

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

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

Division of Health
AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §§16-34-6 and 16-1-7

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

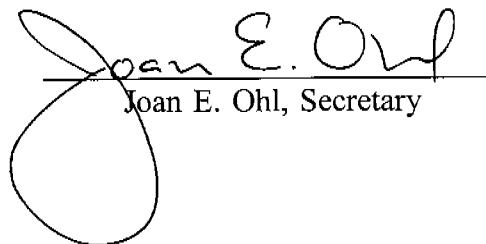
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 78

TITLE OF RULE BEING PROPOSED: Radon Licensure

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Joan E. Ohl, Secretary

\$6.60

QUESTIONNAIRE

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

DATE: July 27, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Radon Licensure, 64CSR78

1. Authorizing statute(s) citation: WV Code Section §§ 16-34-6 & 16-1-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 1998

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

The West Virginia Bureau for Public Health published legal

advertisements in several state newspapers to announce the public

comment period for the proposed rule.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1998

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

Attached _____ No comments received x

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

August 3, 1998

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

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

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

Randy C. Curtis, P.E., Director

Radiation, Toxics & Indoor Air Division

Office of Environmental Health, Bureau for Public Health

815 Quarrier St. Suite 418

Charleston, WV 25301-3013 Phone:558-3210

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

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

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

BRIEF SUMMARY OF THE RULE

SUMMARY: The proposed new legislative rule, Radon Testing and Mitigation, establishes standards and procedures for the licensure of radon testers, radon mitigators, radon trainers and radon laboratories. The rule contains the following sections: general; application and enforcement; definitions; general prohibitions; application for license renewal; licensee requirements; special license requirements; recordkeeping and confidentiality; reciprocity; records review; reprimands, suspensions or revocation of licenses, orders and hearings; penalties; administrative due process; and, licensure fee schedule.

West Virginia Code chapter 16, article 34 requires radon testing, mitigation and radon training to be conducted by properly trained and licensed individuals. These individuals are to be licensed by the Director of the Division of Health.

Radon testing and mitigation of private dwellings and private and public buildings require the tester to notify the Bureau for Public Health of test results. Mitigators are required to submit premitigation test results, mitigation methods utilized and postmitigation test results to the Bureau for Public Health.

The Director of the Division of Health will administer and enforce the rules which include: issuing licenses; assessing fees and fines; approving training providers; and, maintaining a data base of test and mitigation results.

**STATEMENT OF CIRCUMSTANCES WHICH
REQUIRE THE PROPOSED RULE**

West Virginia Code Chapter 16, Article 34 allows the state to license radon professionals and radon laboratories. This passage was encouraged by the United States Environmental Protection Agency and supported by the West Virginia Radon Association.

Radon is a colorless, odorless and tasteless radioactive gas that occurs naturally in soils, rocks, underground water and air. It is produced by the natural breakdown (radioactive decay) of radium-226 in soils and rocks. When radon enters a building, it and its decay products can accumulate to high concentrations.

Based on physical models, animal studies and human epidemiological studies, there is no disagreement among health organizations such as the National Academy of Sciences, The U.S. Public Health Service, the Centers for Disease Control and Prevention, the World Health Organization, the American Lung Association, the American Medical Association, the U.S. environmental Protection Agency and many other national and international health and science organizations that there is a link between radon exposure and lung cancer risk. Radon is a known human carcinogen and is estimated to be the second leading cause of lung cancer in the United States according to the Surgeon General.

The proposed rule will enable the Division of Health to assure that persons professing to be radon testers and mitigators are properly trained in acceptable and standardized radon testing and mitigation methods.

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 78
RADON LICENSURE**

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
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**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 78
RADON LICENSURE**

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**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

RECEIVED
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OFFICE OF THE ATTORNEY GENERAL
CONSTITUTIONAL OFFICE

**SERIES 78
RADON LICENSURE**

§64-78-1. General.

1.1. Scope - This legislative rule establishes procedures and standards for the licensure and training of persons engaged in activities related to radon measurement or mitigation.

1.2. Authority - W. Va. Code §§16-34-6 and 16-1-7.

1.3. Filing Date -

1.4. Effective Date -

§64-78-2. Application and enforcement.

2.1. Application - This rule applies to radon mitigators, radon testers, radon contractors, radon training facilities and radon laboratories.

2.2. Enforcement - The enforcement of this legislative rule is vested with the director of the Division of health.

§64-78-3. Definitions.

3.1. Building - Any publicly or privately owned structure consisting of any combination of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of appurtenance.

3.2. Business entity - A corporation, partnership, association, firm, sole proprietorship or other entity engaged in business.

3.3. Director - The director¹ of the Division of health or his or her lawful designee.

3.4 EPA - The United States Environmental Protection Agency.

3.5. Mitigate - Procedure use to repair or alter an existing building or design for the purpose, in whole or part, of reducing the concentration of radon in the indoor atmosphere.

3.6. Radon - The radioactive noble gas radon-222 and the short-lived radionuclides which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and polonium-214.

3.7. Radon laboratory - A business entity that offers its laboratory services for the purpose of studying air, soil samples or passive radon detection devices to determine the concentration of radon.

3.8. Radon mitigation contractor - A business entity having at least one person licensed as a radon mitigation specialist.

3.9. Radon mitigation specialist - A person holding a license to install or apply methods or materials to reduce radon concentrations in a building or to prevent the entry of radon into the indoor atmosphere.

3.10. Radon tester - A business entity or person licensed to examine a building, air, soil or water for the presence of radon, including taking air, soil or water samples, or the act of diagnosing the cause of radon contamination in a building.

3.11. Test - The act of examining a building, soil or air for the presence of radon, including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a building.

§64-78-4. General prohibitions.

4.1. Except as otherwise provided in subsection 4.2. of this section:

¹The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989, and the Department of Health was renamed the Division of health and made part of the DHHR (W. Va. Code §5F-1-1 *et seq.*). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of health.

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4.1.a. No individual may perform radon testing or hold himself or herself out as performing radon testing without a valid radon tester or mitigation specialist license;

4.1.b. No individual may provide professional or expert advice on radon testing, radon exposure or the health risks related to radon exposure or hold himself or herself out as providing such advice without a valid radon tester or radon mitigation specialist license;

4.1.c. No individual may provide on-site supervision of radon mitigation or hold himself or herself out as providing such supervision without a valid radon mitigation specialist license;

4.1.d. No individual may provide professional or expert advice on radon mitigation or radon entry routes or hold himself or herself out as providing such advice without a valid radon mitigation specialist license;

4.1.e. No business or government entity may perform or authorize any individual employed by it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon mitigation contractor license; and

4.1.f. No laboratory shall perform analysis of radon air or soil samples or offer for sell radon detection devices for the purpose of assessing radon content without a valid radon laboratory license.

4.1.g. No training shall be conducted without a valid radon training license.

4.2. Subsection 4.1 of this section does not apply to any of the following:

4.2.a. An owner or leasee of a building or real property who is performing its own radon tests or mitigation on its building or real property;

4.2.b. An individual, business entity or government entity conducting research regarding radon testing or mitigation in conjunction with a federal or state agency;

4.2.c. Employees of the department of health and human resources' radiological health program;

4.2.d. The regulation of construction practices;

4.2.e. The regulation of retail sales of radon test kits for the use by individuals to

conduct their own radon testing in buildings owned or leased by them, but does apply to an employee of a licensed radon mitigation contractor that subcontracts for radon mitigation to be performed by a licensed mitigation contractor.

§64-78-5. Application for licensure as a radon mitigation contractor, radon tester, mitigation specialist, radon laboratory, radon testing or radon training facility.

5.1. To apply for a license as a radon mitigation contractor, the applicant shall submit to the director an application provided by the director which will include the following:

5.1.a. Name and business address of the applicant;

5.1.b. Name and chief executive officer, partners or the sole proprietor;

5.1.c. Names of employees directly involved in radon testing or mitigation and the following:

5.1.c.1. Documentation that each applicant or employee has successfully completed the training approved by the director. The documentation shall include the course title, course sponsor, names of course instructors, date and place of course; and

5.1.c.2. Documentation that the applicant has passed the examination recommended by the United States Environmental Protection Agency.

5.1.d. Description of any of the following matters to which the applicant or a person involved with the applicant on a radon project was a party:

5.1.d.1. Any radon mitigation or radon testing projects which were terminated prior to completion;

5.1.d.2. Any penalties, citations, administrative orders or actions pertaining to radon mitigation or radon testing; or

5.1.d.3. Any lawsuits pertaining to radon mitigation or radon testing. Copies of initial pleadings and final orders shall be attached to the application.

5.1.e. Description of the basic quality assurance and quality control procedures that will be utilized by the applicant for each type of measurement device used.

5.1.f. Description of the radiological safety plan designed to track employee

radon exposure and keep it as low as reasonably achievable;

5.1.g. Description by type, manufacture and model number of all instruments to be used in radon measurements. If the applicant intends to use devices requiring non-portable equipment for analysis, the applicant shall list the name and address of the radon laboratory providing the analysis and its issued license number.; and

5.1.h. Description and method of instrument calibrations.

5.2. To apply for a license as a radon tester, the applicant shall do all of the following:

5.2.a. Submit to the director an application on a form prescribed and provided by the director, which shall include the information required by paragraphs 5.1.a. and 5.1.e. to 5.1.h.

5.2.b. Provide documentation that the applicant has successfully completed the training required by paragraph 5.1.c.1.; and

5.2.c. Provide documentation that the applicant has passed the examination required by paragraph 5.1.c.2.

5.3. To apply for a license as a radon mitigation specialist, the applicant shall do all of the following:

5.3.a. Submit to the director an application on a form prescribed and provided by the director, which shall include information required by subdivisions 5.1.a and 5.1.e. to 5.1.h.;

5.3.b. Provide documentation that the applicant has successfully completed the training required by paragraph 5.1.c.1.; and

5.3.c. Provide documentation that the applicant has passed the examination required by paragraph 5.1.c.2.

5.4. To apply for a license as a radon laboratory, the applicant shall do all of the following:

5.4.a. Submit to the director an application on a form prescribed and provided by the director, which shall include the information required by subdivisions 5.1.a. and 5.1.e. to 5.1.h.; and

5.4.b. Provide documentation that the applicant is on the United States Environmental Protection Agency's proficiency list or equivalent.

5.5. To apply for a license to train radon testers and radon mitigators the applicant shall do the following:

5.5.a. Provide evidence that the training center has been approved to conduct radon testing or radon mitigation training by the United States Environmental Protection Agency.

5.6. Notwithstanding provisions of subsection 5.1., the director shall issue a radon mitigation contractor license on request to the holder of a radon mitigation specialist license if the owner or chief stockholder of a business entity and the only individual who will work as a radon mitigation specialist. Under these circumstances, the licensing criteria for a radon mitigation specialist will satisfy for a radon mitigation contractor license. A license issued under this section expires at the same time as the individual's radon mitigation specialist license.

5.7. An individual, business entity or government entity may hold more than one license, but except as provided in subsection 5.6 a separate application and fee is required for each license.

5.8. An application for licensure shall be accompanied by a nonrefundable check or money order.

§64-78-6. License renewal.

6.1. Each license issued under this rule is nontransferable and shall expire one year from the last day of the month in which it is issued. A license may be renewed by the director if an applicant applies for renewal by doing both of the following:

6.1.a. Submitting an application for renewal, including the licensee's number and appropriate information as required under subsections 5.1 to 5.5.; and

6.1.b. Submitting the application for renewal no less than thirty (30) days before the expiration of the existing license.

6.2. An application for licensure renewal shall be accompanied by a nonrefundable check or money order.

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6.3. The application is considered complete and a license will be issued when the director has received the appropriate fee and information requested.

§64-78-7. Licensee requirements.

7.1. Licensed radon testers shall do the following:

7.1.a. Operate in strict accordance with licensure requirements;

7.1.b. Obtain, in writing, from the director, approval for any change which would render the information submitted to obtain the original license inaccurate; and

7.1.c. Use only the services of a radon laboratory licensed by the director to analyze samples for the presence and concentration of radon.

7.2. Licensed mitigation specialists shall do the following:

7.2.a. Operate in strict accordance with licensure requirements;

7.2.b. Afford the director the opportunity to inspect any radon mitigation project;

7.2.c. Maintain records of each radon mitigation project that the specialist has supervised or performed and make these records available to the director upon request. These records shall be maintained for a minimum of three (3) years and shall include the following:

7.2.c.1. The name and license number of the individual who supervised the radon mitigation;

7.2.c.2. The names and license numbers of all radon testers and mitigation specialists involved in the project;

7.2.c.3. The location and description of the project;

7.2.c.4. The radon measurements including the screening measurements, follow-up measurements and the post-mitigation measurements;

7.2.c.5. The start and completion dates of the project;

7.2.c.6. A summary of the basic procedures that were used to reduce

radon concentrations;

7.2.d. Report to the director once every three months the requirements of paragraphs 7.2.c.1. through 7.2.c.6.

7.3. Licensed radon mitigation contractors shall do the following:

7.3.a. Comply with the requirements of subdivisions 7.1.a, 7.1.b. and 7.2.b.;

7.3.b. Provide adequate equipment for worker protection to keep exposures to radon as low as reasonably achievable; and

7.3.c. Ensure that all radon testers, radon mitigators and radon laboratories involved in a project have a valid West Virginia license.

7.4. Licensed radon laboratories shall do the following:

7.4.a. Report all State radon test results in pico curies per liter (pci/l) to the director on a three(3)-month basis by city, street, and zip code; and

7.4.b. Maintain radon test results for a minimum of three years.

7.5. Holders of a radon training course license shall do the following:

7.5.a. Comply with provisions of subdivision 7.1.b.;

7.5.b. Issue a certificate of completion to each individual who successfully completes the courses; and

7.5.c. Submit to the director a list of all individuals who successfully complete the course.

§64-78-8. Special license requirements.

8.1. No licensed radon mitigation contractor may do any of the following:

8.1.a. Perform radon mitigation without the direct on-site supervision of a licensed radon mitigation specialist;

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8.1.b. Provide radon testing other than through the employment of a licensed radon tester or mitigation specialist;

8.1.c. Provide advice regarding testing, radon exposure or the health risks associated with radon exposure other than through the employment of a licensed radon tester or mitigation specialist; or

8.1.d. Provide advice regarding radon mitigation or radon entry routes other than through the employment of a licensed mitigation specialist.

8.2. No licensed radon tester, licensed radon mitigation specialist or licensed radon mitigation contractor involved in the testing of a particular building, or in the provision of advice for a particular building may be involved in the performance of mitigation on that building unless the contract for mitigation is in writing and clearly and conspicuously states both of the following:

8.2.a. That the radon tester, mitigation specialist or mitigation contractor was involved in the testing or provision of advice that led to the mitigation contract; and

8.2.b. The advantage of long-term testing and the value of a second opinion as ways to verify testing results and to assure that the proposed mitigation is appropriate, especially when the mitigation is to be performed by the tester, mitigation specialist or mitigation contractor that was involved in the testing or provision of advice that led to the mitigation contract.

8.3. For the purpose of subsection 8.2., a radon tester, mitigation specialist or mitigation contractor involved in testing or providing advice with respect to a particular building will be considered to be "involved in the performance of mitigation of that building" if he or she has any ownership interest in or has any contractual or employment relationship with the individual or entity providing the mitigation.

8.4. No licensed radon tester, licensed radon mitigation specialist or licensed mitigation contractor may perform radon testing, mitigation or provide any advice related to radon, radon testing or radon mitigation unless it is performed in accordance with the requirements of this rule.

§64-78-9. Recordkeeping and confidentiality.

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9.1. The director, any employee of the department of health and human resources, or any individual, business entity with which the director enters into an agreement shall not release information collected pursuant to this rule concerning a specific building used as a private residence or the real property upon which it is located to anyone other than the owner or occupant of the building or real property without his or her consent. Provided, that the director may release the information if he or she determines that the release is necessary for the use of conducting legitimate scientific studies or the information is released in summary statistical or other form that does not reasonably tend to disclose the address of the building or real property or the identity of the owner or occupant.

9.2. The director shall maintain a list of all licensed radon testers, mitigation specialists, mitigation contractors, radon training facilities, and radon laboratories licensed by the state. On request, the director shall provide a copy of all or part of the list to any individual, business entity or government entity in accordance with the Division of health's Fees for Services rule, 64CSR51.

9.3. The division of health shall maintain information pursuant to this rule for at least three years.

§64-78-10. Applications from out of state practitioners.

Any individual, business entity or government entity that holds a valid license issued by another jurisdiction with requirements for practice as a radon tester, mitigation specialist or mitigation contractor as rigorous as those imposed by West Virginia, may apply for a license as a radon tester, mitigation specialist or mitigation contractor by providing the proper supporting documentation and payment of the appropriate fee.

§64-78-11. Records Review.

All licensees shall afford the director, at all reasonable times, opportunity to examine records which are required to be maintained by the provisions of this rule.

§64-78-12. Reprimands, License Suspensions or Revocation of Licenses, and Orders.

12.1. The director shall reprimand, refuse to grant a license to, or suspend or revoke the license of, a radon tester, mitigator, contractor, laboratory or operator of a testing facility if the licensee:

12.1.a. Fraudulently or deceptively obtains or attempts to obtain a license;

12.1.b. Fails at any time to meet the qualifications for a license or to comply with the requirements of this rule;

12.1.c. Fails to meet applicable federal or state standards for radon testing, mitigation or training; or

12.1.d. Employs or permits an individual without a radon tester's license or a radon mitigator's license to supervise work on a radon project.

12.2. The director shall investigate all alleged violations reported to the division of health. Upon the finding of a violation in connection with any project involving radon testing, mitigation or training, the director shall issue a cease and desist order directing that all work, testing or training be halted immediately. Where practicable, the director shall deliver a copy of the order by certified mail, return receipt requested, to the radon tester, mitigator, contractor, training facility or radon laboratory.

§64-78-13. Penalties.

Any person violating any of the provisions of this rule or orders issued pursuant to this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred fifty (\$250) dollars for each violation.

§64-78-14. 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 a manner prescribed in the Rules and Procedures for Contested Hearings and Declaratory Rulings, 64 CSR 1.

§64-78-15. Severability.

The provisions of this rule are severable. If any of the provisions of this rule are held invalid, the remaining provisions remain in effect.

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TABLE 64-78 A.

LICENSURE FEE SCHEDULE

Type of License	Fee
Radon Contractor License for Renewal	\$ 100
Radon Mitigation Specialiats License Or Renewal Fee	100
Radon Testers License or Renewal Fee	50
Radon Laboratory License or Renewal Fee	100
Radon Training Facility License or Renewal Fee	50

3. Objectives of this rule: This legislative rule is to establish procedures and standards for the licensure and training of persons engaged in the activities related to radon measurement and mitigation. The Surgeon General has stated that radon is the second leading cause of lung cancer in the United States.

4. Explanation of Overall Economic Impact of Proposed Rule.

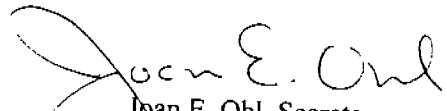
A. Economic Impact on State Government. None - The radon licensing program will be supported by the revenues generated by the program.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens. Minimal impact is expected due to the fact that radon testing and mitigation is voluntary and not mandated by law except for schools. Testing costs are minimal and the average cost to mitigate a residential structure is \$ 400.00.

C. Economic Impact on Citizens/Public at Large. Same as B. In addition, some job opportunities will be created which should more than offset the modest licensing fees. Public health should be improved.

Date: 6/30/98

Signature of Agency Head or Authorized Representative


Joan E. Ohl, Secretary
Department of Health and Human Resources