

N. H. DYER, M.D., M.P.H.
STATE DIRECTOR OF HEALTH



State of West Virginia
DEPARTMENT OF HEALTH
CHARLESTON 25305

see
Oversize
File

July 19, 1973

The Honorable Edgar F. Heiskell, III
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Sir:

Enclosed are two copies of an amendment to Section 3 of "Grade 'A' Pasteurized Milk Ordinance", designated Series II, of Chapter 16-1 of the West Virginia Administrative Regulations. These regulations appear in your odd size file as item number 4.

This amendment cancels and supersedes those regulations sent to your office on May 29, 1973.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by the West Virginia State Board of Health on July 18, 1973.

Very truly yours,


N. H. Dyer, M.D., M.P.H.
State Director of Health

NHD:jd

Enclosures (2)

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 7-19-73

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Department of Health

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 16-1, Ser. II

West Virginia State Board of Health Regulations Governing Food-Service Sanitation.

Section 4. Regulations Governing Food-Service Sanitation

Definitions, Sec. 4.02

Definition of Regulation, Sec. 4.01

Enforcement Interpretation, Sec. 4.15

Enforcement Provisions, Sec. 4.09

Examination and Condemnation of Food, Sec. 4.11

Food, Sec. 4.03

Food Equipment and Utensils, Sec. 4.05

Food-Service Establishments Outside Jurisdiction of Health Officer, Sec. 4.12

Inspection of Food-Service Establishments, Sec. 4.10

Other Facilities and Operations, Sec. 4.07

Penalties, Sec. 4.16

Personnel, Sec. 4.04

Plan Review of Future Construction, Sec. 4.13

Procedure When Infection is Suspected, Sec. 4.14

Repeal and Date of Effect, Sec. 4.17

Sanitary Facilities and Controls, Sec. 4.06

Temporary Food-Service Establishments, Sec. 4.08

Unconstitutionality Clause, Sec. 4.18

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JOE F BUNDETT
SECRETARY OF STATE
THIS DATE 2/9/65

Section 4. Regulations Governing Food Service Sanitation

4.01. Definition of Regulation.--A regulation defining food, potentially hazardous food, adulterated, misbranded, food-service establishment, temporary food-service establishment, health officer, utensils, equipment, etc.; providing for the sale of only unadulterated, wholesome, properly branded food; regulating the sources of food; establishing sanitation standards for food, food protection, food-service personnel, food-service operations, food equipment and utensils, sanitary facilities and controls, and other facilities; requiring permits for the operation of food-service establishments; regulating the inspection of such establishments; providing for the examination and condemnation of food; providing for the incorporation by reference the compliance provisions of the 1962 Edition of the "United States Public Health Service Food Service Sanitation Ordinance and Code"; and providing for the enforcement of this regulation, and the fixing of penalties.

4.02. Definitions.--

(a) ADULTERATED shall mean the condition of a food (1) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (2) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established; (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (4) if it has been processed, prepared, packed, or held under insanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; (5) if it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter;

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or (6) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

(b) APPROVED shall mean acceptable to the health officer based on his determination as to conformance with appropriate standards and good public health practice.

(c) CLOSED shall mean fitted together snugly leaving no openings large enough to permit the entrance of vermin.

(d) CORROSION-RESISTANT MATERIAL shall mean a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds and sanitizing solutions which may contact it.

(e) EASILY CLEANABLE shall mean readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.

(f) EMPLOYEE shall mean any person working in a food-service establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food utensils or equipment.

(g) EQUIPMENT shall mean all stoves, ranges, hood, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of a food-service establishment.

(h) FOOD shall mean any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(i) FOOD-CONTACT SURFACES shall mean those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

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DATE: 8/9/65

(j) FOOD-PROCESSING ESTABLISHMENT shall mean a commercial establishment in which food is processed or otherwise prepared and packaged for human consumption.

(k) FOOD-SERVICE ESTABLISHMENT shall mean any fixed or mobile restaurant; coffeeshop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop, soda fountain; tavern; bar; cocktail lounge; night club; 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 for 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.

(l) HEALTH OFFICER shall mean the State Director of Health or his designated representative, including all full and part-time representatives in district, county, or city health departments.

(m) KITCHENWARE shall mean all multiuse utensils other than tableware used in the storage, preparation, conveying, or serving of food.

(n) MISBRANDED shall mean the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable State or local labeling requirements.

(o) PERISHABLE FOOD shall mean any food of such type or in such condition as may spoil.

(p) PERSON shall mean an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.

(q) POTENTIALLY HAZARDOUS FOOD shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry,

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fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(r) SAFE TEMPERATURES, as applied to potentially hazardous food, shall mean temperatures of 45° F. or below, and 140° F. or above.

(s) SANITIZE shall mean effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the Health Officer as being effective in destroying microorganisms, including pathogens.

(t) SEALED shall mean free of cracks or other openings which permit the entry or passage of moisture.

(u) SINGLE-SERVICE ARTICLES shall mean cups, containers, lids, or closures; plates, knives, forks, spoons, stirrers, paddles; straws, place mats, napkins, doilies, wrapping material; and all other similar articles which are constructed wholly or in part from paper, paperboard, milded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then to be discarded.

(v) TABLEWARE shall mean all multiuse eating and drinking utensils, including flatware (knives, forks, and spoons).

(w) TEMPORARY FOOD-SERVICE ESTABLISHMENT shall mean any food-service establishment which operates at a fixed location for a temporary period of time, not to exceed 2 weeks, in connection with a fair, carnival, circus, public exhibition, or similar gathering.

(x) UTENSIL shall mean any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.

(y) WHOLESOME shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

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4.03. Food.--

(a) Food Supplies - All food in food-service establishments shall be from sources approved or considered satisfactory by the health officer, and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. No hermetically sealed, non-acid and low-acid food which has been processed in a place other than a commercial food-processing establishment shall be used.

(b) Food Protection - All food while being stored, prepared, displayed, served, or sold at food-service establishments, or during transportation between such establishments, shall be protected from contamination. All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above), except during necessary periods of preparation and service. Raw fruits and vegetables shall be washed before use. Stuffing, poultry, stuffed meats, and poultry, and pork and pork products shall be thoroughly cooked before being served. Individual portions of food once served to the customer shall not be served again: PROVIDED, That wrapped food which has not been unwrapped and which is wholesome may be reserved.

Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in food-service establishments. Poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

4.04. Personnel.--

(a) Health and Disease Control - No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a food-service establishment in any

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THIS DATE 8/9/65

capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the health officer immediately.

(b) Cleanliness - All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved hand-washing facility before starting to work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his hands.

4.05. Food Equipment and Utensils.--

(a) Sanitary Design, Construction and Installation of Equipment and Utensils - All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair; and the food-contact surfaces of such equipment and utensils shall, in addition, be easily accessible for cleaning, nontoxic, corrosion resistant and relatively nonabsorbent: PROVIDED, That, when approved by the health officer, exceptions may be made to the above materials requirements for equipment such as cutting boards, blocks, and bakers' tables. All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas.

Equipment in use at the time of adoption of this regulation which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and the food-

contact surfaces are nontoxic. Single-service articles shall be made from nontoxic materials.

(b) Cleanliness of Equipment and Utensils - All eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

After cleaning and until use, all food-contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination. All single-service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once.

Food-service establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.

4.06. Sanitary Facilities and Controls.--

(a) Water Supply - The water supply shall be adequate, of a safe, sanitary quality and from an approved source. Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils, or containers are washed.

Ice used for any purpose shall be made from water which comes from an approved source, and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner.

(b) Sewage Disposal - All sewage shall be disposed of in a public sewerage system, or, in the absence thereof, in a manner approved by the health officer.

(c) Plumbing - Plumbing shall be so sized, installed, and maintained as to carry adequate quantities of water to required locations throughout the establishment; as to prevent contamination of the water supply; as to properly convey sewage and liquid wastes from the establishment to the sewerage or sewage-disposal system; and so that it does not constitute a source of contamination of food, equipment, or utensils, or create an insanitary condition or nuisance.

(d) Toilet Facilities - Each food-service establishment shall be provided with adequate, conveniently located toilet facilities for its employees. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. In food-service establishments hereafter constructed toilet rooms shall not open directly into any room used primarily for the preparation of food. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Where the use of non-water-carried sewage disposal facilities have been approved by the health officer, such facilities are provided for patrons, such facilities shall meet the requirements of this subsection.

(e) Hand-Washing Facilities - Each food-service establishment shall be provided with adequate, conveniently located hand-washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleaning soap or detergent, and approved sanitary

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DATE 2/9/65

towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(f) Garbage and Rubbish Disposal - All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leakproof, non-absorbent containers which shall be kept covered with tightfitting lids when filled or stored, or not in continuous use: PROVIDED, That such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a food-waste refrigerator. All other rubbish shall be stored in containers, rooms or areas in an approved manner. The rooms, enclosures, areas and containers used shall be adequate for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided, and each container, room, or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food-waste grinders, if used, shall be installed in compliance with State and local standards and shall be of suitable construction. All garbage and rubbish shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance.

(g) Vermin Control - Effective measures shall be taken to protect against the entrance into the establishment and the breeding or presence on the premises of vermin.

4.07. Other Facilities and Operations.--

(a) Floors, Walls, and Ceilings - The floor surfaces in kitchens, in all other rooms and areas in which food is stored or prepared and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms and toilet rooms, shall be of smooth, nonabsorbent materials, and so constructed as to be easily cleanable: PROVIDED, That the floors of non-refrigerated, dry-food-storage areas need not be nonabsorbent. All floors shall be kept clean and in good repair. Floor drains shall be provided in

3/9/65

all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor. All exterior areas where food is served shall be kept clean and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.

The walls and ceilings of all rooms shall be kept clean and in good repair. All walls of rooms or areas in which food is prepared, or utensils or hands are washed, shall be easily cleanable, smooth and light-colored, and shall have washable surfaces up to the highest level reached by splash or spray.

(b) Lighting - All areas in which food is prepared or stored or utensils are washed, hand-washing areas, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well lighted. During all cleanup activities, adequate light shall be provided in the area being cleaned, and upon or around equipment being cleaned.

(c) Ventilation - All rooms in which food is prepared or served or utensils are washed, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces. Filters, where used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable State and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(d) Dressing Rooms and Lockers - Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose. Such designated areas shall be provided for this purpose. Such designated areas

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THIS DATE 8/9/65

shall be located outside of the food preparation, storage, and serving areas, and the utensil-washing and storage areas: PROVIDED, That, when approved by the health officer, such an area may be located in a storage room where only completely packaged food is stored. Designated areas shall be equipped with adequate lockers, and lockers or other suitable facilities shall be provided in dressing rooms. Dressing rooms and lockers shall be kept clean.

(e) Housekeeping - All parts of the establishment and its premises shall be kept neat, clean, and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food-contact surfaces. None of the operations connected with a food-service establishment shall be conducted in any room used as living or sleeping quarters. Soiled linens, coats, and aprons shall be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of food-service establishment operations: PROVIDED, That guide dogs accompanying blind persons may be permitted in dining areas.

4.08. Temporary Food Service Establishments.--A temporary food-service establishment shall comply with all provisions of this regulation which are applicable to its operation: PROVIDED, That the health officer may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

4.09. Enforcement Provisions.--

(a) Permit - It shall be unlawful for any person to operate a food-service establishment within the State of West Virginia, who does not possess

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a valid permit issued to him by the health officer. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every food-service establishment. Permits for temporary food-service establishments shall be issued for a period of time not to exceed 14 days.

(b) Issuance of Permits - Any person desiring to operate a food-service establishment shall make written application for a permit on forms provided by the health officer. Such application shall include: the applicant's full name and post office address and whether such applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses shall be included; the location and type of the proposed food-service establishment; and the signature of the applicant or applicants. If the application is for a temporary food-service establishment, it shall also include the inclusive dates of the proposed operation.

Upon receipt of such an application, the health officer shall make an inspection of the food-service establishment to determine compliance with the provisions of this regulation. When inspection reveals that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the health officer.

(c) Suspension of Permits - Permits may be suspended temporarily by the health officer for failure of the holder to comply with the requirements of this regulation.

Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Section 4.09 of this regulation, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended, and that an opportunity for a

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hearing will be provided if a written request for a hearing is filed with the health officer by the permit holder.

Notwithstanding the other provisions of this regulation, whenever the health officer finds insanitary or other conditions in the operation of a food-service establishment which, in his judgment, constitute a substantial hazard to the public health, he may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is immediately suspended, and all food-service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the health officer, shall be afforded a hearing as soon as possible.

(d) Reinstatement of Suspended Permits - Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 10 days following receipt of a written request, including a statement of the permit have been corrected, the health officer shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

(e) Revocation of Permits - For serious or repeated violations of any of the requirements of this regulation, or for interference with the health officer in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the health officer. Prior to such action, the health officer shall notify the permit holder in writing, stating the reasons for which the permit is subject to

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revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice, unless a request for a hearing is filed with the health officer, by the permit holder, within such 5-day period. A permit may be suspended for cause pending its revoaction or a hearing relative thereto.

(f) Hearings - The hearings provided for in this section shall be conducted by the health officer at a time and place designated by him. Based upon the record of such hearing, the health officer shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the health officer.

4.10. Inspection of Food-Service Establishments.--

(a) At least once every 6 months, the health officer shall inspect each food-service establishment located in the State of West Virginia, and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(b) Access to Establishments - The health officer, after proper identification, shall be permitted to enter, at any reasonable time, any food-service establishment within the State of West Virginia, for the purpose of making inspections to determine compliance with this regulation. He shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

(c) Inspection Records; Demerit Values; Demerit Scores - Whenever the health officer makes an inspection of a food-service establishment, he shall record his findings on an inspection report form provided for this purpose, and shall furnish the original of such inspection report form to the permit

2/9/65

holder or operator. Such form shall summarize the requirements of Sections 4.03 through 4.08 of this regulation and shall set forth demerit point values for each such requirement. Upon completion of an inspection, the health officer shall total the demerit point values for all requirements in violation, such total becoming the demerit score for the establishment.

(d) Issuance of Notices - Whenever the health officer makes an inspection of a food-service establishment and discovers that any of the requirements of Sections 4.03 through 4.08 of this regulation have been violated, he shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notification, the health officer shall:

(1) Set forth the specific violations found, together with the demerit score of the establishment.

(2) Establish a specific and reasonable period of time for the correction of the violations found, in accordance with the following provisions:

(aa) When the demerit score of the establishment is 20 or less, all violations of 2 or 4 demerit points must be corrected by the time of the next routine inspection; or

(bb) When the demerit score of the establishment is more than 20 but not more than 40, all items of 2 or 4 demerit points must be corrected within a period of time not to exceed 30 days; or

(cc) When one or more 6 demerit point items are in violation, regardless of demerit score, such items must be corrected within a period of time not to exceed 10 days.

(dd) When the demerit score of the establishment is more than 40, the permit is immediately suspended.

(ee) In the case of temporary food-service establishments, 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.

(3) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in immediate suspension of the permit.

(4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the health officer within the period of time established in the notice for correction.

(e) Service of Notices - Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the health officer.

4.11. Examination and Condemnation of Food.--Food may be examined or sampled by the health officer as often as may be necessary to determine freedom from adulteration or misbranding. The health officer may, upon written notice to the owner or person in charge, place a hold order on any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the health officer, and neither such food nor the containers thereof

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shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the health officer, except on order by a court of competent jurisdiction. After the owner or person in charge has had a hearing as provided for in Section 4.09, 2, (4), and on the basis of evidence produced at such hearing, or on the basis of his examination in the event a written request for a hearing is not received within 10 days, the health officer may vacate the hold order, or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or bring it into compliance with the provisions of this regulation shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

4.12. Food-Service Establishments Outside Jurisdiction of the Health Officer.--

Food from food-service establishments outside the jurisdiction of the health officer of the State of West Virginia may be sold within the State of West Virginia if such food-service establishments conform to the provisions of this regulation or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the health officer may accept reports from responsible authorities in other jurisdiction where such food-service establishments are located.

4.13. Plan Review of Future Construction.--When a food-service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food-service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangement, and construction materials of work areas, and the location, size, and type of fixed equipment and facilities

shall be submitted to the health officer for approval before such work is begun.

4.14. Procedure When Infection is Suspected.--When the health officer has reasonable cause to suspect possibility of disease transmission from any food-service establishment employee, the health officer shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The health officer may require any or all of the following measures: (a) the immediate exclusion of the employee from all food-service establishments; (b) the immediate closure of the food-service establishment concerned until, in the opinion of the health officer, no further danger of disease outbreak exists; (c) restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and (d) adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

4.15. Enforcement Interpretation.--This regulation shall be enforced by the health officer in accordance with the interpretations thereof contained in the compliance provisions of the 1962 Edition of the "United States Public Health Service Food-Service Sanitation Ordinance and Code".

4.16. Penalties.--Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$200.00, or by imprisonment for not more than 30 days, or both, as provided in Chapter 16, Article 1, Section 20, Public Health Laws of West Virginia.

4.17. Repeal and Date of Effect.--This regulation shall be in full force and effect on July 1, 1965; and, at that time, all regulations and parts of regulations in conflict with this regulation are hereby repealed.

4.18. Unconstitutionality Clause.--Should any section, paragraph, sentence, clause, or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of said regulation shall not be affected thereby.

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STATE DEPARTMENT OF HEALTH
Charleston, West Virginia

February 9, 1965

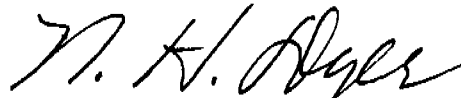
Honorable Joe F. Burdett
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Sir:

Enclosed are two copies of a regulation issued by this Department, regarding food-service sanitation. This regulation is designated Series II of Chapter 16-1 of the West Virginia Administrative Regulations.

I hereby certify that the attached are true and accurate copies of official regulations adopted by this Department on January 20, 1965.

Very truly yours,


N. H. Dyer, M. D., M. P. H.
State Director of Health

Filed in Office of the Secretary of State
of West Virginia *February 9, 1965*
JOE F. BURDETT
SECRETARY OF STATE

STATE DEPARTMENT OF HEALTH

Charleston, West Virginia

February 9, 1965

Honorable Joe F. Burdett
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Sir:

Enclosed are two copies of a regulation issued by this Department regarding food-service sanitation. This regulation is designated Series II of Chapter 16-1 of the West Virginia Administrative Regulations.

I hereby certify that the attached regulation is a true and accurate copy of official regulations adopted by this Department on January 20, 1965.

Very truly yours,



N. H. Dyer, M. D., M. P. H.
State Director of Health

Filed in Office of the Secretary of State
of West Virginia February 9, 1965
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Department of Health

FILED IN THE OFFICE OF
JOE F. GUNN
SECRETARY OF STATE
THIS DATE 2/9/65

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 16-1, Ser. II

West Virginia State Board of Health Regulations Governing Food-Service Sanitation.

Section 4. Regulations Governing Food-Service Sanitation

Definitions, Sec. 4.02

Definition of Regulation, Sec. 4.01

Enforcement Interpretation, Sec. 4.15

Enforcement Provisions, Sec. 4.09

Examination and Condemnation of Food, Sec. 4.11

Food, Sec. 4.03

Food Equipment and Utensils, Sec. 4.05

Food-Service Establishments Outside Jurisdiction of Health Officer, Sec. 4.12

Inspection of Food-Service Establishments, Sec. 4.10

Other Facilities and Operations, Sec. 4.07

Penalties, Sec. 4.16

Personnel, Sec. 4.04

Plan Review of Future Construction, Sec. 4.13

Procedure When Infection is Suspected, Sec. 4.14

Repeal and Date of Effect, Sec. 4.17

Sanitary Facilities and Controls, Sec. 4.06

Temporary Food-Service Establishments, Sec. 4.08

Unconstitutionality Clause, Sec. 4.18

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Section 4. Regulations Governing Food Service Sanitation

4.01. Definition of Regulation.--A regulation defining food, potentially hazardous food, adulterated, misbranded, food-service establishment, temporary food-service establishment, health officer, utensils, equipment, etc.; providing for the sale of only unadulterated, wholesome, properly branded food; regulating the sources of food; establishing sanitation standards for food, food protection, food-service personnel, food-service operations, food equipment and utensils, sanitary facilities and controls, and other facilities; requiring permits for the operation of food-service establishments; regulating the inspection of such establishments; providing for the examination and condemnation of food; providing for the incorporation by reference the compliance provisions of the 1962 Edition of the "United States Public Health Service Food Service Sanitation Ordinance and Code"; and providing for the enforcement of this regulation, and the fixing of penalties.

4.02. Definitions.--

(a) ADULTERATED shall mean the condition of a food (1) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (2) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established; (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (4) if it has been processed, prepared, packed, or held under insanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; (5) if it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter;

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or (6) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

(b) APPROVED shall mean acceptable to the health officer based on his determination as to conformance with appropriate standards and good public health practice.

(c) CLOSED shall mean fitted together snugly leaving no openings large enough to permit the entrance of vermin.

(d) CORROSION-RESISTANT MATERIAL shall mean a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds and sanitizing solutions which may contact it.

(e) EASILY CLEANABLE shall mean readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.

(f) EMPLOYEE shall mean any person working in a food-service establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food utensils or equipment.

(g) EQUIPMENT shall mean all stoves, ranges, hood, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of a food-service establishment.

(h) FOOD shall mean any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(i) FOOD-CONTACT SURFACES shall mean those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

(j) FOOD-PROCESSING ESTABLISHMENT shall mean a commercial establishment in which food is processed or otherwise prepared and packaged for human consumption.

(k) FOOD-SERVICE ESTABLISHMENT shall mean any fixed or mobile restaurant; coffeeshop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop, soda fountain; tavern; bar; cocktail lounge; night club; 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 for 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.

(l) HEALTH OFFICER shall mean the State Director of Health or his designated representative, including all full and part-time representatives in district, county, or city health departments.

(m) KITCHENWARE shall mean all multiuse utensils other than tableware used in the storage, preparation, conveying, or serving of food.

(n) MISBRANDED shall mean the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable State or local labeling requirements.

(o) PERISHABLE FOOD shall mean any food of such type or in such condition as may spoil.

(p) PERSON shall mean an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.

(q) POTENTIALLY HAZARDOUS FOOD shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry,

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fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(r) SAFE TEMPERATURES, as applied to potentially hazardous food, shall mean temperatures of 45° F. or below, and 140° F. or above.

(s) SANITIZE shall mean effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the Health Officer as being effective in destroying microorganisms, including pathogens.

(t) SEALED shall mean free of cracks or other openings which permit the entry or passage of moisture.

(u) SINGLE-SERVICE ARTICLES shall mean cups, containers, lids, or closures; plates, knives, forks, spoons, stirrers, paddles; straws, place mats, napkins, doilies, wrapping material; and all other similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then to be discarded.

(v) TABLEWARE shall mean all multiuse eating and drinking utensils, including flatware (knives, forks, and spoons).

(w) TEMPORARY FOOD-SERVICE ESTABLISHMENT shall mean any food-service establishment which operates at a fixed location for a temporary period of time, not to exceed 2 weeks, in connection with a fair, carnival, circus, public exhibition, or similar gathering.

(x) UTENSIL shall mean any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.

(y) WHOLESOME shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

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4.03. Food.--

(a) Food Supplies - All food in food-service establishments shall be from sources approved or considered satisfactory by the health officer, and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. No hermetically sealed, non-acid and low-acid food which has been processed in a place other than a commercial food-processing establishment shall be used.

(b) Food Protection - All food while being stored, prepared, displayed, served, or sold at food-service establishments, or during transportation between such establishments, shall be protected from contamination. All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above), except during necessary periods of preparation and service. Raw fruits and vegetables shall be washed before use. Stuffing, poultry, stuffed meats, and poultry, and pork and pork products shall be thoroughly cooked before being served. Individual portions of food once served to the customer shall not be served again: PROVIDED, That wrapped food which has not been unwrapped and which is wholesome may be reserved.

Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in food-service establishments. Poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

4.04. Personnel.--

(a) Health and Disease Control - No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a food-service establishment in any

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capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the health officer immediately.

(b) Cleanliness - All employees shall wear clean outer garmets, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved hand-washing facility before starting to work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his hands.

4.05. Food Equipment and Utensils.--

(a) Sanitary Design, Construction and Installation of Equipment and Utensils - All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair; and the food-contact surfaces of such equipment and utensils shall, in addition, be easily accessible for cleaning, nontoxic, corrosion resistant and relatively nonabsorbent: PROVIDED, That, when approved by the health officer, exceptions may be made to the above materials requirements for equipment such as cutting boards, blocks, and bakers' tables. All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment in use at the time of adoption of this regulation which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and the food-

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contact surfaces are nontoxic. Single-service articles shall be made from nontoxic materials.

(b) Cleanliness of Equipment and Utensils - All eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

After cleaning and until use, all food-contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination. All single-service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once.

Food-service establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.

4.06. Sanitary Facilities and Controls.--

(a) Water Supply - The water supply shall be adequate, of a safe, sanitary quality and from an approved source. Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils, or containers are washed.

Ice used for any purpose shall be made from water which comes from an approved source, and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner.

(b) Sewage Disposal - All sewage shall be disposed of in a public sewerage system, or, in the absence thereof, in a manner approved by the health officer.

(c) Plumbing - Plumbing shall be so sized, installed, and maintained as to carry adequate quantities of water to required locations throughout the establishment; as to prevent contamination of the water supply; as to properly convey sewage and liquid wastes from the establishment to the sewerage of sewage-disposal system; and so that it does not constitute a source of contamination of food, equipment, or utensils, or create an insanitary condition or nuisance.

(d) Toilet Facilities - Each food-service establishment shall be provided with adequate, conveniently located toilet facilities for its employees. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. In food-service establishments hereafter constructed toilet rooms shall not open directly into any room used primarily for the preparation of food. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Where the use of non-water-carried sewage disposal facilities have been approved by the health officer, such facilities are provided for patrons, such facilities shall meet the requirements of this subsection.

(e) Hand-Washing Facilities - Each food-service establishment shall be provided with adequate, conveniently located hand-washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, and approved sanitary

towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(f) Garbage and Rubbish Disposal - All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leakproof, non-absorbent containers which shall be kept covered with tightfitting lids when filled or stored, or not in continuous use: PROVIDED, That such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a food-waste refrigerator. All other rubbish shall be stored in containers, rooms or areas in an approved manner. The rooms, enclosures, areas and containers used shall be adequate for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided, and each container, room, or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food-waste grinders, if used, shall be installed in compliance with State and local standards and shall be of suitable construction. All garbage and rubbish shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance.

(g) Vermin Control - Effective measures shall be taken to protect against the entrance into the establishment and the breeding or presence on the premises of vermin.

4.07. Other Facilities and Operations. ←

(a) Floors, Walls, and Ceilings - The floor surfaces in kitchens, in all other rooms and areas in which food is stored or prepared and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms and toilet rooms, shall be of smooth, nonabsorbent materials, and so constructed as to be easily cleanable: PROVIDED, That the floors of non-refrigerated, dry-food-storage areas need not be nonabsorbent. All floors shall be kept clean and in good repair. Floor drains shall be provided in

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all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor. All exterior areas where food is served shall be kept clean and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.

The walls and ceilings of all rooms shall be kept clean and in good repair. All walls of rooms or areas in which food is prepared, or utensils or hands are washed, shall be easily cleanable, smooth and light-colored, and shall have washable surfaces up to the highest level reached by splash or spray.

(b) Lighting - All areas in which food is prepared or stored or utensils are washed, hand-washing areas, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well lighted. During all cleanup activities, adequate light shall be provided in the area being cleaned, and upon or around equipment being cleaned.

(c) Ventilation - All rooms in which food is prepared or served or utensils are washed, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces. Filters, where used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable State and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(d) Dressing Rooms and Lockers - Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose. Such designated areas shall be provided for this purpose. Such designated areas

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shall be located outside of the food preparation, storage, and serving areas, and the utensil-washing and storage areas: PROVIDED, That, when approved by the health officer, such an area may be located in a storage room where only completely packaged food is stored. Designated areas shall be equipped with adequate lockers, and lockers or other suitable facilities shall be provided in dressing rooms. Dressing rooms and lockers shall be kept clean.

(e) Housekeeping - All parts of the establishment and its premises shall be kept neat, clean, and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food-contact surfaces. None of the operations connected with a food-service establishment shall be conducted in any room used as living or sleeping quarters. Soiled linens, coats, and aprons shall be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of food-service establishment operations: PROVIDED, That guide dogs accompanying blind persons may be permitted in dining areas.

4.08. Temporary Food Service Establishments.--A temporary food-service establishment shall comply with all provisions of this regulation which are applicable to its operation: PROVIDED, That the health officer may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

4.09. Enforcement Provisions.--

(a) Permit - It shall be unlawful for any person to operate a food-service establishment within the State of West Virginia, who does not possess

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THIS DATE 2/9/65

a valid permit issued to him by the health officer. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every food-service establishment. Permits for temporary food-service establishments shall be issued for a period of time not to exceed 14 days.

(b) Issuance of Permits - Any person desiring to operate a food-service establishment shall make written application for a permit on forms provided by the health officer. Such application shall include: the applicant's full name and post office address and whether such applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses shall be included; the location and type of the proposed food-service establishment; and the signature of the applicant or applicants. If the application is for a temporary food-service establishment, it shall also include the inclusive dates of the proposed operation.

Upon receipt of such an application, the health officer shall make an inspection of the food-service establishment to determine compliance with the provisions of this regulation. When inspection reveals that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the health officer.

(c) Suspension of Permits - Permits may be suspended temporarily by the health officer for failure of the holder to comply with the requirements of this regulation.

Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Section 4.09 of this regulation, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended, and that an opportunity for a

8/9/65

hearing will be provided if a written request for a hearing is filed with the health officer by the permit holder.

Notwithstanding the other provisions of this regulation, whenever the health officer finds insanitary or other conditions in the operation of a food-service establishment which, in his judgment, constitute a substantial hazard to the public health, he may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is immediately suspended, and all food-service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the health officer, shall be afforded a hearing as soon as possible.

(d) Reinstatement of Suspended Permits - Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 10 days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the health officer shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

(e) Revocation of Permits - For serious or repeated violations of any of the requirements of this regulation, or for interference with the health officer in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the health officer. Prior to such action, the health officer shall notify the permit holder in writing, stating the reasons for which the permit is subject to

revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice, unless a request for a hearing is filed with the health officer, by the permit holder, within such 5-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(f) Hearings - The hearings provided for in this section shall be conducted by the health officer at a time and place designated by him. Based upon the record of such hearing, the health officer shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the health officer.

4.10. Inspection of Food-Service Establishments.--

(a) At least once every 6 months, the health officer shall inspect each food-service establishment located in the State of West Virginia, and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(b) Access to Establishments - The health officer, after proper identification, shall be permitted to enter, at any reasonable time, any food-service establishment within the State of West Virginia, for the purpose of making inspections to determine compliance with this regulation. He shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

(c) Inspection Records; Demerit Values; Demerit Scores - Whenever the health officer makes an inspection of a food-service establishment, he shall record his findings on an inspection report form provided for this purpose, and shall furnish the original of such inspection report form to the permit

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THIS DATE 2/9/65

holder or operator. Such form shall summarize the requirements of Sections 4.03 through 4.08 of this regulation and shall set forth demerit point values for each such requirement. Upon completion of an inspection, the health officer shall total the demerit point values for all requirements in violation, such total becoming the demerit score for the establishment.

(d) Issuance of Notices - Whenever the health officer makes an inspection of a food-service establishment and discovers that any of the requirements of Sections 4.03 through 4.08 of this regulation have been violated, he shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notification, the health officer shall:

(1) Set forth the specific violations found, together with the demerit score of the establishment.

(2) Establish a specific and reasonable period of time for the correction of the violations found, in accordance with the following provisions:

(aa) When the demerit score of the establishment is 20 or less, all violations of 2 or 4 demerit points must be corrected by the time of the next routine inspection; or

(bb) When the demerit score of the establishment is more than 20 but not more than 40, all items of 2 or 4 demerit points must be corrected within a period of time not to exceed 30 days; or

(cc) When one or more 6 demerit point items are in violation, regardless of demerit score, such items must be corrected within a period of time not to exceed 10 days.

(dd) When the demerit score of the establishment is more than 40, the permit is immediately suspended.

(ee) In the case of temporary food-service establishments, 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.

(3) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in immediate suspension of the permit.

(4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the health officer within the period of time established in the notice for correction.

(e) Service of Notices - Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the health officer.

4.11. Examination and Condemnation of Food.--Food may be examined or sampled by the health officer as often as may be necessary to determine freedom from adulteration or misbranding. The health officer may, upon written notice to the owner or person in charge, place a hold order on any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the health officer, and neither such food nor the containers thereof

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shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the health officer, except on order by a court of competent jurisdiction. After the owner or person in charge has had a hearing as provided for in Section 4.09, 2, (4), and on the basis of evidence produced at such hearing, or on the basis of his examination in the event a written request for a hearing is not received within 10 days, the health officer may vacate the hold order, or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of this regulation: PROVIDED, That such order of the health officer to denature or destroy such food or bring it into compliance with the provisions of this regulation shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

4.12. Food-Service Establishments Outside Jurisdiction of the Health Officer.--

Food from food-service establishments outside the jurisdiction of the health officer of the State of West Virginia may be sold within the State of West Virginia if such food-service establishments conform to the provisions of this regulation or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the health officer may accept reports from responsible authorities in other jurisdictions where such food-service establishments are located.

4.13. Plan Review of Future Construction.--When a food-service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food-service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangement, and construction materials of work areas, and the location, size, and type of fixed equipment and facilities

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shall be submitted to the health officer for approval before such work is begun.

4.14. Procedure When Infection is Suspected.--When the health officer has reasonable cause to suspect possibility of disease transmission from any food-service establishment employee, the health officer shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The health officer may require any or all of the following measures: (a) the immediate exclusion of the employee from all food-service establishments; (b) the immediate closure of the food-service establishment concerned until, in the opinion of the health officer, no further danger of disease outbreak exists; (c) restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and (d) adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

4.15. Enforcement Interpretation.--This regulation shall be enforced by the health officer in accordance with the interpretations thereof contained in the compliance provisions of the 1962 Edition of the "United States Public Health Service Food-Service Sanitation Ordinance and Code".

4.16. Penalties.--Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$200.00, or by imprisonment for not more than 30 days, or both, as provided in Chapter 16, Article 1, Section 20, Public Health Laws of West Virginia.

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4.17. Repeal and Date of Effect.--This regulation shall be in full force and effect on July 1, 1965; and, at that time, all regulations and parts of regulations in conflict with this regulation are hereby repealed.

4.18. Unconstitutionality Clause.--Should any section, paragraph, sentence, clause, or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of said regulation shall not be affected thereby.

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