



## **FISCAL NOTE FOR PROPOSED RULES**

Rule Title: **64CSR4 Public Water System Operator Regulations**

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: **Health and Human Resources**

Address: **One Davis Square, Suite 100 East**  
**Charleston, WV 25301**

Phone Number: **304-356-4122** Email: [Ann.A.Goldberg@wv.gov](mailto: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.

This update of the Public Water System Operator Regulations is proposed to provide consistency between water and wastewater operator requirements, update due to changes in technology and incorporate new operator certification classification for specific public water systems.

### **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		
	2011 Increase/Decrease (use "-")	2012 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
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.

There is no anticipated change in revenue or cost associated with the proposed rule changes.

**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.

The change is needed to provide consistency between water and wastewater operator requirements, update due to changes in technology and incorporate new operator certification classification for specific public water systems. There is no anticipated change in revenue or cost.

Date

7/23/2011

Agency

Department of Health and Human Resources

Authorized Representative

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

Legislative Rule, 64CSR4  
Department of Health and Human Resources  
Bureau for Public Health  
Office of Environmental Health Services  
Public Water Systems Operator Regulations

### **BRIEF SUMMARY**

The proposed repeal and replace rule consists of several small changes made to clarify intent, improve the organizational structure, and meet the U.S. Environmental Protection Agency (EPA) requirements for public water system operators. Class R systems were added to Section 4.1.b. to ensure certified operator coverage at specific types of public water systems as required by the EPA. The experience requirements for Class III and IV operators were reduced by one year to more appropriately reflect the current training needs. The examination score expiration date was increased from two years to five years, which more appropriately reflects changes in technology and examination versions. Clarification on adequate operator coverage for public water systems and exception criteria were also added to improve consistency in implementation and communication of intent.

### **STATEMENT OF CIRCUMSTANCES**

The Bureau for Public Health seeks to amend the rule for Public Water Systems Operators. The changes are needed to provide consistency between water and wastewater operator requirements, update the rules due to changes in technology and incorporate new operator certification classification for specific public water systems.

These proposed changes were discussed with a stakeholder committee that consisted of state regulatory agencies, training providers, and industry related associations during several meetings over a one year period prior to this filing.

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 29 , 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Ann A. Goldberg, Director  
Public Health Regulations  
Bureau for Public Health  
350 Capitol Street, Room 702  
Charleston, WV 25301  
(304) 558-2971 phone; (304) 558-1035 fax

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
PUBLIC WATER SYSTEMS OPERATORS REGULATIONS

1. Authorizing statute(s) citation \_\_\_\_\_  
WV Code §§16-1-4 and 16-1-9.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 17th, 2011

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Public comment period ended July 18th, 2011

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

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

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

July 29, 2011

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ann A. Goldberg, Director, Public Health Regulations  
Bureau for Public Health, Department of Health and Human Resources  
350 Capitol St. Room 702, Charleston, WV 25301

(304) 558-2971 phone; (304) 558-1035 fax

ann.a.goldberg@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Walt Ivey, Director, Environmental Engineering Division  
Office of Environmental Health Services, BPH/DHHR  
350 Capitol St.. Rm. 313, Charleston, WV 25301

(304) 558-2981 phone; (304) 558-0289 fax

walter.m.ivey@wv.gov

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

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

n/a/

b. Date of hearing or comment period:

June 17 - July 18, 2011

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

n/a

d. Attach findings and determinations and reasons:

Attached n/a

## 64CSR4 PUBLIC COMMENTS AND RESPONSES

1. Morgantown Utility Board, Greg Shellito, 7-1-11
2. Berkeley County Public Service Water District, Paul Fisher, 7-7-11
3. City of Philippi, William E. Knight III, 7-11-11
4. Morgantown Utility Board, Timothy L. Ball, 7-15-11
5. WV Municipal Water Quality Association, Paul Calamita, 7-18-11
6. Beckley Water Company, Matthew W. Stanley, 7-18-11
7. WV American Water Company, Douglas Amos, 7-18-11
8. St. Albans, Jean Melton, 7-18-11
9. WVRWA&WVML, Timothy P. Stranko, 7-18-11

### **COMMENT #1: Morgantown Utility Board, Greg Shellito, 7-1-11**

**From:** Greg Shellito [mailto:gshellito@mub.org]

**Sent:** Friday, July 01, 2011 9:51 AM

**To:** Dawn.A.Newell@wv.gov

**Subject:** Proposed water operator Rules.

Dawn,

I have just reviewed the proposed rule changes. I have, as well as my operational staff, some great concerns over the changes.

The Morgantown Water treatment plant has for, well over 50 years, operated exceptionally with our current Class IV and class III operational arrangement.

I would appreciate it greatly if you could contact me and perhaps explain what logic ( if any ) was used to craft the new proposed regs. The new requirements for our plant to

Have a class IV operator present 24/7 is inane, this would not only place my current class III operators, out of a job ( which they have performed very very well at for decades )

But would also cause additional operational cost within our organization. I don't understand the reasoning behind this change, I cannot think of any problems, that have occurred,

Because we had a class III operating instead of a class IV at our facility, or for that matter anywhere else in the state. Allowing a class III to operate our class IV plant, under the guidance and direction

Of our chief operator has and will always provide us with well trained and knowledgeable operators.

Lastly, I believe, as does my operational personnel that a 3 year renewal, NOT a 2 year is more than adequate to keep ones certification.

Greg A Shellito  
Manager of Treatment and Production  
Morgantown Utility Board  
304 599 2111

### **RESPONSE #1:**



Mr. Greg A. Shellito  
Morgantown Utility Board  
PO Box 852  
Morgantown, WV 26507-0852

Dear Mr. Shellito:

This letter is to confirm receipt of your enclosed written comments on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) on July 1, 2011 and provide written response. Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems, the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

*5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

As requested, the logic behind the previously proposed subsection 5.6.d. was subsection 5.1.g. of the current rule version based on the 2007 intent. Lastly, the 2 year renewal cycle requirement is not a proposed change as it is the existing rule (2007) and will be maintained. Thank you for your input.

**COMMENT #2: Berkeley County Public Service Water District, Paul Fisher, 7-11-11**  
**FOLLOWING IS RETYPED FROM HARDCOPY:**

July 11, 2011

We hereby submit the following comments on the proposed changes to 64CSR4:

**Section 4.1.b.:** We disagree with making commercial and industrial entities have a certified water systems operator (i.e., Class R Operator) when they further filter or soften water after they receive it from the Public Water System. As you know, many businesses in Berkeley County who are served public water from the Berkeley County Public Service Water District or the City of Martinsburg use water softeners. We are concerned that these types of businesses may become classified as public water systems.

This classification will put an additional burden on the business in addition to the requirement for a certified operator. Routine sampling, analytical work and compliance reporting will then be required. Softening is a proven and well-understood point-of-entry technology. While the additional compliance efforts will add cost to the business' operation, the benefit with regards to public health is not clear. As more and more businesses become "public water systems" simply due to water softeners, corrosion inhibitors or further filtering, the added demand on analytical laboratories will push the limits of available resources.

Regulatory compliance monitoring that will be required for businesses employing point-of-entry systems will likely meet with resistance. Eliminating water softening units can be a way to avoid the new regulatory requirements, but this may not be feasible for certain types of businesses. We suspect that there will be a demand from large customers for softening treatment at the District's water treatment plants. Water softening upgrades are not in our long term plan due to the significant capital and operating expense that would be required. This is certainly an issue that will affect other karst areas of the State of West Virginia.

Finally, we are concerned that should these newly identified "public water systems" be unable to handle the regulatory requirements, they may eventually be assigned to the primary water purveyor from which they purchase water. Should the District be assigned this responsibility, the added cost for monitoring numerous point-of-entry systems would have to be passed on to our customers (another unfunded mandate).

We understand that the Bureau for Public Health is acting in response to guidance from the U.S. Environmental Protection Agency. A question that certainly begs an answer is: How are other States handling this same issue?

**5.2.d:** We are adamant that the system owner receive as a minimum the same notice as the Commissioner (5.2.e) of at least thirty (30) calendar days in advance of the voluntary termination of any operator.

cont....

The Commissioner does not have to advertise, review applications and resumes, interview candidates, make a selection and then tender an offer which may or may not be accepted. Then the operator being hired has to give the Commissioner another 30 day notice before they can leave their present place of employment. All of these things can take up to 120 days if you are fortunate enough to even be able to hire someone.

When we are unable to fill a position, we must hire an OIT off the street or reassign an existing employee from within the organization. For the Berkeley County Public Service Water District which operates two (2) Class IV Water Systems, it is a ten (10) year process to move from OIT to Class IV operator and then only if the operator is able to pass all the examinations. I am sure we are not alone in West Virginia in this regard, therefore due consideration should be given to this comment.

**5.6.d and 5.6.d.iii.:** This proposed change is by far the most challenging of all. In the current Public Water Systems Operator Regulations which became effective April 18, 2007, section 5.1.h. states "Require in the case of Class III and IV public water systems, that a certified operator with certification no lower than one (1) class below the system classification, be present at all times when the plant is operational." By removing this section, we are immediately placed in violation because we do not have enough Class IV operators to have one present at all times when these plants are operational as required by proposed section 5.6.d.

Per 5.6.d. the Public Water System owner may send a written request to the Commissioner who will consider granting a written exception to this requirement if the conditions as outlined in either 5.6.d.i, 5.6.d.ii. or 5.6.d.iii. (depending on system classification) are met. In our case only a Class III operator who passed the Class IV examination could apply for and receive a waiver to operate one of our Class IV water systems without on-site supervision of a Class IV operator.

Therefore, we determinedly oppose the removal of section 5.1.h. from the current Public Water Systems Operator Regulations which became effective April 18, 2007.

Thank you in advance for your consideration in these matters.

Paul S. Fisher, Executive Director  
Berkeley Co PSWD

**RESPONSE #2:**

Mr. Paul S. Fisher  
Berkeley County Public Service Water District  
PO Box 737  
Martinsburg, WV 25402-0737

Dear Mr. Fisher:

This letter is to confirm receipt of your enclosed written comments dated July 11, 2011 on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) and provide written response.

The addition of Class R systems (Section 4.1.b) and operators is necessary to meet federal requirements for public water systems and will be maintained. The basis for this addition is also our concern these types of additional treatment may unintentionally degrade water quality. The operational and monitoring requirements for these systems will be minimal and based on determination of potential impacts to the consumer.

Based on concerns received with respect to additional system owner notification by individuals voluntarily terminating employment (Subsection 5.2.d), only the 30 day prior notice to the Commissioner will be maintained as specified in the current rule (2007). OEHS will continue to strongly suggest all certified operators provide at least the 2 week notice as a professional courtesy so plans can be made for their replacement, however, it will not be mandated by a formal rule and subsection 5.2.d will be removed from the draft.

Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems (subsection 5.6.d), the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

Thank you for your input.

**COMMENT #3: City of Philippi, William E. Knight III, 7-13-11**

FOLLOWING IS RETYPED FROM HARDCOPY:

July 13, 2011

I have some comments on the proposed rule changes in 64CSR4.

1) *5.2.d. Notify the system owner at least twelve (12) calendar days in advance of the voluntary termination of his or her employment at a PWS.*

*5.2.e. Notify the Commissioner at least thirty (30) calendar days in advance of the voluntary termination of his or her employment at a PWS,*

Twelve (12) days is likely not enough time for the system owner to find a suitable replacement for a water operator. 5.2.d. should at least require the thirty (30) day notification as per 5.2.e.

2) *5.6.d. Class II, III, and IV PWSs shall have an operator with certification equal to or greater than the system classification present in the primary treatment facility at all times when the plant is operational, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS.*

*5.6.d.ii. Class II operators at Class III PWSs who apply for an exception to operate without on-site supervision of a Class III shall pass the Class III exam prior at a minimum.*

*5.6.d.iii. Class III operators at Class IV PWSs who apply for an exception to operate without on-site supervision of a Class IV shall pass the Class IV exam prior at a minimum.*

I know that these new revisions are designed to give water operators a larger knowledge base to insure higher water quality. With the shortage of qualified water operators in West Virginia it seems that this part of the revision to 64CSR4 may cripple PWS's that have newly certified Class II operators at a class III PWs or newly certified class III operators at a class IV PWS.

Please let me know if there will be a grace period to take the required exam for water operators currently operating their PWS that are one classification below their PWS classification.

In the case of The City of Philippi's PWS, and many others in the state, we have a retired operator who works in times of need. These new regulations would make it hard for us and others to make use of our retired operators due to the fact that most are one classification below their PWS and the PWS owners will likely be unwilling or financially unable to send these part-time operators (less than one month per year) to receive a higher classification. Could there be a special exception implemented for these retired operators?

William E. Knight, III  
Chief Operator  
City of Philippi

**RESPONSE #3:**

Mr. William E. Knight III  
City of Philippi  
PO Box 460  
Philippi, WV 26416

Dear Mr. Knight:

This letter is to confirm receipt of your enclosed written comments dated July 13, 2011 on the proposed changes to *Public Water Systems Operator Regulations (64CSR4)* and provide written response.

We acknowledge your suggestion to increase the 12 day prior system owner notification for voluntary terminations (subsection 5.2.d) to 30 days. However based on concerns received with respect to additional system owner notification by individuals voluntarily terminating employment (Subsection 5.2.d), only the 30 day prior notice to the Commissioner will be maintained as specified in the current rule (2007). OEHS will continue to strongly suggest all certified operators provide at least the 2 week notice as a professional courtesy so plans can be made for their replacement, however, it will not be mandated by a formal rule and subsection 5.2.d will be removed from the draft.

Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems (subsection 5.6.d), the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

Thank you for your input.

**COMMENT #4: Morgantown Utility Board, Timothy L. Ball, 7-15-11**

**From:** Tim Ball [mailto:tball@mub.org]

**Sent:** Monday, July 18, 2011 8:22 AM

**To:** Ivey, Walter M; Goldberg, Ann A

**Cc:** Greg Shellito

**Subject:** Water Oper Rules

Walt and Ann

I am pleased to offer comments on the proposed Water Operator Rules.

Hardcopy will follow in the mail.

Thanks and Best Regards,  
Tim

Timothy L. Ball P.E.  
General Manager

Morgantown Utility Board  
278 Green Bag Rd  
PO Box 852  
Morgantown, WV 26507-0852

phone 304.292.8443  
fax 304.292.1526  
tball@mub.org  
[www.mub.org](http://www.mub.org)

FOLLOWING IS RETYPED FROM HARDCOPY:

July 15, 2011

Morgantown Utility Board is pleased to offer the following comments regarding the proposed Rules:

- Page 3, Section 3.29 – defines “Present” as being “physically located on-site”. Where this definition is applied to supervision of operations, we respectfully submit that being on call and available provides sufficient presence of an appropriately licensed / certified Chief Operator.
- Page 7, Section 5.6.d – requires an operator with certification equal to or greater than the system classification to be present at all times. We object to this requirement on the basis that it is excessively restrictive, and that it imposes a staffing requirement that may be unachievable due to a shortage of qualified candidates/applicants. The current/previous rule has allowed an operator of one level lower certification to work under the (on call) supervision of an appropriately certified Chief Operator; this practice has worked well and should be continued.
- Page 10, Section 10.5 – prohibits carryover of excess CEU's from one license period to another. We object to this requirement on the basis that it is excessively restrictive. Because CEU training opportunities are somewhat limited, and because staffing requirements often make it difficult to remove operators from the WTP for training, it is important that operators be provided flexibility to accumulate excess CEU's when possible, and then apply those credits as needed. Recognizing that many training benefits have a “shelf life”, a more reasonable alternative to the proposed rule would be to set a maximum number of hours (perhaps half the amount required for certification) that could be carried over.

We respectfully submit these comments for your consideration, and we sincerely appreciate the opportunity to do so.

Timothy L. Ball, General Manager  
Morgantown Utility Board

**RESPONSE #4:**

Mr. Timothy L. Ball  
Morgantown Utility Board  
PO Box 852  
Morgantown, WV 26507-0852

Dear Mr. Ball:

This letter is to confirm receipt of your enclosed written comments dated July 15, 2011 on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) and provide written response.

With respect to your suggestion of accepting on call individuals as present, we are not proposing further changes to the draft definition of present at this time. The more specific proposed definition of “present” as being “physically located on-site” is based on our experience with on-call individuals not being adequately readily available in the treatment plant.

Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems, the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

*5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

With respect to your suggestion of accepting "carryover" continuing education, the proposed draft is not changed from the current rule (2007) and will be maintained. The intent is for continuing education to occur throughout each renewal period. We have also facilitated and approved several electronic CEH course options to support operator training options and their busy schedules. Thank you for your input.

**COMMENT #5: WV Municipal Water Quality Association, Paul Calamita, 7-18-11**

**From:** Calamita, Paul [mailto:paul@aqualaw.com]

**Sent:** Monday, July 18, 2011 12:51 PM

**To:** Calamita, Paul; Goldberg, Ann A; walter.m.ivy@wv.gov

**Cc:** Newell, Dawn A

**Subject:** Comments on Proposed Revisions to Water Treatment Works and Operators Regulations

I am writing to provide the following comments on the referenced proposed regulations on behalf of the West Virginia Municipal Water Quality Association.

Section 5.2.b – we object to the requirement that operators have to carry their certification card at all times while operating the plant. This is unnecessary. The rules require that each facility post the current list of certified operators at the plant and that is enough. We urge the Commissioner to delete this requirement.

Section 5.2.e – we object to the requirement that a certified operator notify the Commissioner 30 days before voluntarily terminating his employment. We think this should be within 30 days following a voluntary termination. We note that operators must give wastewater system owners 12 days notice, which will ensure that system owners have adequate time to ensure seamless staffing. Requiring 30 day advance notice is unnecessary and imposes unnecessary liability on operators if they fail to make this notice. However, providing notice to the Commissioner within 30 days after voluntarily terminating employment makes sense.

Section 5.4.d – We object to the requirement to notify the Commissioner within 24 hours of any employment status changes of the system certified operators. We believe this should be changed to a 30-day rather the 24-hour requirement.

Section 5.6.ad – We do not think that fully graded operators have to be physically there "at all times water quality or quantity decisions are made". We think an operator one grade less

should be adequate as long as a fully graded operator is available by modern communication (cell phone, radio, etc.) 24/7.

8.4 and 8.5 We do not think the Commissioner should impose a specific hour limitation for distribution system operation and lab work. We suggest this limitation be a narrative requirement that is more flexible.

14.1.e. We believe the compliance requirement is too broad. Operators should not be subject to suspension or revocation by the Commissioner for minor non-compliance. Minor non-compliance should be left to system owners to address. We think suspension/revocation authority should be subject to some criteria, such as for significant, intentional, grossly negligent or repetitive non-compliance by an operator.

Table 64-4A We object to the numerical criteria for defining the required yearly experience requirements. For example, imposing a 2000 hour requirement means 50 40-hour work weeks. That leaves two weeks for vacation and no sick days. We think the Table should simply specify "one year of full time wastewater experience" and leave it at that. Alternatively, if the Commissioner insists on specifying a numerical minimum, despite our objection, it should be set at a minimum of 1600 hours to qualify as a "year" of experience rather than 2000.

Finally, we suggest that the "WD" certification be clarified as applying only to distribution only systems and not water systems that treat and supply finished drinking water. Distribution system activities in systems that treat and provide finished drinking water are implemented by staff supervised by certified operators due to the treatment plant licensing requirements. Distribution personnel in such systems (which also treat water) should not be required to get WD certification.

Thank you for considering our comments. Please let me know if you have any questions

Paul Calamita  
WVMWQA  
General Counsel

**RESPONSE #5:**

Mr. Paul Calamita, General Counsel  
WV Municipal Water Quality Association  
P.O. Box 51  
Richmond, VA 23218

Dear Mr. Calamita:

This letter is to confirm receipt of your enclosed written comments on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) on July 18, 2011 and provide written response.

Subsection 5.2.b requiring operators to carry their current certification card upon them is not changed from the current rule (2007) and will be maintained.

Subsection 5.2.e. requiring operators to notify the Commissioner 30 days prior to voluntary termination is not changed from the current rule (2007) and will be maintained. Although the intent of proposed subsection 5.2.d was to support communication between system owner and



operators with respect to employment changes in advance so proper arrangements could be made, based on the comments received, this addition will not be included in the proposed draft. Although 5.2.d will be removed and not mandated by a formal rule, OEHS still strongly suggests all certified operators provide at least the 2 week notice as a professional courtesy so plans can be made for their replacement.

Subsection 5.4.d. requiring system owners to notify the Commissioner of any certified operator employment changes within 24 hours combined subsections 5.1.d and 5.1.e from the current rule (2007) and is intended as a public health protection mechanism. Certified operators are another system asset that must be properly documented and accounted for. Maintenance of the notification requirements will support overall system compliance.

Based on your concern and other similar comments received on adequate operator coverage, the proposed draft was modified and now reads, "5.6.e. *Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational.*" Outside of the Class III and IV PWSs and those working under a written exception at Class II PWSs, we feel it is important to have an operator with certification equal to or greater than the system present. With respect to your suggestion of accepting on call individuals as present, we are not proposing further changes to the draft definition of present at this time. The more specific proposed definition of "present" as being "physically located on-site" is based on our experience with on-call individuals not being adequately readily available in the treatment plant. The references to "or quantity decisions" was removed based on yours and others suggestions.

The current rule (2007) specifies hourly limitations for distribution experience on upgrades. The intent was to ensure individuals operating Class I and higher PWSs had the majority of their experience in the treatment of water, not other operational duties. The lab specification was added based on our experience with laboratory personnel pursuing operator certifications and is a safeguard to ensure water treatment and operational experience for Class I and higher operators.

The 2002 rule was more general with the experience requirements in years. However, we developed the 2,000 hour specification in the current rule (2007) based on a full-time employee in general and will maintain to ensure operators transitioning from operators-in-training under the Chief Operators responsibility to a Class I water potentially as the Chief Operator and only operator have at least a minimum of 2,000 hours of experience. Many systems do not operate 8 hours per day and there are also many part-time operators that needed more than a "full-time" 1 year reference.

The Water Distribution certification was added in the 2007 rule to ensure the federal requirement that a certified person is responsible for decisions in treatment and/or distribution of a public water system. Our experience is that situations exist where the treatment plant Chief Operator does not have jurisdiction over the distribution portion of the system, hence cannot fully be responsible for that aspect as well. The allowance for designation of separate Chief Operators for the treatment facility and distribution system when the plant Chief Operator does not directly supervise the activities within the distribution system will help ensure that an appropriately trained individual is ensuring required water quality parameters are maintained within the entire system and will be maintained.

Thank you for your input.

**COMMENT #6: Beckley Water Company, Matthew W. Stanley, 7-18-11**

**From:** Louis Wooten [mailto:lwooten@beckleywater.com]

**Sent:** Monday, July 18, 2011 3:57 PM

**To:** Ivey, Walter M

**Subject:** Proposed changes as presented by EED of Rule 64CSR4

Mr. Ivey,

Please find the attached comment from Matthew Stanley:

Proposed changes as presented by EED of Rule 64CSR4:

The proposed changes to Rule 64CSR4 section 5.6.d have a very significant impact on our ability to serve our customers and meet the necessary requirements in an economical fashion. Currently the Rule allows us to put a competent class III operator in our plant and work towards his class IV certification. This is a proven method with positive results that if changed would only prove to add additional cost to achieve the same thing. Further, section 5.6.d.iii creates an issue of achieving the (1) one year of competency which is nothing less than what has been set out in the Rule change already mentioned in section 5.6.d above. We are therefore in objection to the rule change as proposed in 5.6.d and 5.6.d.iii.

Matthew W. Stanley  
President, CEO and Chairman of the Board  
Beckley Water Company  
119 South Heber Street  
Beckley, WV 25801

**RESPONSE #6:**

Mr. Matthew W. Stanley  
Beckley Water Company  
119 South Heber Street  
Beckley, WV 25801

Dear Mr. Stanley:

This letter is to confirm receipt of your enclosed written comments on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) on July 18, 2011 and provide written response.

Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems, the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

*5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS.*

*All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

Your objection to 5.6.d.iii should be eliminated due to the above noted change in 5.6.d. Thank you for your input.

**COMMENT #7: WV American Water Company, Douglas Amos, 7-18-11**

From: lisa.weber@amwater.com [mailto:lisa.weber@amwater.com]

Sent: Monday, July 18, 2011 12:12 PM

To: Ivey, Walter M; Goldberg, Ann A

Subject: Fw: Letter to WVDHHR

Please reply back to me with a confirmation of receipt. Thank you.

Lisa S. Weber  
Senior Secretary  
West Virginia American Water  
P. O. Box 1906  
Charleston, WV 25327  
304-353-6364  
Internal: 7-250-6364  
Fax: 304-353-6360  
E-mail: [lisa.weber@amwater.com](mailto:lisa.weber@amwater.com)

(See attached file: 20110718101038074.pdf)

**FOLLOWING IS RETYPED FROM HARDCOPY:**

July 18, 2011

West Virginia American Water appreciates the opportunity to comment on the proposed changes to rule 64CSR4: *Public Water Systems Operator Regulations*. We hope you find the comments listed below helpful during the rule-making process. West Virginia American Water supports many of the proposed changes to the rule. It is understood that some of these changes are necessary to conform to the U.S. Environmental Protection Agency (EPA) rules and to protect the health of the citizens of West Virginia. Supporting comments on specific sections of the rule follow.

- **§64-4-4.1.b:** The addition of the Class R system designation in is necessary to align the classification of water systems within WV with that established by the USEPA.
- **§64-4-5.2d:** Stipulating operators provide the system owner a notice of at least 12 days in advance of voluntary termination of employment will assist system owners in attempting to maintain adequate staffing levels.
- **§64-4-5.4.a and §64-4-5.4.a.1:** The designation of separate Chief Operators for the treatment facility and distribution system when the Plant Chief Operator does not directly supervise the activities within the distribution system will help ensure that an appropriately trained individual is ensuring required water quality parameters are maintained within the system.
- **§64-4-5.4 and §64-4-5.5:** These sections provide detailed information regarding notification of operator status changes within 24 hours, rules governing the designation

of the Chief Operator and the Chief Operator Course requirements. The detailed requirements found in these sections will help operators understand the regulations and should improve compliance with procedures.

- **§64-4-8 and §64-4-9:** These sections outline requirements for experience and examination. Reductions in the experience requirement and giving operators 5 years to meet education and experience requirements from the date of the passed examination will make it easier for operators to attain the Class III and Class IV levels of certification.

West Virginia American Water does have concerns regarding one section of the proposed rule. **§64-4-5.6.d** stipulates that in the case of Class II, III and IV facilities, an operator with certification equal to or greater than the classification of the plant be present any time the plant is in operation, unless a written exception is granted by the Commissioner. As West Virginia American Water attempted to fill several recent vacancies at our Class III and Class IV facilities, we found the current pool of WV Certified Class III and Class IV operators to be critically low. Several operator positions remained vacant for weeks and in some cases months before a qualified certified operator could be found. Although we attempted to hire individuals who had certifications equal to the plant classification, certain vacancies had to be filled with an operator one certification below that of the facility. While the provision of an exception to the rule will certainly help system owners, gaining that exception is not guaranteed. With the operator shortage becoming more severe, we fear this proposed revision will become a roadblock for Class III and Class IV systems to maintain adequate staffing. Once again, thank you for the opportunity to provide comments on the proposed rule. Please do not hesitate to contact me if I can be of further assistance in this or any other matter.

Douglas R. Amos  
Vice President of Operations  
West Virginia American Water

**RESPONSE #7:**

Mr. Douglas R. Amos  
WV American Water  
1600 Pennsylvania Avenue  
Charleston, WV 25302

Dear Mr. Amos:

This letter is to confirm receipt of your enclosed written comments dated July 18, 2011 on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) and provide written response.

Thank you for acknowledging subsections 4.1.b, 5.2.d, 5.4.a, 5.4, 5.5, 8, and 9 documenting some of the rationale behind these aspects of the proposed changes.

Based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems (subsection 5.6.d), the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

*5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

Thank you for your input.

**COMMENT #8: St. Albans, Jean Melton, 7-18-11**

**From:** JBootn@aol.com [mailto:JBootn@aol.com]

**Sent:** Monday, July 18, 2011 11:23 AM

**To:** Ivey, Walter M

**Subject:** Comments64CSR4

**To** Directors Ms. Ann Goldbergor and Mr. Walt Ivey  
**From** Jean Melton , Chief Operator  
**Date** July 18, 2011 @ 11am  
**Subject** Comments on Proposed Rule Changes to 64CSR4  
Public Water System Operator Regulations  
pages \_\_1\_\_, including this one

Dear Directors,

Please consider these comments on proposed rule changes for Public Water System Operator Regulations.

**BRIEF SUMMARY**

Please extend Comment Period as the very significant change of Section 5.6.d of proposed changes are not "small" and not included under "Brief Summary" and have potential for significant detrimental effects on this system, and in my opinion, most C 3 and 4 systems.

Although I would support other changes to 64 CSR4, or at least not object enough to submit written comments,, the change of "certification equal to or greater than the system classification..." is so unexpected and with no discernable benefits that it greatly outweighs other "small" changes. I have not spoken with anyone who could explain the purpose of this proposed change and I strongly oppose this change.

**Please Do Not enact these Proposed Rule Changes as written.**

I have been a certified water operator for over 30 years and obtained a Class IV license in 1987. For the past 20 years I have held job title of Chief Operator; at Morgantown for 7 years and St. Albans for past 14years. I am also pleased to serve on the Exam Review Committee for Water Operator Certification since its beginning. In addition, I know most of the members of the stakeholder committee and hold all in high esteem for their professional committment to ensuring the quality of public drinking water.

Sincerely,

A.Jean Melton

(my Word Pro software kept locking up while attempting to write this, so in desperation, I'm sending this poorly formatted email with comment. Snail Mail copy to be postmarked in about 20 minutes. JM?

NewOpRegsComment711.lwp

**RESPONSE #8:**

Mrs. Jean Melton, Chief Operator  
St. Albans Municipal Utility  
PO Box 1270  
St. Albans, WV 25314

Dear Mrs. Melton:

This letter is to confirm receipt of your enclosed written comments dated July 18, 2011 on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) and provide written response.

We cannot extend the comment period as requested in your comments. However, based on your concern and other similar comments received on adequate operator coverage at Class III and IV public water systems (subsection 5.6.d), the proposed draft was modified and now reads:

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

Thank you for your input.

**COMMENT #9: WVRWA&WVML, Timothy P. Stranko, 7-18-11**  
**FOLLOWING IS RETYPED FROM HARDCOPY:**

July 18, 2011

Please accept and consider these comments on the proposed rules noted above, tendered by the West Virginia Rural Water Association and the West Virginia Municipal League on behalf of their respective Boards of Directors and members.

First, thank you for the considerable and careful work done to prepare these proposed rules. The League and Association believe that most of the changes are improvements that will benefit our citizens and customers. However, there are critical rules that we find to be problematic in both theory and practical application. Accordingly, we ask that these rules be reconsidered and rewritten as suggested below:

**RULE 4.1 (4.1 (64 WV CSR 4-4.1)**

Section 4.1.b.: We disagree with making commercial and industrial entities have a certified water systems operator (i.e., Class R Operator) when they further filter or soften water after they receive it from the Public Water System. As you know, many businesses that are served public water use water softeners. We are concerned that these types of businesses may become classified as public water systems.

This classification will put an additional burden on the business in addition to the requirement for a certified operator. Routine sampling, analytical work and compliance reporting will then be required. Softening is a proven and well understood point-of-entry technology. While the additional compliance efforts will add cost to the business' operation, the benefit with regards to public health is not clear. As more and more businesses become "public

water systems” simply due to water softeners, corrosion inhibitors or further filtering, the added demand on analytical laboratories will push the limits of available resources.

Regulatory compliance monitoring that will be required for businesses employing point-of-entry systems will likely meet with resistance. Eliminating water softening units can be a way to avoid the new regulatory requirements, but this may not be feasible for certain types of businesses. We suspect that there will be a demand from large customers for softening treatment at public water treatment plants. Water softening upgrades would be unnecessary and significant capital and operating expenses. This is certainly an issue that will affect the karst areas of the State of West Virginia.

We understand that the Bureau for Public Health is acting in response to guidance from the U.S. Environmental Protection Agency. A question that certainly begs an answer is: How are other States handling this same issue?

Section 4.1 (f): This rule classifies water systems by three metrics: source water, population and complexity of the treatment process. We agree that these metrics are appropriate to sort and assign different regulations to systems with dissimilar tasks and demands. Our concern is that the Class IV category unfairly and unnecessarily groups dissimilar systems into the same rule requirements. For example, the Putnam PSD (3MGD) is classified the same as the WVAWC Elk River plant (50MGD). It is neither appropriate nor consistent to regulate both these plants under a Class IV rating. The Class III category should be expanded to include medium sized facilities according to the following metrics:

4.1.f. Class III: A PWS serving a population of at least ten thousand (10,000) but less than ~~twenty thousand (20,000)~~ ~~forty thousand (40,000)~~ including consecutive connection population....

4.1.g. Class IV: A PWS serving a population of at least ~~twenty thousand (20,000)~~ ~~forty thousand (40,000)~~, including consecutive connection population and has conventional or non-conventional treatment.

#### **RULE 5.2 (64 WV CSR 4-5.2)**

Section 5.2(d): We are adamant that the system owner receive a minimum the same notice as the Commissioner (5.2.e.) of at least thirty (30) calendar days in advance of the voluntary termination of any operator.

The Commissioner does not have to advertise, review applications and resumes, interview candidates, make a selection and then tender an offer which may or may not be accepted. Then the operator being hired has to give the commissioner another 30 day notice before they can leave their present place of employment. All of these things can take up to 120 days if you are fortunate enough to even be able to hire someone.

When a utility is unable to fill a position, it must hire an OIT off the street or reassign an existing employee from within the organization. For Class IV Water Systems, it is a ten (10) year process to move from OIT to Class IV operator and then only if the operator is able to pass all the examinations.

#### **RULE 5.6. (64 WV CSR 4-5.6.D)**

This rule proposes significantly more demanding staffing requirements for our public water suppliers without evidence either of need for this change or corresponding public benefit to be enjoyed by the heightened requirements (and corresponding increased costs).

We know of no event or situation where the current staffing rules are or have been proven to be problematic with respect to the public health or the quality of water produced at our treatment plants. With readily available and affordable technology allowing for instant communications, automatic alarms and remote monitoring, the proposed rule is a step backward that would disallow use of that technology to allow systems to maintain constant and consistent quality water supply while limiting staffing costs that must be underwritten by the ratepayers.

Accordingly, the Association determinedly opposes the removal of section 5.1.h. from the current Public Water Systems Operator Regulations which became effective April 18, 2007, and further requests that the proposed rule be amended as follows:

Section 5.6.d. Class II, III and IV PWSs shall have an operator with certification equal to ~~or greater than no lower than~~ one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS.

Thanks for your kind consideration of these comments, and for your important service for the Citizens of West Virginia.

By Counsel:  
Timothy P. Stranko  
West Virginia Rural Water Association  
West Virginia Municipal League

**RESPONSE #9:**

Mr. Timothy P. Stranko  
WV RWA & WV ML Counsel  
PO Box 1588  
Charleston, WV 25326-1588

Dear Mr. Stranko:

This letter is to confirm receipt of your enclosed written comments dated July 18, 2011 on the proposed changes to *Public Water Systems Operator Regulations* (64CSR4) and provide written response.

The addition of Class R systems (Section 4.1.b) and operators is necessary to meet federal requirements for public water systems and will be maintained. The basis for this addition is also our concern these types of additional treatment may unintentionally degrade water quality. The operational and monitoring requirements for these systems will be minimal and based on determination of potential impacts to the consumer.

With respect to your concern on the population division between Class III and Class IV classification definitions (subsection 4.1.f), the 10,000 population basis for these boundaries was established in the current rule (2007) and will be maintained. The 2007 rule was based on minimizing changes in the classifications from the point rating system for classification in the



2002 rule. Based on further consideration, however, we further clarified the definitions for these systems as follows:

*4.1.f. Class III: A community or non-transient non-community PWS with:*

*4.1.f.1. A GW source that serves a population of greater than ten thousand (10,000) including consecutive connections and has either a treatment technique as identified in 40CFR141.73 or treats for an identified primary contaminant;*

*4.1.f.2. A GUDI or SW source that serves a population of at least ten thousand (10,000) but less than twenty thousand (20,000) including consecutive connections.*

*4.1.g. Class IV: A community or non-transient non-community PWS with a GUDI or SW source that serves a population of serving a population of at least twenty thousand (20,000) including consecutive connection population and has treatment.*

Based on concerns received with respect to additional system owner notification by individuals voluntarily terminating employment (Subsection 5.2.d), only the 30 day prior notice to the Commissioner will be maintained as specified in the current rule (2007). OEHS will continue to strongly suggest all certified operators provide at least the 2 week notice as a professional courtesy so plans can be made for their replacement, however, it will not be mandated by a formal rule and subsection 5.2.d will be removed from the draft.

Based on your concern and other similar comments received on adequate operator coverage at Class II, III and IV public water systems, the proposed draft was modified and now reads:

*5.6.d. Class II PWSs shall have an operator with certification equal to or greater than the system classification present in the primary treatment facility at all times when the plant is operational, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

*5.6.d.1. Class I operators at Class II PWSs who apply for an exception in writing from the Commissioner to operate without on-site supervision of a Class II shall pass the Class II exam prior at a minimum.*

*5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational*

*5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.*

Thank you for your input.

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

**SERIES 4  
PUBLIC WATER SYSTEMS OPERATOR REGULATIONS**

FILED  
JUL 29 PM 4:02

WEST VIRGINIA  
SECRETARY OF STATE

**§64-4-1. General.**

1.1. Scope. -- This legislative rule governs the examination and certification of operators of public water systems (PWSs), establishes a system for classification of PWSs, and specifies certain responsibilities of PWSs. The WV Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. -- WV Code §§16-1-4 and 16-1-9.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rules. -- This legislative rule repeals and replaces Public Water Systems Operator Regulations, 64CSR4, effective April 18, 2007.

**§64-4-2. Application and Enforcement.**

2.1. Application. -- This rule applies to owners, certified operators, and operators-in-training (OITs) of a PWS and to applicants for certification.

2.2. Enforcement. -- This rule is enforced by the Commissioner of the Bureau for Public Health.

**§64-4-3. Definitions.**

3.1. ID Operator. -- An individual holding a valid West Virginia PWS operator certification issued by the Commissioner.

3.2. Adequate. -- A sufficient amount the Commissioner determines, considering hours of operation of the treatment plant, treatment complexity, distribution extent, source of water, and other factors such as personnel leave.

3.3. Certified Operator. -- An individual holding a valid West Virginia PWS operator certification issued by the Commissioner.

3.4. Chief Operator. -- The certified operator(s) whom the owner designates who is responsible for managing the daily operational activities of an entire PWS or a water treatment facility, or a distribution system in a manner that ensures meeting state and federal safe drinking water rules and regulations.

3.5. Class I Operator. -- An individual holding a valid Class I West Virginia PWS operator certification issued by the Commissioner.

3.6. Class II Operator. -- An individual holding a valid Class II West Virginia PWS operator certification issued by the Commissioner.

3.7. Class III Operator. -- An individual holding a valid Class III West Virginia PWS operator certification issued by the Commissioner.

3.8. Class IV Operator. -- An individual holding a valid Class IV West Virginia PWS operator certification issued by the Commissioner.

3.9. Class R Operator. -- An individual holding a valid Class R West Virginia PWS operator certification issued by the Commissioner.

3.10. Commissioner. -- Commissioner of the West Virginia Bureau for Public Health or his or her designee.

3.11. Community Water System. -- A PWS that serves at least fifteen (15) service connections used by year round residents or regularly serves at least twenty-five (25) year round residents.

3.12. Consecutive System. -- A PWS that receives some or all of its finished water from one or more other PWSs.

3.13. Continuing Education Hour (CEH). -- One (1) hour of participation in an organized continuing education experience under responsible sponsorship approved by the Commissioner for renewal of a PWS operator certification.

3.14. Continuing Education Unit (CEU). -- Ten (10) CEHs.

3.15. Distribution System. -- Facilities downstream of the water treatment plant used to convey water for human consumption and which may include storage tanks, disinfection mechanisms, pumps, valves, hydrants, meters, and other appurtenances.

3.16. Drinking Water. -- Water produced by a PWS that conforms to the requirements of *Public Water Systems* (64CSR3).

3.17. Experience. -- Hands-on work performing certified operator duties at a PWS.

3.18. Groundwater. -- A source of water under the ground, typically from a well, that is not open to the atmosphere (surface water) or under the direct influence of surface water (groundwater under the direct influence).

3.19. Groundwater Under the Direct Influence (GUDI). -- A source of groundwater determined to be under the influence of a surface water source.

3.20. Non-Transient Non-Community Water System. -- A PWS that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.

3.21. Operating Shift. -- That period of time during which operator decisions that affect public health are necessary for proper operation of the PWS.

3.22. Operate. -- To perform the practical work and apply the technical knowledge and operational skills in the treatment, testing, and/or distribution of drinking water.

3.23. Operator-in-Training (OIT). -- An individual who holds a valid operator-in-training certificate issued by the Commissioner, and who is training under the responsibility of the Chief Operator at a PWS while completing the educational and/or experience requirements to become a Water Distribution (WD) or Class I operator.

3.24. Owner. -- The person legally responsible for the operation of a PWS.

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

3.26. Population. -- Population served by a PWS as determined by the Commissioner.

3.27. Present. -- To be readily available to perform tasks at the water treatment plant and/or intake by physically being located on-site unless otherwise determined by the Commissioner in advance in writing.

3.28. Primary Contaminant. -- Any contaminant (other than disinfection for microbiological) that has a maximum contaminant level (MCL) or treatment technique in accordance with *Public Water Systems* (64CSR3).

3.29. Public Water System (PWS). -- Any water supply or system that regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system which are used primarily in connection with the system; and (2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system. A PWS does not include a system which meets all of the following conditions: (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) Obtains all of its water from, but is not owned or operated by a PWS that otherwise meets the definition; (3) Does not sell water to any person; and (4) Is not a carrier conveying passengers in interstate commerce.

3.30. Surface and Ground Water Under the Direct Influence of Surface Water. -- A source that has been determined to be open to the atmosphere or subject to surface water runoff.

3.31. Transient Non-Community Water System. -- A PWS that is not a community water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

3.32. Water Distribution (WD) Operator. -- An individual holding a valid WD West Virginia PWS operator certification issued by the Commissioner. A water operator certified at the WD level shall only operate within the water distribution system or conduct distribution system related functions at a Class I or higher PWS.

3.33. Water Treatment Plant. -- A facility to process and treat water for distribution to consumers in accordance with *Public Water Systems* (64CSR3).

#### **§64-4-4. Classification of Public Water Systems.**

4.1. A PWS is classified on the basis of source water, population, and complexity of water treatment processes.

4.1.a. 1D: A transient non-community PWS that has groundwater only as a source, and does not use gaseous chlorine or chlorine dioxide as a means of disinfection, and does not treat for the removal of nitrate or nitrite, or both. A groundwater source that uses gaseous chlorine, chlorine dioxide as a means of disinfection or has treatment for removal of nitrate or nitrite, or both is at least a Class I PWS.

4.1.b. Class R: A non-transient PWS that retreats at the point of entry with anything other than chlorine another PWSs finished water for facility use and consumption only. A Class R that provides water to another PWS is at least a Class I PWS.

4.1.c. Water Distribution (WD): A PWS that obtains all of its water from another PWS, and is not owned or operated by the supplying PWS. A WD system does not have any other source of water other than water from the supplying PWS. A WD system may apply chlorine for supplemental disinfection but otherwise does not treat its water. A WD that retreats with anything other than chlorine is at least a Class I PWS.

4.1.d. Class I: A community or non-transient non-community PWS with a GW source that serves a population of less than ten thousand (10,000) including consecutive connection population and does not treat for an identified primary contaminant. A transient non-community PWS that has a groundwater source that uses gaseous chlorine, chlorine dioxide as a means of disinfection or has treatment for removal of nitrate or nitrite, or both.

4.1.e. Class II: A community or non-transient non-community PWS with:

4.1.e.1. A GW source that serves a population of less than ten thousand (10,000) including consecutive connections, does not treat for an identified primary contaminant, and has a treatment technique as identified in 40CFR141.73;

4.1.e.2. A GW source that serves a population of at least ten thousand (10,000) including consecutive connections that does not treat for an identified primary contaminant; or,

4.1.e.3. A GUDI or SW source that serves a population of less than ten thousand (10,000) including consecutive connections.

4.1.f. Class III: A community or non-transient non-community PWS with:

4.1.f.1. A GW source that serves a population of greater than ten thousand (10,000) including consecutive connections and has either a treatment technique as identified in 40CFR141.73 or treats for an identified primary contaminant;

4.1.f.2. A GUDI or SW source that serves a population of at least ten thousand (10,000) but less than twenty thousand (20,000) including consecutive connections.

4.1.g. Class IV: A community or non-transient non-community PWS with a GUDI or SW source that serves a population of serving a population of at least twenty thousand (20,000) including consecutive connection population and has treatment.

#### **§64-4-5. Required Personnel and Conditions of Employment.**

5.1. Any individual who operates a 1D, Class R, WD, Class I, Class II, Class III, or Class IV PWS in West Virginia shall be certified by the Commissioner.

5.2. All certified water operators shall:

5.2.a. Be responsible for their certification in accordance with all aspects of this rule;

5.2.b. Carry their current certification card issued by the Commissioner upon them at all times the operator is operating the PWS;

5.2.c. Not work in a PWS under the certification of another person; only the person whose name appears on the operator certification is certified by that document. Certifications are not transferable;

5.2.d. Notify the Commissioner at least thirty (30) calendar days in advance of the voluntary termination of his or her employment at a PWS;

5.2.e. Comply with the provisions of *Public Water Systems* (64CSR3); and,

5.2.f. Demonstrate data integrity by providing complete, accurate, and true information for the period in which they were responsible for data collection including but not limited to records, reports, and lab results.

5.3. 1D, Class R, and the distribution portion only of a PWS system under the direct jurisdiction of the treatment plant are not required to designate a Chief Operator.

5.3.a. The owner of a 1D system shall ensure it is operated by a 1D, Class I or higher water operator.

5.3.b. The owner of a Class R system shall ensure it is operated by a Class R, Class I or higher water operator.

5.3.c. The owner of a WD system shall ensure it is operated by a WD, Class I or higher water operator.

5.4. The owner of PWS shall:

5.4.a. Employ a Chief Operator(s) with a certification equal to or higher than the system classification, except for 1D and Class R PWSs. A PWS may have more than one (1) Chief Operator if jurisdiction is bifurcated between the distribution system and treatment plant or otherwise approved in writing by the Commissioner based upon written request;

5.4.a.1. In the case of a distribution system not under the direct jurisdiction of the treatment plant Chief Operator, employ an additional Chief Operator with WD, Class I or higher certification and an adequate number of certified operators to operate the distribution system.

5.4.a.2. Place direct supervision of their PWS, including each treatment facility and/or distribution system, under the responsible charge of the Chief Operator(s) holding an adequate certification.

5.4.b. Employ an adequate number of certified operators to operate the system;

5.4.c. Not employ more OITs than the number of employed certified operators, unless written permission is granted by the Commissioner;

5.4.d. Notify the Commissioner within twenty four (24) hours, in a manner and form approved by the Commissioner, of any certified operator or OIT employment status changes;

5.4.e. Submit a personnel status report as of July 1 by July 15 every year. The report is to be in a manner and form approved by the Commissioner and required information includes, at a minimum: a list of all certified operators employed, the Chief Operators(s), and the system owner; and,

5.4.f. Post a copy of the current certification of all certified operators employed at the PWS in a conspicuous location in the water treatment plant, or, if there is no water treatment plant, the PWS office.

5.5. The Chief Operator of a PWS shall:

5.5.a. Be responsible for the operation of the PWS;

5.5.b. Be employed on a full-time basis by the PWS owner except in WD and Class I systems;

5.5.c. Attend a course approved by the Commissioner for training as a Chief Operator within two (2) years of the effective date of this rule. Attendance of the designated course is also applicable for CEH credit for the renewal cycle. A person newly designated by the owner as the Chief Operator after the effective date of this rule shall attend within one (1) year. Class R and 1D systems are exempt from the requirements of this subsection;

5.5.d. Apply to the Commissioner for OIT certification, on behalf of OIT applicants, within thirty (30) days of their hire at the PWS. Experience gained for certification starts only upon the issued date of the OIT certificate;

5.5.e. Be responsible for training and job duty assignments of OITs and other certified operators and properly document the experience towards certification upgrade;

5.5.f. Renew the OIT certification every two (2) years or until all requirements for WD or Class I certification are met. Submit the renewal application at least thirty (30) calendar days prior to expiration date, in a manner and form approved by the Commissioner. The OIT shall attempt to pass the WD or Class I examination at least once during each two (2) year renewal; and,

5.5.g. Be automatically designated as the Chief Operator if they are the only certified operator who meets the requirements of Section 5.4 for the PWS.

5.6. Adequate Operator Coverage:

5.6.a. Class R PWSs shall have a Class R, Class I or higher operator present at all times water quality decisions are made to ensure proper operation in accordance with all applicable state and federal laws.

5.6.b. 1D and WD PWSs shall have an operator with certification equal to or greater than the system classification present at all times water quality decisions are made and present at least once every day to ensure proper operation in accordance with all applicable state and federal laws.

5.6.c. Class I PWSs shall have a Class I or higher operator present at all times water quality decisions are made. A properly certified operator shall be present at least once every day when the plant is operational to ensure proper operation in accordance with all applicable state and federal laws.

5.6.d. Class II PWSs shall have an operator with certification equal to or greater than the system classification present in the primary treatment facility at all times when the plant is operational, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.

5.6.d.1. Class I operators at Class II PWSs who apply for an exception in writing from the Commissioner to operate without on-site supervision of a Class II shall pass the Class II exam prior at a minimum.

5.6.e. Class III and IV PWSs shall have an operator with certification no lower than one (1) class below the system classification present in the primary treatment facility at all times when the plant is operational

5.6.f. Class II, III and IV PWSs shall have at least one (1) certified operator (except 1D, Class R or WD level) in addition to the Chief Operator, unless the Commissioner grants a written exception to this requirement in response to a written request by the owner of the PWS. All exceptions granted will be individual and system specific (not transferable) and may be rescinded immediately if compliance concerns arise.

#### **§64-4-6. Qualifications for Certification.**

6.1. An individual desiring certification shall submit an application for certification to the Commissioner. The application shall be on a form approved by the Commissioner.

6.2. Certification of a PWS operator is based on education, a passing grade on the applicable certification examination, and in some cases experience as an OIT or higher certified operator (Table 64-4A).

6.3. Class R and 1D certifications are not sequential towards OIT, WD, and Class I through IV. A Class R or 1D shall begin with application for an OIT if he or she wishes to operate a WD, Class I or higher classification system.

6.4. WD certification is not sequential towards Class I certification. A WD shall begin with application for an OIT if he or she wishes to operate a Class I or higher classification system.

6.5. Class I through IV applicants shall obtain certification for each Class level in sequence.

6.6. An individual desiring certification as a WD or Class I operator shall begin with an application for OIT certification.

6.7. Applicants for certification shall be eighteen (18) years of age or older. This may be waived to a minimum age of sixteen (16) upon written request to the Commissioner and in accordance with Section 7.2.

#### **§64-4-7. Education Requirements.**

7.1. The education requirements for each certification are listed in Table 64-4A.

7.2. OIT education requirements can be waived by the Commissioner, in writing, to completion of tenth (10<sup>th</sup>) grade. Minimum requirements are verification each semester the student is currently



attending school and maintaining a 2.0 average on a 4.0 scale towards graduation requirements. Failure to meet the above requirements will be grounds for revocation of the certificate.

7.3. Education requirements can be waived by the Commissioner, in writing, to actively working towards a GED. Minimum requirements are verification each semester the student is currently enrolled in an adult education program and completing graduation requirements. Failure to meet the above requirements will be grounds for revocation of the certificate.

7.4. The Commissioner-approved Class R certification course and passing the Class R exam education requirement can be substituted with a Commissioner-approved manufacturer certification if requested in writing and adequate information is provided.

7.5. The number of CEUs credited for courses and operating experience, are in Table 64-4B.

7.6. All education courses for CEUs will be evaluated by the Commissioner. One hundred percent (100%) credit will be awarded for those deemed to be directly related to water treatment and distribution (examples are mathematics, science, and business courses). If the Commissioner deems the course not directly related, fifty percent (50%) credit will be awarded.

7.7. Class III and IV applicants may substitute up to half of the required CEU education as specified in Tables 64-4A and B of this rule with additional experience upon written request to the Commissioner.

7.7.a. An applicant cannot use experience used as a substitute for the educational requirement to also satisfy the experience requirement.

7.7.b. An applicant may use the Class R, 1D, WD, Class I, and Class II certification courses towards the educational requirements for a Class III or higher class level certificate.

#### **§64-4-8. Experience Requirements.**

8.1. The experience requirements for each classification are listed in Table 64-4A of this rule.

8.2. Only experience obtained as a valid certified water operator shall count towards experience required for the purposes of this rule.

8.3. Experience as an operator should be predominantly “hands-on” or necessary skills, knowledge, ability, and judgment acquired from daily operating experience rather than from text book study or supervisory observation. It means the individual has actually operated a water treatment plant or worked in the distribution system and has performed tasks including, but not limited to, routine tests, sample collection, completion of operational reports, and calculations of chemical dosages and subsequent adjustment of chemical feeders or backwashed filters.

8.4. Experience obtained exclusively in distribution, maintenance, and other non operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.

8.5. Class II applicants at Class I systems may obtain two thousand (2,000) hours experience at a Class I PWS and successful completion of a Commissioner approved course instead of obtaining two thousand (2,000) hours at a Class II or higher PWS.

8.6. An applicant may substitute the experience requirements with education and training as specified below:

8.6.a. Class II, III, and IV applicants may substitute up to half of the required experience with additional education upon written request to the Commissioner.

8.6.b. An applicant cannot use education used as a substitute for experience requirements to satisfy education requirements.

**§64-4-9. Examination Requirements.**

9.1. Examination requirements for each certification are listed in Table 64-4A.

9.2. Examinations shall not be administered until the Commissioner-approved certification course requirements are first met, unless the Commissioner grants a written exception based on a written request.

9.3. An applicant for operator certification shall submit an application for examination in a form and manner approved by the Commissioner with proof of education and, if required, separate proof of work experience.

9.4. The Commissioner shall schedule examinations for water operator certification applicants meeting requirements and notify them before the examination date.

9.5. An individual shall make a score of seventy (70%) or better on the examination in order to be considered a passing grade.

9.6. The results of certification examinations are valid for five (5) years. If the applicant has not met the requirements for education, experience, or both within those five (5) years, the applicant shall reapply for examination and regain a passing score.

9.7. An applicant who fails an examination shall wait a minimum of sixty (60) days from the date they took the examination before reapplying for the examination.

**§64-4-10. Renewal Requirements.**

10.1. Ensure renewal applications are submitted at least thirty (30) calendar days before expiration and no earlier than sixty (60) calendar days prior to expiration in a manner and form approved by the Commissioner.

10.2. The Commissioner shall approve continuing education hour (CEH) courses based on their relevance to PWSs.

10.3. The number of CEHs required by each classification each renewal period as follows:

10.3.a. Class R: A minimum of one (1) CEHs required for renewal;

10.3.b. OIT: A minimum of six (6) CEHs required for renewal;

10.3.c. WD: A minimum of six (6) CEHs required for renewal;

10.3.d. Class I: A minimum of twelve (12) CEHs required for renewal;

10.3.e. Class II, III, and IV: A minimum of twenty-four (24) CEHs required for renewal; and,

10.3.f. No CEHs are required for 1D renewal.

10.4. CEHs cannot be repeated in consecutive renewal periods.

10.5. Operators shall not carry over additional CEHs completed during the two (2) year period to satisfy the CEH requirements for the next certification renewal period.

10.6. The Commissioner may grant extensions upon written request by the applicant.

10.7. The Commissioner may specify certain courses an operator shall attend in order to qualify for renewal.

**§64-4-11. Expiration.**

11.1. All PWS operator certifications expire two (2) years from the date of issuance. An individual with expired certification shall not operate a PWS in West Virginia.

11.2. An applicant seeking reinstatement of his or her previous certification shall pass the examination at the certification level previously held if their certification has been expired for more than one (1) year.

11.3. If an individual holds a Class R, 1D or WD in addition to a Class I or higher certification, the Class R, 1D or WD will not expire so long as the Class I or higher is properly maintained.

**§64-4-12. Grandfathering.**

12.1. The below specifications only apply to grandfathering or facilitated implementation of the newly revised rule to currently certified operators.

12.2. Current 1D, OIT, WD, Class I, Class II, Class III and Class IV certificates will expire in accordance with the terms of the current certificate (two (2) years from date of issuance).

12.3. Upon classification as Class R PWS in accordance with this rule, individuals currently employed in Class R systems shall obtain Class R certification within two (2) years.

12.4. A passing score received on a certification examination valid as of the effective date of this rule will not expire until five (5) years from date of exam administration.

**§64-4-13. Certification from Another Jurisdiction.**

13.1. The Commissioner shall grant certification to a PWS operator certified by another jurisdiction, if the applicant:

13.1.a. Is actively seeking, has been offered or has accepted employment in West Virginia which requires a certified operator;

13.1.b. Submits a completed application in a manner and form approved by the Commissioner;

13.1.c. Meets the educational and work experience requirements of this rule; and,

13.1.d. Passes a West Virginia certification examination equivalent to the certification level of the other jurisdiction, as determined by the Commissioner.

**§64-4-14. Suspension and Revocation.**

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule. Failure to notify the Commissioner of voluntary termination of employment in accordance with Subsection 5.2.d. of this rule, even though the failure shall not subject the certified operator to the penalties of Section 16 of this rule.

14.1.c. Performed the duties of a water operator in a negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or,

14.1.e. Violated, or caused to be violated, any portion of *Public Water Systems* (64CSR3) or *Cross-Connection Control and Backflow Prevention* (64CSR15).

14.2. The Commissioner shall notify the certified operator and the employer via certified mail of a proposed suspension or revocation. The notification shall set forth the action proposed, the effective date, the reason, and the length of time of the proposed action.

14.3. The suspension of an operator's certification is effective for an initial period of not more than one (1) year, during which time the certification is not valid and the individual cannot operate a PWS. The individual shall obtain the CEHs required for that certification level, as if the revocation had not occurred.

14.4. The revocation of an operator's certification is for a period of not less than one (1) year during which time the certification is not valid and the individual cannot operate a PWS. After the period of ineligibility (caused by the revocation) has expired, the formerly certified operator shall pass the examination at the certification level previously held at a minimum to regain certification.

**§64-4-15. Penalties.**

15.1. A person subject to the provisions of this rule shall comply fully with them and shall not direct or assist another person to violate this rule.

15.2. A person who violates any provision of this rule or any rules or orders of the Bureau for Public Health is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500), as provided under WV Code §16-1-18. Each day there is a failure to comply with a provision of this rule may be a separate offense.

**§64-4-16. Administrative Due Process.**

16.1. Those persons adversely affected by the enforcement of this rule may request a contested case hearing in accordance with procedural rule, Rules of Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

**Table 64-4A**  
**OPERATOR EDUCATION AND EXPERIENCE REQUIREMENTS FOR CERTIFICATION**

CLASS	EDUCATION REQUIRED	EXPERIENCE REQUIRED
Class R	HS diploma or GED, Commissioner-approved Class R certification course & passing the Class R exam.*	No experience required.
1D	Commissioner-approved 1D certification course & passing the 1D exam.	No experience required.
OIT	HS diploma or GED.*	No experience required.
WD	HS diploma or GED, Commissioner-approved WD certification course & passing the WD exam.	One-thousand (1,000) hours (6 months full-time) at a WD or higher PWS.
Class I	HS diploma or GED, Commissioner-approved Class I certification course & passing the Class I exam.	Two-thousand (2,000) hours (1 year full-time) at a PWS.**
Class II	HS diploma or GED, Commissioner approved Class II certification course & passing the Class II exam.	Four-thousand (4,000) hours (2 years full-time) at a PWS with at least two-thousand (2,000) of those hours at a Class II or higher PWS.**
Class III	HS diploma or GED and successfully completing ninety (90) CEUs** and passing the examination in accordance with Subsection 6.4.	Eight-thousand (8,000) hours (4 years full-time) at a Class I or higher PWS with at least two-thousand (2,000) of those hours at a Class II or higher PWS.**
Class IV	HS diploma or GED and successfully completing one hundred eighty (180) CEUs** and passing the examination in accordance with subsection 6.4.	Ten-thousand (10,000) hours (5 years full-time) at a Class I or higher PWS with at least two-thousand (2,000) of those hours at a Class III or higher PWS.**

\* and \*\* Refer to Sections 7 and 8.

**Table 64-4B**  
**CEUs FOR COURSES AND OPERATING EXPERIENCE**

Ten (10) CEHs	1 CEU
One (1) College Semester Credit Hour	1.5 CEU
One (1) College Quarter Credit Hour	1 CEU
Two-thousand (2,000) hours of experience	45 CEU

Note Section 7.6.