

Title 64 Series 17
Department of Health and Human Resources
Bureau for Public Health
Food Establishments
Summary of Public Comments

COMMENTS AND RESPONSES

The descriptions of public comments below are a paraphrasing of the originally submitted comments. The full text of each public comment has been filed with the Secretary of State's Office.

Comment

Stanley Mills, RS, Director of Environmental Services at the Kanawha-Charleston and Putnam County Health Departments indicates that both health departments endorse the proposed amendments. He also notes that based on his long experience, the provisions of the 2013 Food Code are more food-service-establishment friendly than the version of the food code contained in the current rule.

Response

The agency has no response.

Comment

West Virginia Hospitality & Travel Association objects to §3.1.k.1 on the basis that it provides no time frame/limit. The Association asserts: 1) In its Food Safety & Defense Task Force meetings this was discussed and the industry at that time agreed ten days may be too long and offered a five day time frame/limit. 2) During the 2018 regular Legislative session this time frame/limit was again addressed and the industry agreed to potentially a three day or 72 hour time frame/limit. 3) The industry's reasoning for this objection is to allow time for correction over a potential weekend period as necessary.

Response

The main purpose of the FDA Food Code is to assist regulators and the regulated industry in prioritizing actions that proactively improve food employee behaviors and food preparation practices mitigating and eliminating the risk of foodborne illness.

The 2013 Food Code will:

- Reduce the risk of foodborne illnesses within food establishments, thus protecting consumers and industry from potentially devastating health consequences and financial losses.

- Establish uniform standards for retail food safety that reduce complexity and better ensure compliance.
- Elimination of redundant processes for establishing food safety criteria.
- Establish a more standardized approach to inspections and audits of food establishments.

The 2013 Food Code contains changes made in the 2009 Food Code that introduced new terms and levels of priority.

- Replaced the terms “Critical” and “Non-Critical” with “Priority”, “Priority Foundation” and “Core”.
- A *critical item* was considered to be more likely to contribute to foodborne illness or pose an environmental health hazard as compared with a non-critical item, which usually pertained to the facilities and how the facilities were maintained.
- The 2009 edition of the Food Code changed the designation of violations and the new three-tiered violation terminology system designates each provision as a Priority Item, Priority Foundation Item, or Core Item.
- These designations are intended to prioritize food safety protocols and inspections, and replace the use of Critical and Non-Critical Item designations in previous editions of the Food Code.

A “Priority item” means a provision whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard, and includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing.

A “Priority foundation item” means a provision whose application supports, facilitates or enables one or more PRIORITY ITEMS and includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans¹, documentation or record keeping, and labeling.

“Core items” generally relate to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, equipment design, or general maintenance.

The amendment to §64-17-3.k. adds to the § 8-904.10 of the Food Code that the Commissioner may summarily suspend a permit if the food establishment has three or more “priority” or “priority foundation” violations.

¹“HACCP plan” means a written document that delineates the formal procedures for following the HAZARD Analysis and CRITICAL CONTROL POINT principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

Under the current rule the term “critical” is used and in §3.1.i.1.A, a food establishment license may be summarily suspended for 3 or more immediately uncorrectable critical items in violation at the time of inspection. Under the 2013 Food Code relevant terms were changed and the term “critical” was bifurcated in to Priority Item and Priority Foundational Item.

Under the Bureau’s proposed amendments to 64 CSR 17, the term “critical” is simply replaced with the terms “Priority” and Priority foundation”. Thus, 3 or more immediately uncorrectable priority or priority foundational items may result in a summary suspension.

Despite the prior consensus regarding this language, during the most 2018 Legislative session it was asserted that some violation currently within the definition of “priority foundation” were not previously considered “critical”. Thus, the time required by the Food Code to timely correct a violation was not consistent between the current rule and the rule as amended. This specifically goes to the provisions of 8-405.11. That section provides:

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

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

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

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

Thus, the Food Code makes a distinction when between the time permitted to correct a priority item and a priority foundation item, when considering the potential hazard involved and the complexity of the corrective action necessary.

The rule as proposed retains the amendment as it was initially proposed. The agency believes that since the proposed amendment to the rule is consistent with the consensus of the stakeholder engagement, it should not be omitted. However, in response to these comments the agency will modify the proposed rule by removing the phrase “priority foundation” from paragraph 3.1.k.1.



KANAWHA-CHARLESTON HEALTH DEPARTMENT

PUTNAM COUNTY HEALTH DEPARTMENT



July 12, 2018

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JUL 19 2018

Brian Skinner
350 Capitol St., Suite 702
Charleston, WV 25305

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

brian.j.skinner@wv.gov

Dear Mr. Skinner:

Re. Food Establishment Rule: 64CSR17

The Kanawha-Charleston Health Department and the Putnam County Health Department endorse this rule that includes the 2013 Food Code.

While this legislation was opposed last year by the hospitality and travel industry, in my long-time experience, this version of the food service code is more food-service-establishment friendly than prior versions of the food code.

Sincerely,

Stanley Mills, RS, Director
Environmental Services

Copies: Sen. Mitch Carmichael
Sen. Glenn D. Jeffries
Del. Geoff Foster
Del. Larry Rowe
Dr. Deb Koester

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RECEIVED

COMMISSIONER OF HEALTH
DEPARTMENT OF HEALTH

From: Carol Fulks
To: Shanon, Brian J
Cc: Nora Johnson
Subject: Food Establishment Rule 64CSR 17 - Industry Comment
Date: Thursday, July 19, 2018 3:46:45 PM

On behalf of the West Virginia Hospitality & Travel Association's industry members please see our comment below in reference to legislative rule 64CSR17 on food establishments;

Under s64-17-3. Incorporate by reference of Federal Model Food Code

3.1.k.1 The commissioner may also summarily suspend a permit to operate a food establishment if:

3.1.k.1A The food establishment has three or more immediately uncorrectable priority or priority foundation items in violation at the time of inspection;
The industry objects to this portion of the rule as there is no time frame/limit. 1) In our Food Safety & Defense Task Force meetings this was discussed and the industry at that time agreed ten days may be too long and offered a five day time frame/limit. 2) In this year's legislative session this time frame/limit was again addressed and the industry agreed to potentially a three day or 72 hour time frame/limit. 3) The industry's reasoning for this objection is to allow time for correction over a potential weekend period as necessary.

We appreciate the opportunity to comment on this rule and look forward to a consensus on this issue. The industry will make itself available for further discussions or meetings as necessary.



Carol Fulks

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"Optimism is the faith that leads to achievement"

