

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

Form #4

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Nov 20 8 32 AM '98

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health, Dept 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

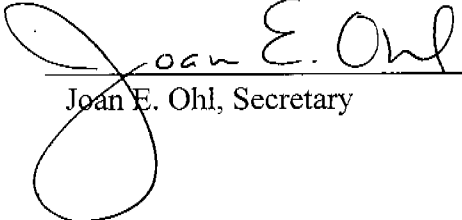
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 78

TITLE OF RULE BEING PROPOSED: Radon Licensure

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



Joan E. Ohi, Secretary

\$4.20

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

**SERIES 78
RADON LICENSURE**

**MODIFIED PROPOSED RULE
AFTER REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

**SERIES 78
RADON LICENSURE**

TABLE OF CONTENTS

§64-78-1. General.	1
§64-78-2. Application and enforcement.	1
§64-78-3. Definitions.	1
§64-78-4. General prohibitions.	1
§64-78-5. Application for licensure as a radon mitigation contractor, radon tester, mitigation specialist, radon laboratory, radon testing or radon training facility. . . .	2
§64-78-6. License renewal.	4
§64-78-7. Licensee requirements.	4
§64-78-8. Special license requirements.	6
§64-78-9. Record keeping and confidentiality.	6
§64-78-10. Applications from out of state practitioners.	6
§64-78-11. Records Review.	7
§64-78-12. Reprimands, Suspensions or Revocation of Licenses, Orders, Hearings.	7
§64-78-13. Penalties.	7
TABLE 64-78 A	8

64CSR78

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

FILED
Nov 20 8 33 AM '98
OFFICE OF THE SECRETARY OF STATE

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. This rule should be read in conjunction with the definitions and provisions of W. Va. Code §16-34-1 et seq. (Licensure of Radon Mitigators, Testers, Contractors and Laboratories).

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 EPA - The United States Environmental Protection Agency.

§64-78-4. General prohibitions.

4.1. In addition to the prohibitions in W. Va. Code §16-34-3(a), no training shall be conducted without a valid radon training license.

4.2. Subsection 4.1 of this section does not apply to the individuals or entities described in W. Va. Code §16-34-3(b) or any of the following:

4.2.a. The regulation of construction practices; and

4.2.b. 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.

§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 shall include the following:

5.1.a. The name and business address of the applicant;

5.1.b. The name of the chief executive officer, partners or the sole proprietor of the business;

5.1.c. The 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. A 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. A 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. A description of the radiological safety plan designed to track employee radon exposure and keep it as low as reasonably achievable;

5.1.g. A 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. A description of the method of instrument calibrations.

5.2. To apply for a license as a radon tester, the applicant shall:

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. of this section.

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

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

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

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. of this section;

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

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

5.4. To apply for a license as a radon laboratory, the applicant shall:

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. of this section; and

64CSR78

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

5.5. To apply for a license to train radon testers and radon mitigators the applicant shall 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. An individual, business entity or government entity may hold more than one license. An applicant shall submit a separate application and pay a separate fee with each application, except a holder of a radon mitigation specialist license who is a business owner eligible for a radon mitigation contractor license under the provisions of W. Va. Code §16-34-5(c) is not required to pay the fee for the radon mitigation contractor license.

5.7. 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 applying for renewal:

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

6.1.b. Submits 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.

6.3. The director shall issue a license after receiving the appropriate fee and the information requested in the application.

§64-78-7. Licensee requirements.

7.1. Licensed radon testers shall:

64CSR78

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:

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 are maintained for a minimum of three (3) years and 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; and

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. of this section.

7.3. Licensed radon mitigation contractors shall:

64CSR78

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

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:

7.4.a. Report all State radon test results in picocuries 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:

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

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. Special licensure requirements are as provided in W. Va. Code §16-34-4.

§64-78-9. Record keeping and confidentiality.

9.1. 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.

§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 paying the appropriate fee.

§64-78-11. Records Review.

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

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

12.1. W. Va. Code §16-34-13 governs reprimands, suspensions or revocations of licenses, orders and hearings.

12.2. 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 Division of Health's rule, Rules and Procedures for Contested Hearings and Declaratory Rulings, 64 CSR 1.

§64-78-13. Penalties.

13.1. W. Va. Code §16-34-14 governs penalties.

64CSR78

TABLE 64-78 A

LICENSURE FEE SCHEDULE

Type of License	Fee
Radon Contractor License for Renewal	\$ 100
Radon Mitigation Specialist 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



FILED

Nov 16 12 18 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

email: tanders@mail.wvnet.edu
November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hochler, Secretary of State, State Register

TO: Marsha Dadisman
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Radon Licensure, 64CSR78**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____



FILED

Nov 16 12 18 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

email: tanders@mail.wvnet.edu
November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Randy C. Curtis
Bureau for Public Health
815 Quarrier St., Suite 418
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Radon Licensure, 64CSR78**

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health, Department of Health and Human Resources

Subject: Radon Licensure, 64CSR78

OFFICE OF THE
SECRETARY OF STATE
- VIRGINIA

Oct 23 10 58 AM '98

FILED

PERTINENT DATES

Filed for public comment: June 30, 1998
Public comment period ended: July 30, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: \$51,000 increase to come from generated revenues

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states that the proposed rule applies to radon mitigators, radon testers, radon contractors, radon training facilities and radon laboratories.

Section 3 defines terms. This section is unnecessary in that it repeats Code definitions. The only term defined in this section which is not defined in the Code is "EPA".

Section 4 sets forth the Code provisions regarding those persons who are required to obtain a radon tester or mitigation specialist license and those persons who are exempted from licensure.

Section 5 contains application requirements licensure of radon mitigation contractors, radon testers, radon mitigation specialists, radon laboratories, and trainers of radon testers and radon mitigators.

Section 6 relates to license renewal and provides that licenses must be renewed annually.

Section 7 sets forth the duties of licensees.

Section 8 is completely unnecessary in that it repeats the special licensure requirements contained in WVC §16-34-4.

Section 9 contains the provisions of the statute regarding record keeping and confidentiality. It also requires the Director to maintain a list of all licensees and to provide that list to any person upon request.

Section 10 provides for the licensure of out of state practitioners where the person has a license from another state that has requirements for practice at least as rigorous as those in this State. It requires those applicants to submit the documentation required by the proposed rule and the appropriate fee.

Section 11 requires licensees to allow the Director to examine their records.

Section 12 contains the provisions of the statute regarding reprimands, license suspensions or revocation of licenses.

Section 13 contains the provisions of the statute regarding penalties.

Section 14 references the appropriate rule for administrative due process.

Section 15 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §16-34-6, which provides, in part, as follows:

...(a) To protect the health of individuals inhabiting, occupying or frequenting buildings, the department of health and human resources shall adopt rules to implement the requirements of this article. All rules adopted under this section shall be adopted in accordance with article three, chapter twenty-nine-a of this code.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Many of the provisions of the proposed rule simply repeat the provisions of the Code verbatim and are therefor unnecessary and need to be removed. The purpose of a rule is to implement, extend, apply, interpret the statute or make it more specific not repeat it.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.