



FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Retail Food Store Sanitation, 64 CSR 2001 JUN 14 PM 2:57

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

  
\_\_\_\_\_  
Taunja Willis Miller, Secretary  
Department of Health and Human Resources

DATE: September 10, 1991  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: DEPARTMENT OF HEALTH AND HUMAN RESOURCES

LEGISLATIVE RULE TITLE: Retail Food Store Sanitation

1. Authorizing statute(s) citation W. Va. Code §16-1-7

2. a. Date filed in State Register with Notice of Hearing:

June 14, 1991

b. What other notice, including advertising, did you give of the hearing?

Notices were sent to County Health Departments, WV Retailers Assoc., WV Grocers Assoc., Department of Agriculture.

County Health Departments distributed the notices locally.

c. Date of hearing(s): Comment period from June 14, 1991  
to July 14, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 10, 1991

f. Name and phone number of agency person to contact for additional information:

Kay Howard 348-3223

\_\_\_\_\_  
\_\_\_\_\_

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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[PROPOSED]  
TITLE 64

WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Retail Food Store Sanitation

Series 20

1992

RULE ABSTRACT

Date: May 30, 1991

Agency: Department of Health and Human Resources

Rule Title: Retail Food Store Sanitation

CSR Title and Series: 64 CSR 20

Type: Legislative

FILED

1991 JUN 14 PM 2:57

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Summary: The proposed revisions: 1) remove the present exemption for meat markets; 2) add requirements related to the sanitation of meat departments of retail food stores; 3) 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 4) make various non-substantive technical and stylistic revisions. Removal of the current exemption makes other relevant operational sections of the rule applicable to all retail food store meat markets. The proposed revisions regarding meat departments are required in order to protect the public health because the State Department of Agriculture is dropping its retail food store meat inspection program as of July 1, 1991.

For further information contact: Regulatory Development Section, telephone 348-3223 or Ronald K. Forren, Director, Public Health Sanitation Division, 348-2981, Division of Health, Capitol Complex, Charleston, WV 25305.

[PROPOSED]  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RETAIL FOOD STORE SANITATION

64 CSR 20

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[PROPOSED]  
TITLE 64  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
  
SERIES 20  
RETAIL FOOD STORE SANITATION

§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 -

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.~~ amends and reenacts 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 refrigerated shell eggs; 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.~~ forty-five degrees Fahrenheit (45° F) or below and ~~140-degrees-F.~~ one hundred forty degrees Fahrenheit (140° 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 be~~ are 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 (10) 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 ninety (90) or more, all violations of ~~1-or-2~~ one (1) or two (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 eighty (80) but not more than 89 eighty nine (89), all violations of ~~1-or-2~~ one (1) or two (2) point weighted items shall be cor-

rected within a specific period of time not to exceed thirty (30) days.

4.3.3(c). When the rating score of the store is at least 70 seventy (70) but not more than 79 seventy-nine (79), all violations of ~~1-or-2~~ one (1) or two (2) point weighted items shall be corrected within a specified period of time not to exceed ten (10) days.

4.3.3(d). All violations of ~~4-or-5~~ four (4) or five (5) point weighted items shall be corrected within a specified period of time not to exceed ten (10) days following inspection.

4.3.3(e). When the rating score of the store is 69 sixty-nine (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 (10) 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 (6) 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: two degrees Fahrenheit (2° 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: two degrees Fahrenheit (2° 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:~~ zero degrees Fahrenheit (0° 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:~~ forty-five degrees Fahrenheit (45° 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.~~ two degrees Fahrenheit (2° 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.~~ forty-five degrees Fahrenheit (45° 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.~~ zero degrees Fahrenheit (0° 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 processing equipment shall be completely disassembled, cleaned and sanitized at least every eight (8) hours if the equipment and meat contact surfaces have not exceeded a temperature of fifty degrees Fahrenheit (50° F) during the entire time that processing has taken place. Complete disassembly, cleaning and sanitizing of meat processing equipment shall occur every five (5) hours if the temperature range is between fifty one degrees Fahrenheit (51° F) and sixty degrees Fahrenheit (60° F). Any processing that occurs at temperatures over sixty degrees Fahrenheit (60° F) requires complete disassembly, cleaning and sanitizing of the equipment after each use, and in no case shall the length of time be longer than one (1) hour from the start of processing until cleaning begins.

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 (4) 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 (6) 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 (3) 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 (3) 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 (2) 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 (1) of the following methods:

16.9.1. Immersion for at least  $\frac{1}{2}$  one-half (1/2) minute in clean, hot water of a temperature of at least ~~170-degrees-F.~~ one hundred seventy degrees Fahrenheit (170° F); or,

16.9.2. Immersion for at least one (1) minute in a clean solution containing at least 50 fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least ~~75-degrees-F.~~ seventy-five degrees Fahrenheit (75° F); or,

16.9.3. Immersion for at least one (1) 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.~~ seventy-five degrees Fahrenheit (75° 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.~~ seventy-five degrees Fahrenheit (75° F) for one (1) 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 (6) 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 ~~direector~~ 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 (1) covered waste receptacle.

**§64-20-21. Handwashing Facilities.**

21.1. Handwashing facilities shall be provided in or within ~~20~~ twenty (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~~ fifteen (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~~ sixteen (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, skylights, 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 twenty (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 thirty (30) inches from

the floor:

24.14.1. At least 20 twenty (20) foot candles of light in sales areas, utensil and equipment storage areas, and in hand-washing and toilet areas; and

24.14.2. At least 10 ten (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 (1) 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 (1) 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-17,-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 (\$200) or by imprisonment for not more than thirty (30) 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.

Discussion of Public Comments Received  
Concerning the Proposed Rule,  
Retail Food Store Sanitation, 64 CSR 20

The proposed revisions add requirements related to the sanitation of meat departments of retail food stores, make a few minor revisions in order to upgrade the rule to industry and health standards which have changed since the last revision, and make various non-substantive technical and stylistic revisions. The proposed addition of requirements for meat departments is required because the State Department of Agriculture dropped its retail food store meat inspection program as of July 1, 1991.

A public comment period was held between June 14, 1991 and July 14, 1991. One comment (attached) was received.

1. Comment: The West Virginia Department of Agriculture suggested that Section 12.3, which addresses the refrigeration and cleaning schedule of processing equipment, be more specific and should follow current meat inspection practices of the United States Department of Agriculture and the West Virginia Department of Agriculture.

Response: The Department agrees and has revised and clarified Section 12.3 accordingly.

2. Comment: The West Virginia Department of Agriculture commented that due to the designation of shell eggs as a potentially hazardous food, fruit and vegetable stands and other roadside markets that handle shell eggs will now be designated as a grocery store and fall under these rules. The Department of Agriculture believes that rules for construction, maintenance, cleaning and plumbing need not apply to such firms, and that the protection of the public health does not require that these types of standards be applied to this type of firm.

Response: The Department did not intend for the Retail Food Store Sanitation rule to apply to roadside markets or fruit and vegetable stands. It is necessary, however, that eggs be refrigerated due to the potential hazards of salmonella. The definition of retail food store has been revised to exclude such markets or food stores, provided that eggs for sale are kept under refrigeration.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

State Capitol  
Charleston, WV 25305

Cleve Benedict  
Commissioner

July 13, 1991

Ms. Taunja Willis Miller, Secretary  
Department of Health and Human Resources  
c/o Kay Howard  
Regulatory Development  
Building 3, Capitol Complex  
Charleston, West Virginia 25305

Dear Ms. Miller:

The West Virginia Department of Agriculture is very pleased with your development of the Retail Food Store Sanitation Regulations that will address the sanitation of retail meat shops. We have reviewed the amended regulations that you filed with the Secretary of State on June 14, 1991 and have two comments.

Section 12.3 addresses the refrigeration of processing equipment and a cleaning schedule. We recommend that this area be more specific because there will be a wide range of temperatures found in inspections. We recommend the following language:

Complete disassembly, cleaning and sanitizing of meat processing equipment shall occur at least every 8 hours for equipment and product contact surfaces that have not exceeded a temperature of 50F (room temperature) during the entire time that the processing has taken place. Complete disassembly, cleaning and sanitizing of meat processing equipment shall occur at least every 5 hours for equipment and product contact surfaces that have reached or exceeded 50F but have not exceeded 60F. Any processing that occurs at temperatures over 60F shall require complete disassembly, cleaning and sanitizing immediately after each use, and in no case shall the length of time be longer than one hour from the start of processing until cleaning begins.

This follows current meat inspection practices of the USDA and WVDA. They do not allow any processing area to get above 50F unless the cleaning is performed every 5 hours.

The second comment is in regard to inspection of fruit and vegetable stands and other roadside markets that handle shell eggs. Due to the designation of shell eggs as a potentially hazardous food, these firms that handle eggs will now be designated as a

Page Two  
Retail Grocery Store Sanitation  
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grocery store and fall under these regulations. The rules for construction, maintenance, cleaning and plumbing do not apply to these types to firms that normally are not rodent or insect proof. The protection of the public health does not require that these conditions be applied to this type of firm. This agency asks that you consider amending these requirements.

Sincerely,

*Barbara J. Smith*

Barbara J. Smith, Director  
Compliance Division  
(304)-348-2226

BJS:healreg