WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #7

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2012 APR -5 PM 1:25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WV DHHR BUREAU FOR PUBLIC HEALTH TITLE NUMBER: 64

CITE AUTHORITY: WV CODE §§16-1-4 and 16-1-6(b) and (m)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

TITLE OF RULE BEING AMENDED: GENERAL SANITATION

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Due to overcrowding and lack of sufficient sleeping space in some correctional facilities, an emergency rule amendment is being sought to provide for an exemption from the bedding area requirements of the general sanitation rule. This proposal establishes the requirements and procedure for requesting the exemption and sets forth the Standards that must be met based upon the American Correctional Association recommendations.

Use additional sheets if necessary

Authorized Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: GENERAL SANITATION, 64CSR18

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Health and Human Resources

Address: One Davis Square
Suite 303
Charleston, WV 25301

Phone Number: 304 558-2971 Email: ann.a.goldberg@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

There will be no cost to the Bureau for Public Health for this revision. There may be a cost saving realized by the Department of Corrections.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2012 Increase/Decrease (use"-")	2013 Increase/Decrease (use"-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Buildings			
Equipment			
Land			
Other Assets			
2. Estimated Total Revenues			

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date

Agency

Department of Health and Human Resources

Authorized Representative

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

WV DHHR
BPH

64CSR18, General Sanitation rule,
EXPLANATION OF THE EMERGENCY

The State of West Virginia, Bureau for Public Health has been inspecting institutions for public health purposes for many years. Recently, it has come to our attention that the Department of Corrections has or may have difficulty meeting the minimum square foot requirements of the section on multi-person bedding and sleeping areas. In an effort to work with our colleagues at the Department of Corrections we are proposing this Emergency rule.

The Department Of Corrections (DOC) has a significant backlog of prisoners in jails. Every prisoner being kept in jails but committed to DOC represents an ongoing violation of the provisions of several Supreme Court decisions starting with SER Dodrill v. Scott, SER Smith v. Skaff, SER Stull v. Davis, Sams v. Kirby and Sams v. Commissioner. Similarly, there are over 1700 inmates in jails awaiting placement. The number of inmates is creating potential operations problems within the jails. Likewise there is a cost of $48.00 per day per inmate to house an inmate in a jail and over $60.00 a day in other contracted settings. As a result, any impediment to increasing the number of beds exacerbates not only the overcrowding in the jails but also the operations of the prisons. DOC has several facilities that are either on line and limited by the General Sanitation rule or will come on line before a regular rule could be finalized that will help reduce some of these situations, even if it is only by a small number of beds.

With no relief the conditions in the jails will create potential 8th amendment violations opening the state up to civil liability, attorney fee shifts and potential prospective relief. Likewise, prisoners kept in jails awaiting a bed have potential delays in their ultimate release on parole. Therefore, even given the small impact of the solution to the overall problem, the individual results will be significant for each individual who can be moved from a jail to a prison as a result of increased beds that may be available through an exception from section 6.5. of the General Sanitation rule, 64CSR18.

We respectfully request that this application to file the GENERAL SANITATION rule as an Emergency rule be granted.

EMERGENCY RULE, 64CSR18
Department of Health and Human Resources
Bureau for Public Health
Environmental Engineering Division
GENERAL SANITATION

BRIEF SUMMARY

The proposed rule modifies an existing rule to allow for an exception to be made in the square footage requirements for bedding and sleeping areas for prisons and other correctional facilities. The rule has also been updated with additional definitions and corrections to obsolete terms or titles throughout the rule.

STATEMENT OF CIRCUMSTANCES

The Department of Corrections has been working with the Department of Health and Human Resources to allow for an exception to be made for the instances where the Department of Corrections is unable to meet the minimum square footage requirements for bedding and sleeping areas. In those instances, the DOC will abide by the Standards set by the American Correctional Association for per person square footage requirements.

EMERGENCY RULE QUESTIONNAIRE

DATE: March , 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) Jennifer Taylor, General Counsel

Department of Health and Human Resources, 1 Davis Square, Suite 100 E
Charleston, WV 25301

EMERGENCY RULE TITLE: GENERAL SANITATION

1. Date of filing ~~March~~ April 6 , 2012

2. Statutory authority for promulgating emergency rule:

   WV Code §

3. Date of filing of proposed legislative rule: on or before June 29, 2012

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

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

   no

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

   This rule has a requirement for square footage in the bedding areas of multiple occupancy rooms. Some state prisons, correctional facilities or work release centers cannot meet it. Therefore, the Department of Health and Human Resources, in cooperation with the Department of Corrections, has developed a way for an affected institution to request an exemption from the square foot floor space requirements of the General Sanitation rule. Each facility requesting an exemption would have to meet the minimum square foot requirements by American Correctional Association Standards.

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

~~n/a~~

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

~~see #6~~

FILED

2012 APR -5 PM 1:26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 64
~~WEST VIRGINIA~~ LEGISLATIVE RULE
~~DIVISION OF~~ BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 18
GENERAL SANITATION

§64-18-1. General.

1.1. Scope. – This ~~legislative~~ rule establishes the minimum public health sanitation requirements governing all institutions and schools, care facilities, lodging facilities, recreational facilities, and public restrooms. ~~This rule should be read in conjunction with the provisions of W. Va. Code §16-1-7, particularly the definition of "bed and breakfast inn" in the section's subdivision (7).~~

1.2. Authority. -- W~~.~~Va~~.~~ Code §~~16-1-7~~ 16-1-4.

1.3. Filing Date. -- ~~April 29, 1999~~.

1.4. Effective Date. -- ~~July 1, 1999~~.

~~1.5. Supersession of former rule. -- This legislative rule repeals and replaces W. Va. Division of Health Legislative Rule, Organized Camps, 64 CSR 18; Tourist and Resort Camps, 64 CSR 24; Labor and Industrial Camps, 64 CSR 29; and School Sanitation, 64 CSR 44, all effective December 29, 1967.~~

~~1.6.~~ 1.5. Applicability. -- This rule applies to every person~~, as defined in this rule,~~ who in any manner establishes, conducts, controls, manages, maintains, or operates a facility included under the scope of this rule.

~~1.6.a. For the purpose of this rule, institutions and schools include, but are not limited to, public or private correctional facilities, colleges and universities, and primary and secondary educational facilities (kindergarten through grade twelve (12)).~~

~~1.6.b. For the purpose of this rule, care facilities include, but are not limited to, public or private halfway houses, adult day care facilities, residential care facilities (such as juvenile group homes and work release centers), and non-disaster emergency shelters (such as homeless shelters and family violence protection shelters). The term does not include health care facilities licensed by the division of health.~~

~~1.6.c. For the purpose of this rule, lodging facilities include, but are not limited to, hotels, motels, and labor camps.~~

~~1.6.d. For the purpose of this rule, recreational facilities include, but are not limited to, campgrounds, parks, playgrounds, organized camps, fairs, festivals and mass gatherings.~~

~~1.6.e. For the purpose of this rule, public restrooms include any facility where restrooms are provided for public use.~~

~~1.7.~~ 1.6. Enforcement. -- This rule is enforced by the ~~director of the division of~~ commissioner of the

bureau for public health.[1]

§64-18-2. Definitions.

2.1. Approved - A procedure of operation, installation or construction which is in accordance with the standards, specifications, and instructions established by the ~~division of~~ bureau for public health.

2.2. Campground - A tract of land established, maintained, and offered to the public for payment for the location or placement of two or more camping units.

2.3. Camping Unit - Any tent, camping vehicle, cabin, or similar vehicle or structure designed or intended to be used for camping purposes.

2.3.a. A "camping unit" means and includes, but is not limited to, tents, tent campers, fold down campers, pop up campers, travel trailers, camping vans, motor homes, pick up coach campers, or any other unit built or mounted on a vehicle or chassis and capable of being self-propelled or towed.

2.3.b. A "camping unit" shall not include any unit kept by its owner on land occupied by the owner in connection with his or her dwelling, or any unoccupied camping unit kept and stored at a location that has been reserved for storage within a campground.

2.4. Campsite - Any plot of land within a campground used or intended to be used for the location or placement of a camping unit.

2.5. Care Facilities – Include, but are not limited to, public or private halfway houses, adult day care facilities, residential care facilities (such as juvenile group homes and work release centers), and non-disaster shelters (such as homeless shelters and family violence protection shelters). The term does not include health care facilities licensed by the Office of Health Facilities Licensure and Certification in the Office of the Inspector General.

2.6. Commissioner – The commissioner of the bureau for public health or his or her lawful designee.

~~2.5.~~ 2.7. Construct - To install, establish, extend, alter or modify.

~~2.6. Director - Director of the division of health or his or her lawful designee.~~

~~2.7.~~ 2.8. Health Officer - The ~~director~~ commissioner of the ~~division of~~ bureau for public health who is also the State Health Officer or the executive officer of the local board of health or his or her lawful representative.

~~2.8.~~ 2.9. Hotel - Every building where food and lodging are furnished to guests and payment is required.

~~2.9.~~ 2.10. Institution - A public or private facility established by an organization or corporation for the purpose of providing higher education, care, training, rehabilitation or other similar services or functions. For the purpose of this rule, an "institution" includes, but is not limited to, public or private correctional facilities,

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[1] ~~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.~~

colleges and universities, and primary and secondary educational facilities (pre-K through grade twelve [12]).

~~2.10.~~ 2.11. Labor Camp - A labor camp includes any lumber, mining, agricultural, construction, or other industrial camp where ten or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents, cabins, buildings, or other similar enclosures.

2.12. Lodging Facilities – Include, but are not limited to, hotels, motels and labor camps.

~~2.11.~~ 2.13. Mass Gathering - Any group of two hundred fifty (250) or more persons assembled together for a meeting, festival, social gathering, concert or other similar purpose. The term shall not include assembly in any permanent buildings or permanent structures designed, equipped and intended for use by large numbers of people. For the purposes of this subsection, "equipped" means supplied with adequate sanitary facilities for the intended use.

~~2.12.~~ 2.14 Motel - Every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages, tourist courts, and bed and breakfast inns.

~~2.13.~~ 2.15. Nuisance - An annoyance or anything which causes injury, inconvenience, damage, or which essentially interferes with the enjoyment of life or property, and includes, but is not limited to, inadequate or unsanitary sewage, water or plumbing facilities or other unsanitary conditions.

~~2.14.~~ 2.16. Occupant - A person utilizing a specific facility governed by this rule.

~~2.15.~~ 2.17. Operator - A person who has been granted a written permit, in accordance with this rule, to operate a facility governed by this rule.

~~2.16.~~ 2.18. Organized Camp - Any area, place, parcel or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more permanent or semi-permanent structures are established or maintained as living or sleeping quarters for children or adults, and operated for educational, social, recreational, religious instruction or activity, physical education or health, or vacation purposes either gratuitously or for compensation. This definition shall not be construed to include a hunting, fishing, or other camp privately owned and used exclusively for the personal pleasure of the owner.

~~2.17.~~ 2.19. Permit - A written document issued by the health officer giving a person permission to operate a specific facility governed by this rule.

~~2.18.~~ 2.20. Person - An individual, partnership, association, syndicate, company, firm, trust, corporation, institution, department, division, bureau, agency, or any entity recognized by law.

~~2.19.~~ 2.21. Public Restroom - A structure housing toilet, lavatory, or other such facilities intended for the unrestricted use by the public. A "public restroom" includes any facility where restrooms are provided for public use.

2.22. Recreational Facilities – Include, but are not limited to, campgrounds, parks, playgrounds, organized camps, fairs, festivals and mass gatherings.

~~2.20.~~ 2.23. School - A public or private organization that provides instruction for the teaching of children.

The term includes early childhood / primary education centers, middle childhood / junior high education centers, adolescent / high school education centers and vocational education centers. The term does not include child care centers as defined in the ~~division of~~ bureau for public health rule, Child Care Centers, 64CSR21. For purposes of this rule, "schools" include, but are not limited to, public or private correctional facilities, colleges and universities and primary and secondary educational facilities (pre-K through grade twelve [12]).

~~2.21.~~ 2.24. Service Animal - Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

~~2.22.~~ 2.25. Sewer Connection - The connection consisting of all pipes, fittings, and appurtenances from the waste drain outlet of a facility to the inlet pipe of the corresponding sewer riser pipe of the sewer system serving a specific facility governed by this rule.

~~2.23.~~ 2.26. Sewer System - A system whether publicly or privately owned which receives and treats sewage and provides for the disposal of effluent and sludge from the system. Included in this definition are individual sewer systems and public sewer systems.

~~2.24.~~ 2.27. Waste Disposal Station - A facility used for disposing of excreta or sewage from a camping unit waste holding tank.

~~2.25.~~ 2.28. Wastewater - Water containing human, animal, or domestic waste.

~~2.26.~~ 2.29. Water Connection - The connection consisting of all pipes, fittings and appurtenances from the water connection inlet of a facility to the outlet pipe of the corresponding water riser pipe of the water distribution system serving a specific facility governed by this rule.

~~2.27.~~ 2.30. Water Supply System - A system of pipes, appurtenances and equipment for the collection, treatment, storage or distribution of water.

§64-18-3. Plan Review, Permits, Hearings, Notices and Orders.

3.1. Plan Review

3.1.a. Except as provided in paragraph 3.1.a.1 of this section, whenever a facility governed under the scope of this rule is constructed or extensively remodeled and whenever an existing structure is converted to use as one of the facilities governed under this rule, the owner or operator shall submit plans and specifications for the construction, remodeling, or conversion to the health officer for review and approval at least forty-five (45) days before construction, remodeling, or conversion is begun.

3.1.a.1. This section does not apply to colleges and universities or to public restrooms unless the public restroom is included as part of a facility governed under this rule.

3.1.a.2. Once completed plans are received by the health officer, the health officer shall review the plans within a period of time not to exceed forty-five (45) days.

3.2. Permit to Operate

3.2.a. Except as provided in paragraph 3.2.a.1 of this section, no person shall operate a facility governed by this rule who does not possess a valid permit issued to him or her by the health officer.

3.2.a.1. This provision shall not apply to colleges and universities or to the operation of a public restroom unless it is included as part of a facility governed under this rule.

3.2.b. The applicant shall submit a written application for a permit to operate a facility governed by this rule to the health officer on a form prescribed by the health officer and signed by the applicant or his or her authorized representative.

3.2.c. The applicant shall submit to the health officer an application for a permit at least fifteen (15) days before the actual or proposed operation of the facility is to be effected.

3.2.d. Prior to approving the application for a permit, the health officer shall inspect the proposed facility to determine compliance with this rule. Only persons who comply with the applicable provisions of this rule are entitled to a permit.

3.2.e. Facilities governed by this rule, in operation at the time this rule becomes effective, and meeting all applicable prior rules are eligible for a permit to operate, provided that the facility shall meet the applicable operational requirements of this rule, and, provided further, that any construction taking place after the effective date of this rule shall be in compliance with this rule and other applicable design standards and rules.

3.2.f. Permits are not transferable or assignable and automatically become invalid upon a change of ownership of the facility or upon suspension or revocation of the permit.

3.2.g. A permit to operate expires at midnight on the 30th day of June following the date of issuance.

3.2.h. The applicant shall submit to the health officer an application for the renewal of a permit at least fifteen (15) days prior to the expiration date of the existing permit.

3.2.i. In the event of an intended change or an actual change in ownership of a facility, an applicant shall submit an application for a permit to operate to the health officer at least 15 days before the proposed or actual change is effected.

3.2.j. The health officer may suspend or revoke a permit if he or she finds that the facility is being maintained or operated in violation of this rule.

3.2.k. The health officer may revoke a permit to operate for repeated or serious violations of any of the requirements of this rule or for interference with the health officer in the performance of his or her duties.

3.2.l. The health officer shall not reinstate a permit to operate until he or she determines by an inspection that the facility is in compliance with all applicable provisions of this rule and any orders, rules or instructions issued by the health officer.

3.2.m. The operator shall post the operational permit in a conspicuous place within the facility, and the permit shall be readily available to the health officer.

3.3. Hearings, Notices and Orders.

3.3.a. Whenever the health officer makes an inspection of a facility and discovers that any of the provisions of this rule have been violated, he or she shall notify the operator of the violations by means of an inspection report form or other written notice. The operator shall correct the violations within the time

specified in the notice.

3.3.b. Whenever the health officer finds that any facility governed by this rule constitutes an imminent hazard to public health, he or she may, without notice or hearing, issue a written order to the operator or person in charge citing the existence of the condition and requiring action to be taken to remedy the condition, including the suspension of the permit to operate. Notwithstanding any other provision of this rule, the order is effective immediately.

3.3.b.1. Any person to whom the order is directed shall comply with the order immediately, but upon written petition to the health officer shall be afforded a hearing on the matter as set forth in subdivision 3.3.c. of this rule.

3.3.c. Any person whose application for a permit to operate a facility governed by this rule has been denied, or whose permit has been suspended or revoked, may submit a written petition to the health officer requesting a hearing on the matter. The health officer shall grant a hearing on the matter within ten (10) days after he or she has received the written petition.

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

§64-18-4. Inspections.

4.1. Except as specified in subdivisions 4.1.a and 4.1.b of this section, the health officer shall inspect a facility governed by this rule at least once a year.

4.1.a. Colleges and universities and public restrooms which are not part of a facility governed by this rule may be inspected on a complaint basis only.

4.1.b. Schools shall be inspected at least once every two years.

4.2. The health officer shall ~~also~~ make additional inspections as necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant to this rule.

4.3. The health officer shall discuss the inspection report with the person in charge at the time of inspection.

§64-18-5. Animals.

5.1. A facility falling within the scope of this rule may keep or house domestic animals or pets under conditions conducive to proper sanitation and good health.

5.2. No live reptiles shall be kept or housed unless a written plan is provided and implemented for proper sanitary handling and hand washing.

5.3. No wild, dangerous or obviously ill animals are to be kept or fed in an area that would endanger inhabitants or patrons of the facility.

5.4. No dogs, cats or other domestic animals shall be permitted to run at large.

5.5. If the facility has dogs or cats, they must be immunized by a licensed veterinarian for any disease which can be transmitted to humans and for which there is a vaccine.

5.6. Animal quarters shall be kept in a clean condition at all times and located and maintained so as not to create a nuisance.

5.7. All manure shall be removed and sanitarily disposed of at a frequency necessary to minimize objectionable odors or insect and rodent breeding.

5.8. Drainage from stables, pens, coops or other animal quarters shall be disposed of in a manner to prevent contamination of any source of potable water, groundwater, or surface water.

5.9. The maximum number of animals in any facility shall be limited to the number that can be adequately housed, fed, and maintained.

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

5.10.a. Service animals may be permitted in dining areas.

§64-18-6. Bedding and Sleeping Areas.

6.1. All rooms or areas used for bedding and sleeping shall be kept clean and sanitary, maintained in a safe condition and in good repair.

6.2. Floors in sleeping quarters shall be easily cleanable, in good repair and located to prevent ground and surface water entry.

6.3. Tents used as permanent sleeping quarters shall be placed on platforms or floors elevated at least one foot above the ground surface. Concrete pads may be used in lieu of platforms on floors.

6.4. Single occupancy sleeping areas shall contain a minimum of seventy (70) square feet of floor space per person.

6.5. In multiple occupancy rooms or areas used for a combination of eating, sleeping or cooking, a minimum of fifty (50) square feet of floor space is required per occupant.

6.5.a. Insofar as this subsection governs any state prison, correctional facility, work release center or other facility for the housing of criminal offenders or detainees, upon any inspection required by this rule, such a facility may request an exemption to this subsection regarding square footage if the following conditions are met:

6.5.a.1. There is a conflict between the minimum square footage requirements of subsection 6.5 and the minimum square footage requirements established by the current applicable standards of the American Correctional Association (the "Standards"); and

6.5.a.2 The facility desiring the exemption provides the Bureau for Public Health with a copy of

the ACA Standards at the same time that they submit a written request for an exemption.

6.5.b. Upon satisfaction of the provisions of 6.5.a, the bureau may grant the request for exemption, in which case the square footage requirements of the Standards shall govern. In all other respects, the requirements of this rule shall apply.

6.6. Except for tents, no sleeping area shall have a ceiling height of less than seven (7) feet measured from the floor.

6.7. Sleeping areas shall be designed to provide a minimum of three feet between beds, both laterally and end to end. Beds shall be placed so that the heads of sleepers are at least six feet apart. These spacing requirements for beds do not apply to hotels, motels, or bed and breakfast inns.

6.8. When double-decker beds are used, there shall not be less than twenty-seven (27) inches between the lower mattress and the bottom of the upper bed and not less than twenty-seven (27) inches between the ceiling and the top mattress of the upper bed.

6.9. Triple decker beds are prohibited.

6.10. A bed and bedding shall be provided for each person.

6.11. Mats or cots used for short term napping shall be spaced two feet apart on all sides.

6.12. All articles of bedding and furniture shall be kept clean and in good repair.

6.13. All fabric mattresses shall be provided with mattress pads or mattress covers.

6.14. Linens shall be provided except in those facilities where the user is normally required to bring his or her own linens.

6.15. Linen, if provided, shall be changed at least once weekly or more often if needed, and clean linen provided.

6.16. A clean set of linen shall be provided for each succeeding occupant.

6.17. Storage area or areas shall be provided for the storage of excess clothing, luggage, or similar articles.

6.18. Sleeping areas in primitive or outpost camping or similar recreational activities are exempt from the requirements of this section.

§64-18-7. Communicable Disease.

7.1. Good hygienic practices and disease control measures shall be employed to prevent the spread of communicable disease.

7.2. No staff member while affected with any disease in a communicable form, or while a carrier of a communicable disease, or while affected with boils, infected wounds, sores, or a respiratory infection shall work in any capacity in which there is likelihood of the staff member transmitting disease to other persons.

7.3. All staff members in care facilities, correctional facilities, schools, and similar facilities where a close staff/client relationship exists shall:

7.3.a. Wear clean outer garments and maintain a high degree of personal cleanliness;

7.3.b. Conform to good hygienic practices while on duty;

7.3.c. Thoroughly wash hands and the exposed portions of arms with soap and warm water before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking or using the toilet; and

7.3.d. Not use tobacco in any form while performing duties. If not prohibited by law, the health officer may designate specific areas for tobacco use when the staff member is not engaged in the performance of his or her duties.

7.4. The operator shall maintain a register containing a record of all occupants.

7.4.a. The register shall be available to the health officer and shall be preserved for a minimum of twelve (12) months.

7.4.b. The register shall contain the name and address of the occupants and the dates of occupancy.

7.4.c. A register need not be maintained for mass gatherings, parks, playgrounds, and public restrooms.

§64-18-8. Garbage and Refuse.

8.1. Storage, handling, collection, transportation and disposal of garbage and refuse shall be conducted to prevent odor, insect, rodent and other nuisance conditions.

8.2. All garbage and refuse shall be stored in approved water tight, vermin proof, and easily cleanable containers. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

8.3. Garbage and refuse containers shall be kept clean.

8.4. When not in continuous use, garbage and refuse containers shall be covered at all times except those containers used only for non-putrescible and non-infectious wastes.

8.5. Excluding mass gatherings, garbage and refuse containers, enclosures, dumpsters and compactor systems located outside shall be stored elevated or on metal racks or on a smooth surface of non-absorbent material such as concrete or asphalt that is kept clean and maintained in good repair.

8.6. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean.

8.7. Garbage and refuse storage rooms and outside enclosures, if used, shall be constructed of easily cleanable, non-absorbent, washable materials, shall be kept clean, shall be insect and rodent proof, and shall be large enough to store the garbage and refuse containers that accumulate.

8.8. Garbage and refuse containers shall be readily accessible for use and servicing.

8.9. If garbage and refuse container cleaning operations are conducted outside, then a frost proof hose bib and sanitary waste drain shall be provided.

8.10. Disposal of garbage and refuse shall be in compliance with the West Virginia Solid Waste Act.

§64-18-9. Heating and Ventilation.

9.1. Every indoor space intended for human occupancy shall be ventilated by natural or mechanical means. The minimum amount of outdoor air shall be five (5) cubic feet per minute per person.

9.2. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes.

9.3. Ventilation systems, when vented to the outside, shall not create a nuisance or public health hazard.

9.4. Heating, ventilation and air-conditioning systems shall be in compliance with the requirements of the State Building Code.

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

9.6. For mechanical ventilation, indoor design temperature shall be sixty-eight (68) degrees Fahrenheit for heating and seventy-eight (78) degrees Fahrenheit for cooling.

9.7. If operated during the normal heating season, the facility shall be equipped with approved heating units sufficient to provide and maintain a temperature of sixty-eight (68) degrees Fahrenheit or greater in routinely occupied indoor areas unless the facility is intended or designed for low temperature operation.

9.8. Oil and gas fired heating devices shall be properly vented to the outside air or otherwise in compliance with the State Building Code.

9.9. Clothes dryer vent systems shall be independent of all other systems and shall convey the products of combustion and moisture to the outside.

§64-18-10. Housekeeping and Maintenance.

10.1. The entire premises and its contents shall be maintained in good repair and in a clean and sanitary condition. Facilities and equipment shall be provided for this purpose.

10.2. Cleaning and sanitizing shall be conducted at a frequency necessary to maintain an environment conducive to the general safety, health and comfort of the users.

10.3. A written plan providing for a regular schedule of housekeeping tasks shall be provided and implemented for institutions, schools, care facilities, lodging facilities and organized camps.

§64-18-11. Laundry.

11.1. Laundry, if done on the premises, shall be done in a separate area, room, or rooms designed for that particular purpose.

11.2. Soiled laundry shall be stored in non-absorbent, easily cleanable, covered containers or covered laundry bags intended for laundry storage.

11.3. Clean laundry shall be stored in such a manner so as not to become soiled or contaminated.

11.4. Soiled and clean laundry shall be handled, stored, processed and transported in such a manner as to prevent the spread of infection.

11.5. Laundry rooms and equipment shall be maintained in a clean and sanitary condition.

11.6. Chemicals and materials used in laundry operations shall be labeled, stored, handled, and used so as to provide maximum cleaning and disinfecting efficiency and prevent injury to the user.

11.7. All laundered articles shall be washed at a temperature which gives the best performance in relation to the types of soil, level of soil, fabric types and chemicals used. Manufacturers' instructions regarding time, temperature, mechanical agitation and chemical action should be followed in the washing process.

11.8. All laundered articles shall be rinsed to remove the cleaning agent.

11.9. After washing and rinsing, laundered articles must be either rinsed in a chemical sanitizing solution and air dried, or mechanically dried.

11.10. An individual laundering his or her own personal belongings is exempt from the requirements of subsections 11.7, 11.8, and 11.9 of this section provided that the handling, storage, processing and transporting of the individual's laundry does not contaminate surrounding areas or other laundry.

11.11. Laundry facilities shall be made available on a regular basis to occupants of labor camps.

§64-18-12. Lighting.

12.1. Lighting levels shall be commensurate with the type of activity occurring within the area.

12.2. Light sources shall be installed or available to provide the following minimum foot candles of light:

12.2.a. Twenty (20) foot candles of light shall be provided in critical cleaning areas, including, but not limited to, food preparation areas, utensil washing areas, toilet and bathing facilities, and laundry areas. Dining areas shall not be considered critical cleaning areas;

12.2.b. Ten (10) foot candles of light shall be provided in normal cleaning areas, including, but not limited to, corridors, lobbies, janitor's closets, storage areas, and lodging quarters;

12.2.c. One hundred (100) foot candles of light shall be provided in hazardous work areas, including, but not limited to, workshops and school laboratories; and

12.2.d. Forty (40) foot candles of light shall be provided in reading and activity areas, including, but not limited to, classrooms, day rooms, play rooms, and meeting rooms.

12.3. Lighting may be by either natural or artificial means or both.

12.4. All light bulbs and fluorescent tubes shall be protected by effective shields or the use of shatterproof bulbs over food preparation areas, showers, gymnasiums, and any other area where safety is a concern. These areas include the classrooms in primary and secondary schools.

12.5. Tamper proof light fixtures shall be provided in areas where a safety hazard may exist to the user or where abuse is likely.

12.6. Primitive or outpost camping areas are exempt from the requirements of this section.

§64-18-13. Noise.

13.1. All facilities falling under the scope of this rule and constructed after the effective date of this rule shall incorporate reasonable acoustic planning into the facility design and site selection.

13.2. Acoustic planning for the construction of a facility shall take into consideration the effects of exposure to noise on the physical health, mental health, and comfort of the facility user within the context of the intended use of the facility.

13.3. The ~~director~~ commissioner may develop, through interpretive rule, ranges of design goals for ambient sound levels in facilities covered under this rule and require estimated ambient sound levels in decibels to be shown in plans submitted for review.

§64-18-14. Plumbing.

14.1. In the absence of applicable ~~division of~~ bureau for public health rules and design standards, water supply and wastewater systems and fixtures shall comply with the requirements of the State Building Code.

14.2. Any plumbing or drainage system under the jurisdiction of this rule shall be maintained in good repair and in a sanitary and serviceable condition by the owner or his agent.

14.3. Plumbing fixtures shall be installed in a manner to afford easy access for cleaning and shall not be located in such a manner as to interfere with the use or the normal operation of doors, windows or other exit openings.

14.3.a. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floors, walls and ceilings.

14.3.b. Utility service lines and pipes shall not be unnecessarily exposed on floors, walls or ceilings.

14.4. Drainage system vent terminals shall extend to the outer air and be installed to minimize the possibilities of clogging and the return of foul air into the building or into adjoining structures.

14.5. Plumbing fixtures directly connected to a drainage system shall be equipped with a water-seal trap.

14.6. Plumbing fixtures shall have a smooth impervious surface and be constructed of materials especially suited to the use for which the fixture is intended.

14.7. A service or utility sink is required in all establishments where wet cleaning methods are used.

14.8. Plumbing fixtures shall be installed and maintained so that backsiphonage, backflow, and cross connection potentials are eliminated.

§64-18-15. Safety.

15.1. All premises and facilities available to public patronage, employment, confinement, or use shall be designed, maintained and operated to minimize safety hazards and promote an accident-free environment.

15.2. Adequate protection against all electrical hazards shall be provided.

15.3. The design, installation and maintenance of the facility shall comply with applicable State Fire Marshal's rules.

15.4. The design, maintenance and arrangement of facilities, including lighting, shall minimize hazards of falls, slipping and tripping.

15.5. A fence or barrier shall be provided around any outdoor playground or activity area located in an area where safety may be a concern and which is used by children or persons not capable of self-preservation.

15.6. Except for parks, playgrounds, and public restrooms, a first aid kit shall be provided.

§64-18-16. Sewage.

16.1. Sewage and liquid waste disposal systems shall comply in full with the ~~division of~~ bureau for public health rule, Sewer Systems, Sewage Treatment Systems, and Sewage Tank Cleaners, 64CSR9.

16.2. Sewage and liquid waste disposal systems shall be kept in good repair and properly maintained and operated.

16.3. Liquid waste shall not be deposited on the ground in a manner that may create a nuisance.

16.4. Adequate access for approved cleaning vehicles and operations shall be provided to all self-contained privies and portable excreta disposal units.

§64-18-17. Size, Space.

17.1. In campgrounds, twelve hundred (1200) square feet of space shall be provided for each campsite. The average campground density shall not exceed twenty-five (25) campsites per acre.

17.2. In campgrounds, camping units, including canopies and similar appurtenances, shall be separated from other camping units on adjacent campsites and all campground buildings and structures by a minimum distance of ten (10) feet.

17.3. There shall be at least ten (10) feet of space between a camping unit and any campground street, common parking area, or other common use areas.

17.4. Campground areas used exclusively for backpack type of camping are exempted from subsections 17.2 and 17.3 of this section provided the use of these areas will not adversely affect public health.

17.5. For mass gatherings, at least twenty (20) square feet per person shall be provided at the site for day time assemblage, and at least forty (40) square feet per person shall be provided for overnight assemblage, exclusive of parking areas.

17.6. For mass gatherings, adequate parking space shall be provided for every four (4) persons with the density not to exceed one hundred (100) passenger cars or thirty (30) buses per usable acre.

17.7. School classrooms shall provide a minimum of twenty-eight (28) square feet of space per student.

17.8. Bedding and sleeping areas shall be sized according to section 6 of this rule.

§64-18-18. Storage.

18.1. Appropriate storage facilities of cleanable construction shall be provided for, but not limited to, the following items: food; utensils; toys; work materials; cleaning supplies; clothing; linens; medicines; and toxic materials.

18.2. All storage facilities shall be maintained in a neat, orderly, and clean condition.

18.3. Only those articles necessary for the operation and maintenance of the facility shall be stored on the premises.

18.4. All items intended for human consumption or human contact shall be protected from contamination during storage.

18.5. Poisons and other potentially hazardous items shall be properly labeled and stored in locked storage spaces not used for any other purpose. Keys for the storage spaces shall be available only to authorized staff members.

§64-18-19. Structure, Materials, Construction and Repair.

19.1. Every foundation, roof and exterior wall, door, skylight and window shall be reasonably weather-tight, watertight, and damp-free, and shall be kept in sound condition and good repair.

19.2. Floors, interior walls and ceilings shall be sound and in good repair.

19.3. Materials, adhesives and coverings used in interior areas shall be limited to a type that minimizes offensive or hazardous emissions to individuals who use or occupy the facility.

19.4. All exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by paint or other protective covering or treatment using nontoxic materials where accessible to children.

19.5. The interior finish of floors, walls, and ceilings shall be constructed of materials which are suitable for the intended use of the area and the frequency and type of cleaning methods necessary to maintain these finishes in a sanitary condition.

19.6. Floors, walls and ceilings in toilet rooms, food preparation areas, bathing facilities, and similar areas shall be easily cleanable, non-absorbent, and capable of withstanding routine wet cleaning methods. Other types of floor coverings may be permitted in areas where necessary for safety reasons, provided they do not interfere with floor cleaning.

19.7. Accessory structures present or provided shall be structurally sound and be maintained in good repair or they shall be removed from the premises.

19.7.a. The exterior of accessory structures shall be made weather-resistant through the use of decay-resistant materials or the use of paint or other preservatives.

19.8. Every foundation, roof, floor, exterior and interior wall, ceiling, inside and outside stair, every porch, and every appurtenance thereto, shall be safe to use and capable of supporting the loads that normal use may cause to be placed on them.

§64-18-20. Surroundings.

~~20.1.~~ All parts of property used in connection with the operation of the facility shall be kept neat, clean, adequately drained, free of litter and vermin harborage, and designed, located, maintained and operated so as not to endanger the public health or to create a nuisance or safety hazard.

§64-18-21. Toilet, Hand washing and Bathing Facilities.

21.1. Toilet, hand washing, and bathing facilities shall be provided in the number required in the State Building Code.

21.1.a. Labor camps and organized camps shall provide one water closet and one lavatory for each ten (10) occupants and one (1) bathtub or shower for each eight (8) occupants, or fraction thereof.

21.1.b. Parks and playgrounds shall provide at least one (1) water closet and one lavatory for each sex.

21.1.c. Campground comfort stations shall provide for each twenty (20) campsites or fraction thereof one (1) water closet for males, two (2) water closets for females, one (1) lavatory for each sex, and one (1) bathtub or shower for each sex.

21.1.d. In mass gatherings, a ratio of one (1) water closet for each one hundred (100) persons shall be provided for the first one thousand (1000) persons, then an additional two (2) water closets per one thousand (1000) thereafter. When water under pressure is provided, one (1) lavatory for every two (2) water closets shall be provided.

21.1.e. Urinals may be substituted for up to fifty percent (50%) of the required number of water closets.

21.2. Toilet, hand washing and bathing facilities shall be designed, constructed, installed, maintained, and operated in a sanitary manner.

21.3. Rooms containing toilet facilities shall be vented to the outside air. Adequate ventilation or humidity control shall be provided as needed in shower rooms and other high humidity areas.

21.4. An adequate supply of toilet tissue shall be provided at each water closet.

21.5. All hand washing facilities shall be provided with hand cleansing soap or detergent, and sanitary towels or a hand drying device providing heated air, adjacent to each hand washing sink.

21.5.a. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand washing facilities.

21.6. If bathing facilities are provided, occupants shall be provided with soap and clean washcloths and towels.

21.6.a. Occupants shall be provided with clean washcloths and towels at least once weekly or more often if needed.

21.6.b. Washcloths and towels shall be freshly laundered before being furnished to occupants.

21.7. Common use towels are prohibited.

21.8. The supplies required under subsection 21.6 of this rule are not required to be provided in those facilities where the user is normally required to bring his or her own soap, washcloths and towels.

21.9. Hand washing facilities, where provided, shall be in or immediately adjacent to the toilet facilities.

21.10. Toilet, hand washing, and bathing facilities shall meet the requirements of section 23 of this rule.

21.11. Any self-closing or metering faucet shall be designed to provide a flow of water for a minimum of fifteen seconds without the need to reactivate the faucet.

21.12. Except for privies, unless properly constructed privacy barriers are provided, toilet rooms shall be completely enclosed and shall have tight-fitting doors which shall be closed except during cleaning or maintenance.

21.13. Privies shall meet the requirements of section 16 of this rule.

21.14. Toilet rooms used by women shall have at least one covered waste receptacle for the disposal of sanitary napkins <u>or other such products</u>.

21.15. In facilities which are mainly used by children, toilet and hand washing fixtures shall be sized so that they may be used by children without assistance, or step stools that are properly constructed for safety and ease of cleaning shall be provided.

21.16. In institutions, schools, and care facilities, a diaper changing area shall be established and used by staff members when they change the diapers and soiled underwear of individuals under their care. The changing area shall not be located in food preparation areas.

21.16.a. Hand washing facilities shall be readily accessible to the diaper changing area.

21.16.b. Diaper changing shall be done on a clean, safe, impervious, nonabsorbent surface which is

used for no other purpose.

21.16.c. The individual's perineal (urinary and anal) area shall be cleaned with disposable wipes.

21.16.d. After a staff member removes an individual's soiled diaper or soiled underwear, and before the staff member puts a fresh diaper on the individual, the staff member shall wipe his or her own hands with a pre-moistened towelette or a damp paper towel.

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

21.16.f. 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.

21.16.g. Soiled cloth diapers and underwear shall be stored in nonabsorbent, easily cleanable, covered containers with plastic liners. The containers shall be emptied, cleaned and disinfected daily.

21.16.h. Soiled disposable diapers will 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.

21.16.i. Toilet-training chairs, if used, shall be of easily cleanable construction, and after each use, shall be emptied into a toilet, and thoroughly cleaned and sanitized in a utility sink.

21.16.j. Hand washing sinks shall not be used for rinsing soiled diapers or clothing, or for cleaning toilet-training equipment.

§64-18-22. Vector Control.

22.1. Effective measures shall be used to minimize the presence of rodents, flies, cockroaches, and other insects and vermin on the premises.

22.2. The premises shall be kept in such condition as to prevent the harborage or feeding of insects, rodents, and other vermin.

22.3. Applicable doors, windows and other exterior openings shall be effectively protected against the entrance of rodents, insects, and other vermin. These areas include, but are not limited to, food service areas, toilet facilities, and housing areas. This requirement does not apply to primitive camping, outpost camping or similar recreational activities.

22.4. Screening material shall not be less than sixteen (16) mesh to the inch.

22.5. Only those pesticides approved by the United States Environmental Protection Agency and the United States Department of Agriculture shall be used.

22.6. Poisonous or toxic materials shall not be used, stored or disposed of in a way that constitutes a hazard to employees or other persons, nor in a way other than in compliance with the manufacturer's specifications.

§64-18-23. Water Supply.

23.1. An approved, adequate, easily accessible, potable water supply shall be provided. This provision may be waived by the health officer for remote campgrounds, campsites, mass gatherings, and similar areas where compliance is impractical.

23.2. Water supplies shall be installed, constructed, maintained, operated and monitored in compliance with ~~division of~~ bureau for public health rules ~~64 CSR 3~~, Public Water ~~Supply Regulations~~ Systems, 64CSR3; ~~64CSR19,~~ Water Well Regulations, 64CSR19 and ~~64 CSR 15,~~ Cross-Connection Control and Backflow Prevention, ~~Regulations~~ 64CSR15.

23.3. Hot and cold running water shall be supplied through a mixing valve or combination faucet in all areas where food is prepared, at all hand washing and bathing facilities, and all other applicable areas. This provision may be waived by the health officer for campgrounds, campsites, mass gatherings, and similar areas where compliance is impractical.

23.3.a. Hot water means water heated to a temperature of not less than 110 degrees Fahrenheit.

23.3.b. Steam-mixing valves are prohibited.

23.3.c. Water temperatures for showers, bathing, or hand washing shall be thermostatically controlled to insure the safety of users.

23.4. Drinking fountains, if provided: shall be constructed of impervious material; shall have an angle-jet nozzle protected by a non-oxidizing mouth guard above the overflow rim of the bowl; shall be equipped with a pressure regulating valve; and shall be maintained in a sanitary manner.

23.4.a. Drinking fountain/lavatory combinations where the water fountain is part of the cold water faucet or is built into the sink's basin are prohibited.

23.4.b. Drinking fountains, if provided, shall be at the ratio required in the State Building Code.

23.5. No dipping vessels or cups for common use are permitted.

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

23.7. Where portable drinking water containers or coolers are used, they shall be of easily cleanable construction, securely closed, and constructed and arranged so that water can only be withdrawn from the container by a water tap or faucet.

23.7.a. Pitchers, water jugs, or similar receptacles without water taps or faucets may be used if they are easily cleanable, of approved construction, and in good repair, and the water contained in them is protected against contamination.

23.7.b. All portable water containers shall be kept clean, sanitized between uses, and properly stored and handled.

23.8. All ice intended for human consumption or for food storage shall be obtained from a source approved

by the health officer and shall be made, stored, transported, and handled under sanitary conditions.

23.8.a. Ice intended for self-service shall be dispensed from automatic self-service ice dispensing equipment.

23.9. The ~~director~~ commissioner may permit the use of potable water transported in tanks to supplement the existing water supply or as the sole source of water supply.

23.9.a. Transported water shall be from an approved public water supply and maintained with at least one (1.0) mg per liter free chlorine residual or an equivalent strength of another disinfectant as approved by the health officer.

23.9.b. Equipment and procedures used to transport and dispense potable water shall be approved by the health officer.

§64-18-24. Penalty for Violating Provisions of Regulations.

~~24.1.~~ Any person violating any of the provisions of this rule, or orders issued pursuant to this rule, is punishable by a fine of not more than two hundred dollars ($200) or by imprisonment for not more than thirty (30) days, or both. Each day's failure to comply with any applicable provision of this rule constitutes a separate offense.

§64-18-25. Administrative Due Process.

~~25.1.~~ 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 in a manner prescribed in the ~~division of~~ bureau for public health's ~~administrative~~ rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.