

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

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OFFICE WEST VIRGINIA  
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**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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

CITE AUTHORITY: WV Code §§16-1-4, 16-1-9 and 16-1-9a.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: PUBLIC WATER SYSTEMS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

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

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SERIES 3  
PUBLIC WATER SYSTEMS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§64-3-1. General.**

1.1. Scope. -- This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water. This rule should be read in conjunction with W-Va. Code §16-1-9 and §16-1-9a. The W-Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us>

1.2. Authority. -- W-Va. Code §§16-1-4, 16-1-9 and 16-1-9a.

1.3. Filing Date. --

1.4. Effective Date. -- ~~April 21, 2011~~

~~1.5. Amendment of Former Regulations. -- This rule amends Public Water Systems, West Virginia Administrative Rules, Division of Health, 64CSR3, 2007.~~

**§64-3-2. Application and Enforcement.**

2.1. Application. -- This rule applies to public drinking water systems, to bottled water treatment plants and distributors, and to laboratories desiring certification to perform analytic tests of drinking water.

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

**§64-3-3. Definitions.**

3.1. Bottled Water. -- All water which is sealed in bottles, packages or other containers and offered for sale for human consumption, including bottled mineral water.

3.2. Bottled Water Distributor. -- A person who buys and sells bottled water on a wholesale basis.

3.3. Commissioner -- Commissioner of the Bureau for Public Health or his or her designee.

3.4. Initial Demonstration of Capability (IDC) -- Before analyzing compliance samples, an analytical team shall demonstrate acceptable precision, accuracy, sensitivity and specificity for the method to be used, as described in the referenced document in subdivision 13.2.a. of this rule.

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

3.6. Proficiency Testing Samples (PT) -- A sample provided to the laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within specified acceptance limits

specified in this rule. The qualitative and/or quantitative composition of the reference material is unknown to the laboratory at the time of analysis.

3.7. Public Water System. -- A public water system is 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 individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and 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 public water system does not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) Which obtains all of its water from, but is not owned or operated by a public water system that otherwise meets the definition; (3) Which does not sell water to any person; and (4) Which is not a carrier conveying passengers in interstate commerce.

3.8. Sanitary Survey. -- An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water, as described in the federal regulations adopted in this rule.

3.9. Secretary. -- The Secretary of the Department of Health and Human Resources.

#### **§64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions.**

4.1. A person shall not construct, alter, renovate or award a contract for any construction, alteration or renovation of a public water system without obtaining a permit from the Commissioner.

4.2. Application for a permit to construct, alter or renovate shall be made to the Commissioner on forms prescribed by the Commissioner at least forty-five working days prior to the date on which approval by the Commissioner is desired. The application shall be accompanied by an engineering report, maps, and detailed plans and specifications of the proposed construction, alteration or renovation prepared by or under the direction of a registered professional engineer.

4.3. The Commissioner may revoke a permit to construct, alter or renovate for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate is valid for five years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the Commissioner in accordance with the ~~Division of~~ Bureau for Public Health rule, Public Water System Design Standards, 64CSR77.

4.6. To the extent practical, all new or expanded facilities shall be located outside the hundred-year flood plain.

4.7. The Commissioner may issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not significantly affect the quality or quantity of the water supply service rendered. The work shall be done in accordance with the provisions of the ~~Division of~~ Bureau for Public Health rule, Public Water System Design Standards, 64CSR77.

4.9. A public water system shall submit a written description of the proposed additions, alterations or renovations to the Commissioner no less than ten working days prior to implementing the additions, alterations or renovations under this provision. The Commissioner shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five working days of receipt of the description.

4.10. All public water supply systems using a raw water source which is open to the atmosphere or subject to surface runoff shall, at a minimum, provide filtration treatment.

**§64-3-5. Permit to Operate a Public Water System.**

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted in this rule.

5.2. The Commissioner shall develop a program for the issuance of a permit to operate a public water system. The permit is renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted in this rule. The Commissioner shall administer the permit program uniformly and shall not grant a permit until after he or she has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, the new owner shall submit a written application to the Commissioner at least fifteen working days before the proposed change to transfer the permit to operate.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

**§64-3-6. Inspections and Sanitary Surveys of Public Water Systems.**

6.1. The Commissioner shall inspect public water systems and conduct sanitary surveys in accordance with the federal regulations adopted in this rule.

6.2. The Commissioner has the right of access to all parts of a public water system. The public water system shall furnish the Commissioner access to all information and records required to be kept by this rule and the federal regulations adopted in this rule.

**§64-3-7. Public Water System Disinfection Requirements.**

7.1. Disinfection with chlorine, chlorine dioxide, chloramine or ozone is required of all public water systems, provided the requirements of Subsection 7.6. of this section are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective log removal.

7.3. Ground water systems shall install chemical disinfection to provide at least a four-log virus inactivation or removal before or at the first customer, for any ground water source. Monitoring requirements are the same as the federal regulations adopted in this rule.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted in this rule.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times.

7.7. The Commissioner may authorize ~~exemptions~~ exceptions, in writing, in the chlorine disinfection parameters specified in this section. The Commissioner may impose additional monitoring requirements if an ~~exemption~~ exception is authorized.

#### **§64-3-8. Public Water System Fluoridation.**

8.1. Average concentrations of fluoride present in the drinking water of a public water system, which artificially adjusts fluoride ~~concentrations~~ levels shall be no less than ~~the minimum~~ 0.5 milligrams per liter and no higher than ~~the maximum concentrations shown in Table 64-3 at the end of this rule~~ 0.9 milligrams per liter. The optimum level for artificially adjusted fluoride is 0.7 milligrams per liter.

8.2. Public water systems that plan to make long term changes in the method being used to artificially adjust fluoride levels, such as a change in the chemical composition or the dosage rate, shall notify the Commissioner prior to implementing the proposed change. The commissioner shall approve the change in writing before the public water system may begin implementation of the changes.

~~8.2.~~ 8.3. The drinking water of artificially adjusted fluoridated or defluoridated public water systems shall be monitored once ~~per~~ each day for fluoride concentration. Records of the monitoring shall be maintained in accordance with Sections 9 and 10 of this rule.

~~8.3.~~ 8.4. At least once a month, ~~the~~ any public water system that artificially adjusts the fluoride concentrations shall submit a sample of drinking water to the Commissioner or to a certified laboratory for fluoride analysis.

#### **§64-3-9. Public Water System Control Tests and Record Maintenance.**

A public water system shall retain records of microbiological, turbidity, radiological and chemical analyses, or a summary of the records, at a convenient location on or near the premises of the public water system, in accordance with the federal regulations adopted in this rule. The Commissioner shall certify a laboratory or laboratories to conduct all tests and analyses required by this rule or the federal regulations adopted in this rule, with the exception of on-site water system operational tests. The public water system shall retain monthly operational reports, containing the information required to be submitted under subsection 12.4. of this rule, for five years.

#### **§64-3-10. Adoption of Federal Regulations.**

10.1. The following federal regulations are hereby adopted by reference:

10.1.a. National Primary Drinking Water Regulations, 40 CFR Part 141;

10.1.b. National Primary Drinking Water Regulations Implementation, 40 CFR Part 142, Subparts A and F, and Sections 40 CFR 142.20(b), 142.21; 142.62, 142.63, 142.64 and 142.65; and

10.1.c. National Secondary Drinking Water Regulations, 40 CFR Part 143.

10.2. The Commissioner shall use the provisions of 40 CFR142.20(b) and the requirements and procedures of Subpart F of 40 CFR Part 142, as adopted in this rule as applicable in granting exemptions. Nothing in this section shall authorize the granting of a variance by the Commissioner. For the purpose of granting exemptions, the following changes are made to Subpart F in 40 C.F.R. Part 142:

10.2.a. The term "Commissioner" shall be substituted for the term "Administrator."

10.2.b. The term "West Virginia" shall be substituted for the phrase "State that does not have primary enforcement responsibility."

10.2.c. To meet the requirements of 40 C.F.R. § 142.54(b)(2), the Commissioner need only provide notice to other appropriate State or local agencies at the Commissioner's discretion.

10.3. In the event of a conflict between a federal standard adopted in this rule and a state standard adopted in this rule, the more stringent standard applies

10.4. These regulations can be viewed on the internet at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>. Copies of these regulations are available in hard copy from:

U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

**§64-3-11. Bottled Water Treatment Plants and Distributors.**

11.1. No person shall operate a bottled water treatment plant in this State without first receiving from the Commissioner a permit to bottle and distribute water.

11.2. No person shall distribute bottled water in this State without first receiving from the Commissioner a permit to distribute bottled water.

11.3. Application for a permit to bottle and distribute water shall be made to the Commissioner on forms prescribed by the Commissioner. A completed application and a set of plans and specifications for the treatment plant shall be submitted to the Commissioner for approval at least forty-five working days prior to the date on which a permit from the Commissioner is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with Beverages, 21 CFR, §165 final regulations promulgated and published as final rules prior to the adoption of this rule, with the exception of Sections 165.3(b), 165.110(a)(2)(ii) and ~~165.110(b)(2)~~.

11.4.a. The name of the water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water". Ground water found to be under the direct influence of surface water as defined in 40 CFR §141.2, as adopted by this rule, shall be treated by a method approved by the Commissioner.

11.4.b. The bottler shall conduct microbiological monitoring not less than weekly on the finished product. ~~The bottler shall determine microbiological acceptability in accordance with 40 CFR §141.63, as adopted by this rule.~~

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, and Processing and Bottling of Bottled Drinking Water, 21 CFR §129.

11.6. The Commissioner shall inspect each in - state bottled water treatment plant every twelve months or as he or she otherwise determines.

11.7. An out-of-state bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the Commissioner. The out-of-state treatment plant shall comply with the requirements of this rule and the federal regulations adopted in this rule for in-state bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state in which the treatment plant is located is considered acceptable for the purposes of this rule. The out-of-state treatment plant shall notify the Commissioner of any corrective action it is required to take by its state regulatory authority and shall notify the Commissioner of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the State who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the Commissioner. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the Commissioner. The Commissioner shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. The Commissioner may revoke a permit for failure to comply with provisions of this rule.

#### **§64-3-12. Public Water System Reporting Requirements.**

12.1. Unless otherwise specified in this rule or the federal regulations adopted in this rule, a public water system shall report to the Commissioner the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted in this rule within forty working days of the system's receipt of the test, measurement or analysis.

~~12.2. If a public water system fails to comply with this rule or the federal regulations adopted in this rule, it shall be reported to the Commissioner within forty eight hours of the discovery of the violation.~~

~~12.3. Analytical results of tests performed by the laboratory of the Bureau for Public Health are not required to be reported.~~

~~12.4.~~ 12.2. A public water system shall submit a ~~written~~ summary of the public water system operation, test data and other information as may be required by the Commissioner to the Commissioner at least once each month. The Commissioner may require more frequent reports in cases where there are public health concerns.

~~12.5.~~ 12.3. All reports and summaries required by this rule or federal regulations adopted in this rule shall be submitted in a manner or form approved by the Commissioner.

~~12.6.~~ 12.4. A public water system shall distribute a public notice for any failure to comply with this rule or the federal regulations adopted in this rule. The content, distribution, recordkeeping and reporting of the public notification shall be performed in a time and manner as specified in the federal rules adopted, by reference, in this rule with the exception of Tier 1 public notices. For Tier 1 public notices, the time required for initial public notices and consultation with the state shall be as soon as possible, but no more than twelve hours.

#### **§64-3-13. Certification of Laboratories to Conduct Drinking Water Tests.**

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal regulations adopted in this rule shall be certified by the Commissioner or by the federal Environmental Protection Agency.

13.2. A certified laboratory shall:

## 64CSR3

13.2.a. Comply with the requirements and criteria contained in the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition, EPA 815-R-05-004, January 2005. In addition, before an analyst is permitted to do any regulatory compliance samples for chemistry, the Initial Demonstration of Capability (IDC) required by each method must be completed. If there are no IDC requirements in the method, the following are guidelines to be used: At a minimum, the IDC shall include a demonstration of the ability to achieve a low background (instrument detection limit), determination of the method detection limit in accordance with the procedure given in §40 CFR 136, Appendix B, and the precision and accuracy of the method. To demonstrate precision and accuracy, at a minimum four replicates of a quality control or reference sample must be processed through all steps of the analytical procedure and evaluated against laboratory derived acceptance limits. In addition, precision and accuracy must be established if more than one sample preparation technique is used; or

13.2.b. Comply with the requirements of this rule and hold a certificate of recognition from the National Environmental Laboratory Accreditation Program (NELAP) for the analysis of drinking water; or

13.2.c. Any other accreditation determined to be equivalent by the Commissioner.

13.3. An in-state laboratory shall submit an application form when seeking initial approval at least sixty days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this state shall be certified by the Commissioner if:

13.4.a. It has been certified by the federal Environmental Protection Agency; or

13.4.b. It has been certified by a program for the certification of laboratories equivalent to the program of this state as determined by the Commissioner. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the Commissioner. The Commissioner may charge a fee for all expenses incurred for an on-site survey of an out-of-state laboratory.

13.5. An out-of-state laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with Subsection 13.4.a. or 13.4.b. of this section. The out-of-state laboratory shall notify the Commissioner immediately of any change in its certification status under Subsection 13.4.a. or 13.4.b. of this rule.

13.6. The Commissioner shall conduct on-site inspections of in-state laboratories to determine compliance with this rule and the federal standards adopted in this rule initially prior to certification, and at least every three years thereafter. The ~~division~~ bureau has the right of entry upon proper identification at any time considered necessary during operating hours in order to conduct the inspections.

13.7. The Commissioner shall issue certificates of approval upon initial approval and shall renew the certificates on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued shall contain the name and location of the laboratory, a laboratory code number, the signatures of the State's Office of Laboratory Services' Director and Certification Officers, and the date of expiration of the certificate.

13.7.a. Certified laboratories shall participate in a proficiency testing water study within the first three months of the calendar year. The study shall have a closing date no later than the last working day of March. If the Commissioner does not receive proficiency testing water study results by the end of May of each calendar year, the Commissioner shall downgrade the laboratory to "provisionally certified" for each certified parameter not analyzed.



13.7.b. For a drinking water laboratory to maintain certification, the Commissioner must receive an acceptable proficiency testing water study result for each certifiable parameter and by each approved method for which the laboratory holds, or is seeking, certification by September 30 of each year. The proficiency testing provider shall forward the water study results directly to the Commissioner; photocopies from the laboratory will not be accepted.

13.8. Certified laboratories shall notify the Commissioner when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. Certified laboratories shall submit to the Commissioner all required or requested data, information and reports in a manner or form approved or provided by the Commissioner.

13.10. Certified laboratories shall accept chemistry compliance monitoring samples only in containers that have been demonstrated and documented to be free of regulated or interfering contaminants. This demonstration shall be accomplished through testing using an approved drinking water method. The contaminants of interest must be shown to be below detectable levels on a representative container from any given lot after exposure to reagent water and any required preservatives.

13.11. Certified laboratories shall reject any public water system compliance monitoring sample that has exceeded its holding time for the indicated testing parameters, has not been received at the required temperature or pH, or does not contain the required preservatives, or is not in an approved container. Upon a rejection, the certified laboratory shall then notify the submitting public water system and the sample originator in a timely manner to allow for resampling and resubmission to prevent noncompliance with Federal regulations and State rules ~~and regulations~~ and endangerment of public health.

13.12. The Commissioner shall administer and use the criteria and procedures of the section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the Manual for the Certification of Laboratories Analyzing Drinking Water referenced in Subsection 13.2. of this section, when a laboratory's noncompliance with the Manual and/or the provisions of this rule is detected.

#### **§64-3-14. Penalties.**

Any person who violates any provision of this rule or orders issued under this rule is subject to injunction, criminal prosecution, and criminal, civil and administrative fines, all as provided in W.-Va. Code §§16-1-9, 16-1-9a, 16-1-17 and 16-1-18.

#### **§64-3-15. Administrative Due Process.**

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in accordance with the ~~Division of~~ Bureau for Public Health rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.

TABLE 64-3

**Average Acceptable Range of Fluoride Concentration  
at Various Annual Average Maximum Daily Air  
Temperatures**

<u>ANNUAL AVERAGE MAXIMUM DAILY AIR TEMPERATURE</u>	<u>FLUORIDE CONCENTRATION IN MILLIGRAMS PER LITER</u>		
	Lower	Optimum	Upper
53.8 — 58.3 F 12.1 — 14.6 C	0.8	1.1	1.5
58.4 — 63.8 F 14.7 — 17.7 C	0.8	1.0	1.3
63.9 — 70.6 F 17.7 — 21.4 C	0.7	0.9	1.2