

**JANUARY**

Monday, January 6, 1997

11:00 a.m.-2:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Earl Ray Tomblin  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Ross, Chairman  
Grubb, Vice Chairman  
Anderson  
Boley  
Buckalew  
Macnaughtan (absent)

Douglas, Chairman  
Linch, Vice Chairman  
Compton  
Faircloth  
Gallagher (absent)  
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

Mr. Ross introduced the new Administrative Assistant to the Legislative Rule-Making Review Committee, Audrey Ross.

The minutes of the December 9, 1996, meeting were approved.

Debra Graham, Committee Counsel, explained that the rule proposed by the Division of Labor, Manufactured Housing Construction and Safety Standards, was placed at the foot of the agenda at the Committee's December meeting and that the Committee adjourned its meeting prior to acting on the proposed rule. Leff Moore, West Virginia Manufactured Housing Association, and Chris Quaesbarth, Deputy Director, Division of Labor addressed the Committee and responded to questions from the Committee.

Mr. Anderson moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Joe Altizer, Associate Counsel, explained that the rule proposed by the Division of Environmental Protection, To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, had been removed from the Committee's December agenda to allow the Division to prepare proposed modifications in response to concerns raised by the West Virginia Manufacturers Association. Mr. Altizer distributed copies of the proposed modifications and explained them.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Board of Examiners of Psychologists, Qualifications for Licensure of a Psychologist and/or School Psychologist, was laid over at the Committee's December meeting. Ted Glance, the Board's Executive Director, responded to questions from the Committee.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained that the rule proposed by the Governor's Committee on Crime, Delinquency and Correction, Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards, was laid over at the Committee's December meeting. He answered questions from the Committee. Don Davidson, representing the Governor's Committee, responded to questions from the Committee.

Mr. Buckalew moved that the Committee request that the Governor's Committee modify the proposed rule by reinserting Section 3.15 of the proposed rule which requires the State Police Academy to pay the cost of the ammunition for law enforcement officers who attend the Academy.

John Hoff, Executive Director of the Association of Counties, and Lisa Dooley, Executive Director of the Municipal League, addressed the Committee and responded to questions from the Committee.

Mr. Buckalew asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Anderson moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Mr. Ross asked Mr. Faircloth to apprise the Committee of problems relating to Department of Health and Human Resources rules for county Health Departments regarding approval of septic tank systems. Mr. Faircloth explained the problems to the Committee. Dr. Henry Taylor, Commissioner, Bureau for Public Health responded to questions from the Committee.

Mr. Faircloth moved that the Committee request that Debra Graham review the statutes and rules relating to septic tank systems to determine the Department's authority to regulate septic tank systems and that it determine whether or not Berkeley County has the authority to establish new fees. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Human Services, Family Day Care Facility Certification, and stated that the Division has agreed to technical modifications.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Health, Child Care Centers, and stated that the Division has agreed to technical modifications.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley, reviewed her abstract on the rule proposed by the Department of Health and Human Resources, Residential Board and Care Homes, and stated that there are several issues she needs to discuss with the Department.

Ms. Douglas moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the Department of Health and Human Resources, Incorporation by Reference as Legislative Rule of the Child Support Enforcement Division Policy and Procedure Manual. Mr. Altizer suggested that the rule should be withdrawn because it is more appropriately a procedural rule and not a legislative rule.

Mr. Anderson moved that the Committee request that the Department withdraw the proposed rule. The motion was adopted.

Mr. Altizer explained the rule proposed by the Department of Health and Human Resources, Application of Statutory Interest Provisions. Mr. Altizer reported that the Committee does not have statutory authority to propose this legislative rule.

Mr. Anderson moved that the Committee request that the Department withdraw the proposed rule. The motion was adopted.

Mr. Altizer stated that the Agency had not made all the suggested modifications to the rule proposed by the Department of Health and Human Resources, Interstate Income Withholding, therefore no action was taken on the rule.

Mr. Altizer explained that the rule proposed by the Department of Health and Human Resources, Providing Information to Credit Reporting Agencies, would be more appropriate as a procedural rule rather than a legislative rule and that the Department is willing to withdraw the proposed rule and refile it as a procedural rule.

Mr. Anderson moved that the Committee request that the Department withdraw the proposed rule. The motion was adopted.

Ms. Pauley explained the rule proposed by the Insurance Commissioner, Life and Health Reinsurance Agreements, and stated that the Commissioner has agreed to technical modifications.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Kay Howard, Department of Health and Human Resources, Director, Office of Regulatory Development, requested that the Committee consider the rule proposed by the Department, Nursing Home Licensure Rule, at its next meeting, despite the fact that the proposed rule was not filed by the statutory deadline for rules required to be included in the Committee's report to the 1997 Session of the Legislature.

Ms. Douglas moved that the Committee consider the proposed rule at its next meeting, if the committee's staff has time to review the proposed rule after it considers all of the rules which were timely filed.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: January 6, 1997

TIME: 11:00 A.M.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

Present	Absent	Yeas	Nays
✓			
<del>✓</del>	✓		
✓			
✓			
	✓		
✓			
✓			
✓			
✓			
✓			
	✓		

RE:

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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review Cmte. DATE: January 6, 1997

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
JACK H. ALBERT	Belle WV	AARP - American Assoc. of Retired Persons	
Linda Jones	Charleston WV	DHHR	
Judith Curry	Charleston, WV	DHHR	
SANDY DAUBMAN	CHARLESTON, W.V.	DHHR	
KAY HOWARD	CHARLESTON	DHHR	
DALE FARLEY	CHARLESTON	WV DEP. AUC QUALITY	✓ YES ASSET NEEDED
Mike McThomas	Ches.	WVMA	y/s as needed
CHRIS QUASSBARTH	BLDG 3, Rm 319 CAPITOL	WV MFR. HOUSING SAFETY BOARD	
Chris DUV		WV BPH	





Minutes approved (12/9/96)

Div. of Labor

Explained posture

Left Moore addressed the C. (responded to q)

His Bd opposed to the rule - will be proposing statutory changes.

Chris Quasbarth responded to q.

Bottom of agenda

Anderson  
adopted

DEP - Prevent & Control

Joe distributed letter e mod <sup>proposed</sup> for Dale Farley. He explained the proposed modifications.

Approve as mod

w/ mly  
Agree

Douglas  
adopted

Bd of Examiners of Psychologists

Free Dir Ted Glaree - Free Dir. responded to questions from the C

\* Check w/Brenda - she didn't return my marked up version.

Douglas  
adopted Approve as modified

Gov's Comm-tee

Joe - had been laid over; ans'd questions

Bookataw Made comments - wants prov regarding ammo w/drawn.

Don Davidson - responded to questions

1997

Basley Wants to know abt audit & payment of or collection

of fines  
Modally rule to delete & relating to charging  
Cities & counties paying cost of arms  
John Hoff, Assn of Cities, - addressed the C

& responded to a  
Anderson proposes to foot of agenda - adopted

Quakley W/draw mtg (unan. consent)

Lisa Doherty Free Dir Man League - responded  
to questions  
Anderson moved prev q.

Dir of Human Servs - Family Day Care  
Bureau of Public Health - Sepsic Tanks

Furcaloth reviewed the prob.

Dr. Henry Taylor, O BPT address the issue.  
More - look at Code 16-1-7 & 1983 rules relating  
to septic systems

@ look at legal advice - does Rocky City  
have legal authority to charge fee.

Dir of Human Servs - Family Day Care  
- Check age on age on confidentiality of juvenile  
records.

- Child Abuse registry  
- Douglas Approu - as mod

adopted

Furcaloth  
adopted

Quakley

Basley

Div of Health - Child Care Centers

I explained

Approve as mod

Douglas  
adopted

DTHR - Residential Bd & Care

Rita explained

lay over til next meeting

Douglas  
adopted

Child Support - Incorp By Ref.

Joe explained

Agency w/draw

Anderson  
adopted

Child Support - Appl. Stat Prov.

Joe explained

w/draw

Anderson  
adopted

Child Support - Providing Info

w/draw (pre)

Anderson  
adopted

Ins Comm - Life & Health

Rita explained

Approve as mod

Douglas

Move  
on  
line

Kay - Request to take up Nursing Home Rule.  
Douglas - we will try.

I updated

12/16/96  
Joc. Alizer



**DIVISION OF ENVIRONMENTAL PROTECTION**

GASTON CAPERTON  
GOVERNOR

1558 Washington Street East  
Charleston, WV 25311-2599

LAIDLEY ELI MCCOY PH.D.  
DIRECTOR

January 2, 1997

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair  
WV Legislative Rule-Making Review Committee  
Room MB47 - State Capitol  
Charleston, West Virginia 25305

Dear Committee Members:

As you are aware, the Office of Air Quality ("OAQ") of the Division of Environmental Protection ("DEP") requested that the Legislative Rule-Making review Committee (the "Committee") delay its consideration of proposed revisions to 45 C.S.R. 25 originally scheduled for consideration by the Committee on November 18, 1996.

As you know, 45 C.S.R. 25 is the air quality component of the DEP's rules which carry out implementation of the federal Resource Conservation and Recovery Act ("RCRA"), and does so primarily by incorporating federal rules by reference. The initial purpose of requesting your delayed consideration of 45 C.S.R. 25 was to provide the OAQ with the opportunity to verify publication in the Federal Register by USEPA of revisions to federal rules incorporated by reference in 45 C.S.R. 25 as well as to review the substance of such final federal rules prior to your consideration of 45 C.S.R. 25. Further, the OAQ was informed during your November meeting that the West Virginia Manufacturers Association (the "WVMA") had approached the Committee or some of its members with certain concerns or objections to provisions of 45 C.S.R. 25, and your delayed consideration of the rule would also facilitate analysis of the WVMA's concerns.

During the time that you have afforded the OAQ, the OAQ has discussed with the WVMA and has conducted an analysis of proposed modifications to 45 C.S.R. 25. Discussions between the OAQ and the WVMA has resulted in modifications to the rule proposed to you, which are presented to you today attached to this correspondence for your consideration. It is my understanding that the WVMA is in agreement with these modifications based upon our discussions and correspondence.

In reviewing the issues involved with the proposed modifications to 45 C.S.R. 25, it has been necessary to analyze the statutory construction of the rule, including the legislative history since its original promulgation by the Air Pollution Control Commission in 1984, as well as the implementation of the rule since that time. Important to this analysis is the legislative

**Office of Air Quality**  
**Phone: (304) 558-4022 Fax: (304) 558-3287**

Legislative Rule-Making Review Committee

January 2, 1997

Page - 2

history of 45 C.S.R. 25, which includes numerous amendments to federal rules incorporated by reference in 45 C.S.R. 25, including substantial new federal requirements for hazardous waste management. A summary of the analysis of each of the proposed modifications to 45 C.S.R. 25 is provided as follows:

Section 1.1.b: The WVMA has objected to this provision of the rule which has been retained since the 45 C.S.R. 25 was first promulgated by the Air Pollution Control Commission in 1984. The OAQ believes that it was the intent of the Commission to not include in the State rule the federal exclusion for small quantity hazardous waste generators and wastewater treatment units that are contained in the federal counterpart, 40 CFR § 270.1. Thus, the original intent of the rule may have been to include all small quantity hazardous waste generators in West Virginia (now numbering approximately 4800 facilities), as well as the approximately 150 large quantity hazardous waste generators and treatment facilities (including wastewater treatment units) primarily addressed by the federal rules.

Since 1984, 45 C.S.R. 25 has been amended several times, and has evolved into a vehicle by which the air component of West Virginia's RCRA program is revised by incorporating updated or newly promulgated federal rules by reference. In addition, 45 C.S.R. 25 incorporates by reference 47 C.S.R. 35, which is the waste management component of West Virginia's RCRA program, and which also incorporates by reference several federal rules, including the federal rules which provide the RCRA permitting framework. Thus, federal rules are directly incorporated by reference in 45 C.S.R. 25, and indirectly through 47 C.S.R. 35.

The legislative evolution of 45 C.S.R. 25 has included the incorporation by reference of 40 CFR § 270.1, following section 1.1.b later in the text of 45 C.S.R. 25. Statutory construction dictates that this later provision in 45 C.S.R. 25 modifies the prior language of 1.1.b containing the inclusion of small quantity generators and wastewater treatment units. Further complicating the analysis, 45 C.S.R. 25 incorporates by reference 40 CFR § 270.1 through 47 C.S.R. 35. Since 47 C.S.R. 35 does not include small quantity generators or wastewater treatment units, and the framework for RCRA permitting is implemented through 47 C.S.R. 35, arguably the permitting requirements contained in 47 C.S.R. 35 cannot be enforced by OAQ for facilities that are included by 45 C.S.R. 25. Thus, the way in which the federal rules have been incorporated by reference in 45 C.S.R. 25 has had the effect of overturning the apparent original legislative intent of the Commission to include small quantity generators and wastewater treatment units otherwise excluded in the federal rule.

Legislative Rule-Making Review Committee

January 2, 1997

Page - 3

Regardless of the difficulty of implementing the provisions of C.S.R. § 45-25-1.1.b presented by the statutory construction of the rule, the limited RCRA enforcement personnel and financial resources of the OAQ prevent application of RCRA requirements to small quantity hazardous waste generators and wastewater treatment units. Because the legislative history of 45 C.S.R. 25 is problematic to implementing the inclusion of small quantity hazardous waste generators and wastewater treatment units in West Virginia's RCRA program, and the practical reality of resource limitations, the OAQ has concluded that it is appropriate to modify C.S.R. §§ 45-25-1.1.b.1 and 1.1.b.2 to eliminate the inclusion of those facilities. We should note however, that potential quantity and toxicity of air pollutant emissions from some of these facilities may warrant further study of this issue, the results of which may indicate that additional and more specific rule-making is required to carry out the mandate of the West Virginia Air Pollution Control Act.

The OAQ also agrees with the WVMA with respect to the remaining modifications of C.S.R. § 45-25-1.1.b, and to the deletion of paragraph 1.1.b.3, the language of which is superfluous to the rule.

Section 1.5.a: The WVMA has requested that the date of incorporation by reference of the federal rules be changed from June 15, 1996 to July 1, 1996 to conform with the dates of incorporation contained in 47 C.S.R. 35. Since USEPA has promulgated no RCRA rules affecting the air program between June 15, and July 1, 1996, the OAQ has no objection to modifying the rule to accommodate this request, and has included such revision in its proposed rule modification.

Section 1.5.c: The WVMA has requested modification to C.S.R. § 45-25-1.5 by the addition of paragraph 1.5.c so that a rule substantially revised and finalized by USEPA on November 25, 1996 can be adopted by reference. If 45 C.S.R. 25 is not modified at this time to incorporate by reference the new rule-making by USEPA, 45 C.S.R. 25 will maintain in it a former version of the federal rule, 40 CFR parts 264 and 265, subparts AA, BB, and CC, which is now significantly different in stringency than the new rule. The significant differences between the federal rule currently incorporated by reference in 45 C.S.R. 25, and the federal rule incorporated by reference in C.S.R. § 45-25-1.5.c are highlighted in an attachment to this letter for the Committee's information.

Such differences between the federal and state rule violates the conformity requirements of new or amended environmental rule making of W.Va. Code § 22-1-3a, since no findings to support such a difference has been made or

Legislative Rule-Making Review Committee

January 2, 1997

Page - 4

can be made at this time by the DEP. Thus, the OAQ supports the modification of C.S.R. § 45-25-1.5 to include incorporation by reference of the federal rule made final by USEPA on November 25, 1996.

Section 3.2: Although the WVMA did not request modification of this section, the reference dates contained in the section require modification in order to conform with the changes requested to C.S.R. § 45-25-1.5 by the WVMA. Modification of this section has no effect beyond those outlined in the analysis of modifications to section 1.5 discussed above.

Section 5.1: The WVMA has requested the modification of section 5.1 to eliminate the inclusion in the definition of hazardous waste of "mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works." Research of the legislative history of this section reveals that when 45 C.S.R. 25 was originally promulgated in 1984, the Commission intended these wastes to be included in West Virginia's RCRA program despite any exemption by federal rules or by rules promulgated by the Office of Waste Management ("OWM") of the DEP. However, like the inclusions contained in C.S.R. § 45-25-1.1.b, the inclusion contained in C.S.R. § 45-25-5.1 has apparently been overturned by the legislative evolution of this rule. Privately owned and publicly owned treatment works are in essence comprised of wastewater treatment units, which are excluded from the RCRA program by 40 CFR § 270.1. Thus, even though 45 C.S.R. 25 includes this type of waste in the definition of hazardous waste, the facilities that handle the waste are excluded from RCRA permitting requirements under federal and OWM rules, and implementation of C.S.R. § 45-25-5.1 is impracticable. In light of statutory construction of C.S.R. § 45-25-5.1, the OAQ agrees to the modifications sought by the WVMA with the understanding that because of the potentially high quantity and toxicity of air pollutant emissions from some of these facilities, the OAQ intends to conduct further study of these facilities in order to determine whether additional rule making is necessary to carry out the mandate of the West Virginia Air Pollution Control Act.



Legislative Rule-Making Review Committee

January 2, 1997

Page - 5

Please do not hesitate to call on me if you should have any thoughts or questions regarding any of the modifications that the OAQ proposes to 45 C.S.R. 25.

Sincerely yours,



G. Dale Farley  
Chief, OAQ

GDF/tlm

cc: (w/attachments)

Committee Members

Joe Altizer, Counsel to the Committee (also with CFR attachment)

L. Eli McCoy, Director of DEP

Carrie Chambers, DEP

Michael P. McThomas, WVMA

45CSR25

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

SERIES 25  
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE  
TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. The intent and purpose of this rule is to establish a program of regulation over air emissions from the treatment, storage and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein. ~~including but not limited to:~~

~~b.1.A. Generators accumulating hazardous waste on site for periods of less than ninety (90) days;~~

~~b.2.B. Owners and operators of wastewater treatment units as defined in this rule; and~~

~~b.3.C. Owners and operators which burn hazardous wastes in incinerators, boilers and industrial furnaces in order to destroy the wastes.~~

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or

disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and §§22-5-1 et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Director that enforcement shall be implemented in accordance with W. Va. Code §§22-18-1 et seq., where practicable.

1.1.e. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code §§22-18-1 et seq., and this rule.

1.2. Authority. -- W.Va. Code §§22-5-1 et seq. and §§22-18-1 et seq.

1.3. Filing Date. --~~April 25, 1996~~

1.4. Effective Date. --~~May 1, 1996~~

1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of ~~June 1, 1995~~June 15, 1996~~July 1, 1996~~...

1.5.b. This rule also incorporates by reference the provisions contained in 47 CSR 35, effective June 1, ~~1995~~1996.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR part 264 and 265 subparts AA, BB and CC as amended and published as a final rule on November 25, 1996, at 61 federal register 59932.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", 'statutory air pollution' ~~shall have~~has the meaning ascribed to it in W. Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "BACT", 'Best Available Control Technology' means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste

treatment, storage or disposal facility which the Director, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

~~2.7. "Chief" means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.~~

2.87. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S. C. §1251 et seq.

2.98. "Director" means the Director of the West Virginia Division of Environmental Protection or his or her designated representative such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.109. "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §§22-1-1 et seq.

2.110. "EPA" means the United States Environmental Protection Agency.

2.11. "Facility mailing list" means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

2.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

2.13. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.15. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.16. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

~~2.17.~~ All Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§22-5-1 et seq., or W. Va. Code §§22-18-1 et seq., or 47 CSR 35 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

#### §45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 47 CSR 35 "Hazardous Waste Management Regulations", effective June 1, 1995 6 are hereby adopted by reference.

3.1.a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director has final administrative authority to resolve the conflict.

3.2. The provisions contained in the Code of Federal Regulations (~~June 1, 1995 June 15, 1996~~ effective on July 1, 1996, except as otherwise provided by section 1.5 of this rule), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

3.2.a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

3.2.b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the Director of the West Virginia Division of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection.

3.2.d. The distance provisions of 40 CFR 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and

Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Facility Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 47 CSR 35;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;

4.1.d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by 40 CFR 264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Director with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate such facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the

environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subparts AA, BB and CC.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of such potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. a- The Director may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Director may require the following data from the permit applicant:

4.13.a.A- Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

a.1.(a) Mass emission rates from the stack, and

a.2.(b) Concentration in the gas stream exiting the stack;  
and

4.13.b.B- Air dispersion estimates for those substances, including:

b.1.(a) Meteorological data, and

b.2.(b) Description of the air dispersion models, and

b.3.(c) Assumptions underlying the air dispersion models used; and

4.13.c.C- Expected human and environmental exposure, including:

c.1.(a) Topographic considerations,

c.2.(b) Population distributions,

c.3.(c) Population activities, and

c.4.(d) Modes, intensity, and duration of exposure; and

4.13.d.D- Consequences of exposure, including:

d.1.(a) Dose-response curves for carcinogens,



~~d.2.(b)~~ Health effects based on human or animal studies for other toxic constituents,

~~d.3.(e)~~ Potential for accumulation of toxic constituents in the human body, and

~~d.4.(d)~~ Statements of expected risk to individuals or populations.

4.14. Emergency Permit. Notwithstanding any other provision in 40 CFR 270.61, in the event the Director finds an imminent and substantial danger to human health or the environment, the Director may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Director at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice as described under Section 7 of this rule and shall include the following:

e.1.A- Name and address of the office granting the emergency authorization,

e.2.B- Name and location of the permitted hazardous waste management facility,

e.3.C- A brief description of the wastes involved,

e.4.D- A brief description of the action authorized and reasons for authorizing it,

e.5.E- Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the

facility in accordance with all other applicable regulations promulgated by the Director, including, but not limited to, 45 CSR 6 and 45 CSR 13.

#### §45-25-5. Exclusion and Exemptions.

5.1. Wastes and/or materials excluded in 47 CSR 35, are also excluded from the requirements of this rule, ~~except that mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the requirements of this rule.~~

5.2. Except for recyclable materials exempt pursuant to Section 3 of 47 CSR 35, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4 of this rule.

#### §45-25-6. Confidential Information.

6.1. Any records, reports, or information and any permit, permit applications, and related documents within the Director's possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code §22-18-1 et seq., and §22-5-1 et seq.

#### §45-25-7. Public ~~Notice~~Participation.

Public notice of the preparation of a draft permit shall be given by the methods contained in 47 CSR 35 ~~Section 12.~~ In addition, ~~the owner and operator shall place a Class I legal advertisement in a newspaper of general circulation in accordance with applicable provisions of WV CSR §§45-13-6.1., 6.2., and 6.3. Section 11, and 40 CFR 270.2, 270.14, 270.30, 270.62, and 270.66.~~

#### §45-25-8. Application Fees.

8.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the ~~"Hazardous Waste Management Fund"~~ "Air Pollution Control Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

##### ACTIVITY FEES

##### a. Hazardous Waste Management Facilities

Treatment design capacity more than 1,000 ton/yr	\$5,000
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Treatment design capacity less than 1,000 ton/yr	\$5,000
b. Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

All fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

**§45-25-9. Inconsistency Between Rules.**

In the event of any inconsistency between this rule and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method and rule.

**45CSR25****TABLE 25-A**

<b>Item No.</b>	<b>CFR No.</b>		<b>Part No.</b>		<b>Subpart No.</b>		<b>Title</b>
1.	40 CFR	-	264, 265	-	O	-	Incinerator
2.		-	270.19	-	B	-	Specific Requirements for Incinerators
3.		-	270.62	-	F	-	Hazardous Waste Incinerator Permits
4.	40 CFR	-	264	-	X	-	Miscellaneous Units
5.		-	270.23	-	B	-	Specific Requirements for Miscellaneous Units
6.	40 CFR	-	264, 265	-	AA	-	Air Emission Standards for Process Vents
7.		-	270.24	-	B	-	Specific Requirements for Process Vents
8.	40 CFR	-	264, 265	-	BB	-	Air Emission Standards for Equipment Leaks
9.		-	270.25	-	B	-	Specific Requirements for Equipments Leaks
10.	40 CFR	-	264, 265, 270	-	CC	-	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers
11.	40 CFR	-	265	-	P	-	Thermal Treatment
12.	40 CFR	-	266	-	H	-	Hazardous Waste Burned in Boilers and Industrial Furnaces

Item No.	CFR No.	Part No.	Subpart No.	Title
13.		270.22	B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
14.		270.66	F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
15.	40 CFR	279.23	C	On-site Burning In Space Heater
16.		279.60 279.61 279.62 279.63	G	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
<u>17.</u>		<u>270.14(b)(22)</u>	<u>B</u>	<u>Part B application General Requirements</u>
<u>18.</u>		<u>270.30(m)</u>	<u>B</u>	<u>Information repository</u>

## **Subpart AA, BB and CC**

Summary of changes  
from November 25, 1996  
Federal Register revision

- I. General - Clarified the applicability of Subparts AA, BB, and CC.**
  - A. Less than 90 units for large quantity generators are applicable.
  - B. Subpart CC not applicable to recycling units, however, AA, and BB are.
- II. Subpart AA - Reduced and clarified monitoring requirements.**
- III. Subpart BB**
  - A. Exclude equipment that contains or contacts affected hazardous waste for less than 300 hrs/yr from requirements.
  - B. Reduced record keeping and monitoring requirements.
- IV. Subpart CC - Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers.**
  - A. Postponed effective date to December 6, 1996 (retained final effective date of December 8, 1997)
    - Interim Status TSDF
      - 1. All TSDF is subject to the rules on December 6, 1996
      - 2. Modify Part B applications submitted before effective date.
      - 3. Install and operate control equipment by December 8, 1997.
    - Permitted TSDF
      - 1. Permit issued before Dec. 6, 1996 are not shield from Subpart AA, BB, and CC
      - 2. Facilities are subject to interim status rules under Part 265 on effective date.
      - 3. Standards applied and added when permit reissued, modified, or reviewed.
  - B. Clarified applicability to eliminate overlap of regulations.
  - C. New definitions added to clarify rule.
  - D. General Standards
    - 1. The average Volatile Organic Concentration (VOC) level for hazardous waste required to be managed in the units using air emission control changed from 100 ppmw to 500 ppmw (as determined at the point of waste origination).
    - 2. Treatment level changed to reflect change in action level from 50 ppmw to 100 ppmw VOC.
    - 3. Added another treatment option
  - E. Incorporated additional waste determination testing methods.
  - F. Tank Standards
    - 1. Divided methods of compliance into 2 levels
    - 2. Reduced monitoring and clarified times when closure devices can be opened.
    - 3. Added another control option to Level 2 tank standards.
  - G. Surface Impoundments Standards
    - 1. Added more design and installation information.

2. Clarified times when surface impoundment covers can be removed or opened.
3. Reduced monitoring requirements.

H. Containers Standards

1. Divided the requirements into three levels.
2. Under waste loading requirements, Level 2 must use good engineering and safety considerations.
3. Inspection, Monitoring Record keeping and Reporting. Under level 1 & 2, no periodic Method 21 leak monitoring. Inspect initially and annually. No reporting requirements but records is required to be maintained.

I. Closed Vent Systems & Control Devices.

1. Allowing 240 hrs/year for period of planned routine maintenance of the control devices.
2. Record keeping requirements.

1/6/97  
Distributed 1/6/97 by  
Debra Graham

## ANNOTATED EMERGENCY RULE

PROPOSED - TITLE 64  
WEST VIRGINIA LEGISLATIVE RULE  
DIVISION OF HEALTH  
SERIES 21  
CHILD CARE CENTERS

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Emergency Rule  
Effective \_\_\_\_\_, 199\_



**PROPOSED - TITLE 64  
WEST VIRGINIA LEGISLATIVE RULE  
DIVISION OF HEALTH  
SERIES 21  
CHILD CARE CENTERS**

**TABLE OF CONTENTS**

§64-21-1. General	1
§64-21-2. Definitions	1
§64-21-3. Permits, Hearings, Notices, Orders	3
§64-21-4. Inspections	6
§64-21-5. General Building Requirements	6
§64-21-6. Activity Areas and Equipment	9
§64-21-7. Animals	10
§64-21-8. Bedding and Sleeping Area	11
§64-21-9. Diaper Changing and Toilet Training	12
§64-21-10. Employee Health	13
§64-21-11. Food Service	13
§64-21-12. Garbage and Refuse Disposal	15
§64-21-13. Hand Washing	15
§64-21-14. Housekeeping and Sanitation	15
§64-21-15. Laundry	16
§64-21-16. Safety	16
§64-21-17. Sewage System	17
§64-21-18. Storage	17
§64-21-19. Water Supply	17
§64-21-20. Penalty for Violating Provisions of Regulations	18
§64-21-21. Administrative Due Process	18
§64-64-22. Severability	18

**PROPOSED - TITLE 64  
WEST VIRGINIA LEGISLATIVE RULE  
DIVISION OF HEALTH  
SERIES 21  
CHILD CARE CENTERS**

**Ed. Note:** This Emergency rule has been renumbered and reformatted according to the revised rules of the Secretary of State, Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, Title 153, Series 6, effective June 7, 1996. The differences between the Emergency rule and the Agency-Approved rule filed with the Legislative Rule-Making Review Committee on August 30, 1996 are described in the endnote at the end of this rule.

**§64-21-1. General.**

1.1. Scope. -- ~~These legislative rules establish~~ This legislative rule establishes the environmental health requirements for the construction and operation of child care centers.

1.2. Authority. -- W. Va. Code § 16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Supersession of Former Rule. -- This rule amends and replaces W. Va. Legislative Rule, Child Care Centers, 64 CSR 21, effective March 15, 1974.

1.6. Applicability. -- This rule applies to the owners and operators of child care centers.

1.7. Enforcement. -- This rule is enforced by the director of the division of health.<sup>1</sup>

~~§ 64-21-2. Application and Enforcement:~~

~~2.1. Application. -- These legislative rules apply to the owners and operators of child care centers:~~

~~2.2. Enforcement. -- The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee:~~

**§64-21-2. Definitions.**

2.1. Approved. -- A procedure of operation, installation or construction which is in accordance

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<sup>1</sup> The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

with the standards, specifications, and instructions established by the ~~state department~~ division of health.

2.2. Child Care Center. -- Any child care facility providing nonresidential child care for seven (7) or more children for all or part of a day. The term "child care center" includes: day care centers, family day care facilities, nursery schools, and preschools. "Child care center" does not include:

2.2.a. A kindergarten, preschool or school education program operated by a public school, accredited by the state department of education;

2.2.b. An individual or facility which offers occasional, temporary care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

2.2.c. Summer recreation camps operated for children attending sessions for periods not exceeding thirty (30) days;

2.2.d. Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

2.2.e. Persons providing family day care solely for children related to them, including grandparents, aunts and uncles.

2.3. Construct. -- Construct, extend, alter, or modify.

2.4. Day Care Center. -- A child care center which provides nonresidential child care for thirteen (13) or more children on a nonresidential basis.

2.5. Director. -- Director of the division of health or his or her lawful designee.

2.6. Disinfect. -- To eliminate virtually all germs from inanimate surfaces through the use of chemicals (e.g., products registered with the U.S. Environmental Protection Agency as "disinfectants") or heat. In the child care environment, a solution of one fourth (1/4) cup household liquid chlorine bleach added to one (1) gallon of tap water and prepared fresh daily is an effective disinfectant for environmental surfaces and other inanimate objects, ~~provided that~~ if the surfaces have been cleaned.

2.7. Family Day Care Facility. -- A child care center which is used to provide nonresidential child care for seven (7) to twelve (12) children, including children who are living in the household who are less than six (6) years of age. No more than four (4) of the total number of children may be less than twenty-four (24) months of age.

2.8. Health Officer. -- The ~~state~~ director of the division of health or the executive officer of the local board of health or his ~~duly authorized~~ or her lawful representative.

2.9. Permit. -- A written document, issued by the ~~department~~ division of health giving a

designated person permission to operate, construct, extend, alter or modify a building or structure to be used, or being used, as a child care center.

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

~~2.11. State Director of Health. -- The administrative head and chief executive officer of the state board of health or his duly authorized representative.~~

~~3.6. Child Care Center. -- Any child care facility receiving seven or more children for all or part of a day. The term shall be construed to mean day care center, day nurseries, nursery schools, kindergartens, play groups, night time care facilities, or centers or workshops for the mentally or physically handicapped.~~

~~3.7. Construct. -- The term construct shall also be construed to mean and include the terms extend, alter, and modify.~~

### §64-21-3. Permits, Hearings, Notices, Orders.

#### 3.1. Construction and Modification.

~~3.1.a. On and after March 15, 1974, the date these regulations became effective Except for minor repairs, no person shall construct a building or structure to be used as a child care center, or extend, alter or modify any structure used as a child care center without first making written application to the state department division of health and having received receiving a permit for same the child care center. Construction, extension, alteration, or modifications shall not commence begin until the division has issued a permit for the construction. a permit has been obtained for such purpose from the state department of health.~~

~~3.1.b. The division shall not issue a permit for the construction of a child care center shall not be issued until receiving an application for a construction permit and detailed plans and specifications of the child care center have been submitted to the state department of health for review and approval.~~

~~3.1.c. An application for a permit shall be made in writing and submitted to the department of health on a form prescribed by that agency, signed by the applicant or his or her authorized agent, and shall contain such information as may be requested by the state department of health to enable it to determine if the child care center construction is in compliance with all applicable provisions of these regulations. The applicant shall submit a written permit application on a form prescribed by the division. The form shall be signed by the applicant or his or her authorized agent and shall contain all information requested by the division to enable it to determine if the child care construction is or will be in compliance with the applicable provisions of this rule.~~

~~3.1.d. When upon review of the plans, specifications, and application for a permit, the state department division of health is satisfied that the proposed construction of the child care center is~~

satisfactory, it shall issue a permit. ~~shall be issued.~~ If the construction activities have not commenced begun within six (6) months from the date of issuance of a permit, ~~said the permit shall~~ automatically expire expires.

3.1.e. The application, plans, and specifications shall include, but not be limited to: a plot layout, floor plans, building or specifications, type of material used, a list of food service equipment, the type of potable and waste water treatment systems and the type of heating and ventilation systems.

3.1.f. Applications for plan approval and permit shall be made at least forty-five (45) days prior to the date that construction is to begin.

3.1.g. The ~~state department~~ division of health shall deny permission to construct, extend, alter, or modify the building or structure, if the information on the application, plans, specifications or supporting information documentation is incomplete, inaccurate, false or misleading, or indicates that the applicable provisions of this regulation rule cannot be met.

3.1.h. The child care center shall only be constructed, extended, altered or modified in accordance with the plans and specifications as approved by the ~~state department~~ division of health. ~~Any deviation from the approved original plans or specifications must be submitted in writing to the state department of health for review and written approval obtained before such changes are made. The applicant shall submit a written description of any deviation from the approved plans or specifications. Implementation of the deviation shall not begin without the written approval of the division.~~

### 3.2. Permit to Operate.

3.2.a. ~~On and after March 15, 1974, the date these regulations became effective; No person directly or indirectly shall in any manner conduct, control, manage, maintain, or operate a child care center unless said the person has in his or her possession a valid permit by the health officer to operate such a specific child care center.<sup>2</sup> The required permit to operate shall in no way affect or preclude the requirement that a license to operate a child care center must be obtained from the child care center licensing board, West Virginia department of welfare. Licenses are issued based upon approval of the facility by the state department of health, state fire marshal's office and state department of welfare.~~

3.2.b. ~~An application for a permit to operate a child care center shall be made in writing to the health officer, on a form prescribed by the state department of health, signed by the applicant or his authorized agent and shall contain such information as may be requested by the health officer to enable him to determine that the facility and its operation is in compliance with the applicable provisions of these regulations. The applicant shall submit a written permit application to the health officer on a form prescribed by the division. The form shall be signed by the applicant or his or her~~

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<sup>2</sup> The permit issued under this rule is one of several approvals required in order for a child care center (a day care center, a family day care facility, or other type of child care center) to obtain a license or certification to operate issued by the division of human services.

authorized agent and shall contain all information requested by the division to enable it to determine if the child care center and its operation are in compliance with the applicable provisions of this rule.

3.2.c. The application for a permit shall be made at least fifteen (15) days before the actual or proposed operation of ~~said the~~ child care center is to be effected.

3.2.d. The health officer shall deny a permit if the information on the application form is incomplete, inaccurate, false or misleading or indicates that the applicable provisions of ~~these regulations~~ this rule cannot be met.

3.2.e. Only persons who comply with the applicable provisions of ~~these regulations~~ shall be this rule are entitled to retain a permit.

3.2.f. Child care centers in operation at the time ~~these regulations became~~ this rule becomes effective, ~~and meeting which meet~~ all applicable prior ~~regulations~~ rules, shall be ~~deemed to be~~ eligible for a permit to operate. ~~Provided, that~~ Any construction, extension, modification or alteration taking place after the effective date of ~~these regulations~~ this rule in child care centers permitted under this subsection shall ~~be in compliance~~ comply with all applicable provisions of ~~these regulations~~ this rule.

3.2.g. Child care centers put into operation after the effective date of ~~these regulations~~ this rule shall comply in full with all applicable provisions of ~~these regulations~~ this rule.

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

3.2.i. A permit to operate ~~shall expire~~ expires at midnight on the 31st day of December following the date of issuance.

3.2.j. In the event of an intended change or actual change in ownership of a child care center, an application for a permit to operate shall be made at least fifteen (15) days prior to the date the proposed or actual change is effected.

3.2.k. A permit may be suspended or revoked by the health officer, if it is found that the child care center is being maintained or operated in violation of ~~these regulations~~ this rule or any applicable law, rule or ordinance applicable thereto.

3.2.l. A permit to operate shall not be reinstated until an inspection by the health officer determines that the child care center is in compliance with all applicable provisions of ~~these regulations~~ this rule and any orders, rules or instructions issued by the health officer.

3.2.m. Operational permits shall be posted in a conspicuous place within the child care center, and ~~said the~~ permit shall be readily available to the health officer.

3.3. Hearings, Notices and Orders.

3.3.a. Any person whose application for the construction, extension, alteration, or modification of a child care center has been denied may petition and shall be granted a hearing on the matter within ten (10) days after the ~~state director of health~~ officer has received a written petition requesting a hearing.

3.3.b. Any person whose application for a permit to operate a child care center has been denied, or whose permit has been suspended or revoked may petition and shall be granted a hearing on the matter within ten (10) days after the health officer has received written petition for such the hearing.

3.3.c. Notwithstanding the other provisions of ~~these regulations~~ this rule, whenever the health officer finds at a child care center insanitary or other conditions that may constitute an immediate or substantial hazard to public health, he or she may, without warning notice or hearing, issue a written order to the operator, citing such the conditions, specifying the corrective action to be taken and the time period in which such the action shall be completed. When ~~deemed~~ necessary, such the order shall state that the permit to operate is immediately suspended.

#### **§64-21-4. Inspections.**

4.1. Each child care center shall be inspected at least once each six (6) months. The health officer shall also make such additional inspections ~~as he deems necessary~~ needed to determine satisfactory compliance with the provisions of ~~these regulations~~ this rule and any orders, notices, instructions, or specifications issued pursuant ~~thereto~~ to this rule.

4.2. Any consecutive violation of the same item or items of ~~these regulations~~ this rule, may be considered as just cause for the immediate suspension of a permit to operate.

4.3. A copy of the inspection report shall be posted within the child care center.

4.4. The owner, operator or person in charge of a child care center, shall provide the health officer with free access to the entire premises for the purpose of inspection, and shall furnish all requested information to make the inspection complete.

#### **§64-21-5. General Building Requirements.**

##### 5.1. Location: Structure: Size.

5.1.a. Child care centers shall be located in a relatively noise and pollution free environment.

5.1.b. Child care center buildings or structures shall be of sound structure and maintained in good repair.

~~6.3. New installation shall not be located in a basement or below ground level without the expressed written consent of the state director of health~~

5.1.c. All painted surfaces shall be free of lead pigment or and other toxic materials.

5.1.d. ~~Child care center housing shall not provide less than~~ Useable floor space of thirty-five (35) square feet per child shall be provided and available for children's activities, exclusive of halls, bathrooms, kitchen, office space, or storage areas.

5.2. Floors; Walls; Ceilings.

5.2.a. Floors, walls and ceilings shall be of easily cleanable construction.

5.2.b. Toilet rooms and areas housing food service facilities shall have moisture-resistant, nonabsorbent floors.

5.2.c. Toilet rooms and areas housing food service facilities shall have water-resistant walls to a minimum level of four (4) feet above floor level.

5.2.d. Toilet rooms and areas housing food service facilities shall provide a coved juncture between the floor and wall.

~~6.8. All carpeting shall be of the type approved by the state fire marshal's office.~~

5.2.e. Carpets shall be securely attached or of a non-skid nature.

5.2.f. Carpeting shall not be used in toilet rooms or areas housing food service facilities.

5.2.f.1. In family day care facilities carpeting may be used in kitchen and dining areas if it is easily cleanable and kept clean and in good repair.

5.3. Heating; Ventilation.

5.3.a. All rooms shall have approved ventilation either by natural or mechanical means. Fans shall have shields with openings less than one-half inch or be out of the reach of children.

5.3.b. Child care centers shall be equipped with approved heating units sufficient to provide and maintain a temperature of at least sixty-eight degrees Fahrenheit (68°F) at floor level in all applicable rooms.

5.3.c. Unguarded open-face heaters are prohibited.

5.3.d. Oil and gas fired heating devices shall be properly vented to the outside air.

5.3.e. Shielding or other effective means shall be used to protect the children from direct contact with radiators, registers, hot water pipes and similar hazards.

5.3.f. ~~Thermometer shall be provided in~~ All rooms used by children ~~and shall be~~ shall have a thermometer which shall be located approximately thirty (30) inches above floor level. Thermostats are not acceptable in lieu of thermometers.



5.4. Insect and Rodent Control.

5.4.a. All buildings or structures shall be of rat-proof construction.

5.4.b. All doors opening to the outside shall be close-fitting. Screen doors or doors used in lieu thereof shall be self-closing.

5.4.c. All openings to the outer air shall be effectively protected against the entrance of insects. 5.23

5.4.d. The child care center shall be ~~kept~~ free of insects and rodents at all times.

5.4.e. Only those insecticides and rodenticides approved by the ~~state department of health~~ U. S. Environmental Protection Agency shall be used in child care centers.

5.5. Lighting.

5.5.a. Play and activity surfaces shall have a minimum of fifty (50) foot candles of illumination at floor level. All other areas shall have at least thirty (30) foot candles of illumination at floor level.

5.5.b. Lighting may be by either natural or artificial means or both.

5.5.c. All light bulbs and fluorescent tubes ~~must~~ shall be protected by effective shields.

5.6. Plumbing.

5.6.a. All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the ~~national plumbing~~ state building code.

5.6.b. Cross-connections and potential back siphonage possibilities are prohibited.

5.7. Toilet, Lavatory, and Bathing Facilities.

5.7.a. Toilet rooms shall be provided and shall be easily accessible to children.

5.7.b. In day care centers, separate and private toilet facilities shall be provided for males and females who are six (6) years of age or older.

5.7.c. One (1) flush toilet and one (1) lavatory shall be provided for each fifteen (15) children or fraction thereof, excluding children in diapers who are not receiving toilet training.

5.7.d. ~~Diaper changing shall be done in an area and on an approved surface provided with a clean cover prior to each use.~~ In day care centers, a hand washing sink shall be located in the diaper changing area. In family day care facilities, a hand washing sink shall be readily accessible to the diaper changing area.

5.7.e. Toilet fixtures shall be sized so that they may be used by children without assistance, ~~or Provided: step stools and/or modified toilet seats that are properly constructed for safety and cleanability which are safely constructed and can be cleaned easily~~ may be used in lieu of ~~proper specially sized toilet fixtures.~~

~~6.20.4. Toilet room shall not open directly into any room housing food service facilities.~~

~~6.20.5. Toilet room doors shall be self-closing.~~

~~6.20.6. Toilet room doors, if louvered for make-up air, shall be screened with 16 mesh or finer screen, or the louver constructed in such a manner as to prevent the entrance of insects and vermin.~~

5.7.f. Lavatories shall be provided in or immediately adjacent to all toilet rooms. Each lavatory shall have mixing faucets, or be provided with tempered water. All lavatories shall be provided with soap and single service sanitary towels.

5.7.g. Waste receptacles shall be provided for used paper towels adjacent to lavatories.

5.7.h. ~~Adult employee~~ If provided, separate adult employee restrooms shall have a minimum of one (1) flush toilet. At least one (1) lavatory shall be located within or immediately adjacent to the toilet room. ~~or immediately adjacent thereto.~~

5.7.i. Adult employee restrooms shall meet the requirements of Sections 5.43 through 5.44 5.7.f and 5.7.g of this rule.

5.7.j. All restrooms shall have a covered waste container.

5.7.k. If night-time care is provided, a bathtub or shower shall be provided as well as age-appropriate bathing facilities for children of toddler age or younger.

5.7.k.1. No child under age six (6) shall be left unsupervised while bathing.

5.7.k.2. Soap and clean, individual washcloths and towels shall be provided for each child.

5.7.k.3. Bathtubs and showers shall be equipped to prevent slipping.

#### **§64-21-6. Activity Areas and Equipment.**

6.1. All activity equipment shall be free of safety hazards, shall be of smooth construction and, where applicable, easily cleanable. Activity equipment shall include, but not be limited to: toys, furnishings, tables, chairs, cots and similar equipment.

6.2. ~~Outdoor activity areas shall be well drained, free of safety hazards, and shall be enclosed by a fence or other suitable barrier.~~ Usable outdoor play space of seventy-five (75) square feet per child shall be provided on the premises or within walking distance of the facility. Play times may

be staggered, and space may be based on the number of children using the area at one (1) time.

6.2.a. Outdoor play spaces shall be well-drained and free of litter, solid waste and refuse, ditches, abandoned cars, used appliances, animal feces, toxic plants, or other conditions presenting a hazard.

6.2.b. Outdoor play spaces provided by day care centers shall be fenced or have natural barriers such as hedges or stationary walls at least three (3) feet high.

6.2.c. In family day care facilities, all areas accessible to the outdoor play area determined to be unsafe for children, including, but not limited to, for example, steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets, roads, driveways, railroad tracks, or parking lots, shall be fenced off or have natural barriers at least three (3) feet high to protect children.

6.2.d. Supports for Outdoor equipment used for climbing and similar play activities shall be installed to prevent tipping or collapse securely fastened to the ground. Swings, slides, and climbing equipment shall not be placed over or immediately adjacent to concrete, asphalt, brick, or similar hard surfaces.

6.3. Sandboxes shall be covered when not in use.

6.4. Wading pools shall be prohibited unless they are an integral part of a swimming pool meeting the state board of health swimming pool and bathing place regulations which meets the division of health's rule, Swimming Pool and Bathing Beach, 64 CSR 16.

#### **§64-21-7. Animals.**

7.1. With the following limitations, Animals may be permitted on child care premises.

7.2. Animals and their quarters shall be kept in a clean condition at all times.

7.3. Wild, dangerous, aggressive or obviously ill animals are prohibited.

11.1.3. If animals are kept indoors at night, the area in which they are kept shall be maintained at a minimum temperature of sixty (60) degrees Fahrenheit.

11.1.4. Animals kept indoors shall be kept in the children's activity room or other areas approved by the health officer.

7.4. Aquariums shall be permitted. Provided: Aquariums are shall be under the supervision of the child care staff, are located in the activity areas and are kept out of reach of children.

11.1.6. Dogs and cats may be permitted. Provided:

a. There is only one dog or one cat per child care center;

~~7.5. The dog is at least six (6) months old and the cat at least three (3) months old, and both are Dogs and cats shall be currently vaccinated against rabies, distemper, hepatitis, and leptospirosis.~~

~~7.6. In day care centers, the outdoor quartering areas of the dog or cat is dogs and cats shall be complete and completely separate from children's outdoor activity areas.~~

~~7.7. Indoor animal quarters and litter boxes may shall not be located in food preparation, storage, or serving areas.~~

~~7.8. Live animals, including birds and turtles, shall be excluded from food preparation, storage, serving areas, and in-use dining areas. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums.~~

#### **§64-21-8. Bedding and Sleeping Area.**

~~9.1. Individual cribs or cots, mattresses and bedding shall be provided for each child. (See department of welfare standards.)~~

~~9.2. Bedding shall be kept clean and sanitary at all times.~~

~~9.3. If mattresses are used, mattress pads and water-proof covers shall be required.~~

~~9.4. Individual bedding shall be changed once per week or more often if necessary.~~

~~9.5. Cribs, cots, or mattresses shall be a minimum of twenty-four (24) inches apart on all sides while in use.~~

~~9.6. Double-decker beds are prohibited.~~

~~9.7. Each child's bedding shall be properly identified and used only for that particular child.~~

8.1. Each child who naps shall be provided with an individual bed, sturdy cot, crib, couch, baby bed, playpen, or mat. In family day care facilities, siblings may share double beds.

8.2. For infants who are not yet able to climb, separate cribs shall be provided. Cribs shall be spaced a minimum of twenty-four (24) inches apart on all sides. Bars on cribs shall be no farther apart than two and three-eighths (2 3/8) inches, and crib sides shall be secure and high enough to prevent accidents.

8.3. Individual sheets and covers shall be provided for each child and shall be laundered at least weekly or whenever soiled or prior to use by another child.

8.4. Mattresses, mats, cots, and other sleeping surfaces shall be water-proof or shall have a water-proof cover shall be used.

8.5. Stackable cribs are prohibited. The upper levels of double-deck beds shall not be used by children under nine (9) years of age.

#### **§64-21-9. Diaper Changing and Toilet Training.**

9.1. Diaper changing, if applicable, shall be done in an area where approved hand washing facilities are readily accessible. Children shall be diapered or have soiled underwear changed in an established diaper changing area. The changing area shall not be located in food preparation areas.

9.2. Diaper changing shall be done on a clean, safe, impervious, nonabsorbent surface which is used for no other purpose.

9.3. Soiled disposable diapers shall be stored in a nonabsorbent, easily cleanable covered container with a plastic liner. Said container shall be emptied, cleaned and disinfected daily or oftener. The plastic liner containing the diaper shall be disposed of along with garbage and refuse in a manner acceptable to the health officer. The child's perineal (urinary and anal) area shall be cleaned with disposable wipes.

9.4. After removing a soiled diaper and before putting a fresh diaper on a child, staff members shall wipe their own hands with a pre-moistened towelette or a damp paper towel.

9.5. Both the child's and the staff member's hands shall be thoroughly washed after each diaper change. If disposable gloves are used, they must be discarded immediately and hands washed.

9.6. Changing tables and surfaces shall be cleaned and disinfected after each use by cleaning to remove visible soil, followed by wiping with an approved disinfectant solution, whether or not disposable, nonabsorbent paper is used. If disposable paper is used, it shall be discarded immediately after each diapering.

9.7. Feces from soiled diapers shall be disposed of through the regular sewage disposal system. Soiled cloth diapers and/or soiled training pants shall be stored in a labeled container with a tight-fitting lid provided by a commercial diaper service or in a sealed plastic bag which is sent home with the child at the end of the day. If diapers are laundered by a commercial diaper service, the service must shall be accredited by the Diaper Service Accreditation Council. Feces from soiled cloth diapers or training pants shall be disposed of by dumping in a toilet.

9.8. Soiled diapers, if reusable, shall be stored in nonabsorbent, easily cleanable covered containers with plastic liners. Said containers shall be emptied, cleaned and disinfected daily, or more often if conditions warrant. Soiled disposable diapers shall be stored in conveniently located, washable, plastic-lined, tightly covered waste containers. Each container shall be labeled and kept clean and free of buildup of soil and odor.

9.9. Toilet training chairs, where applicable, if used, shall be of easily cleanable construction and after each use shall be emptied into a toilet, and thoroughly cleaned and disinfected sanitized in a utility sink, after each use. Approved facilities for emptying, cleaning, and disinfecting toilet training chairs shall be provided and used.

9.10. Hand washing sinks shall not be used for rinsing soiled diapers or clothing or for cleaning toilet training equipment.

#### **§64-21-10. Employee Health.**

10.1. All staff members shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty.

10.2. Staff members shall not use tobacco in any form while engaged in any food service activities, ~~or while feeding children or administering to their~~ the children's needs.

10.3. Smoking is prohibited in children's ~~living and activity~~ areas.

10.4. No staff member while affected with any disease in a communicable form, or while a carrier of such a disease, or while affected with boils, infected wounds, sores, or a respiratory infection shall work in any capacity in which there is likelihood of ~~such the persons staff member~~ transmitting disease to other persons; and no person known or suspected of being affected with any ~~such~~ disease or condition shall be employed in any ~~such~~ area or capacity. In family day care facilities, appropriate measures shall be taken to assure that non-staff household members do not directly or indirectly transmit diseases to the staff or the children protect staff and children from the direct or indirect transmission of diseases from non-staff household members.

10.5. The staff shall employ universal precautions for protection from disease and infection. Spills of body fluids, which include urine, feces, blood, saliva, nasal discharge, eye discharge, and injury or tissue discharges, shall be cleaned up immediately, as follows and:

10.5.a. Surfaces soiled by spills of vomit, urine, and feces on any surface shall be cleaned and disinfected;

10.5.b. Surfaces soiled by spills of blood or blood-containing body fluids and injury and tissue damage shall be cleaned and disinfected;

10.5.c. Persons cleaning contaminated areas shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids;

10.5.d. Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie; and

10.5.e. Mops shall be cleaned with a disinfectant solution.

#### **§64-21-11. Food Service.**

11.1. Food service facilities Child care centers shall comply with the state board the division of health's rule, Food Service Sanitation Rules, 64 CSR 17, except as specified in Section 11.2 of this rule.

11.2. Family day care facilities may use an on-site kitchen which complies with the following requirements:

11.2.a. All food preparation, service and storage areas, and all equipment and utensils shall be kept clean and in good repair:

11.2.b. Food contact surfaces of equipment and utensils shall be non-toxic, easily cleanable, and cleaned and sanitized after each use:

11.2.c. Dish washing facilities shall be provided and methods utilized to effectively remove food soil and sanitize dishes, utensils and equipment. Except for fixed equipment and utensils too large to be cleaned in sink compartments, dishes, utensils and equipment shall be washed in a mechanical dishwasher capable of sanitizing, or washed in a hot detergent solution, rinsed free of detergent and abrasives, and sanitized by one (1) of the following methods:

11.2.c.1. Immersion for at least thirty (30) seconds in water at a temperature of one hundred seventy degrees Fahrenheit (170°F):

11.2.c.2. Immersion for at least one (1) minute in water at a temperature of at least seventy-five degrees Fahrenheit (75°F) and containing fifty (50) parts per million of available chlorine (approximately one (1) tablespoon liquid household bleach per gallon of water); or

11.2.c.3. Immersion in a clean solution containing any other approved chemical sanitizing agent:

11.2.d. Dishes, utensils and equipment shall be air dried:

11.2.e. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be obtained from approved sources. Home-canned food is prohibited except for jams, jellies, preserves, apple butter, syrup and honey. Fluid milk and milk products shall be pasteurized and packaged in an approved milk processing plant:

11.2.f. Adequate refrigeration equipment shall be provided and used for perishable foods and shall be capable of maintaining food temperatures at forty-one degrees Fahrenheit (41°F) or below:

11.2.g. Food shall be prepared in a sanitary manner and protected at all times from potential contamination, including dust, insects, rodents, unnecessary handling, coughs and sneezes, overhead leakage, and unclean equipment and utensils:

11.2.h. Potentially hazardous foods, such as beef, poultry, and eggs, shall be thoroughly cooked:

11.2.i. Prepared foods shall be served immediately, refrigerated, or held at one hundred forty degrees Fahrenheit (140°F) or above:

11.2.j. Food service workers shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting to work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet; and

11.2.k. Food service workers shall employ good hygienic practices, shall wear clean clothing and hair restraints, and shall not use tobacco products in the food preparation and service areas.

11.3. When required by the applicable local health department, all persons engaged in food service activities shall have valid food handler service workers' permits.

#### **§64-21-12. Garbage and Refuse Disposal.**

12.1. All garbage and refuse shall be stored in approved watertight and vermin-proof containers.

12.2. When not in constant use, ~~all such~~ garbage and refuse containers shall be covered with tight-fitting lids.

12.3. Garbage and refuse shall be removed from the premises weekly, or more often, if necessary.

12.4. Except for family day care facilities, a concrete platform or a metal rack ~~shall be~~ is required for outside storage of garbage and refuse containers.

12.5. Garbage and refuse containers shall be cleaned after each emptying.

12.6. If garbage can cleaning operations are conducted outside, then a frost-proof hose bibb shall be provided.

~~6.17.7. Disposal of garbage and refuse must be in compliance with the state board of health solid waste regulations.~~

#### **§64-21-13. Hand Washing.**

13.1. Staff members shall wash their hands thoroughly in an approved lavatory before starting work, after diaper changing activity, and otherwise as often as ~~may be~~ necessary to remove soil and prevent contamination. No staff member shall resume work after visiting the toilet room without first washing their his or her hands.

13.2. Children's hands shall be washed before and after eating meals and snacks, after handling pets or other animals, after visiting the toilet room, and before any food service activity, including setting the table.

#### **§64-21-14. Housekeeping and Sanitation.**



14.1. All areas and equipment of the child care center shall be kept clean and in good repair and in a neat and orderly condition at all times. Indoor environmental surfaces associated with children's activities, such as table tops, shall be cleaned and disinfected when they are soiled or at least once weekly.

14.2. Toys that are placed in children's mouths or are otherwise contaminated by body secretions or excretions shall be set aside to be cleaned and disinfected before handling by another child. Machine-washable cloth toys can be used and shall be machine-washed when contaminated.

14.3. All frequently touched toys in rooms in which infants and toddlers are cared for shall be cleaned and disinfected daily. Toys in rooms in which older, non-diapered children are cared for shall be cleaned weekly and when soiled. The use of soft, non-washable toys for infants and toddlers shall be limited to personal use articles that are not shared between children.

14.4. Toilet rooms, flush toilets, toilet training equipment, and fixtures shall be cleaned and sanitized at least daily and when obviously soiled.

14.5. Rooms shall not be routinely cleaned while occupied by children.

#### **§64-21-15. Laundry.**

15.1. In day care centers, laundry, if done on the premises shall be done in a separate room designed for that particular purpose. ~~may not be done in children's activity areas or in food preparation, service or storage areas.~~

15.2. Soiled laundry shall be stored in nonabsorbent easily cleanable covered containers.

15.3. Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

~~8.4. Washing machines shall be installed so that no backsiphonage possibilities exist.~~

15.4. Clean laundry shall be stored in such a manner ~~so as not to become~~ to protect it from being soiled or contaminated prior to use.

15.5. ~~Laundry shall be done in wash water having a temperature of at least 140°F. A chemical sanitizer shall be added to the rinse water and the laundry air dried; or if the laundry is done by automatic/mechanical washer and dryer, washing shall be accomplished at a temperature of 140°F or higher and the laundry tumble dried at 160°F or higher until dried. Laundry shall either be mechanically washed and dried; or mechanically washed, rinsed in a chemical sanitizing solution, and air-dried.~~

#### **§64-21-16. Safety.**

16.1. All necessary precautions shall be taken to insure an accident-free environment for the children. Such precautions shall include, but not be limited to the following:

16.2. Children shall be ~~closely~~ supervised at all times, indoors and out, in accordance with the division of human resources staff/child ratios for Family Day Care Facilities, 78 CSR 18, and Day Care Centers, 78 CSR 1.

16.3. Stairways, walks, corridors and all other areas of the child care center shall be free of ice, snow, physical obstructions, or any other item which may be a safety hazard. Porches, balconies, decks, or platforms elevated more than three (3) feet above the ground shall be equipped with secure child-proof railings or barriers. Stairways shall be provided with railings and with barriers or safety gates at the top and bottom whenever infants, toddlers or preschool children are in care.

16.4. A first aid kit shall be provided on the premises and shall be readily available at all times. Minimum contents shall include, but not be limited to, ~~an approved disinfectant, sterile cotton and gauze bandages, and adhesive tape. band aids; thermometer; gauze; tape; scissors; tweezers; disposable, nonporous gloves; a first aid guide; and syrup of ipecac.~~ Syrup of ipecac shall be used only with prior authorization from the parent and at the direction of a poison control center or the child's physician. First aid supplies shall not be accessible to the children in care. A first aid kit shall be taken by staff on all trips away from the facility.

#### **§64-21-17. Sewage System.**

17.1. Sewage and excreta disposal systems shall comply in full with ~~the state board of health applicable~~ small sewage and excreta disposal systems regulations rules.

17.2. Sewage and excreta disposal systems shall be kept in good repair and properly maintained and operated.

#### **§64-21-18. Storage.**

18.1. Approved storage facilities shall be provided for, but not limited to the following items: food stuffs, utensils, toys, work materials, cleaning supplies, clothing, linens, medicines, toxic materials, and all items which may be hazardous to children.

18.2. Poisons and other potentially hazardous items shall be inaccessible to children and stored in original containers. ~~kept in locked cabinets. Empty food containers shall not be used for storing of toxic materials, poisons, medicines, and similar items.~~

#### **§64-21-19. Water Supply.**

19.1. All water supply systems shall comply in full with the current standards and requirements issued by the ~~state department~~ division of health.

19.2. Hot and cold running water, with a minimum pressure of twenty pounds per square inch (20 p.s.i.) shall be provided in all areas where food is prepared, at all hand washing facilities, and all other applicable areas. Where the water will be in direct contact with children, the temperature shall not exceed one hundred twenty degrees Fahrenheit (120°F).

19.3. Drinking fountains, if provided, shall be of the angle-jet type with a non-oxidizing mouth guard.

19.3.a. Drinking fountains shall be easily accessible to the children and the water pressure at ~~such~~ the fountains shall be properly regulated.

19.3.b. Drinking fountains, if provided, shall be at the ratio of one (1) per each forty (40) children or fraction thereof.

19.3.c. Drinking cups ~~must~~ shall be dispensed from an approved sanitary single service dispenser. This does not preclude the use of properly washed and sanitized glasses.

**~~§64-21-13. Repeal of Former Regulations.~~**

~~All regulations, previously adopted by the state board of health, which are in conflict with the provisions of these regulations, are hereby repealed.~~

**~~§64-21-14. Severability.~~**

~~If any provisions of these rules or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or the 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.~~

**§64-21-20. Penalty for Violating Provisions of Regulations.**

20.1. Any person who violates any provision of ~~these regulations~~ this rule ~~shall be~~ is guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days or both fine and imprisonment.

20.2. Each day's failure to comply with any applicable provision of ~~these regulations~~ this rule constitutes a separate offense.

**§64-21-21. Administrative Due Process.** -- Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so as prescribed in the division of health's administrative rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR 1.

**§64-64-22. Severability.** -- The provisions of this rule are severable. If any provision of this rule is held invalid, the remaining provisions remain in effect.

End Note

This Emergency rule has been renumbered and reformatted according to the revised rules of

the Secretary of State, Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, Title 153, Series 6, effective June 7, 1996. The Agency-Approved rule was filed with the Legislative Rule-Making Review Committee August 30, 1996. This Emergency rule differs from the Agency-Approved rule as follows: 1) It has been reorganized and accordingly renumbered; 2) A section on universal precautions, originally included in the Division of Human Service's proposed new rule, Family Day Care Certification Requirements, 78 CSR 18, has been moved from that rule to this rule. The Divisions of Health (Bureau for Public Health) and Human Services (Bureau for Children and Families) agree that these standards are more appropriate for the Child Care Centers Rule; 3) It has received additional non-substantive editing for format and style; and, 4) Cross-references have been changed to correspond with the new numbers. These changes are proposed to the Legislative Rule-Making Review Committee for approval as modifications to the agency-approved rule to be incorporated into the rule submitted to the full Legislature.

The Emergency rule was filed as a "clean" rewritten rule without strike-through and underlining. This annotated copy uses the strike-through and underline notation to distinguish all proposed revisions to the current rule. A table showing the equivalent item numbers for the rule currently in effect, the agency-approved rule, and the reorganized emergency rule is available from the Office of Regulatory Development of the Department of Health and Human Resources.