our budget for this.
4. Obviously, there will need to be new plan review applications, permit applications, inspection forms, etc. Have these been developed yet? If so, can we review them for comments?
5. Section 8.201-12 talks about submitting a plan review but there is no time limit for this submittal prior to beginning construction. We constantly receive plans from companies who expect us to review them in a day or two. We think there needs to be at least a 15-day time restriction on plan review submittal.
6. A fee schedule and permit expiration date schedule needs to be developed if you're not using the old one.
7. Our biggest concern is that there are no longer separate definitions for food service, retail food store, and mobile food service. Therefore, we will not be able to require separate permits or perform separate inspections. This will open all

kinds of problems. We will not be able collect separate permit fees. If we go with the old food service fee schedule, we will only be able to collect \$50 for a retail "superstore" where we are currently performing 3 separate inspections, which takes an entire day to complete. Also, if a "superstore" would have problems in one area, like their snack bar, because they have separate permits, they can close down just that section and not the whole grocery store. With only one permit, the entire retail food store, deli/baker, and snack bar would have to be closed.

The Jefferson County Health Department would like to thank you for the opportunity to comment on the proposed regulations. We hope you will take our comments and suggestions in consideration when making your final revisions. We especially feel strongly about #3, #5, and #7.

If you have any questions, please contact the Jefferson County Health Department at (304) 728-8415.

# FAX

## TRANSMITTAL COVER SHEET

JEFFERSON COUNTY HEALTH DEPARTMENT  
ENVIRONMENTAL SECTION  
44-1 WILTSHIRE ROAD  
KEARNEYSVILLE WV 25430

PHONE: (304) 728-8415      FAX: (304) 728-3314 OR  
728-3319

TO: WV Dept of Health & Human Resources  
Office of Regulatory Development

FAX#: (304) 558-6051

DATE: 7/30/99

FROM: Lisa Dunn, DMD, RS

MESSAGE: Comments on proposed food regs.

NO. PAGES (INCLUDING COVER PAGE): 3

**TITLE 64  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH**

**SERIES 17  
FOOD SERVICE SANITATION RULES**

**§64-17-1. General.**

1.1. Scope. -- These legislative rules establish the minimum requirements of the West Virginia board of health governing the construction and operation of food service establishments.

1.2. Authority. -- W. Va. Code §16-1-7

1.3. Filing Date. -- June 13, 1980

1.4. Effective Date. -- August 1, 1980

**§64-17-2. Application and Enforcement.**

2.1. Application - These legislative rules apply to owners or operators of food service establishment.

2.2. Enforcement - The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee.

**§64-17-3. Definitions.**

3.1. Approved - A procedure of operation, installation or construction which is in accordance with the standards, specifications, or instructions established by the Director.

3.2. Commissary - A catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored. The term does not include private homes where food is prepared and served for individual family consumption.

3.3. Construct - The term construct shall be construed to mean and include the terms install, extend, establish, alter and modify.

3.4. Corrosion-Resistant Materials - Those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use environment.

3.5. Delicatessen - Any establishment where primarily specialty food items, i.e., meats, fish, poultry, salads, cheeses, and other table delicacies, are prepared, sold or offered for sale to the public.

3.6. Director - The chief executive, administrative, and fiscal officer of the State Department of Health or his designee.

3.7. Easily Cleanable - Surfaces that are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

3.8. Employee - The permit holder, individuals having supervisory or management duties and any other person working in a food service establishment.

3.9. Equipment - Stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food service establishment.

3.10. Food - Any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

3.11. Food-Contact Surface - Those surfaces of equipment and utensils with which food comes in contact, and those surfaces from which food

may drain, drip, or splash back onto surfaces normally in contact with food.

**3.12. Food Service Establishment** - Any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; delicatessen; nightclub; roadside stand; industrial feeding establishment; private, public, or nonprofit organization or institution routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

The term does not include food processing or manufacturing plants.

This definition is not intended to apply to those vending machines that dispense nonpotentially hazardous food that has been prepackaged by the manufacturer or processor.

**3.13. Health Officer** - The executive officer of the local board of health or his duly authorized representative.

**3.14. Hermetically Sealed Container** - A container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.

**3.15. Kitchenware** - All multiuse utensils other than tableware.

**3.16. Law** - Federal, state and local statutes, ordinances and regulations.

**3.17. Mobile Food Unit** - A vehicle-mounted food service establishment designed to be readily movable.

**3.18. Operator** - A person who is in charge of a food service establishment.

**3.19. Packaged** - Bottled, canned, cartoned, or securely wrapped.

**3.20. Permit** - A written document issued by the Director giving a designated person permission to construct a specific food service establishment or to operate a specific food service establishment.

**3.21. Person** - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency or any other entity recognized by law.

**3.22. Person-In-Charge** - The individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person-in-charge.

**3.23. Potentially Hazardous Food** - Any food that consists in whole or part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odorfree shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.

**3.24. Pushcart** - A nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at proper temperature, limited to the preparation and serving of frankfurters or other sandwiches requiring limited preparation.

**3.25. Reconstituted** - Dehydrated food products recombined with water or other liquids.

**3.26. Safe Materials** - Articles manufactured from or composed of materials that may or may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

**3.27. Sanitization** - Effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals

for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

3.28. Sealed - Free of cracks or other openings that permit the entry or passage of moisture.

3.29. Single-Service Articles - Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and similar articles intended for one-time, one-person use and then discarded.

3.30. Tableware - Multiuse eating and drinking utensils.

3.31. Temporary Food Service Establishment - A food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

3.32. Utensil - Any implement used in the storage, preparation, transportation, or service of food.

#### **§64-17-4. Permits, Hearings, Notices, Orders and Inspections.**

##### **4.1. Construction and Modification**

4.1.1. Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the Director for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities.

4.1.2. Whenever plans and specifications are required to be submitted to the Director, the Director shall inspect the food

service establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this regulation.

##### **4.2. Permit to Operate**

4.2.1. No person shall operate a food service establishment within the State of West Virginia who does not possess a valid permit issued to him by the Director.

4.2.2. An application for a permit to operate a food service establishment shall be made in writing to the Director on a form prescribed by the State Department of Health and signed by the applicant or his authorized representative.

4.2.3. Prior to approving the application for a permit, the Director shall inspect the proposed food service establishment to determine compliance with this regulation. Only persons who comply with the applicable provisions of these regulations shall be entitled to retain a permit.

4.2.4. Food service establishments in operation at the time these regulations became effective, and meeting all applicable prior regulations, shall be deemed to be eligible for a permit to operate: **Provided, That** any construction taking place after the effective date of these regulations shall be in compliance with these regulations. Only persons who comply with the applicable provisions of these regulations shall be entitled to retain a permit.

4.2.5. Permits shall not be transferable or assignable and shall automatically become invalid upon a change of ownership or upon suspension or revocation.

4.2.6. The Director may without warning, notice, or hearing suspend a permit to operate a food service establishment if the holder of the permit does not comply with the requirements of these regulations, or if the operation of the establishment does not comply with the requirements of these regulations, or if the operation of the food service establishment

otherwise constitutes a substantial hazard to public health. When a permit is suspended, the food service operations shall immediately cease.

4.2.7. The Director may revoke a permit to operate for repeated or serious violations of any of the requirements of these regulations or for the interference with the Director in the performance of his duties.

4.2.8. Any person whose permit has been suspended or revoked may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a signed statement by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the Director shall make a reinspection. If the applicant complies with the provisions of these regulations, the permit shall be reinstated.

4.2.9. Operational permits shall be posted within the food service establishment and said permit shall be readily available to the Director.

#### 4.3. Hearings, Notices and Orders

4.3.1. Any person whose application for a permit to operate a food service establishment has been denied, or whose permit has been suspended or revoked may petition and shall be granted a hearing date on the matter within ten (10) days after the Director has received a written petition for such hearing.

4.3.2. The filing of a petition for a hearing on a permit denial, suspension, or revocation shall not stay or suspend the execution of the notice or order resulting in such permit denial, suspension, or revocation.

4.3.3. Hearings provided for in these regulations shall be conducted by the Director at a time and place designated by him.

4.3.4. Whenever the Director makes an inspection of a food service establishment and discovers that any of the provisions of these

regulations have been violated, he shall notify the operator of such violations by means of an inspection report form or other written notice. Correction of the violations shall be accomplished within the time specified in the notice that is in accordance with the following provisions:

4.3.4.1. Whenever the Director finds at any food service establishment insanitary or other conditions that may constitute a potential threat to public health he may without notice or hearing issue a written order to the operator or person in charge citing the existence of such condition and requiring such action to be taken as he may deem necessary to remedy the condition, including the suspension of the permit to operate. Notwithstanding any other provision of these regulations, such order shall be effective immediately.

Any person for whom such order is directed shall comply therewith immediately, but upon written petition to the Director shall be afforded a hearing on the matter as set forth in Section 4 of these regulations.

4.3.4.2. When the rating score of the establishment is 90 or more, all violations of 1 or 2-point weighted items shall be corrected by the time of the next routine inspection.

4.3.4.3. When the rating score of the establishment is 80 but not more than 89, all violations of 1 or 2-point weighted items shall be corrected within a specific period of time not to exceed thirty (30) days.

4.3.4.4. When the rating score of the establishment is at least 70 but not more than 79, all violations of 1 or 2-point weighted items shall be corrected within a specified period of time not to exceed ten (10) days.

4.3.4.5. All violations of 4 or 5-point weighted items shall be corrected within a specified period of time not to exceed ten (10) days following inspection.



4.3.4.6. When the rating score of the establishment is 69 or less, the permit shall be immediately suspended.

4.3.4.7. In the case of temporary food service establishments, all violations must be corrected within a specified period of time not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.

4.3.5. The Director may examine food or collect samples of such food as often as he deems necessary for enforcement of these regulations. The Director may, upon written notice to the operator, place a hold order on any food which he believes in violation of any provision of these regulations. The Director shall tag, label, or otherwise identify any food subject to the hold order. Food subject to a hold order shall not be used, served, or removed from the establishment. The Director shall permit storage of the food under conditions specified in the hold order, unless storage is not without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall specify that a written request for a hearing may be filed with the Director within five (5) working days and that if no hearing is requested the food shall be destroyed under supervision of the Director. On the basis of evidence produced at the hearing, the Director may vacate the hold order or the owner or person in charge of the food may be directed by written order to destroy such food or render it unfit for human consumption.

4.4. Repealed by 65 CSR 10, May 31, 1991.

#### **§64-17-5. Food Supplies.**

##### **5.1. Food Supplies**

5.1.1. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

5.1.2. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the requirements of the West Virginia Board of Health Grade "A" Pasteurized Milk Regulations. Dry milk and dry milk products shall be made from Grade "A" pasteurized milk and milk products.

5.1.3. Fresh and frozen shucked shellfish (oysters, clams, mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, the kind and quality of shellstock, and the interstate certification number issued thereto. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used.

5.1.4. Only clean, whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used, except that commercially prepared and packaged, hard-boiled peeled eggs may be used.

##### **5.2. Food Protection**

5.2.1. At all times, including while being stored, prepared, displayed, served or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding and drainage, overhead leakage, and overhead drippage from condensation. The temperature of potentially hazardous food shall be 45 degrees F. or below or 140 degrees F. or above at all times, except as otherwise provided in the regulations.

5.2.2. In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the operator or person-in-charge shall immediately contact the Director.

##### **5.3. Food Storage**

5.3.1. Food, whether raw or prepared, shall be stored in the original container, or in a clean, covered container except during necessary periods of preparation and service. Containers and covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meats shall be protected by being covered in storage except that quarters or sides of meat may be hung uncovered on clean, sanitized hooks if no food product is stored beneath the meat.

5.3.2. Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area, except that:

5.3.2.1. Metal pressurized premix and postmix beverage containers need not be elevated when the containers are not exposed to floor moisture.

5.3.2.2. Containers may be stored on dollies, racks or pallets: **Provided**, That such equipment is easily movable.

5.3.3. Food and containers of food shall not be stored under exposed or unprotected sewer lines or nonpotable water lines, except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.

5.3.4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.

5.3.5. Packaged food shall not be stored in contact with water or undrained ice.

5.3.6. Unless its identity is unmistakable, bulk foods shall be stored in their original container or package or shall be stored in a container that identifies the food by common name.

5.3.7. Refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Such facilities storing potentially hazardous food shall be provided with a numerically scaled indicating or recording thermometer, accurate to plus or minus 2 degrees F, located so as to be easily readable and to measure the air temperature in the warmest part of the facility.

5.3.8. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45 degrees F. or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container. Potentially hazardous food to be transported shall be prechilled and held at a temperature of 45 degrees F. or below unless maintained at 140 degrees F. or above.

5.3.9. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use.

5.3.10. Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head.

5.3.11. Hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, or recording thermometer accurate to plus or minus 2 degrees F, located so as to be easily readable and to measure the air temperature in the coolest part of the facility. Where it is impractical to install thermometers on equipment such as bain maries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be

available and used to check internal food temperature.

5.3.12. The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees F. or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140 degrees F. or above unless maintained at 45 degrees F. or below.

#### 5.4. Food Preparation

5.4.1. Food shall be prepared with the least possible manual contact, with approved utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

5.4.2. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

5.4.3. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees F, except that:

5.4.3.1. Poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least 165 degrees F. with no interruption of the cooking process.

5.4.3.2. Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees F. with no interruption of the cooking process.

5.4.4. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

5.4.5. Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

5.4.6. Potentially hazardous foods that have been cooked and then refrigerated, shall be

reheated rapidly to 165 degrees F. or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bain maries, warmers, and similar hot food holding facilities are prohibited for use as a means for the rapid reheating of potentially hazardous foods.

5.4.7. Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one gallon in capacity and rapidly cooled to 45 F. or below.

5.4.8. Metal stem-type numerically scaled indicating thermometers, accurate to plus or minus 2 degrees F, shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

5.4.9. Potentially hazardous foods shall be thawed only:

5.4.9.1. In refrigerated units at a temperature not to exceed 45 degrees F; or

5.4.9.2. Under potable running water of a temperature of 70 degrees F. or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

5.4.9.3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

5.4.9.4. As part of the conventional cooking process.

#### 5.5. Food Display and Service

##### 5.5.1. Potentially Hazardous Foods

5.5.1.1. Potentially hazardous food shall be kept at an internal temperature of 45

degrees F. or below or 140 degrees F. or above during display and service.

#### 5.5.2. Milk and Cream Dispensing

5.5.2.1. Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding 1 pint in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where a bulk dispenser for milk and milk products is not available, and portions of less than 1/2 pint are required for mixed drinks, cereals, or dessert service, milk and milk products may be poured from a commercially filled container of not more than 1/2 gallon capacity.

5.5.2.2. Cream, half and half or nondairy creaming or whitening agents shall be provided in an individual service container, approved pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

#### 5.5.3. Condiment Dispensing

5.5.3.1. Condiments, seasonings and dressings for self-service, table or counter service shall be provided in individual packages or from approved dispensers. Sugar for consumer use shall be provided in individual packages or in approved pour-type dispensers.

5.5.3.2. Condiments, seasonings and dressings for room service in health care facilities must be provided in individual packages.

#### 5.5.4. Ice Dispensing

5.5.4.1. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice dispensing utensils or through automatic self-service ice-dispensing equipment. Ice dispensing utensils and ice transfer receptacles shall be stored clean and in a way that protects them from contamination. Wet storage of ice dispensing utensils is prohibited.

#### 5.5.5. Dispensing Utensils

5.5.5.1. To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:

Stored in the food with the dispensing utensil handle extended out of the food; or

Stored clean and dry; or

Stored in running water; or

Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

#### 5.5.6. Reservice

5.5.6.1. Once served to a consumer, portions of leftover food shall not be served again except that single-service packaged food, still in unopened packages or sealed containers may be reserved.

#### 5.5.7. Display Equipment

5.5.7.1. Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or by other effective means. Hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

#### 5.6. Food Transportation

5.6.1. During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original, individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering

operations, food shall meet the requirements of these regulations.

#### **§64-17-6. Personnel.**

##### **6.1. Employee Health**

6.1.1. No person, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in any area of a food service establishment.

6.1.2. When the Director has cause to suspect possible disease transmission by an employee of a food service establishment, he may secure a morbidity history of that employee or make any other investigations as may be indicated. The Director may require any or all of the following measures:

6.1.2.1. The immediate exclusion of the employee from employment in food service establishments.

6.1.2.2. The immediate closure of the food service establishment concerned until the Director determines that no further danger of disease transmission exists.

6.1.2.3. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease.

6.1.2.4. Medical and laboratory examination of the employee and of other employees and of his and their body discharges.

##### **6.2. Personal Cleanliness**

6.2.1. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting to work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.

##### **6.3. Clothing**

6.3.1. The outer clothing of all employees shall be clean.

6.3.2. Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

##### **6.4. Employee Practices**

6.4.1. Employees shall consume food only in approved designated dining areas.

6.4.2. Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in or near areas used for equipment or utensil washing or storage or for food preparation. Employees shall use tobacco only in approved, designated areas.

6.4.3. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while on duty.

#### **§64-17-7. Equipment and Utensils.**

##### **7.1. Materials**

7.1.1. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.

##### **7.1.2. Solder**

7.1.2.1. If solder is used, it shall be composed of safe materials and be corrosion resistant.

##### **7.1.3. Wood**

7.1.3.1. Hard maple or equivalently nonabsorbent material that meets the general

requirements set forth in Section 7.1.1 of these regulations may be used as a food contact surface. Wood may be used for single-service articles, such as chop sticks, stirrers, or ice cream spoons.

#### 7.1.4. Plastics and Rubber

7.1.4.1. Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in Section 7.1.1 of these regulations, are permitted for repeated use.

#### 7.1.5. Mollusk and Crustacea Shells

7.1.5.1. Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

#### 7.1.6. Single Service

7.1.6.1. Reuse of single service articles is prohibited.

### 7.2. Construction

7.2.1. All equipment and utensils, including plastic-ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping and crazing.

7.2.2. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, griddle tops, and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers or hot oil

cooking equipment and hot oil filtering systems, such threads shall be minimized.

7.2.3. Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricants cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

7.2.4. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice: **Provided**, That such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall not pass through the ice machine or the ice storage bin.

7.2.5. Sinks and drainboards shall be self-draining.

7.2.6. Unless designed for in-place cleaning, food contact surfaces shall be accessible for cleaning and inspection:

7.2.6.1. Without being disassembled; or

7.2.6.2. By disassembling without the use of tools; or

7.2.6.3. By easily disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

### 7.3. In-Place Cleaning

7.3.1. Equipment intended for in-place cleaning shall be so designed and fabricated that:

7.3.1.1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

7.3.1.2. Cleaning and sanitizing solutions will contact all interior food contact surfaces; and

7.3.1.3. The system is self-draining or capable of being completely evacuated.

#### 7.4. Pressure Spray Cleaning

7.4.1. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

#### 7.5. Nonfood-Contact Surfaces

7.5.1. Nonfood-contact surfaces which are exposed to splash or food debris, or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

#### 7.6. Ventilation Hoods

7.6.1. Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place.

#### 7.7. Existing Equipment

7.7.1. Equipment that was installed in a food service establishment prior to the effective date of these regulations, and that does not fully meet all of the design and fabrication requirements of this section, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of these regulations shall meet the requirements of these regulations.

#### 7.8. Equipment Installation and Location

7.8.1. Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required.

##### 7.8.2. Table Mounted Equipment

7.8.2.1. Equipment, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a 4-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

##### 7.8.2.2. Equipment is portable if:

It is small and light enough to be moved easily by one person; and

It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

##### 7.8.3. Floor-Mounted Equipment

7.8.3.1. Floor-mounted equipment, unless readily movable, shall be:

Sealed to the floor; or

Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or

Elevated on legs to provide at least a 6-inch clearance between the floor and equipment.

7.8.3.2. Equipment is easily movable if:

It is mounted on wheels or casters; and

It has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

7.8.3.3. Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch; or if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls or ceilings.

#### 7.8.4. Aisles and Working Spaces

7.8.4.1. Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

#### §64-17-8. Cleaning, Sanitization and Storage of Equipment and Utensils.

##### 8.1. Cleaning and Sanitization of Equipment and Utensils

##### 8.1.1. Cleaning and Sanitizing Frequency

8.1.1.1. Tableware shall be washed, rinsed and sanitized after each use.

8.1.1.2. To prevent cross-contamination, kitchen-ware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

8.1.1.3. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be washed, rinsed, and sanitized at intervals

throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

8.1.1.4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day; except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

8.1.1.5. Nonfood-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

##### 8.1.2. Wiping Cloths

8.1.2.1. Cloths used for wiping food spills on tableware shall be clean, dry and used for no other purpose.

8.1.2.2. Moist cloths or sponges used for cleaning nonfood-contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

##### 8.1.3. Manual Cleaning and Sanitizing

8.1.3.1. For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

8.1.3.2. Drainboards or easily movable dish tables shall be provided for proper handling of soiled utensils prior to washing and



for cleaned utensils following sanitizing, and shall be located so as not to interfere with the proper use of the dishwashing facilities.

8.1.3.3. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

8.1.3.4. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

Sinks shall be cleaned prior to use.

Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in Section 8.1.3.5 of these regulations.

8.1.3.5. The food contact surfaces of all equipment and utensils shall be sanitized by:

Immersion for at least one-half (1/2) minute in clean, hot water at a temperature of at least 170 degrees F; or

Immersion for at least one (1) minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees F; or

Immersion for at least one (1) minute in a clean solution containing at least 12.5 parts per million of available iodine at a temperature of at least 75 degrees F; or

Immersion in a clean solution containing any other approved chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts

per million of available chlorine as a hypochlorite at a temperature of at least 75 degrees F. for one (1) minute; or

Treatment with culinary steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

Rinsing, spraying or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Section 8.1.3.5 of these regulations in the case of equipment too large to sanitize by immersion.

8.1.3.6. When hot water is used for sanitizing, the following facilities shall be provided and used:

An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink and capable of maintaining the water at a temperature of at least 170 degrees F; and

A numerically scaled indicating thermometer, accurate to plus or minus 2 degrees F, convenient to the sink for frequent checks of water temperature; and

Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware and equipment in the hot water.

8.1.3.7. When chemicals are used for sanitization, an approved test kit that accurately measures the parts per million concentration of the solution shall be provided and used.

#### 8.1.4. Mechanical Cleaning and Sanitizing

8.1.4.1. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of approved machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and

devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.

8.1.4.2. The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4 inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

8.1.4.3. Machine or water line mounted, numerically scaled indicating thermometers, accurate to plus or minus 2 degrees F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

8.1.4.4. Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

8.1.4.5. Drainboards shall be provided for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dish tables for the storage of clean utensils following sanitization.

8.1.4.6. Equipment and utensils shall be flushed or scraped and when necessary, soaked to remove food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing

machine operation. Equipment and utensils shall be placed in racks, trays, baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

8.1.4.7. Single-tank, stationary-rack, door-type machines and spray-type glass washers using chemicals for sanitization may be used: **Provided, That**

The temperature of the wash water shall not be less than 120 degrees F.

The wash water shall be kept clean.

Chemicals added for sanitization purposes shall be automatically dispensed.

Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with accepted manufacturers' specifications for time and concentration.

The chemical sanitizing rinse water temperature shall be not less than 75 degrees F.

Only approved chemical sanitizers shall be used.

An approved test kit that accurately measures the parts per million concentration of the solution shall be available and used.

8.1.4.8. Machines using hot water for sanitizing may be used: **Provided, That** wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the following stated temperatures: (Subsections 8.1.4.8.1 through 8.1.4.8.5 are found in Table 64-17A at the end of this regulation.

8.1.4.9. All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

8.1.5. Drying

8.1.5.1. After sanitization, all equipment and utensils shall be air dried.

## 8.2. Equipment and Utensil Storage

### 8.2.1. Handling

8.2.1.1. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

### 8.2.2. Storage

8.2.2.1. Cleaned and sanitized utensils and equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or nonpotable water lines, except for automatic fire protection sprinkler heads that may be required by law.

8.2.2.2. Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, wherever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations shall protect these articles from contamination and present the handle of the utensil to the consumer.

### 8.2.3. Single-Service Articles

8.2.3.1. Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or nonpotable water lines, except for automatic fire protection sprinkler heads that may be required by law.

8.2.3.2. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

8.2.3.3. Single-service knives, forks, spoons, straws and stirrers shall be individually wrapped or dispensed from an approved dispenser.

### 8.2.4. Prohibited Storage Area

8.2.4.1. The storage of food equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

## §64-17-9. Sanitary Facilities and Controls.

### 9.1. Water Supply

9.1.1. Enough potable water for the needs of the food service establishment shall be provided from an approved source.

9.1.2. All potable water not provided directly by pipe to the food service establishment from the source shall be delivered in an approved bulk-water transport system and shall be delivered to an approved closed water system.

9.1.3. Bottled and packaged potable water shall be obtained from an approved source and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

9.1.4. Water under pressure shall be provided to all applicable fixtures and equipment that use water.

9.1.5. Only culinary steam shall be used in contact with food or food contact surfaces.

### 9.2. Sewage Disposal

9.2.1. All sewage shall be disposed of in a public sewer system or, in the absence thereof, in a manner approved by the Director.

### 9.3. Plumbing

9.3.1. Plumbing shall be sized, installed, and maintained in accordance with local plumbing codes or, in the absence thereof, the National Plumbing Code.

9.3.2. A nonpotable water system is permitted only for purposes such as air conditioning and fire protection, and only if the system is properly installed and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

9.3.3. Approved backflow prevention devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless an approved backflow prevention device is installed.

9.3.4. If used, grease traps shall be located to be easily accessible for cleaning.

9.3.5. Except for properly trapped open sinks, there shall be no direct connection between the sewer system and any drains originating from equipment which food, portable equipment, or utensils are placed, except that when a dishwashing or other enclosed water-filled machine is located within five (5) feet of a trapped floor drain, the waste outlet may be connected directly on the inlet side of a floor drain trap.

### 9.4. Toilet Facilities

9.4.1. Each food service establishment shall provide for its employees approved and properly located toilet facilities in the number required by the Director. Toilet facilities shall be accessible to employees at all times.

9.4.2. In all new or extensively remodeled food service establishments having dining areas and/or curbside service, approved toilet facilities for the public, for each sex, shall be provided in the number required by the Director, and shall be accessible at all times.

9.4.3. Toilet rooms shall not open to the outside of those establishments that have dining areas.

9.4.4. Toilets and urinals shall be designed to be easily cleanable.

9.4.5. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors, which shall be closed except during cleaning or maintenance.

9.4.6. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

### 9.5. Lavatory Facilities

9.5.1. Easily accessible lavatories shall be provided in or within 20 feet of each food preparation, utensil washing, and food dispensing or serving area.

9.5.2. Lavatories shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

9.5.3. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam-mixing valves are prohibited.

9.5.4. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be located

adjacent to each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

9.5.5. Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.

## 9.6. Garbage and Refuse

### 9.6.1. Containers

9.6.1.1. Garbage and refuse shall be kept in durable, leak-proof, nonabsorbent, easily cleanable, insect-proof and rodent-proof containers. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.

9.6.1.2. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled and during periods the establishment is closed.

9.6.1.3. Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

9.6.1.4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

9.6.1.5. Soiled containers, dumpsters, compactors and compactor systems shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from

compacting or cleaning operations shall be disposed of as sewage.

### 9.6.2. Storage

9.6.2.1. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or bailed units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

9.6.2.2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof and shall be large enough to store the garbage and refuse containers that accumulate.

9.6.2.3. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall be stored on metal racks or on a smooth surface of nonabsorbent material such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

### 9.6.3. Disposal

9.6.3.1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects or rodents.

9.6.3.2. Where garbage or refuse is burned on the premises, it shall be done by incineration that is approved by the Director and the West Virginia Air Pollution Control Commission. Areas around incineration facilities shall be clean and orderly.

## 9.7. Insect and Rodent Control

9.7.1. Effective measures shall be used to minimize the presence of rodents, flies,

cockroaches, and other insects on the premises. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

9.7.2. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, or other means acceptable to the Director. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

#### **§64-17-10. Construction and Maintenance of Physical Facilities.**

##### **10.1. Floors**

10.1.1. Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigeration units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons: **Provided**, That it does not interfere with floor cleaning.

10.1.2. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment-washing and utensil-washing areas, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.

10.1.3. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

10.1.4. Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and shall be graded to drain.

10.1.5. Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

10.1.6. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other cases, the juncture between walls and floors shall not present an open seam of more than 1/32 inch.

10.1.7. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

##### **10.2. Walls and Ceilings**

10.2.1. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

10.2.2. The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, equipment-washing and utensil-washing areas, toilet rooms and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

10.2.3. Studs, joists, and rafters shall not be exposed in walk-in refrigeration units, food preparation areas, and equipment and utensil-washing areas. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

10.2.4. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigeration units, food preparation areas, equipment-washing and utensil-washing areas, toilet rooms and vestibules.

10.2.5. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be kept clean and in good repair.

10.2.6. Wall and ceiling covering materials shall be attached and sealed so as to be easily cleanable.

### 10.3. Cleaning Physical Facilities

10.3.1. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after cooking or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of brooms and dust-arresting sweeping compounds.

10.3.2. In new or extensively remodeled establishments, at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools, and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil or equipment washing, or food preparation sinks for this purpose is prohibited.

### 10.4. Lighting

10.4.1. Permanently fixed artificial light sources shall be installed to provide at least 20 footcandles of light on all food preparation surfaces and at equipment or utensil-washing levels.

10.4.2. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor:

10.4.2.1. At least 20 footcandles of light in utensil and equipment storage areas and in lavatory and toilet areas; and

At least 10 footcandles of light in walk-in refrigeration units, dry food storage areas, and in all other areas. This shall also include dining areas during cleaning operations.

10.4.3. Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located over or within food preparation, service, and display facilities, facilities where utensils and equipment are cleaned and stored, or other areas where food may be open and/or unprotected.

10.4.4. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

### 10.5. Ventilation

10.5.1. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems, when vented to the outside, shall not create a nuisance or public health hazard.

10.5.2. Intake and exhaust air ducts shall be located and maintained to prevent the entrance of dust, dirt and other contaminating materials.

10.5.3. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside.

## 10.6. Dressing Rooms and Lockers

10.6.1. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

10.6.2. Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms or in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

## 10.7. Poisonous Materials

10.7.1. There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.

10.7.2. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.

10.7.3. Poisonous or toxic materials consist of the following categories:

Detergents, sanitizers, and related cleaning or drying agents;

Caustics, acids, polishes, insecticides, rodenticides, and other similar chemicals.

10.7.4. Each of the two categories set forth in the above section shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the

convenient availability of detergents or sanitizers at utensil or dishwashing stations.

10.7.5. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

10.7.6. Personal medications and first-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

## 10.8. Premises

10.8.1. Food service establishments and all parts of property used in connection with their operation shall be kept free of litter.

10.8.2. The walking and driving surfaces of all exterior areas of food service establishments shall be graded to prevent pooling of water and be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust.

10.8.3. Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.

10.8.4. The traffic of unauthorized and unnecessary persons through the food-preparation and utensil-washing areas is prohibited.

10.8.5. Food service establishment operations shall not be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

## 10.9. Laundry Facilities

10.9.1. Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such



items are laundered on the premises, an electric or gas dryer shall be provided and used.

10.9.2. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only pack aged foods or packaged single-service articles.

#### 10.10. Linens and Clothes Storage

10.10.1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.

10.10.2. Soiled clothes and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

#### 10.11. Cleaning Equipment Storage

10.11.1. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment or linens.

#### 10.12. Animals

10.12.1. Live animals, including birds and turtles, shall be excluded from within the food service operational premises and from adjacent areas under the control of the operator. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind persons, may be permitted in dining areas.

### **§64-17-11. Mobile Food Units or Pushcarts.**

#### 11.1. Mobile Food Service

11.1.1. Mobile food units or pushcarts shall comply with the requirements of this chapter, except as otherwise provided in this paragraph and in Section 11.1.2 of these regulations. The Director may impose additional requirements to protect against health hazards related to the conduct of the food

service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities.

11.1.2. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of these regulations, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of these regulations pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary.

11.1.3. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

11.1.4. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing and handwashing, in accordance with the requirements of these regulations. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of these regulations.

11.1.5. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a

different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

## **11.2. Commissary**

### **11.2.1. Base of Operations**

11.2.1.1. Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment and shall be returned at least daily to such location for all supplies and for all cleaning and servicing operations.

11.2.1.2. The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of these regulations.

### **11.2.2. Servicing Area**

11.2.2.1. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart or where mobile food units do not contain waste retention tanks.

11.2.2.2. The surface of the servicing area shall be constructed of a smooth, nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

### **11.2.3. Servicing Operations**

11.2.3.1. Approved potable water servicing equipment shall be installed and shall be stored and handled in a way that protects the water and equipment from contamination.

11.2.3.2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system.

## **§64-17-12. Temporary Food Service Establishments.**

12.1. Unrestricted Establishment (Menu not Restricted)

12.1.1. Must meet all of the requirements of the West Virginia Food Service Sanitation Regulations.

### **12.2. Restricted Establishments**

12.2.1. The preparation of cream-filled pastries, custards, and similar products is prohibited.

12.2.2. The preparation of meat, poultry and fish in the form of sandwiches and salads is prohibited. This does not preclude the preparation of hamburgers, frankfurters, and other food which, prior to service, requires only limited preparation.

12.2.3. Potentially hazardous food which is obtained in individual servings and is stored at safe temperatures may be permitted to be served directly to the customer in the original, unopened, individual container in which it was packaged.

### **12.3. Food Supply**

12.3.1. Food in the food service establishment must be from approved sources.

12.3.2. All food must be clean, wholesome, free from spoilage, adulteration and misbranding.

12.3.3. Potentially hazardous food, excluding hamburger, frankfurters or food requiring limited preparation, must be purchased and served in the original, individual container.

12.3.4. Prepackaged individual coffee creamers or individual packets of powdered coffee whiteners that are properly stored and handled are the only types approved for use.

12.3.5. Home-canned or home-processed food is prohibited.

#### 12.4. Food Protection

12.4.1. Food must be protected from contamination while being stored, prepared, displayed, served or sold.

12.4.2. Food must be received in such a manner as to prevent any contamination.

12.4.3. Food contact surfaces of equipment must be protected from dust, flies, patrons, coughs and sneezes, overhead leakage, or other forms of contamination.

12.4.4. Approved facilities must be provided for maintaining potentially hazardous food at safe temperatures.

12.4.5. Ice must be obtained from an approved source in chipped, crushed or cubed form.

12.4.6. Ice must be obtained in approved, closed, single-service containers.

12.4.7. Ice used in beverages must be dispensed by use of a scoop or an approved automatic dispensing unit.

12.4.8. Styrofoam or similar type porous containers are not approved for ice storage unless such container is lined with a clean, sanitary food grade plastic liner.

#### 12.5. Health

12.5.1. Employees must thoroughly wash their hands before starting work and as often as may be necessary to remove soil and contamination.

12.5.2. No employee shall resume work after visiting the toilet room without first washing his hands.

12.5.3. Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

12.5.4. Employees must not use tobacco in any form while engaged in food preparation and service or while in any area where food is prepared or utensils are washed and sanitized.

12.5.5. Employees must maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

#### 12.6. Equipment and Utensils

12.6.1. Equipment and utensils must be in good repair, free from cracks, chips, pits, open seams and corrosion.

12.6.2. Equipment and utensils must be constructed, located and installed so as to be smooth and easily cleanable.

12.6.3. The use of enamelware and graniteware is prohibited.

12.6.4. Kitchenware and food contact surfaces of equipment must be thoroughly cleaned to sight and touch after each usage.

12.6.5. The cooking surfaces of grills, griddles and similar cooking devices must be cleaned daily or more often if needed.

12.6.6. Nonfood contact surfaces of equipment must be cleaned at a necessary frequency to prevent the accumulation of dirt, dust, food particles and other debris.

12.6.7. Kitchenware and food contact surfaces of equipment used for potentially hazardous food must be sanitized prior to such use.

12.6.8. Single-service cups must be dispensed from approved dispensers.

12.6.9. Single-service straws, eating utensils, and stirrers must be of the individually wrapped type.

## 12.7. Sanitary Facilities

12.7.1. A potable supply of water, under pressure, must be provided for cleaning and handwashing.

12.7.2. All plastic water lines must bear the National Sanitation Foundation (NSF) seal or be of equivalent standards.

12.7.3. The use of plastic or rubber garden hose for water piping is prohibited.

12.7.4. Hot and cold water, under pressure, must be provided in areas where food is prepared and where equipment and utensils are washed.

12.7.5. Auxiliary heating facilities capable of producing an ample supply of hot water must be provided.

12.7.6. Handwashing facilities must be provided. Such facilities in a restricted establishment may consist of a pan, water, soap and individual paper towels.

12.7.7. The potable water supply piping must not be directly connected with any nonpotable water supply system.

12.7.8. Approved and adequate toilet facilities must be provided and conveniently located to the establishment.

## 12.8. Other Facilities

12.8.1. Walls and ceilings must be so constructed so as to minimize the entrance of vermin, dust and rodents.

12.8.2. Ceilings may be constructed of wood, canvas or other materials which protect the interior of the establishment from the elements.

12.8.3. Walls may be constructed of such materials or of 16 mesh screening or equivalent.

12.8.4. Floors must be of tight wood, asphalt or other cleanable material. Dirt floors are prohibited.

12.8.5. All floors, walls and ceilings must be kept clean.

12.8.6. At least 20 footcandles of natural and/or artificial light must be provided on all working surfaces.

12.8.7. Effective ventilation to the outside air must be provided for rooms and equipment where needed.

12.8.8. The establishment and its surroundings must be kept clean, neat and free of litter and rubbish.

12.8.9. No live animals or birds are permitted in establishments: **Provided,** That guide dogs accompanying blind persons or police patrol dogs accompanying officers may be permitted in dining area.

## 12.9. Vermin Control

12.9.1. Counter openings must be effectively screened or the openings protected by effective fans.

12.9.2. Where fans are used for this purpose, the size of the openings shall be so limited that the fans employed will effectively prevent the entrance of flies and other insects.

## 12.10. Waste Handling

12.10.1. Liquid waste which is not discharged into a sewage system must be disposed of in such a manner as not to create a public health hazard or nuisance.

12.10.2. All garbage and rubbish must be stored in durable metal or plastic containers not exceeding 30 gallon capacity.

12.10.3. Containers must be covered with tight-fitting lids when not in continuous use.

12.10.4. Single-service plastic or heavy duty paper liners must be used in all garbage and rubbish containers.

12.10.5. Solid waste must be disposed of in a manner approved by the health authority.

#### **§64-17-13. Vending of Food and Beverages.**

##### **13.1. Food**

13.1.1. Food exposed for sale, offered for sale, sold through vending machines and offered to patrons of vending machines shall be sound and free from spoilage, filth, or other contamination and shall be safe for human consumption. The food shall be obtained from approved sources. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

13.1.2. At all times, including while being prepared, stored, loaded, displayed, or transported, food intended for sale through vending machines shall be protected from all forms of contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, draining, and overhead leakage or condensation.

13.1.3. The temperature of potentially hazardous foods shall be 45 degrees F. or below or 140 degrees F. or above at all times.

13.1.4. Milk and fluid milk products offered for sale through vending machines shall be pasteurized and shall be dispensed only in individual, original containers.

13.1.5. Milk and fluid milk products and fluid nondairy products (creaming agents) shall not be dispensed in vending machines as additional ingredients in hot liquid beverages or other foods.

13.1.6. When condiments are provided in conjunction with food dispensed by a vending machine, they shall be:

13.1.6.1. Packaged in individual portions in single-service containers; or

13.1.6.2. Dispensed from approved dispensers which are cleaned, rinsed and sanitized and filled at the commissary or at the machine location if sanitary facilities are provided; or

13.1.6.3. Made available from condiment self-service dispensing equipment at those locations having an on-duty attendant.

13.1.7. Fresh fruits which may be eaten without peeling shall be thoroughly washed in potable water at the packing plant by the processor, or at the commissary before being placed in the vending machines for dispensing. The washed fruit shall be protected from contamination after the washing process.

13.1.8. All food, other than fresh fruit, shall be stored or packaged in clean protective containers, and all food shall be handled and vended in a sanitary manner.

13.1.9. Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual, original container or wrapper into which it was placed at the commissary or at the manufacturing or processing plant. Potentially hazardous food shall not be dispensed from bulk supplies.

13.1.10. Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units and thermostatic controls which insure the maintenance of safe temperatures at all times. Such vending machines shall have automatic controls which prevent the machine from vending potentially hazardous food until serviced by the operator in the event of power failure, mechanical failure or other condition which results in noncompliance with

temperature requirements in the food storage compartment.

13.1.11. Potentially hazardous food which has failed to conform to the time-temperature requirements of these regulations shall be removed from the vending machine, and be destroyed or otherwise rendered unfit for human consumption.

13.1.12. Vending machines dispensing potentially hazardous food shall be provided with one or more thermometers which, to an accuracy of plus or minus 2 degrees F, indicate the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

13.1.13. There shall be no direct contact by multiuse containers or parts of vending machines with potentially hazardous food. All parts of vending machines which come into direct contact with nonpotentially hazardous food shall be thoroughly cleaned, rinsed and sanitized at a frequency established by the Director and based upon the type of product being dispensed.

### 13.2. Personnel

13.2.1. No person, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in any area of a commissary or vending operation except as specified by the Director.

13.2.2. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in handling foods or food-contact surfaces of utensils or equipment.

### 13.3. Equipment and Utensils

#### 13.3.1. Interior Construction and Maintenance

13.3.1.1. The nonfood-contact surfaces of the interior of vending machines shall be designed and constructed to permit easy cleaning and to facilitate maintenance operations and shall be kept clean and in good repair.

13.3.1.2. All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall preclude routine contact between food and "V" type threaded surfaces except that in equipment where such contact is unavoidable, such as ice makers, such threads shall be minimized. All joints and welds in food-contact surfaces shall be smooth, and all internal angles and corners of the surfaces shall be rounded to facilitate cleaning.

13.3.1.3. If solder is used, it shall be composed of safe materials and be corrosion resistant.

13.3.1.4. All food-contact surfaces of vending machines, including containers, pipes, valves and fittings, shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant, nonabsorbent, easily cleanable and durable under conditions of normal use and shall be cleaned, rinsed and sanitized at a frequency established by the Director based upon the type of product being dispensed.

13.3.1.5. All food-contact surfaces, unless designed for in-place cleaning, shall be accessible for manual cleaning, rinsing, sanitizing and inspection:

Without being disassembled; or

By disassembly without the use of tools; or

By easy disassembling with the use of only simple tools such as a screwdriver or an open-end wrench.

13.3.1.6. In machines designed so that food-contact surfaces are not readily removable, all such surfaces intended for

in-place cleaning shall be designed and fabricated that:

Cleaning and sanitizing solutions can be circulated through out a fixed system using an effective cleaning and sanitizing regimen; and

Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

The system is self-draining or capable of being completely evacuated; and

The procedures utilized result in thorough cleaning of the equipment.

13.3.1.7. The openings into all nonpressurized containers used for the storage of vendable food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers or cover areas are prohibited. Any port opening through the cover shall be flanged upward at least 3/16 inch, and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment rotary shafts, and other functional parts extending into the food container unless a water-tight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, relatively stable, and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

13.3.1.8. The delivery tube or chute and orifice of all bulk food vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall divert condensation or moisture from the normal filling position of the container receiving the food. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is

kept closed except when food is being removed. The cup filling area or platform of controlled location vending machines shall not require a door or cover if there is no opening into the cabinet interior at that point other than for dispensing tube(s) or trapped waste tubing. The dispensing compartment of prepackaged candy and similar product vending machines shall be equipped with a self-closing lid at vending locations where insect or rodent entry into the machine may occur.

13.3.1.9. The food storage compartment and other compartments in refrigerated vending machines which are subject to condensation or cooling water retention shall be self-draining or equipped with a drain outlet which permits complete draining. In vending machines designed to store cartoned beverages, diversion devices and retention pans shall be easily cleanable.

13.3.1.10. Opening devices which come into contact with the food or the food-contact surfaces of the containers shall be constructed of corrosion resistant, nonabsorbent, and safe materials. Unless the opening device is of a single-service type, it shall be readily removable for cleaning, and shall be kept clean. Parts of multiuse opening devices which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

### 13.3.2. Exterior Construction and Maintenance

13.3.2.1. The vending machine shall be of sturdy construction and the exterior shall be designed, fabricated, finished and maintained to facilitate its being kept clean, and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean.

13.3.2.2. Door and panel access openings to the food and container storage spaces of the machine shall be tight-fitting and,

if necessary, gasketed to prevent the entrance of dust, moisture, insects and rodents.

13.3.2.3. All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than 16 mesh to the inch or equivalent. Screening material for openings into condenser units which are separated from food and container storage spaces shall be not less than 8 mesh to the inch or equivalent.

13.3.2.4. In all vending machines in which the condenser unit is an integral part of the machine, such unit, when located below the food and container storage space, shall be separated from such space by a dust-proof barrier and, when located above, shall be sealed from such space.

13.3.2.5. In order to prevent seepage underneath the machine and to promote cleaning, freestanding vending machines shall have one or more of these elevation or movability features:

Be light enough to be manually moved with ease by one person; or

Be elevated on legs or extended sidewalls to afford, with or without kickplates, an unobstructed vertical space of at least six (6) inches under the machine; or

Mounted on rollers or casters which permit easy movement; or

Be sealed to the floor.

13.3.2.6. Kickplates, where used, shall be easily removable or be capable of being rotated. Counter-type machines shall be:

Sealed to the counter; or

Mounted on 4-inch legs or the equivalent; or

Easily moved for cleaning with service connections in place.

13.3.2.7. All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections shall be grommeted, or closed to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage their unauthorized or unintentional disconnection.

### 13.3.3. Equipment Location

13.3.3.1. Vending machines, ovens and other equipment shall be located in a room, area or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from nonpotable water, waste or sewer piping. The immediate area in which the equipment is located shall be well lighted and ventilated. Each vending machine shall be located so that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

13.3.3.2. The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

13.3.3.3. Adequate handwashing facilities, including hot and cold or tempered running water, soap and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

### 13.4. Single-Service Articles

13.4.1. Single-service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary bulk dispenser. All single-service articles shall



be protected from manual contact, dust, insects, rodents, and other contamination.

### 13.5. Other Equipment

13.5.1. All other equipment at the vending location must be kept clean. Food-contact surfaces, if any, must be cleaned, rinsed and sanitized at a frequency established by the Director based upon the type of product being dispensed.

13.5.2. The cavities and door edges of microwave ovens must be cleaned at least once a day and shall be kept free of encrusted grease deposits and other accumulated soil. All microwave ovens must be in compliance with safety standards of the U. S. Food and Drug Administration's Bureau of Radiological Health.

13.5.3. Food-contact surfaces of all equipment and utensils must be protected from contamination at all times including while being transported from the commissary to the vending location.

13.5.4. A record of cleaning operations shall be maintained by the operator. It shall be located in each machine or shall be made available at the time of inspection and shall be current for at least the past thirty (30) days.

### 13.6. Sanitary Facilities

#### 13.6.1. Water Supply

13.6.1.1. All water used in vending machines shall be of a safe and sanitary quality and from an approved source. Water used as a food ingredient shall be piped to the vending machine under pressure.

13.6.1.2. If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

13.6.1.3. To prevent leaching of toxic materials caused by possible interaction of

carbonated water, piping and contact surfaces, postmix soft drink vending machines which are designed with an incoming water supply air gap shall have no copper tubing or other potentially toxic water system tubing between the air gap and the downstream, carbonated water dispensing nozzle.

13.6.1.4. To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, postmix soft drink vending machines which are directly connected to the external water supply system shall be equipped with a double (or two single) check valves and a vented valve or similar backflow preventer immediately upstream from the carbonator, with no copper tubing or other potentially toxic tubing or contact surfaces in or downstream from the check and vented valves.

13.6.1.5. Where check valves are used to prevent the backflow of carbon dioxide into accessible upstream copper or other potentially toxic piping or tubing, a screen of not less than 100 mesh to the inch shall be installed in the water line immediately upstream from the check valves in a location which permits servicing or replacement.

13.6.1.6. In all vending machines in which carbon dioxide is used as a propellant, all food-contact surfaces from the check valves or other protective devices, including the valves or devices, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

#### 13.6.2. Waste Disposal

13.6.2.1. All trash and other waste material shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be properly disposed of.

13.6.2.2. Self-closing, leak-proof, easily cleanable, insect-proof and rodent-proof waste receptacles shall be provided in the vicinity of each machine or machines to receive

used cups, cartons, wrappers, straws, closures, and other items. Plastic bags and wet-strength paper bags must be used to line the receptacles. Soiled waste receptacles shall be cleaned at a frequency to prevent insect and rodent attraction.

Waste receptacles shall not be located within the vending machines with the exception of those machines dispensing only packaged food with crown closures. Waste receptacles shall not be located under counters or otherwise enclosed in a manner that will create a nuisance or prevent space around and under the counter or enclosure from being easily cleaned and maintained. Suitable racks or cases shall be provided for multiuse containers or bottles.

13.6.2.3. Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. Such machines shall be equipped with an automatic shut-off device at the waste pail, or other devices or valves which will place the machine out of operation before the waste pail overflows and prevent water or liquid product from continuously running in the event of the failure of any single control, high level control, or other flow control device in the liquid product or water system, except that, controlled location vending machines not connected to water supply system and which generate no internal liquid wastes, may be equipped with easily removable drip pans at the dispensing platform in lieu of internal waste containers and automatic shut-off devices.

Containers or surfaces on which such wastes may accumulate shall be easily removable for cleaning, shall be easily cleanable, and shall be corrosion resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

#### **§64-17-14. Repeal of Former Regulations.**

14.1. All regulations, previously adopted by the State Board of Health, which are in conflict with the provisions of these regulations are hereby repealed.

#### **§64-17-15. Severability.**

If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.

#### **§64-17-16. Penalty for Violating Provisions of Regulations.**

16.1. Any person who violates any provision of these regulations shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than \$200, or by imprisonment for not more than thirty (30) days, or both fine and imprisonment.

16.2. Each day's failure to comply with any applicable provision of these regulations shall constitute a separate offense.

TABLE 64-17A

**8.1.4.8.1. Single-tank, stationary-rack,  
dual-temperature machine:**

wash temperature.....	150 degrees F
final rinse temperature (rinse manifold) .....	180 degrees F
final rinse temperature (utensil surface).....	165 degrees F

**8.1.4.8.2. Single-tank, stationary-rack,  
dual-temperature machine:**

wash temperature.....	165 degrees F
final rinse temperature (rinse manifold) .....	165 degrees F
final rinse temperature (utensil surface).....	165 degrees F

**8.1.4.8.3. Single-tank, conveyor machine:**

wash temperature.....	160 degrees F
final rinse temperature (rinse manifold) .....	180 degrees F
final rinse temperature (utensil surface).....	165 degrees F

**8.1.4.8.4. Multi-tank, conveyor machine:**

wash temperature.....	150 degrees F
pumped rinse temperature .....	160 degrees F
final rinse temperature (rinse manifold) .....	180 degrees F
final rinse temperature (utensil surface).....	165 degrees F

**8.1.4.8.5. Single-tank, pot and pan washer  
(either stationary or moving-rack)**

wash temperature.....	140 degrees F
final rinse temperature (rinse manifold) .....	180 degrees F
final rinse temperature (utensil surface).....	165 degrees F



**TITLE 64  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH**

**SERIES 20  
RETAIL FOOD STORE SANITATION**

**§64-20-1. General.**

1.1. Scope. -- This legislative rule establishes the minimum sanitation requirements of the West Virginia Department of Health governing the construction and operation of retail food stores.

1.2. Authority. -- W. Va. Code §16-1-7.

1.3. Filing Date. -- April 22, 1992.

1.4. Effective Date. -- April 22, 1992.

**§64-20-2. Application and Enforcement.**

2.1. Application - This rule applies to the construction and the operation of all retail food stores.

2.2. Enforcement - Enforcement of this rule is vested with the secretary of the West Virginia department of health and human resources or his or her lawful designee.

**§64-20-3. Definitions.**

3.1. Approved - Acceptable to the secretary based on his or her determination of conformance with referenced rules or good public health principles and practices.

3.2. Construct - Install, extend, establish, alter or modify.

3.3. Corrosion-Resistant Materials - Those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use environment.

3.4. Culinary Steam - Steam made from potable water.

3.5. Delicatessen - The area of a retail food store where primarily specialty food items, i.e., meats, fish, poultry, salads, cheeses and other table delicacies, are prepared and sold, or offered to the general public.

3.6. Distressed Merchandise - Any food or container of food which has had the label lost, or which has been subjected to possible damage due to accident, fire, flood, adverse weathering, or to any other similar cause, or which may have been rendered unsafe or unsuitable for human consumption or use, e.g., seam or lid dents, hard or soft swells, leaking containers.

3.7. Easily Cleanable - Surfaces that are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

3.8. Employee - The permit holder, individuals having supervisory or management duties, and any other person working in a food service store.

3.9. Equipment - Items other than utensils used in the storage, preparation, display and transportation of food, including, but not limited to slicers, grinders, meat blocks, work tables, shelving, refrigerators, freezers, display cases, sinks, and similar items used in the operation of a retail food store.

3.10. Food - Any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

3.11. Food Contact Surfaces - Those surfaces of equipment and utensils with which food normally comes into contact, or those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

3.12. Operator - A person who is in charge of a retail food store.

3.13. Packaged - Bottled, canned, cartoned, bagged or securely wrapped.

3.14. Permit - A written document issued by the secretary giving a designated person permission to construct a specific retail food store or to operate a specific retail food store.

3.15. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government, institution, department, division, bureau, agency, or any other entity recognized by law.

3.16. Person in Charge - The individual present in a food service store who is the apparent supervisor of the retail food store at the time of inspection.

3.17. Potable Water - Water which is free from impurities in amounts sufficient to cause disease or harmful physiological effects and which conforms to the requirements of Section 17 of this rule.

3.18. Potentially Hazardous Food - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include food which has a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

3.19. 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. For the purpose of this rule, the term "retail food store" does not include

establishments which handle only pre-packaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits, fresh vegetables, or refrigerated shell eggs; or the delicatessen operation of a retail food store.

3.20. Safe Materials - Materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

3.21. Safe Temperatures - As applied to potentially hazardous food, temperatures of forty-five degrees Fahrenheit (45° F) or below and one hundred forty degrees Fahrenheit (140° F) or above.

3.22. Sanitization - Effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

3.23. Sealed - Free of cracks or other openings that permit the entry or passage of moisture.

3.24. Secretary - The secretary of the West Virginia department of health and human resources or his or her lawful designee.

3.25. Single Service Articles - Cups, containers, lids, knives, forks, spoons, straws and packaging materials, including bags and similar articles, that are designed for onetime use only.

3.26. Utensil - Any implement used in the storage, preparation, transportation, or service of food.

#### **§64-20-4. Permits, Hearings, Notices and Orders.**

4.1. Construction and Modification - Whenever a retail food store is constructed or extensively remodeled and whenever an existing structure is converted to use as a retail food store, plans and specifications for such

construction, remodeling or conversion shall be submitted to the secretary for review and approval before construction, remodeling, or conversion is begun. The plans shall show a layout and arrangement of the equipment. Once completed plans are received by the secretary, the plans shall be reviewed within a period of time not to exceed forty-five (45) days.

#### 4.2. Permit to Operate

4.2.1. No person shall operate a retail food store within the state of West Virginia who does not possess a valid permit issued to him by the secretary.

4.2.2. An application for a permit to operate a retail food store shall be made in writing to the secretary on a form prescribed by the department and signed by the applicant or his or her authorized representative.

4.2.3. Prior to approving the application for a permit, the secretary shall inspect the proposed retail food store to determine compliance with this rule. Only persons who comply with the applicable provisions of this rule are entitled to a permit.

4.2.4. Retail food stores in operation at the time this rule becomes effective, and meeting all applicable prior rules are eligible for a permit to operate: Provided, That the store shall be required to meet the applicable operational requirements of this rule: and Provided further, That any construction taking place after the effective date of this rule shall be in compliance with this rule.

4.2.5. Permits are not transferable or assignable and automatically become invalid upon a change of ownership or upon suspension or revocation.

4.2.6. The secretary may without warning, notice or hearing suspend a permit to operate a retail food store if the operation of the retail food store constitutes an imminent hazard to public health. When a permit is suspended, the sale of food shall immediately cease.

4.2.7. The secretary may revoke a permit to operate for repeated or serious violations of any of the requirements of this rule or for the interference with the secretary in the performance of his or her duties.

4.2.8. Any person whose permit has been suspended or revoked may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a signed statement by the applicant that in his or her opinion the conditions causing the suspension or revocation of the permit have been corrected, the secretary shall reinspect the premises. If the applicant complies with the provisions of this rule, the secretary shall reinstate the permit.

4.2.9. Operational permits shall be posted within the retail food store and readily available to the secretary.

#### 4.3. Hearings, Notices and Orders

4.3.1. Any person whose application for a permit to operate a retail food store has been denied, or whose permit has been suspended or revoked may petition and may be granted a hearing in accordance with Section 27 of this rule.

4.3.2. The filing of a petition for a hearing on a permit denial, suspension or revocation shall not stay or suspend the execution of the notice or order resulting in the permit denial, suspension, or revocation.

4.3.3. Whenever the secretary makes an inspection of a retail food store and discovers that any of the provisions of this rule have been violated, he or she shall notify the operator of the violations by means of an inspection report form or other written notice. Correction of the violations shall be accomplished within the time specified in the notice in accordance with the following provisions:

4.3.3(a). When the rating score of the store is ninety (90) or more, all violations of one (1) or two (2) point weighted items shall be

corrected by the time of the next routine inspection.

4.3.3(b). When the rating score of the store is at least eighty (80) but not more than eighty nine (89), all violations of one (1) or two (2) point weighted items shall be corrected within a specific period of time not to exceed thirty (30) days.

4.3.3(c). When the rating score of the store is at least seventy (70) but not more than seventy-nine (79), all violations of one (1) or two (2) point weighted items shall be corrected within a specified period of time not to exceed ten (10) days.

4.3.3(d). All violations of four (4) or five (5) point weighted items shall be corrected within a specified period of time not to exceed ten (10) days following inspection.

4.3.3(e). When the rating score of the store is sixty-nine (69) or less, the permit shall be immediately suspended.

4.3.4. Whenever the secretary finds that any retail food store constitutes an imminent hazard to public health, he or she may without notice or hearing issue a written order to the operator or person in charge citing the existence of the condition and requiring action to be taken to remedy the condition, including the suspension of the permit to operate. Notwithstanding any other provision of this rule, the order is effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon written petition to the secretary shall be afforded a hearing on the matter as set forth in Section 4.3.1 of this rule.

4.3.5. The secretary may examine food or collect samples of food as often as necessary for enforcement of this rule. The secretary may, upon written notice to the operator, place a hold order on any food which he or she believes is in violation of any provision of this rule. The secretary shall tag, label or otherwise identify any food subject to the hold order. Food subject to a hold order shall not be used, served or

removed from the store. The secretary shall permit storage of the food under conditions specified in the hold order, unless storage is a risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall specify that a written request for a hearing may be filed with the secretary within ten (10) working days and that if no hearing is requested the food shall be destroyed under supervision of the secretary. On the basis of evidence produced at the hearing, the secretary may vacate the hold order or the owner or person in charge of the food may be directed by written order to destroy such food.

#### **§64-20-5. Inspection.**

5.1. Each retail food store shall be inspected at least once each six (6) months. The secretary shall also make additional inspections as necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant to this rule.

5.2. The secretary has the authority to inspect or to have inspected any retail food store in any county in the state, and to act through the county's board of health or prosecuting attorney in the enforcement of this rule.

5.3. The inspection report shall be discussed with the person in charge of the store at the time of inspection and posted adjacent to the permit.

#### **§64-20-6. Food Supplies.**

6.1. All food offered for sale in a retail food store shall be clean, wholesome, free from spoilage, adulteration, and misbranding, and safe for human consumption.

6.2. Fluid milk and fluid milk products shall meet the applicable requirements of Grade "A" Pasteurized Milk, 64 CSR 34.

6.3. Fresh and frozen shucked shellfish shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, the kind and quantity of shell stock,



and the interstate certification number issued thereto. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are offered for sale.

6.4. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

#### **§64-20-7. Food Protection.**

7.1. All food shall be protected against contamination.

7.2. All perishable food shall be stored or transported at temperatures which will protect against spoilage.

7.3. Only poisonous and toxic materials, including pesticides, which are used to maintain sanitary conditions and for sanitization purposes may be used or stored in food processing areas.

7.4. Poisonous and toxic materials, including pesticides, shall be prominently identified and shall be used and stored only in a manner and under conditions which will not contaminate food or constitute a hazard to employees or purchasers.

7.5. In the event of a fire, flood, prolonged power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at safe temperatures, the operator or person in charge shall immediately contact the secretary.

7.6. Metal stem type numerically scaled indicating thermometers, accurate to plus or minus two degrees Fahrenheit (2° F) shall be provided and used to assure the safe temperatures of all potentially hazardous foods.

#### **§64-20-8. Food Display Areas.**

8.1. All food display areas shall be kept clean.

8.2. Thermometers accurate to plus or minus two degrees Fahrenheit (2° F) shall be provided and properly located in all refrigerated food display cases.

8.3. Fruits and vegetables shall be wholesome and free from spoilage.

8.4. Food in the frozen food display cases shall be stocked below the loadline and shall be kept frozen and stored at an air temperature of zero degrees Fahrenheit (0° F) or below.

8.5. Dairy products, meat, poultry and fish display cases shall be stocked below the loadline and maintained at forty-five degrees Fahrenheit (45° F) or below.

8.6. Packaged fruits, vegetables, meat and fish shall not be stored or displayed in contact with water or undrained ice.

8.7. Potentially hazardous meat, poultry, fish, grocery products and bakery products shall be kept at safe temperatures.

8.8. Containers of food shall be properly labeled, sound and free of dents on the horizontal and lid seams of cans.

8.9. The sale or offering of distressed merchandise is prohibited.

#### **§64-20-9. Refrigerated and Frozen Food Storage Areas.**

9.1. Walk-in cooler and freezer floors, walls, and ceilings shall be kept clean and in good repair.

9.2. Walk-in cooler floors shall be properly drained.

9.3. Thermometers accurate to plus or minus two degrees Fahrenheit (2° F) shall be provided and properly located in walk-in freezers and coolers.

9.4. Condensation drip trays, blowers and overhead coils shall be kept clean.

9.5. Shelves shall be kept clean.

9.6. Meat hooks shall be kept clean and shall be sanitized after cleaning.

9.7. Walk-in coolers provided for potentially hazardous foods shall be maintained at forty-five degrees Fahrenheit (45° F) or below.

9.8. Frozen food in walk-in freezers shall be kept frozen and stored at an air temperature of zero degrees Fahrenheit (0° F) or below.

#### **§64-20-10. Grocery Storage Area.**

10.1. Containers of food shall be stored at least six (6) inches above the floor or stored on dollies, racks, or pallets. The dollies, racks or pallets shall be easily movable, either by hand or by pallet-moving equipment. The pallet-moving equipment shall be stored on the premises.

10.2. Cased food packaged in cans, glass, or other sealed containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean.

10.3. Shelves, racks, dollies, pallets and floors shall be kept clean and in good repair.

#### **§64-20-11. Produce Preparation Area.**

11.1. A produce preparation sink or an approved wet table and drainage system shall be provided.

11.2. Work tables shall be kept clean.

11.3. Knives, cleavers and other utensils shall be kept clean.

11.4. Produce packaging and wrapping materials shall be properly protected and stored.

11.5. A hand sink shall be provided within twenty (20) feet of the produce department.

#### **§64-20-12. Meat Department.**

12.1. At least a three (3) compartment sink with drainboards or an approved automatic commercial-grade utensil washer shall be provided.

12.2. A hand sink shall be provided within the meat department.

12.3. Meat processing equipment shall be completely disassembled, cleaned and sanitized at least every eight (8) hours if the equipment and meat contact surfaces have not exceeded a temperature of fifty degrees Fahrenheit (50° F) during the entire time that processing has taken place. Complete disassembly, cleaning and sanitizing of meat processing equipment in use shall occur at least every five (5) hours if the temperature range is between fifty one degrees Fahrenheit (51° F) and sixty degrees Fahrenheit (60° F). Any processing that occurs at temperatures of sixty degrees Fahrenheit (60° F) or over requires complete disassembly, cleaning and sanitizing of the equipment after each use, and in no case shall the length of time be longer than one (1) hour from the start of processing until cleaning begins.

12.4. Meat, poultry and fish wrapping and packaging materials shall be stored in a manner to protect them from contamination.

#### **§64-20-13. Delicatessens.**

Delicatessens shall comply with the provisions of Food Service Sanitation Rules, 64 CSR 17.

#### **§64-20-14. Personnel.**

14.1. No person who is infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause a disease that can be transmitted by foods, or who is afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food store in any capacity in which there is a likelihood of the person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons.

14.2. Employees engaged in food preparation and utensil washing operations shall thoroughly wash their hands with soap and warm water before starting work; after smoking, eating, or using the toilet; before and after handling raw meat, raw poultry, or raw fish, and as often as necessary during work to keep them clean. Employees shall wear clean outer clothing.

14.3. Employees shall consume food and use tobacco only in designated areas. The areas shall be located so that the eating or tobacco use of an employee does not result in the contamination of food, equipment, or utensils.

14.4. Employees shall maintain a high degree of personal cleanliness and conform to good hygienic practices while on duty.

14.5. Employees shall use effective hair restraints where necessary to prevent the contamination of food or food contact surfaces.

**§64-20-15. Equipment and Utensils (Construction and Installation).**

15.1. All equipment and utensils used in the preparation, storage, or display of food shall be of such material and so constructed, installed, and maintained as to be easily cleanable and to permit the easy cleaning of the surrounding areas and shall be non-toxic, corrosion-resistant, and non-absorbent.

15.2. No enamelware or graniteware shall be used in the preparation, storage or display of food.

15.3. Single service articles shall be manufactured from safe material and shall be used only once.

15.4. Work tables shall be made of impervious materials and the surfaces shall be of materials which will not be readily scratched or scarred by contact with sharp utensils, except that wooden meat blocks and cutting boards may be constructed of hard maple or the equivalent.

15.5. Metal shelving shall be provided on the interior of walk-in coolers.

15.6. All equipment installed in a retail food store prior to the effective date of this rule which is in good repair and capable of being cleaned may be continued in use.

15.7. Equipment which is placed on tables or counters, unless considered portable, shall be sealed thereto or mounted on legs at least four (4) inches high and installed to facilitate the cleaning of the equipment and adjacent areas.

15.8. Floor mounted equipment shall be on casters; or on six (6) inch legs; or on raised platforms of concrete or other smooth masonry in a manner to prevent liquids or debris from seeping or settling underneath; or sealed to the floor.

15.9. The space between adjoining units of equipment and between a unit and the adjacent wall shall be sealed, or sufficient space shall be provided to facilitate easy cleaning between, behind, and beside all such equipment.

**§64-20-16. Cleaning, Sanitization and Storage of Equipment and Utensils.**

16.1. Utensils and food contact surfaces of equipment shall be cleaned and sanitized:

16.1.1. After any interruption of operations during which time contamination may occur;

16.1.2. Between processing raw pork, or raw poultry, or raw fish, and before processing any different kind of product;

16.1.3. Between processing of raw and ready to eat foods; and,

16.1.4. After final use each working day.

16.2. Non-food contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the

equipment free of the accumulation of dust, dirt, food soil, and other debris.

16.3. Cloths or sponges used for wiping food spills or used for cleaning surfaces of equipment shall be clean and used for no other purpose. These cloths and sponges shall be stored in a sanitizing solution between uses.

16.4. For manual cleaning and sanitizing of equipment and utensils, a three (3) compartment sink must be provided in the meat and bakery departments. Sink compartments shall be large enough to accommodate the immersion of all utensils, and each sink compartment shall be supplied with hot and cold potable running water. Fixed equipment and equipment too large to be cleaned in sink compartments shall be cleaned and sanitized manually or cleaned and sanitized through pressure spray methods.

16.5. Drain boards or easily movable utensil tables shall be provided for the proper handling of soiled utensils prior to cleaning and for cleaned utensils following sanitization.

16.6. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

16.7. When a three (3) compartment sink is utilized for washing equipment and utensils, the equipment and utensils shall be washed, rinsed, and sanitized in that order.

16.8. When a two (2) compartment sink is utilized for washing equipment and utensils, the equipment and utensils shall be washed and sanitized in that order.

16.9. The food contact surfaces of all equipment and utensils shall be sanitized by one (1) of the following methods:

16.9.1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least one hundred seventy degrees Fahrenheit (170° F);

16.9.2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five degrees Fahrenheit (75° F);

16.9.3. Immersion for at least one (1) minute in a clean solution containing at least twelve and one-half (12.5) parts per million of available iodine at a temperature of at least seventy-five degrees Fahrenheit (75° F);

16.9.4. Immersion in a clean solution containing any other approved chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit (75° F) for one (1) minute;

16.9.5. Treatment with culinary steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or,

16.9.6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Sections 16.9.2, 16.9.3 or 16.9.4 of this rule.

16.10. When chemicals are used for sanitation, an approved test kit that accurately measures the parts per million concentration of the solution shall be provided and used.

16.11. Unless used immediately after sanitation, all equipment and utensils shall be air dried. Towel drying is not permitted.

16.12. Cleaned and sanitized equipment and utensils and single service articles shall be handled and stored in a way that protects them from contamination and stored at least six (6) inches above the floor in a clean, dry location. Stored utensils shall be covered or inverted whenever practical.

16.13. Food equipment, utensils, or single service articles shall not be stored in locker

rooms, toilet rooms, garbage rooms, or mechanical rooms.

#### **§64-20-17. Water Supply.**

17.1. Potable water for the needs of the retail food store shall be provided in accordance with Public Water Systems, Bottled Water and Laboratory Certification, 64 CSR 3 or Water Well Regulations, 64 CSR 19, as applicable.

17.2. Water under pressure shall be provided to all applicable fixtures and equipment that use water.

17.3. Only culinary steam shall be used in contact with food or food contact surfaces.

#### **§64-20-18. Sewage Disposal.**

All sewage shall be disposed of in a public sewer system or, in the absence thereof, in accordance with Sewage System Rules, 64 CSR 9.

#### **§64-20-19. Plumbing.**

19.1. Plumbing is required to be in accordance with the State Building Code, 87 CSR 4.

19.2. A non-potable water system is permitted only for purposes such as air conditioning and fire protection, and only if the system is properly installed and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

19.3. Approved backflow prevention devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless an approved backsiphonage prevention device is installed.

19.4. If used, grease traps shall be located to be easily accessible for cleaning.

19.5. Except for properly trapped open sinks, there shall be no direct connection between the sewer system and any drain originating from equipment in which food, portable equipment, or utensils are placed.

#### **§64-20-20. Toilet Facilities.**

20.1. Each retail food store shall provide for its employees approved and properly located toilet facilities in the number required by the secretary. Toilet facilities shall be accessible to employees at all times.

20.2. Toilets and urinals shall be designed to be easily cleaned.

20.3. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors, which shall be closed except during cleaning or maintenance.

20.4. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one (1) covered waste receptacle.

#### **§64-20-21. Handwashing Facilities.**

21.1. Handwashing facilities shall be provided in or within twenty (20) feet of any food preparation, food processing, or utensil washing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand washing. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms.

21.2. Each handwashing facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

21.3. A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be located adjacent to each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be located near the handwashing facilities.

21.4. Handwashing facilities, soap dispensers, hand-drying devices and all other related fixtures shall be kept clean and in good repair.

#### **§64-20-22. Garbage and Refuse.**

22.1. Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers, and the containers may be used for storage inside the retail food store.

22.2. Containers used in food preparation, food processing, and utensil washing areas shall be kept covered during non-working hours and after they are filled.

22.3. Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

22.4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

22.5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned inside and outside in a manner that does not contaminate food, equipment, utensils, or food preparation or processing areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for cleaning

soiled containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

22.6. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

22.7. Garbage or refuse storage rooms shall be constructed of easily cleanable, non-absorbent, washable materials, shall be kept clean, shall be insect and rodent resistant, and shall be large enough to store all the garbage and refuse containers that accumulate.

22.8. Outside storage areas or enclosures shall be kept clean and shall be large enough to store the garbage and refuse containers that accumulate. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on metal racks or on a smooth surface of non-absorbent material such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

22.9. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects or rodents.

22.10. Incineration of garbage and refuse shall be in conformance with applicable State laws and rules. Areas around incineration facilities shall be clean and orderly.

#### **§64-20-23. Insect and Rodent Control.**

23.1. Effective measures shall be utilized to minimize the entry and presence of rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

23.2. Openings to the outside shall be effectively protected against the entry of

rodents. Outside openings shall be protected against the entry of insects by tight-fitting self-closing doors; closed windows; screening; or other means acceptable to the secretary. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall be not less than sixteen (16) mesh to the inch.

#### **§64-20-24. Construction and Maintenance of Physical Facilities.**

24.1. Floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section prohibits the use of anti-slip floor covering in areas where necessary for safety reasons.

24.2. Floors which are water flushed or receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with trapped drains, which are properly installed. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile or similar materials and shall be graded to drain. The floor and wall junctures shall be coved and sealed.

24.3. Floor carpeting, if used as a floor covering, shall be of a closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation, food processing, and utensil washing areas, in food storage areas, or in toilet room areas where urinals or toilet fixtures are located.

24.4. Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as a floor covering;

however, sawdust, granular salt, baked clay, or diatomaceous earth may be used in amounts necessary for the immediate spot clean-up of spills or drippage on floors.

24.5. Mats and duckboards shall be of non-absorbent, grease resistant materials, of size, design, and construction to facilitate cleaning and shall be maintained in good repair.

24.6. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, the installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

24.7. All floors shall be kept clean and in good repair.

24.8. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be kept clean and in good repair.

24.9. The walls, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, food processing areas, utensil washing areas, and toilet rooms and their vestibules shall be smooth, non-absorbent, and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

24.10. Studs, joists, and rafters shall not be exposed in those areas listed in Section 24.9 of this rule. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

24.11. Utility service lines and pipes shall not be unnecessarily exposed on walls and ceilings in those areas listed in Section 24.9 of this rule. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

24.12. Light fixtures, vent covers, wall mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall

be easily cleanable and shall be kept clean and in good repair.

24.13. Permanently fixed artificial light sources shall be installed to provide at least twenty (20) foot candles of light on all food preparation surfaces and at utensil washing work levels.

24.14. Permanently fixed artificial light sources shall be installed to provide, at a distance of thirty (30) inches from the floor:

24.14.1. At least twenty (20) foot candles of light in sales areas, utensil and equipment storage areas, and in handwashing and toilet areas; and

24.14.2. At least ten (10) foot candles of light in walk-in refrigeration units, dry food storage areas, and in all other areas.

24.15. Shielding to protect against broken glass falling onto unpackaged food shall be provided for all artificial lighting fixtures located over or within food preparation areas, food display facilities, and facilities where utensils and equipment are cleaned and stored.

24.16. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

24.17. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems, when vented to the outside, shall not create a nuisance or public health hazard.

24.18. Intake and exhaust air ducts shall be located and maintained to prevent the entrance of dust, dirt, and other contaminating materials.

24.19. In all new or in extensively remodeled retail food stores, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

24.20. Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings.

24.21. Where employees routinely change clothes within the establishment, one (1) or more dressing rooms or designated areas shall be provided for this purpose. These areas shall be located outside of the food preparation, storage and processing areas, and equipment washing and storage areas.

#### **§64-20-25. Interior Maintenance and Cleaning.**

25.1. At least one (1) service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops, or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or utensil washing facilities, or food preparation sinks shall not be used for this purpose.

25.2. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

25.3. All parts of the establishment shall be kept clean and free of litter and rubbish.

25.4. Cleaning operations shall be conducted in a manner to minimize contamination of food and food contact surfaces, such as after closing.

25.5. None of the operations connected with a retail food establishment shall be conducted in any room used as living or sleeping quarters.

25.6. Soiled linens, coats and aprons shall be kept in laundry bags or other suitable containers until removed for laundering.

25.7. Live animals shall be excluded from within the retail food store operational premises and from adjacent areas under the control of the operator. This exclusion does not apply to edible



fish, crustacea, or shellfish. Guide dogs accompanying blind or deaf persons, and patrol dogs accompanying police officers are permitted in retail food stores. Live or dead fish bait shall be stored separately from food or food products.

25.8. If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work cloths used in the establishment. If such items are laundered on the premises, an electric or gas dryer shall be provided and used. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged singleservice articles.

#### **§64-20-26. Exterior Maintenance and Cleaning.**

26.1. Retail food stores and all parts of the property used in connection with the operation of the establishment shall be reasonably free of litter and articles not essential to the operation and maintenance of the establishment.

26.2. The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

26.3. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons.

#### **§64-20-27. Administrative Due Process.**

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

#### **§64-20-28. Penalties.**

Any person violating any of the provisions of this rule or orders issued pursuant to this rule,

is punishable by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days, or both. Each day's failure to comply with any applicable provision of this rule constitutes a separate offense.

#### **§64-20-29. Severability.**

The provisions of this rule are severable. If any provision of this rule is held invalid, the remaining provisions will remain in effect.

