

Legislative Council  
Administrative Rules Committee  
December 10, 2009  
North Dakota Administrative Code (N.D.A.C.) Article 33-17  
Public Water Supply System

This information is provided in regard to ten issues of interest to the Legislative Council's Administrative Rules Committee.

1. Did the rule revisions result from statutory changes made by the Legislative Assembly?

No. The rule revisions did not result from statutory changes made by the Legislative Assembly.

2. Are the rule revisions related to any federal statute or regulation?

Yes. The rule revisions are in response to federal regulations recently promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the federal Safe Drinking Water Act (PL 104-182 or 42 U.S.C. 300f-300j-25). The rule revisions were made to conform our state rules to these federal rules. The federal rules were adopted by reference with permission by the EPA. Therefore, the revised state rules are no more stringent than the federal rules.

3. Describe the rule making procedure that was followed.

On December 15, 2008, the Department requested permission from the State Health Council to amend N.D.A.C. Art. 33-17 and proceed to public hearing. The Notice of Intent to Amend N.D.A.C. Art. 33-17 and a copy of the proposed rules were sent to the Legislative Council on June 1, 2009 and were posted on the Department's internet site. The public hearing notices were published one time in all county newspapers during the time period June 9 to June 15, 2009. The public hearing was held on July 16, 2009, at the Department's Environmental Training Center in Bismarck, N.D. A comment period of 11 days beyond the hearing date was provided.

On August 11, 2009, the State Health Council gave final approval to the rule revisions contingent upon approval of the Attorney General. The revised rules were submitted to the Attorney General for an opinion on August 12, 2009. The Attorney General's Opinion dated August 31, 2009, determined the administrative rules are in compliance with North Dakota Century Code (N.D.C.C.), chapter 28-32.

4. Did any person present a written or oral concern, objection, or complaint for agency consideration with regard to these rules?

No comments were received prior to or during the hearing, or within the comment period following the hearing.

5. What was the approximate cost of giving public notice and holding any hearings on the rules?

The cost for publication of the public hearing notice was \$1,832.28.

6. What is the subject matter of the rules and the reasons for adopting the rules?

The new rules are the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBP) and the Ground Water Rule (GWR).

Under the Long Term 2 Enhanced Surface Water Treatment Rule, surface water systems are required to monitor their source water to determine the concentration of *Cryptosporidium* and use those results to determine if additional treatment is required. The purpose is to improve public health through the control of microbial contaminants.

Under the Stage 2 Disinfectants and Disinfection Byproducts Rule, some systems are required to complete an Initial Distribution System Evaluation to characterize the disinfection byproducts levels in their distribution systems and identify locations to monitor for disinfection byproducts for Stage 2 compliance. Compliance is based on the locational running annual average for Total Trihalomethanes and Five Haloacetic Acids. The purpose is to improve public health by reducing the potential risk of adverse health effects associated with disinfection byproducts throughout the distribution system. This rule builds on the Stage 1 rule.

The purpose of the Ground Water Rule is to reduce the risk of illness caused by microbial contamination in public ground water systems. The GWR establishes a risk-targeted approach to identify GWSs susceptible to fecal contamination and requires corrective action to correct significant deficiencies and source water fecal contamination in all public GWSs.

The rule revisions were necessary to conform our state drinking water rules to new federal rules. The new federal rules are incorporated by reference which satisfies both federal and state stringency requirements.

7. Was a regulatory analysis as required by N.D.C.C. Section 28-32-08 required?

A written regulatory analysis request was not filed by the Governor or a member of the legislative assembly.

8. Was a regulatory analysis or economic impact statement of impact on small entities as required by N.D.C.C. Section 28-32-08.1 required?

A regulatory analysis or economic impact statement on small entities as required by N.D.C.C. Section 28-32-08.1 was not done because the rules are mandated by federal law.

9. Was a constitutional takings assessment prepared as required by N.D.C.C. Section 28-32-09?

A takings assessment is not required as the rules do not result in takings in the context of N.D.C.C. Section 28-32-09.

10. Were these rules adopted as emergency (interim final) rules under N.D.C.C. Section 28-32-03?

No, these rules were not adopted as emergency rules.