

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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2004 APR 29 P 3:06

Form #6 □

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Certification of Backflow Prevention Assembly
Testers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

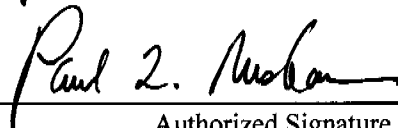
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4205

SECTION 2(c), PASSED ON March 13, 2004

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 29, 2004



Authorized Signature

**TITLE 64
LEGISLATIVE RULES
BUREAU FOR PUBLIC HEALTH**

FILED

**SERIES 25
CERTIFICATION OF BACKFLOW PREVENTION ASSEMBLY TESTERS**

2003 DEC 29 3:06

WEST VIRGINIA
SECRETARY OF STATE

§64-25-1. General.

1.1. Scope. - This legislative rule governs the examination and certification of backflow prevention assembly testers. 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. - December 22, 2003.

1.4. Effective Date. - March 13, 2004.

§64-25-2. Application and Enforcement.

2.1. Application.- This rule applies to certified backflow prevention assembly testers as defined in Section 3 of this rule.

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

§64-25-3. Definitions.

3.1. Applicant. - An individual who has applied for certification as a backflow prevention assembly tester.

3.2. Approved. - Accepted by the Commissioner.

3.3. Backflow Prevention Assembly Tester Certification. - a written document issued by the Commissioner certifying an individual as a tester for backflow prevention assemblies.

3.4. Certified Backflow Prevention Assembly Tester. - An individual who meets all of the requirements under this rule to be certified to inspect and test backflow prevention assemblies or methods.

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

§64-25-4. Qualifications for Certification.

4.1. Applicants for certification as a backflow prevention assembly tester shall:

4.1.a. Be a minimum of eighteen (18) years of age;

4.1.b. Have either a high school diploma or general education diploma (GED); and

4.1.c. Either:

4.1.c.1. Complete and pass all parts of an approved forty (40) hour course of instruction in theory, design, performance, testing and maintenance of backflow prevention assemblies; or

4.1.d.1. Meet re-certification, reinstatement or reciprocity requirements of this rule.

§64-25-5. Certification Application.

5.1. Application.

5.1.a. An applicant for certification as a backflow prevention assembly tester shall submit an application (Form EW-75, available from the Bureau for Public Health), proof of education and proof of completing an approved course of instruction as identified in Section 4 of this rule.

5.1.b. Any applicant who commits fraud or misrepresentation on the application will be permanently disqualified from consideration.

§64-25-6. Certification Examinations.

6.1. The Commissioner shall schedule the two part (written and performance) examination for those applicants who meet the requirements in Section 4 of this rule and shall notify the applicants at least fourteen (14) days before the scheduled examination date.

6.2. The examinations shall consist of a performance examination and a closed book written examination. Exceptions to the written part are:

6.2.a. An applicant may make written request to the director at least thirty (30) days before a scheduled examination date for an oral examination to be given instead of the written examination;

6.2.a.1. Before an oral examination will be given, an applicant shall obtain written approval from the Commissioner; and

6.2.a.2. The taking of an oral examination shall not affect the performance examination requirement.

6.2.b. All examinations shall be administered in English.

6.3. Examination grade.

6.3.a. An applicant's certification status shall be determined by the examination grade.

6.3.b. To pass the examination, an applicant is required to make a minimum grade of seventy percent (70%) on the written examination, and must demonstrate competence to the Commissioner on the performance examination.

6.3.c. An applicant who does not receive a passing grade on the written or successfully complete the performance examination shall wait a minimum of sixty (60) days before applying for reexamination.

6.3.d. An applicant who fails an examination three (3) times shall wait a minimum of one (1) year before reexamination.

6.4. Ineligible Applicants:

6.4.a. The Commissioner shall declare the examination scores of any applicant who corrupts or attempts to corrupt the examination process invalid and shall declare the applicant ineligible for certification upon discovery of the applicant's conduct.

6.4.b. Conduct resulting in invalidation of the examination includes:

6.4.b.1. Any action that violates the security of examination materials, such as removal of any examination materials from the examination room;

6.4.b.2. Communicating with any other examinee or permitting one's answers to be copied by another examinee; or

6.4.b.3. Falsifying or misrepresenting information for admission to the examination, impersonating an examinee or having someone else take the licensing examination on one's own behalf.

§64-25-7. Certification Expiration, Re-certification, Revocation and Reinstatement.

7.1. Expiration. Backflow prevention assembly tester certifications expire three (3) years after the date of issue.

7.2. For re-certification:

7.2.a. Backflow prevention assembly testers shall submit a written application (Form EW-75, available from the Bureau for Public Health) to the Commissioner at least thirty (30) days before and no more than ninety (90) days prior to expiration of current certification and the application

shall include documentation, satisfactory to the Commissioner, that the applicant has sufficient experience or has attended one or more approved continuing education courses for backflow prevention assembly testers during the past three (3) years.

7.2.b. Testers who fail to submit an application for re-certification or submit an incomplete application within the time period stated in Subdivision 7.2.a. of this rule shall retake and pass both the written and performance examinations in accordance with Section 6 of this rule before the applicant will be re-certified.

7.3. Revocation or suspension. The Commissioner may revoke or suspend the certificate of any person who fraudulently obtains certification, or is found to have committed neglect, incompetency or misconduct in the performance of his or her duties as a backflow prevention assembly tester, including non-compliance with this rule. Any person whose certificate is suspended must cease any inspection and testing of backflow prevention assemblies until their certification is reinstated.

7.4. Reinstatement. The Commissioner may reinstate any person whose certification has been revoked upon being presented with satisfactory evidence that all deficiencies leading to the revocation have been corrected.

§64-25-8. Reciprocity.

8.1. The Commissioner may grant West Virginia certification to a backflow prevention assembly tester certified by another jurisdiction, if written proof is presented to the Commissioner that:

8.1.a. The applicant has successfully passed a certification examination at least equivalent to that required under this rule;

8.1.b. The applicant has successfully completed a course of instruction at least equivalent to that required under this rule; and

8.1.c. The applicant meets the educational and age requirements of this rule.

§64-25-9. Compliance and Penalties.

9.1. 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.

9.2. A person who violates any provision of this rule is subject to the criminal penalties of West Virginia Code §16-1-18.

§64-25-10. Administrative Due Process.

10.1. Those persons adversely affected by the enforcement of this rule may request a contested case hearing in accordance with the Division of Health rule, "Rules and Procedures for Contested Case Hearing and Declaratory Rulings," 64CSR1.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certification of Backflow Prevention Assembly Testers, Title 64 Series ___

Type of Rule: **Legislative** ___ **Interpretive** ___ **Procedural**

Agency: Bureau for Public Health, DHHR
 Office of Environmental Health Services -Victor Wilford

Address: 815 Quarrier Street, Suite 418
 Charleston, WV 25301

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$0	\$285,618	\$218,218
Personal Services			0	187,014	187,014
Current Expense			0	42,604	26,704
Repairs & Alterations			0	0	0
Equipment			0	18,000	0
Other (ETC) - Contract			0	38,000	4,500
Revenue			0	0	0

2. Explanation of above estimates. *First Year:*

Personal Services

1.00 FTE for HHR Program Manager (training and exam)	38,900	
2.00 FTE Engineer I (1 for training and 1 for sanitary surveys)	80,000	
1.00 FTE Office Assistant II (cert. filing, typing, renewals)	18,000	
Administrative Fee @ 240/FTE	960	
FICA, Retirement and Workers Comp (21.88%)	29,954	
Health Insurance @ 4800/FTE	<u>19,200</u>	
	Total 187,014	\$187,014

Current Expense

In State Travel @ \$165/night, 50wks, 2da/wk (tech asst)	16,500	
In State Travel @ \$165/night, 12wks, 5da/wk (trainer)	9,900	
Out of State Travel 2 one week travel (out of state training)	6,000	
Office Supplies 800/FTE	3,200	
Telephone 400/FTE	1,600	
Rent 100 sq ft/FTE @ \$13.51/sq ft	<u>5,404</u>	
	Current Expense Total	42,604 \$ 42,604

Issuance of Certificates 1st Year:

Equipment

Computer Equipment 4@\$2500	10,000	
Office Furniture 4@\$2,000	<u>8,000</u>	
	18,000	\$ 18,000

Contract

Contract to administer 12 one week classes/first yr.	\$38,000	<u>\$ 38,000</u>
	Total First Year	\$285,618

Subsequent years of new certifications and renewals:

Personal Services

1.00 FTE for HHR Program Manager (training and exam)	9,000	
2.00 FTE Engineer I (1 for training and 1 for sanitary surveys)	80,000	
1.00 FTE Office Assistant II (cert. filing, typing, renewals)	18,000	
Administrative Fee @ 240/FTE	960	
FICA, Retirement and Workers Comp (21.88%)	29,954	
Health Insurance @ 4800/FTE	<u>19,200</u>	
	187,014	\$187,014

Current Expense

In State Travel \$165/night, 50wks, 2da/wk (tech. asst.)	16,500	
Office Supplies 800/FTE	3,200	
Telephone 400/FTE	1,600	
Rent 100 sq ft/FTE @ \$13.51/sq ft	<u>5,404</u>	
	26,704	\$26,704

Contract

Manuals	\$1,000/year	
Test Benches/Gauges	\$3,000/year	
Overhead for contractor	<u>\$ 500/year</u>	
	\$4,500	\$4,500

Total Subsequent Years \$218,218

3. Objectives of this rule:

To implement the current requirement, under Title 64 Series 15, which requires backflow prevention assemblies to be inspected by a person certified by the Agency. The purpose of the backflow prevention assembly is to prevent undesirable contaminants from entering the public water system at locations within the distribution system. Routine inspections will insure that the assemblies are continuing to function, and the certification requirement will insure that the person inspecting is knowledgeable in determining the status of the assemblies.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Direct increased cost to the state is \$285,618 in the first year with ongoing incremental costs to the state of approximately \$218,218. These costs reflect the anticipated implementation of this new program in the first year, and the anticipated reduction, after the first year. The first year the training sessions will be contracted to a third party, with some of these costs being offset by passing the costs on to the students and also from anticipated grants.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Depending on the utility, the cost of overseeing the inspection program will vary, dependent on the number of Backflow Prevention Assemblies(BPA's) that the utility has in their system. The number of persons needed will vary from none (associated with no BPA's) to a maximum of 2.0 FTE's. Generally, the larger the population a utility serves, the larger number of BPA's the system will have. Any costs to the utility will be passed on to the public at large through nominal increases to the utility bill.

Those industries and facilities that require the installation of BPA's will bear the cost of having an annual inspection of the assemblies performed. The cost will vary, dependent on free market conditions, number of inspections, type of assembly, etc. It is also anticipated that a number of existing BPA's will need to be repaired or replaced, as many have never undergone testing.

C. Economic Impact on Citizens/Public at Large.

The utilities that will be affected by this regulation may have justification in raising the rates for water service, in order to pass on the administrative costs of overseeing the assembly inspection program. The cost to each individual customer should be nominal.

Date: _____

Signature of Agency Head or Authorized Representative:

Paul L. Nusbaum, Secretary
Department of Health and Human Resources