



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/28/2017 9:59:30 AM

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Health TITLE-SERIES: 64-03
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 64-03 Public Water Systems

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-1-4; 16-1-9; 16-1-9a, 16-1-9c, 16-1-9d

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

STATUTORY AUTHORITY

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with W. Va. Code §29A-3-1 et seq. to implement the all of the provisions of W. Va. Code § 16-1-4; 16-1-9; 16-1-9a, 16-1-9c, 16-1-9d. The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 64-3 by the authority specifically found in W. Va. Code § 64-3.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

NA

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Brief Summary of Rule: This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems and public water utilities. 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.

Identification of Proposed Amendments: The proposed amendments make several changes to § 8 to clarify that a public water system may adjust fluoride concentration levels or dosage rates in accordance with subsection 8.1., of the rule series, without the prior written approval of the Commissioner (§ 8.4.). The amendments also include a prohibition on the modification of the chemical composition or additives for water fluoridation, or discontinue fluoridation of drinking water, without the prior written approval of the Commissioner. (§ 8.5.)

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Statement of Circumstances: Recently, the Bureau became aware that the current rule may be read to mandate that the Commissioner approve plans by a public water system to make long term changes in the method being used to artificially adjust fluoride levels, including the discontinuance of fluoridation. See § 8.2

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems and public water utilities. Recently, the Bureau became aware that the current rule may be read to mandate that the Commissioner approve plans by a public water system to make long term changes in the method being used to artificially adjust fluoride levels, including the discontinuance of fluoridation. The proposed amendments make several changes to clarify that a public water system may not modify the chemical composition or additives for water fluoridation, or discontinue fluoridation of drinking water, without the prior written approval of the Commissioner. This rule will have no fiscal impact on the state.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

NA

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0		0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0		0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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

**SERIES 3
PUBLIC WATER SYSTEMS**

§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 and public water utilities. 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, 16-1-9a, 16-1-9c and 16-1-9d. 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 16-1-9a, 16-1-9c and 16-1-9d.

1.3. Filing Date. --

1.4. Effective Date. --

1.5 *Sunset Provision.* This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§64-3-2. Application and Enforcement.

2.1. Application. -- This rule applies to public drinking water systems, public water utilities, 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. Bureau. -- The Bureau for Public Health in the Department of Health and Human Resources.

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

3.5. Conjunctive delineation -- The integrated delineation of the ground water contribution area and the surface water contribution area for a public water system.

3.6. Demonstration of Capability (DOC). -- 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.

3.7. Department. -- The West Virginia Department of Health and Human Resources.

3.8. Hydrologic Unit Code. (HUC) -- The basic unit of an ordered grouping of watersheds and sub-watersheds that make up the entire drainage network of the United States. This drainage network was developed by the United States Geological Survey. Each watershed is assigned a unique identification code based on its location and relationship with surrounding watersheds. The hydrologic unit identification code is a number consisting of between 2 to 17 digits depending on factors specific to each watershed. In West Virginia, most major river basins have been assigned one or more 8-digit hydrologic unit codes. Each of these 8-digit hydrologic units has been further divided into smaller watersheds identified by 11, 14, and 17-digit hydrologic unit codes.

3.9. Ohio River Valley Water Sanitation Commission. (ORSANCO) --An interstate water pollution control agency that was established as a provision of and to implement the Ohio River Valley Water Sanitation Compact, signed in 1948 by the governors of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia and West Virginia.

3.10. 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.

3.11. Potential Source of Significant Contamination. (PSSC) -- A facility or activity that stores, uses or produces substances or compounds with potential for significant contaminating impact if released into the source water of a public water supply.

3.12. 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.

3.13. Public groundwater supply source. -- A primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine or other primary source of water supplies which is found underneath the surface of the state.

3.14. Public surface water supply source. -- A primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state.

3.15. Public surface water-influenced groundwater supply source. -- A source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

3.16. Public Water System. -- A public water system is:

3.16.a. Any water supply or system which 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:

3.16.a.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

3.16.a.2. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

3.16.b. A public water system does not include a system which meets all of the following conditions:

3.16.b.1. Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

3.16.b.2 Which obtains all of its water from, but is not owned or operated by a public water system that otherwise meets the definition;

3.16.b.3. Which does not sell water to any person; and

3.16.b.4. Which is not a carrier conveying passengers in interstate commerce.

3.17. Public Water Utility. – A public water system which is regulated by the West Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code.

3.18. 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.

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

3.20. Unaccounted for water. – The water introduced into the distribution system less all metered usage and all known non-metered usage which can be estimated with reasonable accuracy.

3.21. Watershed. --A watershed is an area of land from which surface water drains into a common outlet, such as a river, lake, or wetland.

3.22. Wellhead Protection Area. (WHPA) -- The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

3.23. Zone of Critical Concern. (ZCC) – The area for a public surface water supply that is comprised of a corridor along streams within a watershed that warrants more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water

intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

§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 Bureau for Public Health rule, *Public Water System Design Standards*, 64 CSR 77.

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 Bureau for Public Health Rule, *Public Water System Design Standards*, 64 CSR 77.

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 and shall measure the total chlorine residual at least one time per day when serving water to the public and report the results in accordance with section 12 of this rule.

7.7. The Commissioner may authorize exceptions, in writing, in the chlorine disinfection parameters specified in this section. The Commissioner may impose additional monitoring requirements if an 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 levels shall be no less than 0.6 milligrams per liter and no higher than 0.8 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.~~

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

~~8.4. 8.3.~~ At least once a month, 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.

8.4. A public water system may adjust fluoride concentration levels or dosage rates in accordance with subsection 8.1., without the prior written approval of the Commissioner.

8.5. A public water system may not modify the chemical composition or additives for water fluoridation, or discontinue fluoridation of drinking water, without the prior written approval of the Commissioner.

8.5.a. Upon a written request, the Commissioner may authorize a modification to the chemical composition or additives for water fluoridation, or the discontinuance of fluoridation of drinking water.

8.5.b. In the event the Commissioner approves a modification or discontinuance pursuant to this subsection, the Commissioner may also impose additional monitoring requirements.

§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, with the exception of the monitoring reduction provisions of Subpart Y, the specific portions of Subpart Y which are not being adopted by reference in this rule are as follows:

10.1.a.1. In 40 CFR §141.854 (c) (2), the last three sentences, beginning with "The State may not allow systems to begin less frequent monitoring"...through the end of that subsection;

10.1.a.2. In 40 CFR §141.854, sections (d), (e) and (h) in their entirety;

10.1.a.3. In 40 CFR §141.854 (i) (2) the portion of the sentence that reads; “unless it meets the criteria in paragraphs (i) (2) (i) through (iii) of the section to be eligible for monitoring less frequently than monthly”;

10.1.a.4. In 40 CFR § 141.854 (i) (2) the portion of the sentence that reads “unless it meets the criteria in §141.854 (i) (2) (i) through (iii) of this section to be eligible for monitoring less frequently than monthly”;

10.1.a.5. In 40 CFR § 141.854 (i) (2) (i) thru (iii) in their entirety; and

10.1.a.6. In 40 CFR 141.855 (c) (2), (d), (e) and (f) in their entirety.

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 CFR 142.20 (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 CFR 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 CFR §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. The National Primary Drinking Water Regulations can be viewed online 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).

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.

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 days of the system's receipt of the test, measurement or analysis.

12.2. A public water system shall submit a 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.

12.3. 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.

12.4. 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.

12.5. A public water system shall report to the Commissioner any proposed long term or permanent changes to their water treatment process, such as a change in fluoridation or changes in the chemicals used in the treatment process, in writing at least 60 days prior to the planned date of implementation, to allow for an evaluation of the change in water quality to the consumers.

§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 by this rule shall be certified by the Commissioner or by the federal Environmental Protection Agency.

13.2. A certified laboratory shall:

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, Supplement I to the Fifth Edition of the Manual to the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-08-006, June 2008, Supplement II to the Fifth Edition of the Manual to the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-12-006, November 2012. In addition, before an analyst is permitted to do any regulatory compliance samples for chemistry, the Demonstration of Capability (DOC) required by each method must be completed. If there are no DOC requirements in the method, the following are guidelines to be used: At a minimum, the DOC shall include four replicates of a quality control or reference sample which 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 subdivision 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 subdivision 13.4.a. or 13.4.b. of this section.

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 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 between January 1 and 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 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.

13.13. For each parameter and method the laboratory holds certification and receives an unacceptable evaluation from the proficiency testing provider, shall submit a pre-placement proficiency testing study to the Commissioner within 90 days of being notified of the unacceptable result. Failure to comply shall result in the parameter or method, or both, being downgraded.

13.14. For each parameter and method the certified laboratory has two consecutive unacceptable evaluations from the proficiency testing provider shall have the aforementioned parameter or method, or both, downgraded to "provisionally certified".

13.15. A laboratory requesting reinstatement due to unacceptable proficiency testing water study performance must provide two consecutive proficiency testing water studies which have been evaluated to be acceptable by the proficiency testing provider.

§64-3-14. Source Water Protection Program.

14.1. This rule establishes a statewide program for development and implementation of source water protection and planning. This program is intended to protect water supply sources from contamination due to substances entering the groundwater or surface water bodies which are used as water supply sources by public water systems and public water utilities.

14.2. The requirements specified in this rule are minimum requirements and shall not prevent a public water utility or a public water system from taking additional steps to protect its wells, springs, wellfields, or surface water intakes.

14.3. On or before July 1, 2016, each existing public water utility which draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants to protect its public water supplies from contamination. The schedule for submission of the source water protection plans is set forth in section 16 of this rule.

14.4. The West Virginia Source Water Protection Program consists of two types of delineations for the West Virginia waterways. These are a broad Watershed Delineation Area (WSDA) and a detailed Zone of Critical Concern (ZCC) delineation.

14.4.a. The Watershed Delineation Area (WSDA) includes the entire watershed area upstream

from a public water utility intake structure, up to the boundary of the state borders, a topographic boundary and is the perimeter of the catchment area that provides water to the water supply intake. This delineation will use available hydrologic unit codes (HUC) based on the watershed network established by the United States Geological Survey (USGS). The WSDA is an area where a general inventory can be performed by the Public Water System. A more detailed inventory and management plan may be warranted based upon the type and number of existing potential sources of significant contamination (PSSC).

14.4.b. The Zone of Critical Concern (ZCC) is a corridor along the streams, lakes, and reservoirs within the Watershed Delineation Area (WSDA) that warrants a more detailed inventory and management of potential sources of significant contamination due to its proximity to the source water intake and to the susceptibility to potential contaminants.

14.4.b.1. Zone of Critical Concern delineations consist of the following:

14.4.b.1.A. Free flowing streams within the Watershed Delineation Area (WSDA) using the following configuration:

14.4.b.1.A.1. Width along the source stream is --1000 feet from each bank of the principal stream and 500 feet from each bank of all tributaries draining into the principal stream.

14.4.b.1.A.1.(a) For purposes of this rule, these terms have the following definitions:

14.4.b.1.A.1.(a)(1) *bank* means the sides of a river or stream between which the water normally flows;

14.4.b.1.A.1(a)(2) the *principal stream* is defined as the stream where the source water intake for the public water utility is located; and

14.4.b.1.A.1(a)(3) *tributaries* are all other waterways flowing into the principal stream.

14.4.b.1.A.2. Length along the source stream is determined based on a 5-hour time of travel using an estimated 90 percent high flow rate that is equaled or exceeded on 10% of the days during the period of record or up to the next upstream intake, where it is available. If high flow rate data is not available through a mathematical model to calculate flow time then a 5-MPH flow rate is used.

14.4.b.1.B. Reservoirs or lakes within the Watershed Delineation Area (WSDA) using the following standards:

14.4.b.1.B.1. Width --1000 feet from each bank of the reservoir and 500 feet from each bank of the tributaries draining into the reservoir or lake.

14.4.b.1.B.2. Length along the source stream feeding into the reservoir or lake. The free flow stream segment will be delineated following the free flow stream procedure. If a lake or reservoir is encountered within the five hour time of travel, the following delineation will take place. If the length of the lake or reservoir is less than or equal to the five hour calculated time of travel distance from the intake then the entire water body will be included. If the length of the lake or reservoir is greater than the calculated five hour time of travel distance from the intake then the section of water body within

the five hour time of travel distance will be used to establish the Zone of Critical Concern (ZCC).

14.4.b.1.C. Ohio River Delineation –The Ohio River will use a tiered delineation system consisting of two protection zones for each Ohio River surface intake consisting of the following: Zone 1 --Zone of Critical Concern --The area adjacent to the Ohio River from 1/4 mile downstream of the intake to a distance of 25 miles (equivalent to a 5-hour time of travel) upstream or the next upstream intake. The lateral extent of this zone extends 1/4 mile on both sides of the river and major tributaries. Zone 2 --Source Water --The entire portion of the Ohio River Basin upstream of the surface intake. This is equivalent to the West Virginia Watershed Delineated Area for the West Virginia waterways.

14.4.c. Conjunctive delineations will consist of the following for public surface water influenced groundwater supply sources.

14.4.c.1. Commissioner will determine whether or not a conjunctive delineation is required on a case by case basis.

14.4.c.2. The criteria that the state will use will be based on identification between selected parameters in the wells and in surface water in the nearby streams. Using this information, the commissioner will develop a statewide guidance standard for the designation.

14.4.c.3. If a public water supply has been determined to be under the influence of surface water and its WHPA intersects the surface water body, ~~then~~ then this system will be required to do a modified (full or partial) surface delineation in addition to the ground water delineation.

14.5. Every effort shall be made by the water utility to inform and engage the public, local governments, local emergency planners, local health departments and affected residents at all levels of the development of the protection plan.

14.6. The completed or updated plan for each affected plant, at a minimum, shall include the following:

14.6.a. A contingency plan that documents each public water utility's planned response to contamination of its public surface water supply source or its public surface water influenced groundwater supply source;

14.6.b. An examination and analysis of the public water system's ability to isolate or divert contaminated waters from its surface water intake or groundwater supply, and the amount of raw water storage capacity for the public water system's plant;

14.6.c. An examination and analysis of the public water system's existing ability to switch to an alternative water source or intake in the event of contamination of its primary water source;

14.6.d. An analysis and examination of the public water system's existing ability to close its water intake in the event the system is advised that its primary water source has become contaminated due to a spill or release into a stream, and the duration of time it can keep that water intake closed without creating a public health emergency;

14.6.e. The following operational information for each plant receiving water supplies from a surface water source shall include:

14.6.e.1. The average number of hours the plant operates each day, and the maximum and minimum number of hours of operation in one day at that plant during the past year; and

14.6.e.2. The average quantities of water treated and produced by the plant per day, and the maximum and minimum quantities of water treated and produced at that plant in one day during the past year;

14.6.f. An analysis and examination of the public water system's existing available storage capacity on its system, how its available storage capacity compares to the public water system's normal daily usage;

14.6.g. The calculated level of unaccounted for water experienced by the public water system for each surface water intake. The public water utility shall use the same method used in the Public Service Commission's rule, Rules for the Government of Water Utilities, 150CSR7, section 5.6., to determine and report on their unaccounted for water. If the calculated percentage of unaccounted for water is in excess of fifteen percent, the public water system shall describe all of the measures it is actively taking to reduce the level of water loss experienced in its system;

14.6.h. A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management in accordance with the provisions of *W.Va. Code* § 16-1-9c(b)(8) ~~and §22-31-4~~.

14.6.h.1. Examples of land uses and activities which are considered to be potential sources of significant contamination may be further described in the guidance document to be published by the Commissioner.

14.6.h.2. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of the *W.Va. Code*.

14.6.h.3. The location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility.

14.6.h.4. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency that poses a potential threat to public health and safety.

14.6.h.5. Any public water utility may identify additional potential sources of significant contamination that are located outside of the zone of critical concern if it deems those potential sources to be of concern to the integrity of the water supply.

14.6.i. If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

14.6.i.1. Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

14.6.i.2. Constructing additional raw water storage capacity and/or treated water storage capacity, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

14.6.i.3. Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

14.6.i.4. Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

14.6.i.5. If one or more alternatives set forth in paragraphs 14.6.i.1 through 14.6.i.4 of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives.

14.6.j. A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

14.6.k. A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the state and local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system's drinking water supply, with an initial notification to the public to occur in any event no later than thirty minutes after the public water system becomes aware that the spill, release or potential contamination of the public water system poses a potential threat to public health and safety;

14.6.l. A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of Environmental Protection, the Bureau for Public Health, the Division of Homeland Security and Emergency Management and other resources; and

14.6.m. An examination of the technical and economic feasibility of implementing an early warning monitoring system.

14.6.n. Plans must be signed by a West Virginia Registered Professional Engineer (PE).

14.6.n.1. In the alternative, if the public water utility does not have a PE to sign their plan, it

is acceptable to have the SWPP signed by the Chief Executive Officer of a privately owned water utility; or

14.6.n.2. In the alternative, if the public water utility does not have a PE to sign their plan, it is acceptable to have the SWPP signed by the Board Chairman or other presiding officer of a publicly owned water utility.

14.7. Any public water utility's public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply that comes into existence on or after July 1, 2014 shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection 14.6. of this section.

14.8. The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection.

14.8.a. Within one hundred eighty days of receiving a plan for approval, the commissioner may approve, reject or modify the plan as may be necessary and reasonable to satisfy the purposes of this rule.

14.8.b. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the initial source water protection plan that has been updated or completed. The public hearings required by this rule may be scheduled in conjunction with one or more public water utilities in the same watershed and shall be held after notice to the public in all affected locations.

14.8.c. The failure by any public water utility to comply with its source water protection plan approved pursuant to this rule is a violation of this rule and may be subject to penalties set forth in section 17 of this rule.

14.9. The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination (PSSC) identified by the plan, or as otherwise made known to the commissioner.

14.10. Any public water utility required to file a complete or updated plan in accordance with the provisions of this rule shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

14.11. Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall review any source water protection plan it may currently have on file with the bureau and update it to ensure it conforms with the requirements of this rule on or before July 1, 2016.

14.12. The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of health.

§64-3-15. Well head and source water protection grant program.

15.1. The commissioner shall continue the Wellhead and Source Water Protection Grant Program.

15.1.a. The fund heretofore created to provide funds for the Wellhead and Source Water Protection Grant Program is continued in the State Treasury and shall be known as the Wellhead and

Source Water Protection Grant Fund.

15.1.b. The fund shall be administered by the commissioner and shall consist of all moneys made available for the program from any source, including, but not limited to, all fees, civil penalties and assessed costs, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the program by the Legislature and all interest or other return earned from investment of the fund.

15.1.c. Expenditures from the fund shall be for the purposes set forth in this rule to provide water source protection pursuant to the program and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of the *W.Va. Code* and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of the *W.Va. Code*.

15.1.d. For the fiscal years ending June 30, 2014 and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature.

15.1.e. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

15.2. In prospectively awarding any grants under the Wellhead and Source Water Protection Grant Program, the commissioner shall prioritize those public water systems where there is the highest probability of contamination of the water source based on the source water assessment report or the source water protection plans which were previously performed. Priority shall also be extended to publicly owned public water systems over privately owned public water systems.

15.3. The commissioner, or his or her designee, shall apply for and diligently pursue all available federal funds to help offset the cost of completing source water protection plans by the deadlines established in section nine-c, article one, chapter sixteen of the *W.Va. Code*.

15.4. The commissioner may receive any gift, federal grant, other grant, donation or bequest and receive income and other funds or appropriations to contribute to the Wellhead and Source Water Protection Grant Program.

§64-3-16. Source water protection plan submission schedules and watershed descriptions.

16.1. The commissioner may organize the public water utilities required to submit Source Water Protection Plans (SWPP) under this rule by watersheds. Grouping the public water utilities in this manner will enhance protection of the public water supply by looking at the potential sources of significant contamination (PSSC) across the entire watershed to protect all downstream uses of water from any contamination occurring upstream.

16.2. To better manage the state's streams, the State is divided into 32 HUC-8 watersheds by the West Virginia Department of Environmental Protection. Those streams are further consolidated into one of five hydrologic regions (Regions 1 - 5). All source water streams that provide intakes for public water utilities are assigned to one of the five regions for purposes of collecting and reviewing the SWPP submitted by public water utilities in each watershed.

16.3. The watershed designations are as follows:

16.3.a. Region 1 Watershed – Contains the Upper Ohio North, Upper Ohio South, Middle Ohio North, Middle Ohio South and Little Kanawha HUC-8 watersheds.

16.3.b. Region 2 Watershed – Contains the Dunkard, Monongahela, West Fork, Tygart Valley, Cheat and Youghiogheny HUC-8 watersheds.

16.3.c. Region 3 Watershed – Contains the North Branch Potomac, South Branch Potomac, Cacapon, Shenandoah Hardy, Potomac Direct Drains and Shenandoah Jefferson HUC-8 watersheds.

16.3.d. Region 4 Watershed – Contains the Lower Kanawha, Upper Kanawha, Elk, Gauley, Greenbrier, Coal, Lower New, Upper New, and James HUC-8 watersheds.

16.3.e. Region 5 Watershed – Contains the Lower Ohio, Lower Guyandotte, Upper Guyandotte, Big Sandy, Twelvepole and Tug Fork HUC-8 watersheds.

16.4. To the greatest extent possible, all public water utilities in the Region 5 Watershed are encouraged to submit their SWPP to the bureau no later than July 1, 2015 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 5 Watershed from October through December, 2015.

16.5. To the greatest extent possible, all public water utilities in the Region 4 Watershed are encouraged to submit their SWPP to the bureau no later than October 1, 2015 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 4 Watershed from January through March, 2016.

16.6. To the greatest extent possible, all public water utilities in the Region 1 Watershed are encouraged to submit their SWPP to the bureau no later than January 1, 2016 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 1 Watershed from April through June, 2016.

16.7. To the greatest extent possible, all public water utilities in the Region 2 Watershed are encouraged to submit their SWPP to the bureau no later than April 1, 2016 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 2 Watershed from July through September, 2016.

16.8. All public water utilities in the Region 3 Watershed, and any public water utilities from the other watersheds that have not previously submitted their SWPP, are required to submit their SWPP to the bureau no later than July 1, 2016 for one or more public hearings to be conducted on all plans from the public water utilities in the Region 3 Watershed submitted by December 31, 2016.

16.9. The grouping of public water utilities required to submit SWPP to the Bureau into regional watersheds is proposed for the efficiency and convenience of the water utilities and the citizens served by them. Nothing in this rule prohibits a public water system from submitting their SWPP to the Bureau at any time prior to the due date for all plans of July 1, 2016. Every public water utility shall submit their SWPP to the Bureau no later than July 1, 2016.

§64-3-17. Penalties.

17.1. 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, 16-1-9c, 16-1-17 and 16-1-18.

17.2. Any individual or entity who violates the provisions of this rule or any orders issued pursuant to this rule is liable for a civil penalty of not less than \$1,000 nor more than \$5,000. Each day's violation constitutes a separate offense.

17.3. Any individual or entity who commits a willful violation of any provision of this rule or orders issued pursuant to this rule shall be subject to a civil penalty of not more than \$10,000 and each day's violation shall be grounds for a separate penalty.

17.4. Civil penalties under this section are payable to the commissioner. All moneys collected under this rule shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited in the fund shall be used by the commissioner to provide technical assistance to public water systems.

17.5. The commissioner may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located.

§64-3-18. 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 Bureau for Public Health Rule, *Rules of Procedure for Contested Case Hearings and Declaratory Rulings*, 64 CSR 1.