

# Chapter 8

## Compliance and Enforcement

### Parts

- 8-1 Regulatory Applicability
- 8-2 Permit to Operate
- 8-3 Inspection and Correction of Violations
- 8-4 Prevention of Food Borne Disease Transmission by Employees
- 8-5 Service of Notice and Severability

### 8-1 Regulatory Applicability

- Subparts 8-101 Preventing Health Hazards
- 8-102 Records

#### 8-101 Preventing Health HAZARDS

##### 8-101.11 Provision for Conditions Not Addressed in these Regulations

- (A) The HEALTH AUTHORITY shall address conditions when necessary to protect public health and may impose specific requirements in addition to the requirements specified in these Regulations, and as authorized by *NRS 439.410*.
- (B) The HEALTH 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 HEALTH AUTHORITY's file for the FOOD ESTABLISHMENT.

#### 8-102 Records

##### 8-102.11 Permission to Examine Records

The HEALTH AUTHORITY shall be allowed to examine and obtain pertinent information concerning FOOD and supplies purchased, received or used, pest control records, and PERSONS employed as specified in *NRS 446.890*, and any other record deemed necessary by the HEALTH AUTHORITY.

##### 8-102.12 Access Allowed at Reasonable Times

After the HEALTH AUTHORITY presents official credentials and states the intention to conduct an inspection, the PERSON IN CHARGE shall allow the HEALTH AUTHORITY access to the facility during the FOOD ESTABLISHMENT's hours of operation and other reasonable times, to determine if the FOOD ESTABLISHMENT is in compliance with these Regulations. The inspection process includes, but is not limited to, the taking of photographs pertinent to the inspection, and the review of information and records as specified in these Regulations to which the HEALTH AUTHORITY is entitled according to *NRS 446.890*.

##### 8-102.13 Refusal, Notification of Right to Access, and Final Request for Access

If a PERSON denies access to the HEALTH AUTHORITY, the HEALTH AUTHORITY shall:

- (A) Inform the PERSON that:
  - (1) The PERMIT HOLDER is required to allow access to the HEALTH AUTHORITY as specified in Paragraph 8-204.12 (G) of this Chapter.
  - (2) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT health PERMIT to operate.
  - (3) If access is denied, contact with the local enforcement agency will be made in accordance with *NRS 446.940-945* to assist with entrance into the facility.

##### 8-102.14 Refusal, Reporting

If the PERSON IN CHARGE continues to refuse access after the HEALTH AUTHORITY has presented credentials, provided notice as specified in Paragraph 8-102.12 of this Section, explained the authority upon which access is requested, and makes a final request for access, the HEALTH AUTHORITY shall provide details of the denial of access on an inspection report form.

##### 8-102.15 Intimidation of a Public Officer

As specified in *NRS 199.300*, it is unLAWful for any PERSON to directly or indirectly intimidate a public officer.

## **8-2 Permit to Operate**

### **Subparts**

- 8-201 Prerequisite for Operation**
- 8-202 Health Permit Application, Submission, Conditions, and Contents**
- 8-203 New, Converted, or Remodeled Establishments**
- 8-204 Responsibilities**
- 8-205 Enforcement**
- 8-206 Shared Facilities**
- 8-207 Compliance Schedule**
- 8-208 Equipment Defects**

### **8-201 Prerequisite for Operation**

#### **8-201.11 PERMIT Requirements**

A PERSON shall not operate a FOOD ESTABLISHMENT without a valid health PERMIT issued by the HEALTH AUTHORITY, except when an exemption is granted by the HEALTH AUTHORITY as specified in *NRS 446.870*.

### **8-202 Health PERMIT Application, Submission, Conditions, and Contents**

#### **8-202.11 Application and Submission**

A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the HEALTH AUTHORITY a written application for a health PERMIT on a form provided by the HEALTH AUTHORITY. The application shall be submitted prior the opening date or to the date of a change of ownership.

#### **8-202.12 Conditions**

To qualify for a health PERMIT, an applicant shall:

- (A) Be an owner, prospective owner, owner designee, or an officer of the legal ownership of the FOOD ESTABLISHMENT.
- (B) Comply with the requirements of these Regulations.
- (C) Agree to allow access to the FOOD ESTABLISHMENT and to provide required information, as specified in *NRS 446.890*.
- (D) Pay the applicable health PERMIT fees at the time the application is submitted.

#### **8-202.13 Contents of the Application**

The application shall include:

- (A) The name, mailing address, telephone number, and signature of the PERSON applying for the health PERMIT, and the name, mailing address, and location of the FOOD ESTABLISHMENT. If an application is made by a corporation, an LLC, or partnership, the names of the members or officers and signature of at least one member or officer, the corporate phone number, and address shall be provided.
- (B) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity.
- (C) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT.
- (D) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified in Paragraph (C) of this Section including but not limited to the zone, district, or regional supervisor.
- (E) The physical location of the FOOD ESTABLISHMENT, including but not limited to street address, proof of ownership, Grant Bargain Sale Deed, lease agreement, or other legal document that establishes the standing of the applicant with respect to the property.
- (F) The names, titles, and business addresses of:
  - (1) The PERSON's comprising the legal ownership as specified in Paragraph (B) of this Section, including the owners, managing members, and officers.
  - (2) The local authorized applicant, if one is required, based on the type of legal ownership. Authorization shall be in writing and shall be signed by the owner or corporate officer, managing member, or other authorized PERSON.
- (G) A statement signed by the applicant that:
  - (1) Attests to the accuracy of the information provided in the application.
  - (2) Affirms that the applicant will:
    - (a) Comply with these Regulations.
    - (b) Allow the HEALTH AUTHORITY access to the establishment as specified in Paragraph 8-102.12 of this Chapter, and to any records needed to establish compliance with these Regulations.

- (H) A statement signed by the applicant declaring exempt or non-exempt status of the facility as specified in the *Nevada Clean Indoor Air Act, NRS 202.2483*. Facilities declaring exempt status shall also provide documentation verifying exempt status, including but not limited to a non-RESTRICTED gaming license, a retail tobacco store license, or any other exemption as specified in *NRS 202.2483, Subsection 3*.
- (I) Other information as required by the HEALTH AUTHORITY.

### **8-203 New, Converted, or Remodeled Establishments**

#### **8-203.11 Approval Process**

For FOOD ESTABLISHMENTS required to submit plans as specified in Chapter 4-101.11 of these Regulations, the HEALTH AUTHORITY shall issue a health PERMIT to the applicant after:

- (A) A properly completed application is submitted. The application form is available on SNHD's Website.
- (B) The required fees are paid.
- (C) The required plans, specifications, and information have been reviewed and APPROVED.
- (D) A pre-operational inspection as specified in Chapter 4-102.11 of these Regulations showing that the ESTABLISHMENT is built or remodeled in accordance with the APPROVED plans and specifications, and that the ESTABLISHMENT is in compliance with these Regulations.

#### **8-203.12 Change of Ownership of an Existing Establishment**

An existing FOOD ESTABLISHMENT, at the time of change of ownership, shall meet the following requirements prior to issuance of a health PERMIT:

- (A) The HEALTH AUTHORITY may issue a health PERMIT to a new owner of an existing FOOD ESTABLISHMENT after a properly completed application is submitted, reviewed, APPROVED, fees are paid, and an inspection resulting in 10 DEMERITS or less of CRITICAL or MAJOR VIOLATIONS showing that the establishment is in substantial compliance with these Regulations.
- (B) The HEALTH AUTHORITY may require replacement of existing facilities and EQUIPMENT that are no longer serviceable, with facilities and EQUIPMENT that comply with these Regulations as specified in Paragraph 8-204.12 (H) of this Chapter.
- (C) Facilities receiving more than 10 DEMERITS of violations shall be closed until applicable fees are paid, and a reinspection is conducted resulting in a total of 10 DEMERITS or less of violations, with no identical CRITICAL or MAJOR VIOLATIONS remaining.

#### **8-203.13 Denial of Application for PERMIT, Notice**

If an application for a health PERMIT to operate is denied, the HEALTH AUTHORITY shall provide the applicant with a notice which includes:

- (A) The specific reasons and regulation citations for denial of the health PERMIT.
- (B) The actions the applicant must take to qualify for a health PERMIT.
- (C) Advisement of the applicant's right of appeal and the process and time frames for appeal as specified in *NAC 439.346*.

### **8-204 Responsibilities**

#### **8-204.11 Responsibilities of the HEALTH AUTHORITY**

The responsibilities of the HEALTH AUTHORITY include;

- (A) At the time a health PERMIT is first issued, the HEALTH AUTHORITY shall inform the PERMIT HOLDER where a copy of these Regulations may be obtained, and that the PERMIT HOLDER is responsible for compliance with these Regulations.
- (B) Failure to provide the above information does not prevent the HEALTH AUTHORITY from taking authorized action, or seeking remedies, if the PERMIT HOLDER fails to comply with these Regulations or an order, warning, or directive of the HEALTH AUTHORITY.

#### **8-204.12 Responsibilities of the PERMIT HOLDER**

Upon acceptance of the health PERMIT issued by the HEALTH AUTHORITY, the PERMIT HOLDER, in order to retain the health PERMIT shall:

- (A) Post the health PERMIT and grade card in a location in the FOOD ESTABLISHMENT that is clearly conspicuous to the CONSUMER upon entering the FOOD ESTABLISHMENT.
- (B) Understand that removal or obscuring of the grade card by individuals, other than the HEALTH AUTHORITY, may result in suspension of the health PERMIT.
- (C) Ensure that all facilities which sell alcoholic BEVERAGES for consumption on PREMISES, shall post health warnings for drinking during pregnancy as specified in *NRS 446.842*.
- (D) Comply with the provisions of these Regulations including the conditions of a granted VARIANCE, APPROVED WAIVER, or required HACCP PLAN, and APPROVED plans as specified in Chapter 4-101.11 and Chapter 4-101.14 of these Regulations.

- (E) Immediately contact the HEALTH AUTHORITY to report an illness of a FOOD HANDLER as specified in Chapter 2-201.11 of these Regulations.
- (F) Immediately discontinue operations and notify the HEALTH AUTHORITY if an IMMINENT HEALTH HAZARD does or may exist as specified in Section 8-304.11 of this Chapter.
- (G) Allow representatives of the HEALTH AUTHORITY access to the FOOD ESTABLISHMENT as specified in *NRS 446.890*.
- (H) Replace facilities and EQUIPMENT, which are no longer serviceable, with facilities and EQUIPMENT that comply with these Regulations if:
  - (1) The HEALTH AUTHORITY directs replacement because the existing facilities and EQUIPMENT constitute a public HEALTH HAZARD, or because they no longer comply with the criteria, upon which the facilities and EQUIPMENT were accepted.
  - (2) The HEALTH AUTHORITY directs the replacement of the facilities and EQUIPMENT at a change of ownership.
  - (3) The facilities and/or EQUIPMENT have exceeded their useful service life and should be replaced in the normal course of operation.
- (I) Comply with the requirements of *NRS 202.2483, the Nevada Clean Indoor Air Act*.
- (J) Comply with directives of the HEALTH AUTHORITY, including but not limited to time frames for corrective actions specified in inspection reports, supervisory conferences, compliance schedules, notices, orders, warnings, and other directives issued by the HEALTH AUTHORITY concerning the PERMIT HOLDER's FOOD ESTABLISHMENT or in response to community emergencies.
- (K) Comply with all applicable federal, state and local governmental requirements as related to the operation of a FOOD ESTABLISHMENT. The responsibility of upholding these requirements falls solely on the PERMIT HOLDER, and failure to do so may result in health PERMIT suspension or revocation.
- (K) Accept notices issued and served by the HEALTH AUTHORITY.
- (L) Be subject to the administrative, civil, injunctive, and criminal remedies as specified in *NRS 446.940-945*, for failure to comply with these Regulations or with a directive of the HEALTH AUTHORITY, including but not limited to time frames for corrective actions specified in inspection reports, supervisory conferences, compliance schedules, notices, orders, warnings, and other directives.

**8-204.13 PERMIT Modifications**

Proposed modifications in the type of operations to be conducted by a FOOD ESTABLISHMENT, whether still at the health PERMIT application step or after a health PERMIT has been granted, shall not be allowed unless APPROVED by Plan Review. The modification process may include, but not be limited to, a construction application, complete with plans and information describing the proposed modifications in design, EQUIPMENT, and operations. Menu changes only, if they are shown to have no impact on EQUIPMENT, may not require a new Plan Review construction application.

**8-204.14 PERMIT Transfer Prohibited**

A health PERMIT may not be transferred from one PERSON to another, from one FOOD ESTABLISHMENT to another, or from one location to another.

**8-205 Enforcement**

**8-205.11 ACTIVE MANAGERIAL CONTROL**

A PERMIT HOLDER shall ensure ACTIVE MANAGERIAL CONTROL of the facility by meeting the requirements of Chapter 2-102.11 (A), (B), or (C) of these Regulations.

- (A) Facilities with a history of multiple DOWNGRADES within a year may be required to provide a certified FOOD protection manager during all hours of operation.
- (B) Facilities with a certified FOOD protection manager, and a history of frequent DOWNGRADES and/or closures, may be referred to the HEARING OFFICER for possible suspension of PERMIT.

**8-206 Shared Facilities**

**8-206.11 Violations**

A violation of any provision of these Regulations, relating to facilities held in common or shared by more than one PERMIT HOLDER, shall be deemed a violation for each health PERMIT, unless separate distinct and designated areas exist.

**8-207 Compliance Schedule**

**8-207.11 Violations**

The HEALTH AUTHORITY shall document observed violations, require corrective action dates, and may issue a compliance schedule as follows:

- (A) The elements of a compliance schedule may include, but are not limited to, necessary training, pest control, structural modifications, EQUIPMENT upgrades, and/or temperature logs, WARE WASHING machine SANITIZATION, and/or cleaning logs.
- (B) Facilities placed on a compliance schedule by the HEALTH AUTHORITY may be closed if corrective action dates or elements of a compliance schedule are not met. If closed, facilities shall remain closed until all compliance issues are resolved, applicable fees are paid, and a reopening inspection shows that the establishment has met the compliance schedule and achieves a score of 10 DEMERITS or less of CRITICAL or MAJOR VIOLATIONS. Guidance documents are provided in Appendices G-1 and G-2.

**8-208 EQUIPMENT Defects**

**8-208.11 EQUIPMENT Taken Out of Service**

EQUIPMENT that constitutes a public HEALTH HAZARD shall be red-tagged by the HEALTH AUTHORITY and required to be taken out of service. The EQUIPMENT shall not be placed back in service until APPROVED by the HEALTH AUTHORITY. If placed back in service without HEALTH AUTHORITY approval, the facility will be DOWNGRADED to the next lower grade and applicable fees assessed.

**8-3 Inspection and Correction of Violations**

**Subparts**

**8-301 Inspection Interval**

**8-302 Inspection Report**

**8-303 Food Establishment Grades**

**8-304 Imminent Health Hazard**

**8-305 Unsafe Food**

**8-306 Permit Suspension and Reinstatement**

**8-301 Inspection Interval**

**8-301.11 Establishing Inspection Interval**

- (A) The HEALTH AUTHORITY shall inspect a PERMITTED FOOD ESTABLISHMENT at least once a year as required by *NRS 446.885*, or as often as necessary to ensure compliance with these Regulations.
- (B) Facilities DOWNGRADED to a “B” or “C” shall be reinspected to ensure correction of violations. Applicable fees shall be paid within 10 business days. Reinspection shall be conducted after 15 business days, as determined by the inspector, or may be scheduled sooner at the request of the operator. If the operator requests an inspection prior to 15 business days, applicable fees shall be paid prior to the reinspection.

**8-302 Inspection Report**

**8-302.11 Documenting Information and Observations**

The HEALTH AUTHORITY shall document on an inspection report form:

- (A) Administrative information about the FOOD ESTABLISHMENT's legal identity, street and mailing addresses, type of establishment, inspection date, and other information including but not limited to type of water supply and SEWAGE disposal, status of the health PERMIT, grade of the facility, and management certifications that may be required.
- (B) Specific factual observations of violations, or other deviations from these Regulations, which require correction by the PERMIT HOLDER include, but are not limited to:
  - (1) Failure of the PERSON IN CHARGE to demonstrate knowledge of FOOD BORNE ILLNESS prevention, application of HACCP principles, and the requirements specified in Chapter 2-102.11 of these Regulations.
  - (2) Failure of FOOD HANDLERS and the PERSON IN CHARGE to demonstrate their knowledge of their responsibility to report a symptom of a FOOD BORNE ILLNESS as specified in Chapter 2-201.11 of these Regulations.
  - (3) Non-conformance with CRITICAL OR MAJOR VIOLATIONS of these Regulations.
  - (4) Failure of the appropriate FOOD HANDLERS to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the HEALTH AUTHORITY due to an APPROVED VARIANCE or WAIVER.
  - (5) Failure of the PERSON IN CHARGE to provide records required by the HEALTH AUTHORITY for determining conformance with a HACCP PLAN.
  - (6) Non-conformance with CRITICAL LIMITS of a HACCP PLAN.
  - (7) Non-conformance with non-CRITICAL VIOLATIONS of these Regulations.

**8-302.12 Specifying Time Frames for Corrections**

The HEALTH AUTHORITY shall specify, on the inspection report form, the time frame for correction of the violations as follows:

- (A) To immediately cease and desist an operation if an IMMEDIATE HEALTH HAZARD exists.
- (B) After DEMERITS are recorded a PERMIT HOLDER may at the time of inspection, correct a CRITICAL or MAJOR VIOLATION of these Regulations.
- (C) Considering the nature of the potential HAZARD of the CRITICAL or MAJOR VIOLATION involved, and the complexity of the corrective action needed, the HEALTH AUTHORITY may agree to or specify a longer time frame, not to exceed 15 business days after the inspection, for the PERMIT HOLDER to correct CRITICAL or MAJOR VIOLATIONS. Depending on the violation, the HEALTH AUTHORITY may impose additional RESTRICTIONS on the facility for the allotted time frame.
- (D) The PERMIT HOLDER shall correct non-CRITICAL VIOLATIONS by the next inspection or within a time specified under the compliance schedule.

#### **8-302.13 Issuing Report and Obtaining Acknowledgment of Receipt**

At the conclusion of the inspection:

- (A) The HEALTH AUTHORITY shall provide **the original** of the completed inspection report, and the notice to correct violations, to the PERMIT HOLDER or to the PERSON IN CHARGE.
- (B) Request a signed acknowledgement of receipt on the voucher.
- (C) Post the appropriate grade, based upon the inspection findings and the condition of the facility, at the time of inspection.
- (D) 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 AUTHORITY within the period established at the time of notice of correction.

#### **8-302.14 Refusal to Sign Acknowledgment**

The HEALTH AUTHORITY shall:

- (A) Inform a PERSON who declines to sign an acknowledgment of receipt of inspection findings as specified in Paragraph 8-302.13 of this Chapter that:
  - (1) An acknowledgment of receipt does not constitute an agreement with findings.
  - (2) Refusal to sign an acknowledgment of receipt will not nullify the PERMIT HOLDER's obligation to correct the violations noted in the inspection report within the time frames specified.
  - (3) A refusal to sign an acknowledgment of receipt shall be documented on the voucher and placed in the HEALTH AUTHORITY's historical file for the FOOD ESTABLISHMENT.
- (B) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspection findings.
- (C) Provide the original of the unsigned inspection voucher to the PERSON IN CHARGE.

#### **8-302.15 Public Information**

The HEALTH AUTHORITY shall treat the inspection report as a public document and shall make it available for DISCLOSURE to a PERSON who requests it as provided in State statute or regulation.

#### **8-302.16 Verification and Documentation of Correction of CRITICAL VIOLATIONS**

The HEALTH AUTHORITY shall:

- (A) After observing at the time of inspection a correction of a CRITICAL or MAJOR VIOLATION or HACCP PLAN deviation, enter the violation and information about the corrective action on the inspection report.
- (B) As specified in Paragraph 8-302.11 of this Chapter, after receiving notification that the PERMIT HOLDER has corrected a CRITICAL or MAJOR VIOLATION, or corrected a deviation from their APPROVED HACCP PLAN, the HEALTH AUTHORITY shall verify the correction of the violation, document the information on an inspection report, and enter the report in the HEALTH AUTHORITY's records.

### **8-303 FOOD ESTABLISHMENT Grades**

#### **8-303.11 Grades**

Except for those PERMIT categories that are on a Pass/Fail, or a non-DEMERIT PERMIT APPROVED/PERMIT not APPROVED, system every FOOD ESTABLISHMENT in the HEALTH AUTHORITY's jurisdiction shall post the health PERMIT and grade card, stating the grade received at the time of the most recent inspection, in an area that is clearly conspicuous to the CONSUMER upon entering the FOOD ESTABLISHMENT.

- (A) FOOD ESTABLISHMENT grades shall be determined as follows:
  - (1) "A" Grade; an ESTABLISHMENT having a DEMERIT score of not more than 10.
  - (2) "B" Grade; an ESTABLISHMENT having a DEMERIT score of more than 10 but not more than 20.
  - (3) "C" Grade; an ESTABLISHMENT having a DEMERIT score of more than 20 but not more than 40.
- (B) If the score of the establishment is more than 40 DEMERITS, the health PERMIT shall be suspended immediately. The establishment shall remain closed until the operator has corrected the violations, paid

any applicable fees, and an inspection is conducted that results in a score of 10 or less DEMERITS with no identical CRITICAL or MAJOR VIOLATION remaining.

- (C) If upon reinspection of a “B” Grade the establishment is unable to achieve a score of 10 or less DEMERITS, with no identical repeat CRITICAL or MAJOR VIOLATIONS remaining, the establishment will be placed on a “C” Grade. A subsequent reinspection will be conducted as specified in Paragraph 8-301.11 (B) of this Chapter.
- (D) If upon reinspection of a “C” Grade the establishment is unable to achieve a DEMERIT score of 10 or less DEMERITS, with no identical repeat CRITICAL or MAJOR VIOLATION remaining, the establishment will be closed. The establishment shall remain closed until the operator has corrected the violations, paid applicable fees, and an inspection is conducted resulting in a score of 10 or less DEMERITS with no identical repeat CRITICAL or MAJOR VIOLATION remaining.
- (E) Notwithstanding the grade criteria of Paragraph 8-303.11 (A) of this Chapter, whenever an identical consecutive CRITICAL or MAJOR VIOLATION is documented, the establishment shall be DOWNGRADED to the next lower grade with a reinspection required and associated fee paid as specified in Paragraph 8-301.11 (B) of this Chapter.

### **8-304 IMMINENT HEALTH HAZARD**

#### **8-304.11 Ceasing Operations and Reporting**

- (A) Except as specified in Paragraph (B) of this Section, a PERMIT HOLDER shall immediately discontinue operations and notify the HEALTH AUTHORITY if an IMMINENT HEALTH HAZARD may exist because of an emergency, including but not limited to fire, flood, water service outage, interruption of power service for longer than two hours, lack of adequate refrigeration, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of a suspect FOOD BORNE ILLNESS outbreak, gross unsanitary occurrences or conditions, or other circumstance that may endanger public health.
- (B) A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.

#### **8-304.12 Resuming Operations**

If operations are discontinued as specified in Paragraph 8-304.11 of this Chapter, or as specified in *NAC 446.100*, the PERMIT HOLDER shall obtain approval from the HEALTH AUTHORITY before resuming operations. Prior to resuming operations, the operator shall ensure that the IMMINENT HEALTH HAZARD has been corrected and that all items listed in the “Checklist for Re-Opening Inspection after an IMMINENT HEALTH HAZARD,” are in service: A guidance document is provided in Appendix H.

- (A) Facilities documented by the HEALTH AUTHORITY, to be operating under conditions of an IMMINENT HEALTH HAZARD and that were issued an immediate CEASE AND DESIST ORDER, shall pay applicable fees and pass a reopening inspection, with 10 or less DEMERITS, and no identical repeat CRITICAL or MAJOR VIOLATIONS remaining.
- (B) Facilities that voluntarily ceased operation shall notify the HEALTH AUTHORITY when all items on the “Checklist for Re-Opening Inspection after an IMMINENT HEALTH HAZARD,” are in service and, as determined by the HEALTH AUTHORITY, may reopen. Depending on the IMMINENT HEALTH HAZARD the HEALTH AUTHORITY shall determine if a re-opening inspection is required.
- (C) Operators of facilities closed for excessive violations as specified in Section 8-303.11(B) of this Chapter, or with a history of non-compliance, including repeat CRITICAL or MAJOR VIOLATIONS, may be required to attend a supervisory conference prior to an inspection to reopen the facility taking place. Applicable fees shall be paid prior to a reopening inspection.

### **8-305 Unsafe FOOD**

#### **8-305.11 Examination and Condemnation of FOOD**

- (A) As specified in *NRS 585.360* whenever the Commissioner or any of his authorized agents shall find in any room, building or other structure, or VEHICLE of transportation, any MEAT, seafood, POULTRY, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner or his authorized agents shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human FOOD.
- (B) As specified in *NRS 446.920*:
  - (1) FOOD may be examined or sampled by the HEALTH AUTHORITY as often as may be necessary to determine freedom from adulteration or misbranding. The HEALTH AUTHORITY may, upon written notice to the owner or PERSON IN CHARGE, place a hold order on any FOOD which is determined, or has probable cause to believe, to be unwholesome or otherwise ADULTERATED or MISBRANDED.

- (2) Under a hold order, FOOD shall be allowed 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 AUTHORITY. Neither such FOOD, nor the containers thereof, shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without approval of the HEALTH AUTHORITY, except by order of a court of competent jurisdiction.
- (3) The owner or PERSON IN CHARGE may make a written request for a hearing as specified in *NRS 446.895*. On the basis of evidence produced at such hearing, or on the basis of an examination, if a written request for a hearing is not received within 10 business days, the HEALTH AUTHORITY may vacate the hold order, issue a written order, or 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 these Regulations. Such order of the HEALTH AUTHORITY to denature or destroy such FOOD or bring it into compliance with the provisions of these Regulations shall be stayed if the order is appealed to a court of competent jurisdiction within three days.
- (4) When not on a hold order by the HEALTH AUTHORITY operators may voluntarily dispose of FOOD believed to be unwholesome or otherwise ADULTERATED or MISBRANDED.

### **8-306 PERMIT Suspension and Reinstatement**

#### **8-306.11 Suspension or Revocation of PERMIT, Reinstatement of Suspended PERMIT, Hearings**

PERMITS issued under the provisions of these Regulations may be suspended as specified in *NRS 446.880*.

- (A) Health PERMITS issued under the provisions of these Regulations may be suspended temporarily by the HEALTH AUTHORITY for failure of the PERMIT HOLDER to comply with the requirements of these Regulations.
- (B) Whenever a PERMIT HOLDER or operator has failed to comply with any notice issued under the provisions of these Regulations, the PERMIT HOLDER or operator shall be notified in writing that the PERMIT is, upon service of the notice, immediately suspended or that the establishment is DOWNGRADED. The notice shall contain a statement informing the PERMIT HOLDER or operator that an opportunity for a hearing will be provided if a written request for a hearing is filed with the HEALTH AUTHORITY as soon as possible.
- (C) Whenever the HEALTH AUTHORITY finds an unsanitary or other condition in the operation of a FOOD ESTABLISHMENT which, in its judgment, constitutes a substantial HAZARD to the public health, he may without warning, notice, or hearing issue a written order to the PERMIT HOLDER or operator citing the condition, specifying the corrective action to be taken, and specifying the time within which the action must be taken. The order may state that the PERMIT is immediately suspended and all FOOD operations shall be immediately discontinued. Any PERSON to whom such an order is issued shall comply with it immediately. Upon written petition to the HEALTH AUTHORITY, the PERSON shall be afforded a hearing as soon as possible.
- (D) Any PERSON whose PERMIT has been suspended may, at any time, make application for reinspection for reinstatement of the PERMIT. Within 10 business 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 has been corrected, the HEALTH AUTHORITY shall make a reinspection. If the applicant is complying with the requirements of these Regulations, the PERMIT shall be reinstated.
- (E) For serious or repeated violations of any of the requirements of these Regulations, or for interference with the HEALTH AUTHORITY in the performance of their duties, the PERMIT may be permanently revoked after an opportunity for a hearing has been provided by the HEALTH AUTHORITY. Before taking such an action the HEALTH AUTHORITY shall notify the PERMIT HOLDER, in writing, stating the reasons for which the PERMIT is subject to revocation and advising the PERMIT HOLDER of the requirements for filing a request for a hearing. A PERMIT may be suspended for cause pending its revocation or a hearing relative thereto.
- (F) Unless a request for a hearing is filed with the HEALTH AUTHORITY by the PERMIT HOLDER within five days, the HEALTH AUTHORITY may permanently revoke a PERMIT after five days following service of the notice.
- (G) The hearings provided for in this section shall be conducted at a time and place designated by the HEALTH AUTHORITY. Based upon the record of the hearing, the HEALTH AUTHORITY shall make a finding and may 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 AUTHORITY.

### **8-306.12 Post Revocation Action**

Once the health PERMIT has been revoked, as specified in Section 8-306.11 of this Chapter, the PERMIT operator is to discontinue all FOOD activity associated with the FOOD ESTABLISHMENT in question. Failure to do so may result in:

- (A) The HEALTH AUTHORITY requesting an injunction from the District Court of Jurisdiction, against continued operation by the previous PERMIT HOLDER.
- (B) The HEALTH AUTHORITY referring the non-compliance to the District Attorney of Jurisdiction for prosecution.
- (C) Once the timeframe for appeal has transpired any FOOD remaining at the location in question may be confiscated and destroyed by the HEALTH AUTHORITY as specified in Section 8-305.11 of this Chapter.

## **8-4 Prevention of Food Borne Disease Transmission by Employees**

### **Subparts**

#### **8-401 Investigation and Control**

### **8-401 Investigation and Control**

#### **8-401.11 Obtaining PERSONAL History of Illness, Medical Examination, and Specimen Analysis**

The HEALTH AUTHORITY shall act, as specified in *NAC 441A*, when it has reasonable cause to believe that a FOOD HANDLER may be infected with an illness 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. Actions may include those specified in *NAC 441A.530, Foodborne Disease Outbreak*, and as required for the particular diseased as specified in *NAC 441A*.

#### **8-401.12 RESTRICTION or Exclusion of FOOD HANDLER, or Summary Suspension of PERMIT**

Based on the findings of an investigation related to a FOOD HANDLER who is suspected of being infected as specified in Section 8-401.11 of this Chapter, the HEALTH AUTHORITY may issue an order to the suspected FOOD HANDLER or PERMIT HOLDER instituting one or more of the following control measures:

- (A) RESTRICTing the FOOD HANDLER.
- (B) Excluding the FOOD HANDLER.
- (C) Closing the FOOD ESTABLISHMENT by summarily suspending a PERMIT to operate in accordance with *NRS 446.935(2b)*.

#### **8-401.13 RESTRICTION or Exclusion Order, Warning or Hearing Not Required, Information Required in Order**

Based on the findings of the investigation as specified in Paragraph 8-401.11 of this Chapter, and to control disease transmission, the HEALTH AUTHORITY may issue an order of RESTRICTION or EXCLUSION to a suspected FOOD HANDLER or the PERMIT HOLDER without prior warning, notice of a hearing, or a hearing.

#### **8-401.14 Release of FOOD HANDLER from RESTRICTION or Exclusion**

The FOOD HANDLER shall remain RESTRICTed/EXCLUDED until released to return to work by the HEALTH AUTHORITY in accordance with *NAC 441A*.

## **8-5 Service of Notice and Severability**

### **Subparts**

#### **8-501 Service of Notice**

#### **8-502 Severability Clause**

### **8-501 Service of Notice**

#### **8-501.11 Delivery of Notice**

The HEALTH AUTHORITY shall properly serve notice by:

- (A) Delivering the notice to the PERMIT HOLDER of the FOOD ESTABLISHMENT.
- (B) Delivering the notice to the PERSON IN CHARGE of the FOOD ESTABLISHMENT.
- (C) Sending the notice by registered or certified mail, return receipt requested, to the last known address of the FOOD ESTABLISHMENT owner. The HEALTH AUTHORITY shall file a copy of the notice in the records of the HEALTH AUTHORITY.

#### **8-502 Severability Clause**

#### **8-502.11 Severability Clause**

Should any section, paragraph, sentence, clause, or phrase of these Regulations be declared unconstitutional or invalid for any reason the remainder of these Regulations shall not be affected thereby.