

8-101.10 Public Health Protection.

- (A) The regulatory authority shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.
- (B) In enforcing the provisions of this Code, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this Code based on the following considerations:
 - (1) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
 - (2) Whether food-contact surfaces comply with Subpart 4-101;
 - (3) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 4-301.11; and
 - (4) The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under ¶ 8-304.11(G) or upgraded or replaced as specified under ¶ 8-304.11(H).
- (C) Plans submitted shall be reviewed and commented on by a sanitarian registered in accordance with ORS 700.

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

- (A) If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law.
- (B) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

8-103.10 Modifications and Waivers.

The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment.

8-103.11 Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this Code is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

- (A) A statement of the proposed variance of the Code requirement citing relevant Code section numbers;
- (B) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; and
- (C) A HACCP plan if required as specified under ¶ 8-201.13(A) that includes the information specified under § 8-201.14 as it is relevant to the variance requested.

8-103.12 Conformance with Approved Procedures.*

If the regulatory authority grants a variance as specified in § 8-103.10, or a HACCP plan is otherwise required as specified under § 8-201.13, the permit holder shall:

- (A) Comply with the HACCP plans and procedures that are submitted as specified under § 8-201.14 and approved as a basis for the modification or waiver; and
- (B) Maintain and provide to the regulatory authority, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed:
 - (1) Procedures for monitoring critical control points,
 - (2) Monitoring of the critical control points,
 - (3) Verification of the effectiveness of an operation or process, and
 - (4) Necessary corrective actions if there is failure at a critical control point.

8-201.11 When Plans Are Required.

A permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

- (A) The construction of a food establishment;
- (B) The conversion of an existing structure for use as a food establishment; or
- (C) The remodeling of a food establishment or a change of type of food establishment or food operation, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this Code.

8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under § 8-201.13, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Code provisions:

- (A) Intended menu;
- (B) Anticipated volume of food to be stored, prepared, and sold or served;
- (C) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (D) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
- (F) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

8-201.13 When a HACCP Plan is Required.

- (A) Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under § 8-201.14 and the relevant provisions of this Code if:
 - (1) Submission of a HACCP plan is required according to law;
 - (2) A variance is required as specified under § 3-502.11; or
 - (3) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under § 8-201.12, an inspectional finding, or a variance request.
- (B) A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under § 3-502.12.

8-201.14 Contents of a HACCP Plan.

For a food establishment that is required under § 8-201.13 to have a HACCP plan, the plan and specifications shall indicate:

- (A) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
- (B) A flow diagram by specific food or category type identifying critical control points and providing information on the following:
 - (1) Ingredients, materials, and equipment used in the preparation of that food, and
 - (2) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
- (C) Food employee and supervisory training plan that addresses the food safety issues of concern;
- (D) A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - (1) Each critical control point,
 - (2) The critical limits for each critical control point,

- (3) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,
 - (4) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,
 - (5) Action to be taken by the person in charge if the critical limits for each critical control point are not met, and
 - (6) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
- (E) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

8-202.10 Trade Secrets.

The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

8-203.10 Preoperational Inspections.

The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with law and this Code.

8-301.11 Prerequisite for Operation.

A person may not operate a food establishment without a valid permit to operate issued by the regulatory authority.

8-302.11 [INTENTIONALLY LEFT BLANK]

8-302.12 Form of Submission.

A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

8-302.13 Qualifications and Responsibilities of Applicants.

To qualify for a permit, an applicant shall:

- (A) Be an owner of the food establishment or an officer of the legal ownership;
- (B) Comply with the requirements of this Code; and
- (C) [INTENTIONALLY LEFT BLANK]
- (D) Pay the applicable permit fees at the time the application is submitted.

8-302.14 [INTENTIONALLY LEFT BLANK]

8-303.10 New, Converted, or Remodeled Establishments

For food establishments that are required to submit plans as specified under § 8-201.11 the regulatory authority shall issue a permit to the applicant after:

- (A) A properly completed application is submitted;
- (B) The required fee is submitted;
- (C) The required plans, specifications, and information are reviewed and approved; and
- (D) A preoperational inspection as specified in § 8-203.10 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.

8-303.20 [INTENTIONALLY LEFT BLANK]

8-303.30 Denial of Application for Permit, Notice.

If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- (A) The specific reasons and Code citations for the permit denial;
- (B) The actions, if any, that the applicant must take to qualify for a permit; and

- (C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS 183.

8-304.10 Responsibilities of the Regulatory Authority.

- (A) At the time a permit is first issued, the regulatory authority shall provide to the permit holder a copy of this Code so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under § 8-304.11, that are applicable to the permit.
- (B) Failure to provide the information specified in ¶ (A) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this Code or an order, warning, or directive of the regulatory authority.

8-304.11 Responsibilities of the Permit Holder.

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

- (A) Post the permit in a location in the food establishment that is conspicuous to consumers;
- (B) Comply with the provisions of this Code including the conditions of a granted variance as specified under § 8-103.12, and approved plans as specified under § 8-201.12;
- (C) If a food establishment is required under § 8-201.13 to operate under a HACCP plan, comply with the plan as specified under § 8-103.12;
- (D) Immediately contact the regulatory authority to report an illness of an employee as specified under § 2-201.15;
- (E) [INTENTIONALLY LEFT BLANK]
- (F) [INTENTIONALLY LEFT BLANK]
- (G) Except as specified under ¶ (H) of this section, replace existing facilities and equipment specified in § 8-101.10 with facilities and equipment that comply with this Code if:
 - (1) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
 - (2) The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of 12 consecutive months, or
 - (3) The facilities and equipment are replaced in the normal course of operation;
- (H) Upgrade or replace refrigeration equipment if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, or by no later than the time specified under ¶ 3-501.16(C)(2);
- (I) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
- (J) Accept notices issued and served by the regulatory authority as may be authorized under ORS 183, ORS 616, ORS 625, and ORS 619.; and
- (K) [INTENTIONALLY LEFT BLANK]

8-304.20 [INTENTIONALLY LEFT BLANK].

8-501.10 Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

- (A) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
- (B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit.

Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:

- (A) Restricting the food employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;
- (B) Excluding the food employee from a food establishment; or
- (C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS 616.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

- (A) States the reasons for the restriction or exclusion that is ordered;
- (B) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS 183; and
- (D) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

8-501.40 Release of Food Employee from Restriction or Exclusion.

The regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:

- (A) A food employee who was infected with **Salmonella Typhi** if the food employee's stools are negative for **S. Typhi** based on testing of at least 3 consecutive stool specimen cultures that are taken:
 - (1) Not earlier than 1 month after onset,
 - (2) At least 48 hours after discontinuance of antibiotics, and
 - (3) At least 24 hours apart; and
- (B) If one of the cultures taken as specified in ¶ (A) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.
- (C) A food employee who was infected with **Shigella** spp. or **Escherichia coli** O157:H7 if the employee's stools are negative for **Shigella** spp. or **E. coli** O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:
 - (1) Not earlier than 48 hours after discontinuance of antibiotics; and
 - (2) At least 24 hours apart.
- (D) A food employee who was infected with hepatitis A virus if:
 - (1) Symptoms cease; or
 - (2) At least 2 blood tests show falling liver enzymes.