

### Section 3004: Severability

4.1 If any provision of these regulations, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of the regulations, and to this extent the provisions of these regulations are declared to be severable.

### Section 3005: Penalty for Violating Provisions of Regulations

5.1 Enforcement of this regulation shall be consistent with the West Virginia 64 CSR 17 Food Establishments Rule adopted by the West Virginia Bureau for Public Health.

5.2 Foodservice establishments operating without a valid permit are subject to penalties set forth in West Virginia State Code Chapter 16 Section 6-23:

“Any person, firm or corporation who shall operate a hotel or restaurant in this state, or who shall let a building to be used for such purposes, without first having complied with the provisions of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined five dollars for each day such failure to comply shall continue.”

5.3 The Nicholas County Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under West Virginia State Code Chapter 16 Section 2-15 against any person who willfully violates this Foodservice Worker Regulation.

Enforcement through civil process, includes, but is not limited to a petition for injunctive relief. Any person who willfully violates this Foodservice Worker Regulation, may be charged with a misdemeanor under West Virginia State Code Chapter 16 Section 2-15 and upon conviction, be subject to a monetary fine. At the time of adoption of this Foodservice Worker Regulation, West Virginia State Code Chapter 16 Section 2-15 provides as follows:

§16-2-15. **Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.**

“Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person’s legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

“Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.

“Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.”

### Section 3006: Public Education

The Nicholas County Health Department shall engage in a continuing program to explain and clarify the purposes and the requirements of this ordinance to citizens affected by it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Effective August 9, 2010



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# **Nicholas County Foodservice Workers Regulation**

### Section 3000: Title

This article shall be known as the Nicholas County Foodservice Workers Regulation

### Section 3001: Purpose

The purposes of this regulation are:

1. To protect the public health and welfare by requiring that persons who work in foodservice establishments located in Nicholas County, West Virginia be properly trained in approved food handling procedures and...
2. To require that all foodservice workers of foodservice establishments located in Nicholas County have valid foodservice worker cards approved by the Nicholas County Health Department.

### Section 3002: Definitions

- 2.1 Approved: Acceptable to the Commissioner or Health Officer based on a determination of conformity with principles, practices, and generally recognized standards that protect the public health.
- 2.2 Catering Operation: An operation that provides food directly to a consumer, regardless of whether there is a charge for the food, at a location that is not a permanent facility or temporary facility permitted as a foodservice establishment by Nicholas County Health Department, including any vehicles used to transport food, but not including operations that do not provide services on a routine basis (i.e. seven days consecutively, seven weeks consecutively, multiple times during a month, etc.)
- 2.3 Commissioner: The chief executive, administrative and fiscal officer of the State Department of Health or his/her designee.
- 2.4 Employee: The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a foodservice establishment.
- 2.5 Employer: Any entity or person who employs the paid or volunteer services of one or more persons.
- 2.6 Equipment: An article that is used in the operation of a foodservice establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

- 2.7 Food: A 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, or chewing gum.
- 2.8 Foodservice Establishment: An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:
- (a) Such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to the consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and
  - (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 order, or delivery service that is provided by common carriers.
- 2.9 Foodservice Worker: An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- 2.10 Health Officer: The executive officer of the local board of health or his/her duly authorized representative.
- 2.11 Law: Applicable local, state, and federal statutes, regulations, and ordinances.
- 2.12 Linens: Fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and working garments including cloth gloves.
- 2.13 Nicholas County Foodservice Worker Course: Instruction consisting of a lecture, a video presentation and a written examination. The foodservice worker course shall be consistent with West Virginia 64 CSR 17 Food Establishments Rule. All topics contained in the course shall meet minimum standards set forth by the West Virginia Bureau for Public Health.
- 2.14 Operator: A person who is in charge of a foodservice establishment.
- 2.15 Permit: The document issued by the local board of health that authorizes a person to operate a foodservice establishment.
- 2.16 Permit Holder: The entity that (a) is legally responsible for the operation of the foodservice establishment such as the owner, the owner's agent, or other person; and (b) possesses a valid permit to operate a foodservice establishment.
- 2.17 Person: An association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- 2.18 Person-In-Charge: The individual present at a foodservice establishment who is responsible for the operation at the time of inspection.

2.19 Single-Service Items: Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard; bulk food containers designed and constructed to be used once and discarded; items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability, specifications for multiuse utensils.

2.20 Utensils: A food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse or single-service; gloves used in the contact with food; temperature sensing probes of temperature measuring devices; and the probe-type or identification tags used in contact with food.

### **Section 3003: Permits, Hearings, Notices and Orders**

3.1 All foodservice workers of a foodservice establishment shall successfully complete a foodservice worker course approved by the Health Officer. Upon completion of said course the Nicholas County Health Department shall issue a foodservice worker card to the worker or employee.

3.1.1 Nicholas County Health Department shall accept any foodservice worker card issued by another jurisdiction in lieu of a Nicholas County foodservice worker card provided the jurisdiction meets the minimum standards in Section 2.13.

3.1.2 Nicholas County Health Department shall keep a list of jurisdictions whose food service worker training may be deemed acceptable.

3.1.3 Certification from a nationally accredited food safety program shall not be accepted in lieu of a Nicholas County foodservice worker card.

3.1.4 The Health Officer may waive the provisions of this section if he/she is satisfied that foodservice workers are adequately trained to prevent the spread of foodborne illness and the endangerment to the public health.

3.2 Any foodservice worker who does not possess an approved foodservice worker card shall be prohibited from working with food, equipment, utensils, linens or single service items in a foodservice establishment until such time that he or she obtains an approved foodservice worker card.

3.3 It shall be the duty and responsibility of the permit holder or operator of a foodservice establishment to ensure that all foodservice workers employed by the foodservice establishment possess an approved foodservice worker card.

3.4 The permit holder or operator of a foodservice establishment shall keep a copy of all foodservice workers cards for foodservice workers employed by the foodservice establishment. Upon request by the Health Officer or his/her duly authorized representative, the permit holder or operator shall provide access to the foodservice worker cards to verify that each foodservice worker working in the foodservice establishment has an approved foodservice worker card.

3.5 Foodservice worker cards shall not be transferable or assignable.

3.6 Whenever the Health Officer or his/her duly authorized representative makes an inspection of a foodservice establishment and discovers that the provisions of these regulations have been violated, he/she shall notify the operator of such violations by means of an inspection report or other written notice. Any foodservice worker found without an approved foodservice worker card shall be limited to duties not involving food, equipment, utensils, linens and single service items.

3.7 The permit holder or operator of a foodservice establishment found in violation of this rule shall be given a period not to exceed thirty-days (30) to correct said violations. The Health Officer or his/her duly authorized representative shall suspend the permit to operate a foodservice establishment of all permit holders or operators failing to make corrections within the given period. The permit shall not be reinstated until such time that the permit holder or operator has shown that all employees working with food, equipment, utensils, linens and single service items have obtained approved foodservice workers cards or are no longer working in the foodservice establishment.

3.8 Any permit holder or operator whose permit has been suspended as a result of violation of this rule may petition and shall be granted an Administrative Hearing on the matter within ten (10) days after the Health Officer or his/her duly authorized representative has received a written petition for such hearing.

3.9 The filing of a petition for an Administrative Hearing on a permit suspension shall not stay or suspend the execution of the notice or order resulting in such permit suspension.

3.10 Administrative Hearings provided for in these regulations shall be conducted by the Health Officer and/or his/ her designee at a time and place designated by him/her.

3.11 Food service establishments shall post approved inspection reports of routine inspections conducted by the Health Officer and/or his/her duly authorized representative in a location conspicuous to the consumer.