



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

1/13/2021 9:30:24 AM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Health TITLE-SERIES: 64-114

RULE TYPE: Legislative Amendment to Existing Rule: Yes

RULE NAME: PUBLIC HEALTH STANDARDS FOR
BUSINESSES REMAINING OPEN DURING THE
COVID-19 OUTBREAK

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

16-3-1, 16-1-4, and 29A-3-15

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 04/16/2020

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

04/21/20 and 05/15/20

PRIMARY CONTACT:

NAME: April L Robertson

ADDRESS: One Davis Square Suite 100 East

Charleston, WV 25301

EMAIL: april.l.robertson@wv.gov

PHONE NUMBER: 130-455-8914 9

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The agency agreed to modifications of this rule at the Legislative Rule-Making Review Committee meeting on 12/08/20 and this emergency amendment is being filed at the request of the LRMRC chairmen to make the active and proposed versions of the rule identical while it proceeds through the full legislative review during the 2021 regular session.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 114
PUBLIC HEALTH STANDARDS FOR BUSINESSES REMAINING OPEN
DURING THE COVID-19 OUTBREAK

§64-114-1. General.

1.1. Scope -- This emergency rule establishes uniform public health standards for businesses operating in the state during the declared state of emergency due to the COVID-19 pandemic, and the provisions of this emergency rule supersede any conflicting provisions of local board of health or other local governing body order related to the COVID-19 pandemic.

1.2. Authority -- W. Va. Code §16-3-1, §16-1-4, and §29A-3-15.

1.3. Filing Date --

1.4. Effective Date --

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

1.6. Applicability -- This rule applies to all businesses permitted to remain operational or open to the public by Executive Order of the Governor of the State of West Virginia. This rule does not apply to health care providers.

1.7. Enforcement -- this rule may be enforced by the Commissioner of the West Virginia Bureau for Public Health or by the Local Health Officer of the Local Board of Health for the jurisdiction in which the business operates.

§64-114-2. Definitions.

2.1. Business -- A business or operation conducted by private or public employer or entity, or both, including non-profit businesses or operations in West Virginia permitted to remain operational or open to the public by Executive Order of the Governor of the State of West Virginia during the state of emergency.

2.2. Commissioner -- The Commissioner of the Bureau for Public Health of the West Virginia Department of Health and Human Resources.

2.3. Customer floor space -- The amount of floor space open to the public by the business.

2.4. Local Health Officer -- The individual who fulfills the duties and responsibilities of the health officer for a local board of health, or his or her designee.

2.5. Public -- Persons not employees of the business.

2.6. Retail business -- Any business primarily engaged in retail sales.

§64-114-3. Essential Businesses and Operations.

3.1. Essential Businesses and Operations. As defined by Executive Order 9-20, or as amended by subsequent Executive Order, any business conducted by private or public employers or entities, or both, including non-profit businesses or operations in any county, shall direct their employees, contractors, and vendors to work from home, to the maximum extent possible, or to otherwise work remotely in order to limit the circumstances requiring their employees to leave home.

3.2. Public Health Standards for Businesses Remaining Open. Notwithstanding the provisions of paragraph 3.1., businesses open to the public must take the following minimum additional actions:

3.2.a. Implement a written plan to limit staff, contractors, and vendors to essential personnel;

3.2.b. Implement social distancing practices in the workplace where possible, including remaining at a minimum six-foot distance from other persons;

3.2.c. Supplying multiple, adequate disinfecting and hygienic supplies and dispensers to staff and other persons as needed, such as disinfecting wipes or spray, hand sanitizer, and soap and water consistent with the number of persons allowed to be on the premises as set forth herein;

3.2.d. For the protection of both employees and the public, encourage, to the greatest extent practicable, the wearing of cloth face coverings in accordance with current public health guidance while on the premises;

3.2.e. Provide protective barriers for employees exposed to the general public; and

3.2.f. Follow, to the greatest extent practicable, all applicable public health guidance issued by the appropriate state authority.

3.3. Public Access Restrictions. All businesses open to the public shall limit access to the general public as follows:

3.3.a. No more than two individual members of the public may enter a retail business per 1,000 square feet of customer floor space at any given time; businesses of less than 1,000 square feet of customer floor space shall not permit that space to be occupied by more than five persons, including employees, at any given time.

3.3.b. For retail businesses whose sales are comprised of at least 80 percent grocery food products or more, no more than three members of the public may enter a business per 1,000 square feet of customer floor space at any given time.

3.3.c. To ensure that the number of people per square foot requirements are not violated, each retail business shall track the number of people who enter and leave the business and control the capacity on a one-in, one-out basis after the maximum capacity required by this section has been reached.

3.3.d. All businesses shall take actions to establish appropriate social distancing measures for the public to the greatest extent possible, including but not limited to, marking areas a minimum of six feet apart at any area where persons are likely to stand or wait in line, creating one-way aisles, and any other restrictions which limit close contact with other people.

3.3.e. To the extent practicable, a business shall encourage its customers to place their order ahead to allow customers to pick up and pay without entering the business.

3.3.f. Any business that remains open to the public shall prominently display the directives required by this section in a conspicuous manner at each public point of entry to the business.

3.3.g. Subsections 3.3.a., 3.3.b., and 3.3.c. shall not apply to election voting polling places or precincts during the early voting period or on Election Day; *Provided:* That all county election officials shall operate voting precincts according to all other health and safety practices required by this rule, as well as any additional mandatory requirements issued by the appropriate state authority.

3.3.h. The public access limitations contained in subsection 3.3. shall not exclude a family with minor children from accessing a retail business together.

3.3.i. This section shall terminate and have no further force or effect upon the lifting of the State of Emergency declared by the Governor on March 16, 2020.

§64-114-4. Penalties.

4.1. Any person who is subject to the provisions of this rule who fails to comply with the requirements herein or otherwise fails to act in accordance with this rule may be subject to enforcement order issued by the Commissioner or local health officer, shall be fined civil money penalties not less than \$25 nor more than \$200.

§64-114-5. Administrative Due Process.

5.1. Any person adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Bureau procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.