

A Regulation Providing Food Safety Training in Hampshire County

Sec. 1000. Title

This article shall be known as the Hampshire County Food Manager Safety Training Regulation of 2009.

Sec. 1001. Findings and Purpose

The US Public Health Service, Food and Drug Administration 2005 FOOD CODE as adopted by WV 64 CSR 17 on April 2, 2008 requires:

(A) RESPONSIBILITY 2-101.11 Designation of a person in charge (PIC) during all hours of operations ensures the continuous presence of someone who is responsible for monitoring and managing all food establishment operations and who is authorized to take actions to ensure that the Code's objectives are fulfilled.

(B) KNOWLEDGE 2-102.11 The PIC who is knowledgeable about foodborne disease prevention, Hazard Analysis and Critical Control Points (HACCP) principles, and code requirements is prepared to recognize conditions that may contribute to foodborne illness or that otherwise fail to comply with Code requirements, and to take appropriate preventive and corrective actions.

(C) DEMONSTRATION 2-102.20 Food Protection Manager Certification. A PIC who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certifications Programs is deemed to comply with 2-102.11(B). The American National Standards Institute (ANSI) has independently evaluated these certification programs under an agreement with the Conference for Food Protection. ANSI accredited certifiers are listed at www.ansi.org

(D) ServSafe The ServSafe Food Protection Manager Certification available from the National Restaurant Association Educational Foundation is an example of an ANSI Accredited (#0655) program.

In attempting to minimize the possibility of foodborne illness in the general public, the regulations of Boards of Health address a serious public health issue which is widely recognized.... Based upon the foregoing observations, we find that a properly certified food service manager(s) shall be on site at any Food Establishment during all operational hours of any facility providing food for public consumption. Local boards of health that place requirements on food service manager certification are consistent with the findings of the Legislature, and fall within the bounds of authority granted by the Legislature to such boards.

WV State Code §16-2-11. Local board of health; powers and duties.

Each local board of health created, established and operated pursuant to the provisions of this article may adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia state department of health and

human resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records.

Sec. 1002. Definitions

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

A. ***Accredited program*** means a food protection manager certification program that has been evaluated and approved ANSI under an agreement with the conference for Food Protection.

B. ***Approved*** means acceptable to the Regulatory Authority based on a determination of conformity with principles, practices and generally recognized standards that protect public health.

C. ***"Business"*** means any sole proprietorship, partnership, joint venture, corporation, non profit or other business entity making food available to the public either for a fee or free of charge, including any establishments where food is prepared, sold or given away.

B. ***"Employee"*** means the permit holder, person in charge, food employee, 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 food establishment.

C. ***"Employer"*** means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

D. ***FDA*** means the US Food and Drug Administration

E. ***Food Establishment*** means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption. This includes an operation that offers cooking demonstrations or instruction, with or without student participation, and the food is then consumed on or off premises. Food Establishment does ***not*** include a kitchen in a family child care facility, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a kitchen in a private home where foods are not offered to the public, a bed and breakfast operation that prepares and offers food to guests if the home is owner occupied and the number of available guest bedrooms does not exceed 6.

F. ***Family Child Care Facility*** means any facility which is used to provide nonresidential child care services for compensation for seven to twelve children, including children who are living in the house hold who are under six years of age. No more than four of the total number of children may be under twenty four months of age. A facility may be in a providers residence or a separate building.

G. **Regulatory Authority** means the Hampshire County Health Department, Hampshire County Board of Health, Health Officer or authorized designee.

Sec. 1003. Application of Article to County-Owned Facilities

All facilities including buildings owned by Hampshire County or any agency that receives any monetary support from Hampshire County shall be subject to the provisions of this regulation.

Sec. 1004. Posting of Certification

Current Accredited Program Certification must be conspicuously posted for the PIC employee.

Sec. 1005. Enforcement

- A. Enforcement of this article shall be implemented by the Hampshire County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a food service permit in the County of Hampshire.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Hampshire County Health Department.
- D. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this regulation.
- E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

Sec. 1006. Violations and Penalties

Willful violation of this Regulation is an unlawful act.

Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they knowingly operate on a premises subject to their control without a certified PIC on site without prior approval of the regulatory authority.

Penalties:

Persons violating this regulation will be notified in writing on a form prescribed by the regulatory authority. A first offence shall be corrected within 30 days of notice. A second offence shall require surrender of permit to operate. The regulatory authority may, at its option, seek civil relief and/or file a misdemeanor complaint under W.VA. Code 16-2-15 against any person who willfully violates this regulation. Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.

Any person who willfully violates this regulation, may be charged with a misdemeanor under W.Va. Code 16-2-15 and, upon conviction, be subject to a monetary fine. At the time of the adoption of this Regulation, West Virginia Code 16-2-15 provided as follows.

Chapter 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.

Sec. 1007. Public Education

The Hampshire County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with it.

Sec. 1008. Severability

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Sec. 1009. Effective Date

This regulation shall become effective _____.