

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED

1991 JUN 14 PM 2:55

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

July 1, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: Dept. of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §16-1-7

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED Retail Food Store Sanitation

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The Department of Health and Human Resources was recently informed that as of July 1, 1991, the Department of Agriculture will, under new regulations effective on that date, repeal its regulatory authority over meat markets of retail food stores. The current Department of Health and Human Services (DHHR) rule, Retail Food Store Sanitation, 64 CSR 20, requires that meat departments of retail food stores be in compliance with Department of Agriculture rules (Section 64-20-12); DHHR's rule applies only if the meat department is used for delicatessen purposes (Section 64-20-13). Because of the potential hazard for substantial harm to the public from unsafe meat, it is essential to preserve regulatory authority over such meat departments. It is therefore necessary to file revisions to the

Use Additional Sheets If Necessary.

Jay W. Miller
Signature

4.70

CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF WV
CSR 20, RETAIL FOOD STORE SANITATION

Retail Food Store Sanitation rule which will give the State Department of Health
and Human Resources regulatory authority over all meat departments in retail food
stores on an emergency basis in order to preserve the public health.

It should be noted that this rule is enforced by local health departments.
It should also be noted that this rule is being filed for public comment simulta-
neously with this emergency filing.

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FISCAL NOTE FOR PROPOSED RULES

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1991 JUN 14 PM 2:55

Rule Title: Retail Food Store Sanitation, 64 CSR 20

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency Department of Health and Address Building 3, Capitol Complex
Human Resources Charleston, W. Va. 25305

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|----------|----------|-------------|------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | \$ | \$ 0 | \$ 0 | \$ 0 |
| Personal Services | | | | | |
| Current Expense | | | | | |
| Repairs and Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of above estimates.

This rule is enforced by local health departments, and there is no fiscal impact of the proposed revision at the State level.

3. Objectives of these rules: The proposed revisions: 1) add requirements related to the sanitation of meat departments of retail food stores; 2) make a few minor revisions in order to upgrade the rule to industry and health standards which have changed since the last revision (1985); and 3) make various non-substantive technical and stylistic revisions. The proposed addition of requirements for meat departments is required because the State Department of Agriculture is dropping its retail food store meat inspection program (see attached letter) as of July 1, 1991.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Adding sanitation requirements for the meat departments of retail food stores will increase the inspection time by approximately 30 minutes per store. The cost to county health departments will vary depending on the number of retail food stores in each county. An increase in annual inspection cost could range from a high of \$3000 for Kanawha County to a low of \$200 for Wirt County.

C. Economic Impact on Citizens/Public at Large.

None

Date June 11, 1991

Signature of Agency Head or Authorized Representative

Tanja Willis Miller
Tanja Willis Miller, Secretary
Department of Health and Human Resources

FILED

DATE: June 14, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1991 JUN 14 PM 2:55

FROM: Department of Health and Human Resources

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY RULE TITLE: Retail Food Store Sanitation

1. Date of filing: June 14, 1991

2. Statutory authority for promulgating the emergency rule:

W. Va. Code §16-1-7

3. Date of filing of proposed legislative rule: June 14, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Amends a current legislative rule

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See Filing Notice

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

[EMERGENCY]
TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Retail Food Store Sanitation

Series 20

1991

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RETAIL FOOD STORE SANITATION

64 CSR 20

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SECRETARY OF STATE

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[EMERGENCY]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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SERIES 20
RETAIL FOOD STORE SANITATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-20-1. General.

1.1. Scope - This legislative rule establishes the minimum sanitation requirements of the West Virginia Board of health department of health and human resources governing the construction and operation of retail food stores.

1.2. Authority - This rule is issued under the authority of and is related to Chapter 16, Article 1, Section 7 of the West Virginia Code. W. Va. Code §16-1-7.

1.3. Filing Date - June 14, 1991.

1.4. Effective Date -

1.5. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Grocery Store and Meat Markets, West Virginia Board of Health Legislative Rules, Chapter 16-1, Series XX-(1983) originally adopted by the West Virginia board of health December 6, 1951 and effective July 1, 1952. Retail Food Store Sanitation, 64 CSR 20, 1985.

§64-20-2. Application and Enforcement.

2.1. Application - This rule applies to the construction and the operation of all retail food stores.

2.2. Enforcement - Enforcement of this rule is vested with the director secretary of the West Virginia department of health and human resources or his or her lawful designee.

§64-20-3. Definitions.

3.1. Approved - Used to describe a procedure of operation, installation, or construction which is in accordance with the standards, specifications, or instructions established by the director. Acceptable to the Secretary based on his or her determination of conformance with referenced rules or good public health principles and practices.

3.2. Construct - The term construct shall mean and include the terms install, install, extend, establish, alter or modify.

3.3. Corrosion-Resistant Materials - Those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use

environment.

3.4. Culinary Steam - Steam made from potable water.

~~3.4.~~ 3.5. Delicatessen - The area of a retail food store where primarily specialty food items, i.e., meats, fish, poultry, salads, cheeses and other table delicacies, are prepared and sold, or offered to the general public.

~~3.5. -- Director -- The director of the West Virginia department of health or his lawful designee.~~

3.6. Distressed Merchandise - Any food or container of food which has had the label lost, or which has been subjected to possible damage due to accident, fire, flood, adverse weathering, or to any other similar cause, or which may have been rendered unsafe or unsuitable for human consumption or use, i.e. e.g., seam or lid dents, hard or soft swells, leaking containers.

3.7. Easily Cleanable - Surfaces that are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

3.8. Employee - The permit holder, individuals having supervisory or management duties, and any other person working in a food service store.

3.9. Equipment - Items other than utensils used in the storage, preparation, display and transportation of food, including, but not limited to slicers, grinders, meat blocks, work tables, shelving, refrigerators, freezers, display cases, sinks, and similar items used in the operation of a retail food store.

3.10. Food - Any 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.

3.11. Food Contact Surfaces - Those surfaces of equipment and utensils with which food normally comes into contact, or those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

3.12. Operator - A person who is in charge of a retail food store.

3.13. Packaged - Bottled, canned, cartoned, bagged or securely wrapped.

3.14. Permit - A written document issued by the director secretary giving a designated person permission to construct a specific retail food store or to operate a specific retail food store.

3.15. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government, institution, department, division, bureau, agency, or any other entity recognized by law.

3.16. Person in Charge - The individual present in a food service store who is the apparent supervisor of the retail food store at the time of inspection.

3.17. Potable Water - Water which is free from impurities in amounts sufficient to cause disease or harmful physiological effects and which conforms to the requirements of Section 17 of this rule.

~~3-17-~~ 3.18. Potentially Hazardous Food - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include ~~clean, whole, uncracked, odor-free shell-eggs or~~ food which has a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

~~3-18-~~ 3.19. Retail Food Store - Any place, structure, premise, vehicle, or any part thereof in which food is sold retail, offered for retail sale, or served not to be consumed on the premises. For the purpose of this rule, the term "retail food store" shall does not include establishments which handle only pre-packaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits or fresh vegetables; or the delicatessen operation of a retail food store.

~~3-19-~~ 3.20. Safe Materials - Materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

~~3-20-~~ 3.21. Safe Temperatures - As applied to potentially hazardous food, shall-mean temperatures of 45 degrees F. or below and 140 degrees F. or above.

~~3-21-~~ 3.22. Sanitization - Effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

~~3-22-~~ 3.23. Sealed - Free of cracks or other openings that permit the entry or passage of moisture.

3.24. Secretary - The secretary of the West Virginia department of health and human resources or his or her lawful designee.

3-23- 3.25 Single Service Articles - Cups, containers, lids, knives, forks, spoons, straws and packaging materials, including bags and similar articles, that are designed for one-time use only.

3-24- 3.26. Utensil - Any implement used in the storage, preparation, transportation, or service of food.

§64-20-4. Permits, Hearings, Notices and Orders.

4.1. Construction and Modification - Whenever a retail food store is constructed or extensively remodeled and whenever an existing structure is converted to use as a retail food store, plans and specifications for such construction, remodeling or conversion shall be submitted to the director secretary for review and approval before construction, remodeling, or conversion is begun. The plans shall show a layout and arrangement of the equipment. Once completed plans are received by the director secretary, the plans shall be reviewed within a period of time not to exceed forty-five (45) days.

4.2. Permit to Operate

4.2.1. No person shall operate a retail food store within the state of West Virginia who does not possess a valid permit issued to him by the director secretary.

4.2.2. An application for a permit to operate a retail food store shall be made in writing to the director secretary on a form prescribed by the West-Virginia department of health and signed by the applicant or his or her authorized representative.

4.2.3. Prior to approving the application for a permit, the director secretary shall inspect the proposed retail food store to determine compliance with this rule. Only persons who comply with the applicable provisions of this rule ~~shall~~ are be entitled to retain a permit.

4.2.4. Retail food stores in operation at the time this rule becomes effective, and meeting all applicable prior regulations, shall be ~~deemed to be~~ eligible for a permit to operate; Provided, that That the store shall be required to meet the applicable operational requirements of this rule; and Provided further, that That any construction taking place after the effective date of ~~these regulations~~ this rule shall be in compliance with this rule.

4.2.5. Permits ~~shall~~ are not be transferable or assignable and ~~shall~~ automatically become invalid upon a change of ownership or upon suspension or revocation.

4.2.6. The director secretary may without warning, notice or hearing suspend a permit to operate a retail food store if the

operation of the retail food store constitutes an imminent hazard to public health. When a permit is suspended, the sale of food shall immediately cease.

4.2.7. The director secretary may revoke a permit to operate for repeated or serious violations of any of the requirements of this rule or for the interference with the director secretary in the performance of his or her duties.

4.2.8. Any person whose permit has been suspended or revoked may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten days following receipt of a written request, including a signed statement by the applicant that in his or her opinion the conditions causing the suspension or revocation of the permit have been corrected, the director secretary shall make a reinspection. If the applicant complies with the provisions of these regulations this rule, the permit shall be reinstated.

4.2.9. Operational permits shall be posted within the retail food store and ~~said permits shall be~~ readily available to the director secretary.

4.3. Hearings, Notices and Orders

4.3.1. Any person whose application for a permit to operate a retail food store has been denied, or whose permit has been suspended or revoked may petition and may be granted a hearing in accordance with Section 27 of this rule.

4.3.2. The filing of a petition for a hearing on a permit denial, suspension or revocation shall not stay or suspend the execution of the notice or order resulting in such permit denial, suspension, or revocation.

4.3.3. Whenever the director secretary makes an inspection of a retail food store and discovers that any of the provisions of this rule have been violated, he or she shall notify the operator of such violations by means of an inspection report form or other written notice. Correction of the violations shall be accomplished within the time specified in the notice that is in accordance with the following provisions:

4.3.3(a). When the rating score of the store is 90 or more, all violations of 1 or 2 point weighted items shall be corrected by the time of the next routine inspection.

4.3.3(b). When the rating score of the store is at least 80 but not more than 89, all violations of 1 or 2 point weighted items shall be corrected within a specific period of time not to exceed thirty days.

4.3.3(c). When the rating score of the store is at least 70

but not more than 79, all violations of 1 or 2 point weighted items shall be corrected within a specified period of time not to exceed ten days.

4.3.3(d). All violations of 4 or 5 point weighted items shall be corrected within a specified period of time not to exceed ten days following inspection.

4.3.3(e). When the rating score of the store is 69 or less, the permit shall be immediately suspended.

4.3.4. Whenever the director secretary finds that any retail food store constitutes an imminent hazard to public health, he or she may without notice or hearing issue a written order to the operator or person in charge citing the existence of such condition and requiring action to be taken to remedy the condition, including the suspension of the permit to operate. Notwithstanding any other provision of this rule, such order shall be effective immediately. Any person for whom such order is directed shall comply therewith immediately, but upon written petition to the director secretary shall be afforded a hearing on the matter as set forth in Section 4.3.1 of these regulations this rule.

4.3.5. The director secretary may examine food or collect samples of such food as often as he deems necessary for enforcement of this rule. The director secretary may, upon written notice to the operator, place a hold order on any food which he or she believes in violation of any provision of this rule. The director secretary shall tag, label or otherwise identify any food subject to the hold order. Food subject to a hold order shall not be used, served or removed from the store. The director secretary shall permit storage of the food under conditions specified in the hold order, unless storage is a risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall specify that a written request for a hearing may be filed with the director secretary within ten working days and that if no hearing is requested the food shall be destroyed under supervision of the director secretary. On the basis of evidence produced at the hearing, the director secretary may vacate the hold order or the owner or person in charge of the food may be directed by written order to destroy such food.

§64-20-5. Inspection.

5.1. Each retail food store shall be inspected at least once each six months. The director secretary shall also make such additional inspections as he deems necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant thereto.

5.2. The ~~director~~ secretary shall have has the authority to inspect or to have inspected any retail food store in any county in the state, and to act through the county's board of health or prosecuting attorney in the enforcement of these regulations this rule.

5.3. The inspection report shall be discussed with the person in charge of the store at the time of inspection and the ~~inspection-report-shall-be~~ posted adjacent to the permit.

§64-20-6. Food Supplies.

6.1. All food offered for sale in a retail food store shall be clean, wholesome, free from spoilage, adulteration, and misbranding, and safe for human consumption.

6.2. Fluid milk and fluid milk products ~~shall-be-pasteurized-and-shall~~ are required to meet the applicable requirements of rules-pertaining-to-milk-and-milk-products-promulgated-by-the West-Virginia-board-of-health- Grade "A" Pasteurized Milk, 64 CSR 34.

6.3. Fresh and frozen shucked shellfish shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, the kind and quantity of shell stock, and the interstate certification number issued thereto. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are offered for sale.

6.4. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

§64-20-7. Food Protection.

7.1. All food shall be protected against contamination.

7.2. All perishable food shall be stored or transported at such temperatures as will protect against spoilage.

7.3. Only such poisonous and toxic materials including pesticides, as are used to maintain sanitary conditions and for sanitization purposes may be used or stored in food processing areas.

7.4. Poisonous and toxic materials including pesticides shall be prominently identified and shall be used and stored only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or purchasers.

7.5. In the event of a fire, flood, prolonged power outage, or similar event that might result in the contamination of food,

or that might prevent potentially hazardous food from being held at safe temperatures, the operator or person in charge shall immediately contact the director secretary.

7.6. Metal stem type numerically scaled indicating thermometers, accurate to plus or minus 2 degrees F. shall be provided and used to assure the safe temperatures of all potentially hazardous foods.

§64-20-8. Food Display Areas.

8.1. All food display areas shall be kept clean.

8.2. Thermometers accurate to plus or minus 2 degrees F. shall be provided and properly located in all refrigerated food display cases.

8.3. Fruits and vegetables shall be wholesome and free from spoilage.

8.4. Food in the frozen food display cases shall be stocked below the loadline and shall be kept frozen and stored at an air temperature of 0 degrees F. or below.

8.5. Dairy products, meat, poultry and fish display cases shall be stocked below the loadline and maintained at 45 degrees F. or below.

8.6. Packaged fruits, vegetables, meat and fish shall not be stored or displayed in contact with water or undrained ice.

8.7. Potentially hazardous meat, poultry, fish, grocery products and bakery products shall be kept at safe temperatures.

8.8. Containers of food shall be properly labeled, sound and free of dents on the horizontal and lid seams of cans.

8.9. The sale or offering of distressed merchandise is prohibited.

§64-20-9. Refrigerated and Frozen Food Storage Areas.

9.1. Walk-in cooler and freezer floors, walls, and ceilings shall be kept clean and in good repair.

9.2. Walk-in cooler floors shall be properly drained.

9.3. Thermometers accurate to plus or minus 2 degrees F. shall be provided and properly located in walk-in freezers and coolers.

9.4. Condensation drip trays, blowers and overhead coils shall be kept clean.

9.5. Shelves shall be kept clean.

9.6. Meat hooks shall be kept clean and shall be sanitized after cleaning.

9.7. Walk-in coolers provided for potentially hazardous foods shall be maintained at 45 degrees F. or below.

9.8. Frozen food in walk-in freezers shall be kept frozen and stored at an air temperature of 0 degrees F. or below.

§64-20-10. Grocery Storage Area.

10.1. Containers of food shall be stored a minimum of six (6) inches above the floor or stored on dollies, racks, or pallets, provided such equipment is easily movable, either by hand or the use of pallet-moving equipment that is on the premises and used.

10.2. Cased food packages in cans, glass, or other sealed containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean.

10.3. Shelves, racks, dollies, pallets and floors shall be kept clean and in good repair.

§64-20-11. Produce Preparation Area.

11.1. A produce preparation sink or an approved wet table and drainage system shall be provided.

11.2. Work tables shall be kept clean.

11.3. Knives, cleavers and other utensils shall be kept clean.

11.4. Produce packaging and wrapping materials shall be properly protected and stored.

11.5. A hand sink shall be provided within 20 feet of the produce department.

§64-20-12. Meat Department.

~~The meat department of the retail food store shall be in compliance with applicable rules and regulations regarding meat and meat products as promulgated by the West Virginia commissioner of agriculture.~~

12.1. At least a three (3) compartment sink with drainboards or an approved automatic commercial-grade utensil washer shall be provided.

12.2. A hand sink shall be provided within the meat department.

12.3. Meat grinders, slicers, cubers and similar meat processing equipment shall be located in refrigerated rooms, or stored under refrigeration between usage or washed and sanitized after each use.

12.4. Meat, poultry and fish wrapping and packaging materials shall be stored in a manner to protect them from contamination.

§64-20-13. Delicatessens.

Delicatessens shall comply with the provisions of rules promulgated by the West Virginia board of health pertaining to food service sanitation. Food Service Sanitation Rules, 64 CSR 17.

§64-20-14. Personnel.

14.1. No person, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while affected with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food store in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons.

14.2. Employees engaged in food preparation and utensil washing operations shall thoroughly wash their hands with soap and warm water before starting work; after smoking, eating, or using the toilet; before and after handling raw meat, raw poultry, or raw fish, and as often as necessary during work to keep them clean. Employees shall wear clean outer clothing.

14.3. Employees shall consume food and use tobacco only in designated areas. Such areas must be located so that the eating or tobacco use of an employee does not result in contamination of food, equipment, or utensils.

14.4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while on duty.

14.5. Employees shall use effective hair restraints where necessary to prevent the contamination of food or food contact surfaces.

§64-20-15. Equipment and Utensils (Construction and Installation).

15.1. All equipment and utensils used in the preparation, storage, or display of food shall be of such material and so constructed, installed, and maintained as to be easily cleanable and to permit the easy cleaning of the surrounding areas and shall be non-toxic, corrosion-resistant, and non-absorbent.

15.2. No enamelware or graniteware shall be used in the preparation, storage or display of food.

15.3. Single service articles shall be manufactured from safe material and shall be used only once.

15.4. Work tables shall be made of impervious materials and the surfaces shall be of such materials that they will not be readily scratched or scarred by contact with sharp utensils, except that wooden meat blocks and cutting boards may be constructed of hard maple or the equivalent.

15.5. Metal shelving shall be provided on the interior of walk-in coolers.

15.6. All equipment installed in a retail food store prior to the effective date of ~~these regulations~~ this rule and which is in good repair and capable of being cleaned may be continued in use.

15.7. Equipment which is placed on tables or counters, unless considered portable, shall be sealed thereto or mounted on legs at least four inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

15.8. Floor mounted equipment shall be on casters; or on six inch legs; or on raised platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or settling underneath; or sealed to the floor.

15.9. The space between adjoining units of equipment and between a unit and the adjacent wall shall be sealed, or sufficient space shall be provided to facilitate easy cleaning between, behind, and beside all such equipment.

§64-20-16. Cleaning, Sanitization and Storage of Equipment and Utensils.

16.1. Utensils and food contact surfaces of equipment shall be cleaned and sanitized:

16.1.1. After any interruption of operations during which time contamination may occur;

16.1.2. Between processing raw pork, or raw poultry, or raw fish, and before processing any different kind of product;

16.1.3. Between processing of raw and ready to eat foods; and,

16.1.4. After final use each working day.

16.2. Non-food contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food soil, and other debris.

16.3. Cloths or sponges used for wiping food spills or used for cleaning surfaces of equipment shall be clean and used for no other purpose. These cloths and sponges shall be stored in a sanitizing solution between uses.

16.4. For manual cleaning and sanitizing of equipment and utensils, a three compartment sink must be provided in the meat and bakery departments. Sink compartments shall be large enough to accommodate the immersion of all utensils, and each sink compartment shall be supplied with hot and cold potable running water. Fixed equipment and equipment too large to be cleaned in sink compartments shall be cleaned and sanitized manually or cleaned and sanitized through pressure spray methods.

16.5. Drain boards or easily movable utensil tables shall be provided for proper handling of soiled utensils prior to cleaning and for cleaned utensils following sanitization.

16.6. Equipment and utensils shall be preflushed or pre-scraped and, when necessary, presoaked to remove food particles and soil.

16.7. When a three compartment sink is utilized for washing equipment and utensils, the equipment and utensils shall be washed, rinsed, and sanitized in that order.

16.8. When a two compartment sink is utilized for washing equipment and utensils, the equipment and utensils shall be washed and sanitized in that order.

16.9. The food contact surfaces of all equipment and utensils shall be sanitized by one of the following methods:

16.9.1. Immersion for at least 1/2 minute in clean, hot water of a temperature of at least 170 degrees F.; or,

16.9.2. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of at least 75 degrees F.; or,

16.9.3. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available

iodine at a temperature of at least 75 degrees F.; or,

16.9.4. Immersion in a clean solution containing any other approved chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 degrees F. for one minute; or,

16.9.5. Treatment with culinary steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or,

16.9.6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Section-16-9 Sections 16.9.2, 16.9.3 or 16.9.4 of this rule.

16.10. When chemicals are used for sanitation, an approved test kit that accurately measures the parts per million concentration of the solution shall be provided and used.

16.11. Unless used immediately after sanitation, all equipment and utensils shall be air dried. Towel drying shall not be permitted.

16.12. Cleaned and sanitized equipment and utensils and single service articles shall be handled and stored in a way that protects them from contamination and stored at least six inches above the floor in a clean, dry location. Stored utensils shall be covered or inverted whenever practical.

16.13. Food equipment, utensils, or single service articles shall not be stored in locker rooms, toilet rooms, garbage rooms, or mechanical rooms.

§64-20-17. Water Supply.

17.1. Potable water for the needs of the retail food store ~~shall~~ is required to be provided in accordance with applicable rules promulgated by the West Virginia board of health Public Water Systems, Bottled Water and Laboratory Certification, 64 CSR 3 or Water Well Regulations, 64 CSR 19, as applicable.

17.2. Water under pressure shall be provided to all applicable fixtures and equipment that use water.

17.3. Only culinary steam shall be used in contact with food or food contact surfaces.

§64-20-18. Sewage Disposal.

All sewage ~~shall~~ is required to be disposed of in a public sewer system or, in the absence thereof, in a manner approved by

~~the director~~ in accordance with ~~rules promulgated by the West Virginia board of health~~ Sewage System Rules, 64 CSR 9.

§64-20-19. Plumbing.

19.1. Plumbing ~~shall be sized, installed, and maintained~~ is required to be in accordance with ~~local plumbing codes or, in the absence thereof, the National Standard Plumbing Code, 1983 Edition, as published by the National Association of Plumbing, Heating and Cooling Contractors~~ the State Building Code, 87 CSR 4.

19.2. A non-potable water system is permitted only for purposes such as air conditioning and fire protection, and only if the system is properly installed and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

19.3. Approved backflow prevention devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless an approved backsiphonage prevention device is installed.

19.4. If used, grease traps shall be located to be easily accessible for cleaning.

19.5. Except for properly trapped open sinks, there shall be no direct connection between the sewer system and any drain originating from equipment in which food, portable equipment, or utensils are placed.

§64-20-20. Toilet Facilities.

20.1. Each retail food store shall provide for its employees approved and properly located toilet facilities in the number required by the ~~director~~ secretary. Toilet facilities shall be accessible to employees at all times.

20.2. Toilets and urinals shall be designed to be easily cleaned.

20.3. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors, which shall be closed except during cleaning or maintenance.

20.4. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for

waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

§64-20-21. Handwashing Facilities.

21.1. Handwashing facilities shall be provided in or within 20 feet of any food preparation, food processing, or utensil washing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand washing. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms.

21.2. Each handwashing facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

21.3. A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be located adjacent to each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be located near the handwashing facilities.

21.4. Handwashing facilities, soap dispensers, hand-drying devices and all other related fixtures shall be kept clean and in good repair.

§64-20-22. Garbage and Refuse.

22.1. Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the retail food store.

22.2. Containers used in food preparation, food processing, and utensil washing areas shall be kept covered during non-working hours and after they are filled.

22.3. Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

22.4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

22.5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation /processing areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

22.6. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

22.7. Garbage or refuse storage rooms shall be constructed of easily cleanable, non-absorbent, washable materials, shall be kept clean, shall be insect and rodent resistant, and shall be large enough to store all the garbage and refuse containers that accumulate.

22.8. Outside storage areas or enclosures shall be kept clean and shall be large enough to store the garbage and refuse containers that accumulate. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on metal racks or on a smooth surface of non-absorbent material such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

22.9. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects or rodents.

22.10. ~~Where garbage or refuse is burned on the premises, it shall be done by incineration that is approved by the director secretary, the department of natural resources, and the West Virginia air pollution control commission.~~ Incineration of garbage and refuse is required to be in conformance with applicable State laws and regulations. Areas around incineration facilities shall be clean and orderly.

§64-20-23. Insect and Rodent Control.

23.1. Effective measures shall be utilized to minimize the entry and presence of rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

23.2. Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall be protected against the entry of insects by tight-fitting self-closing doors; closed windows; screening; or other means acceptable to

the director secretary. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall be not less than 16 mesh to the inch.

§64-20-24. Construction and Maintenance of Physical Facilities.

24.1. Floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section ~~shall prohibit~~ prohibits the use of anti-slip floor covering in areas where necessary for safety reasons.

24.2. Floors which are water flushed or receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with trapped drains, which are properly installed. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile or similar materials and shall be graded to drain. The floor and wall junctures shall be coved and sealed.

24.3. Floor carpeting, if used as a floor covering, shall be of a closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation, food processing, and utensil washing areas, in food storage areas, or in toilet room areas where urinals or toilet fixtures are located.

24.4. Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as a floor covering; however, sawdust, granular salt, baked clay, or diatomaceous earth may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

24.5. Mats and duckboards shall be of non-absorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained in good repair.

24.6. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

24.7. All floors shall be kept clean and in good repair.

24.8. Walls and ceilings, including doors, windows, sky-

lights, and similar closures, shall be kept clean and in good repair.

24.9. The walls, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, food processing areas, utensil washing areas, and toilet rooms and their vestibules shall be smooth, non-absorbent, and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

24.10. Studs, joists, and rafters shall not be exposed in those areas listed in Section 24.9 of this rule. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

24.11. Utility service lines and pipes shall not be unnecessarily exposed on walls and ceilings in those areas listed in Section 24.9 of this rule. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

24.12. Light fixtures, vent covers, wall mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be kept clean and in good repair.

24.13. Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles of light on all food preparation surfaces and at utensil washing work levels.

24.14. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor:

24.14.1. At least 20 foot candles of light in sales areas, utensil and equipment storage areas, and in handwashing and toilet areas; and

24.14.2. At least 10 foot candles of light in walk-in refrigeration units, dry food storage areas, and in all other areas.

24.15. Shielding to protect against broken glass falling onto unpackaged food shall be provided for all artificial lighting fixtures located over or within food preparation areas, food display facilities, and facilities where utensils and equipment are cleaned and stored.

24.16. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

24.17. All rooms shall have sufficient ventilation to keep

them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems, when vented to the outside, shall not create a nuisance or public health hazard.

24.18. Intake and exhaust air ducts shall be located and maintained to prevent the entrance of dust, dirt, and other contaminating materials.

24.19. In all new or in extensively remodeled retail food stores, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

24.20. Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings.

24.21. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose.

24.22. Such designated areas shall be located outside of the food preparation, storage and processing areas, and equipment washing and storage areas.

§64-20-25. Interior Maintenance and Cleaning.

25.1. At least one service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops, or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or utensil washing facilities, or food preparation sinks shall not be used for this purpose.

25.2. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

25.3. All parts of the establishment shall be kept clean and free of litter and rubbish.

25.4. Cleaning operations shall be conducted in such a manner so as to minimize contamination of food and food contact surfaces, such as after closing.

25.5. None of the operations connected with a retail food establishment shall be conducted in any room used as living or sleeping quarters.

25.6. Soiled linens, coats and aprons shall be kept in laundry bags or other suitable containers until removed for laundering.

25.7. Live animals shall be excluded from within the retail food store operational premises and from adjacent areas under the control of the operator. This exclusion does not apply to edible fish, crustacea, or shellfish. Guide dogs accompanying blind or deaf persons, and patrol dogs accompanying police officers may be permitted in retail food stores. Live or dead fish bait shall be stored separately from food or food products.

25.8. If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work cloths used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

§64-20-26. Exterior Maintenance and Cleaning.

26.1. Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operation and maintenance of the establishment.

26.2. The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

26.3. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons.

§64-20-27. Administrative Due Process.

Those persons adversely affected by the enforcement of ~~these rules~~ this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West-Virginia-Department-of-Health ~~Procedural-Rules,--Series-1,--1983~~ 64 CSR 1.

§64-20-28. Penalties.

Any person violating any of the provisions of ~~these rules~~ this rule or orders issued pursuant thereto, ~~shall be~~ is punishable by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, or both. Each day's failure to comply with any applicable provision of ~~these regulations~~ shall-constitute this rule constitutes a separate offense.

§64-20-29. Severability.

~~If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.~~ The provisions of this rule are declared to be severable. If any provision of this rule is held invalid, the remaining provisions will remain in effect.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

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Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION

July 1, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

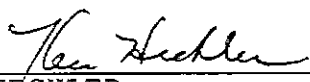
AGENCY: Department of Health and Human Resources

RULE: Amendments, Series 20, Retail Food Store Sanitation

DATE RULE FILED AS AN EMERGENCY RULE: June 14, 1991

DECISION NO. 42-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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DECISION EMERGENCY RULE DECISION
(ERD 42-91)

AGENCY: Department of Health and Human Resources
RULE: Amendments, Series 20, Retail Food Store Sanitation
FILED AS AN EMERGENCY RULE: June 14, 1991

- par. 1 The Department of Health and Human Resources (Department) has filed the above amendments to an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or (3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State June 14, 1991 and with the LRMRC June 14, 1991.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-1-7(1) reads:

The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department are as follows:

The Department of Health and Human Resources was recently informed that as of July 1, 1991, the Department of Agriculture will, under new regulations effective on that date, repeal its regulatory authority over meat markets of retail food stores. The current Department of Health and Human Services (DHHR) rule, Retail Food Store Sanitation, 64 CSR 20, requires that meat departments of retail food stores be in compliance with Department of Agriculture rules (Section 64-20-12); DHHR's rule applies only if the meat department is used for delicatessen purposes (Section 64-20-13). Because of

the potential hazard for substantial harm to the public from unsafe meat, it is essential to preserve regulatory authority over the meat departments. It is therefore necessary to file revisions to the Retail Food Store Sanitation rule which will give the State Department of Health and Human Resources regulatory authority over all meat departments in retail food stores on an emergency basis in order to preserve the public health.

It should be noted that this rule is enforced by local health departments. It should also be noted that this rule is being filed for public comment simultaneously with this emergency filing.

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare."
- par. 14 This decision shall be cited as Emergency Rule Decision 34-91 or ERD 34-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health and Human Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION

Entered _____