

[CHAPTER 328D]
BOTTLED WATER

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" **[§328D-1] Definitions.** For the purposes of this chapter:

"Approved laboratory" means a laboratory approved by the department or other government agency or agencies having jurisdiction or certified by the United States Environmental Protection Agency.

"Approved source", when used in reference to a bottled water plant's product water or water used in the plant's operations, means the source of the water, whether from a spring, artesian well, drilled well, public or community water system, or any other source that has been inspected and the water sampled, analyzed, and found to be of a safe and sanitary quality. The presence in the plant of a current certificate or notification of approval from the department or other government agency or agencies having jurisdiction shall constitute approval of the source.

"Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water".

"Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

"Bottled water plant" means any place or establishment in which bottled water is prepared for sale.

"Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

"C.F.R." means the Code of Federal Regulations.

"Department" means the department of health.

"Director" means the director of health.

"Distilled water" means bottled water which has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

"Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration (activated carbon or particulate) and ozonation or an equivalent disinfection process.

"EPA" means the United States Environmental Protection Agency.

"FDA" means the United States Food and Drug Administration.

"Fluoridated water" means bottled water containing fluoride. The label shall specify whether the fluoride is naturally occurring or added. Any water which meets this definition shall contain not less than 0.5 and not more than 1.0 milligrams per liter fluoride ion and otherwise comply with the Food and Drug Administration (FDA) quality standards in section 103.35(d)(2), Title 21 of the Code of Federal Regulations.

"Mineral water" means bottled water that contains not less than 500 parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water".

"Natural water" means bottled spring, mineral, artesian, or well water which is derived from an underground formation and is not derived from a municipal system or public water supply.

"Plant operator" means any person who owns or operates a bottled water plant.

"Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water which meets the definition of this paragraph and is vaporized, then condensed, may be labeled "distilled water".

"Spring water" means water derived from an underground formation from which water flows naturally to the surface of the earth. "Spring water" shall meet the requirements of "natural water".

"Water dealer" means any person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

"Well water" means water from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer. "Well water" shall meet the requirements of "natural water". [L 1988, c 304, pt of §1]

" **[\$328D-2] Product quality.** (a) All bottled water shall be from an approved source and shall not contain any constituent in quantities that may be injurious to health, as established by rules adopted by the department or other government agency or agencies having jurisdiction. All bottled water shall meet standards prescribed by the FDA in 21 C.F.R. section 103.35, except that the total dissolved solids limitation of section 103.35(d) shall not apply to mineral water.

(b) Except as provided in subsection (a), bottled water, including mineral water, shall not exceed any maximum contaminant level (MCL) established by the EPA under the Safe Drinking Water Act or standards established by the department or other government agency or agencies having jurisdiction for any organic or inorganic chemical. [L 1988, c 304, pt of §1]

" **[\$328D-3] Manufacturing, operations; requirements.** (a) All bottled water, including mineral water, shall be filtered and processed and packaged in accordance with the FDA good manufacturing practice regulations (GMPs) 21 C.F.R. Parts 110 and 129, and any other rules adopted by the department or government agency or agencies having jurisdiction.

(b) Bottled water production, including transporting, processing, packaging, and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for microbiological contamination of the finished product. These conditions and controls shall include the following:

- (1) Bottled water shall be subject to effective germicidal treatment by ozonation or carbonation at a minimum of three volumes of carbon dioxide or other equivalent disinfection approved by the department or government agency or agencies having jurisdiction;
- (2) Bottled water shall not be transported or stored in bulk tanks or processed or bottled through equipment or lines used for any nonfood product; and
- (3) For optimum consumer protection, in order to minimize the potential for microbiological contamination of the finished product, noncarbonated bottled water shall not be transported, stored, processed, or bottled in or through lines or equipment through which any food product other than water is passed.

(c) Each bottled water plant operator and water dealer shall develop and maintain a procedure for product recall and shall implement this procedure for any product for which the operator or dealer knows or has reason to believe circumstances exist that may adversely affect its safety for the consumer.

(d) Artesian water may be collected with the assistance of external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water.

(e) Natural water shall not be modified by blending with water of another type or by deletion or addition of dissolved solids except as related to disinfection or other treatment to reduce the concentration of any naturally present constituent which exceeds government-sanctioned or approved safety standards or guidelines. It may be collected and transported by pumps, pipes, tunnels, trucks, or similar devices.

(f) Spring water shall be collected only at the spring or through a bore hole that is adjacent to the point of emergence. Spring water collected with the assistance of external force to protect the water shall retain all the physical properties of and be of the same composition and quality as the water that flows naturally to the surface of the earth. [L 1988, c 304, pt of §1]

" **[§328D-4] Source water monitoring.** (a) The plant operator shall be responsible for sampling and analysis of all approved sources for the contaminants specified in section 328D-

2 to assure that product water derived from approved sources continues to comply with section 328D-2. Such monitoring shall be at least annually, except that analysis for microbiological contaminants shall be weekly if the source is other than a public water system.

(b) Approved sources shall be monitored every four years for contaminants for which the EPA under the Safe Drinking Water Act, the department, or other government agency or agencies having jurisdiction requires source water monitoring.

(c) In lieu of source monitoring required by this section, a plant operator using a public water system as its source may obtain and display a certificate from the public water system demonstrating that the public water system conducts the monitoring required by this section.

(d) Where a bottled water plant operator, water dealer, or regulatory agency knows or has reason to believe that a contaminant not otherwise monitored is present in the source water because of a spill, release of a hazardous substance, or otherwise, and its presence would create a potential health hazard to consumers, the plant operator or water dealer upon receipt of such information shall monitor the source water for the contaminant.

(e) Detection of any contaminant in source monitoring required pursuant to this section shall be followed immediately by a program of periodic monitoring to confirm the presence in the source water of the contaminant. If the listed unregulated contaminant is confirmed to be present in the source water at a concentration that exceeds a published EPA health advisory, or an FDA or department or other government agency action level for drinking water, the plant operator or water dealer shall employ appropriate treatment techniques to remove or to reduce the contaminant in the product water below the concentration and shall employ a program of periodic monitoring for the contaminant in the source water until such time as the contaminant is not detectable in the source water.

(f) The required source water sampling shall be performed by qualified personnel and required analysis shall be performed by an approved laboratory. Records of the required sampling and analyses shall be maintained on file at the plant for not less than two years and shall be available for official review upon request of the department or other government agency or agencies having jurisdiction. [L 1988, c 304, pt of §1]

" **[§328D-5] Finished product monitoring.** (a) To assure that bottled water complies with section 328D-2, the following product monitoring of representative samples derived from the bottled product shall be performed:

- (1) For microbiological contaminants specified in section 328D-2, a representative sample from a batch or segment of a continuous production for each type of bottled water produced by the plant shall be analyzed weekly; and
- (2) For chemical, physical, and radiological contaminants specified in section 328D-2, a representative sample from a batch or segment of continuous product run for each type of bottled drinking water produced by the plant shall be analyzed annually.

(b) The required product water sampling shall be performed by qualified personnel and required analysis shall be performed by an approved laboratory.

(c) Records of required sampling and analysis shall be maintained at the plant not less than two years and shall be available for official review upon request of the department or government agency or agencies having jurisdiction. [L 1988, c 304, pt of §1]

" **[§328D-6] Labeling requirements.** All bottled water shall conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

- (1) Mineral water may be labeled "mineral water". Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water".
- (2) Spring water may be labeled "spring water" or "natural spring water".
- (3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in the water may bear on its label the words "naturally carbonated" or "naturally sparkling".
- (4) Bottled water which contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated", "carbonation added", or "sparkling" when the carbonation is obtained from a natural or manufactured source.
- (5) Well water may be labeled "well water" or "natural well water".
- (6) Artesian water may be labeled "artesian water" or "natural artesian water".
- (7) Purified water shall be labeled "purified water" and the method of preparation shall be stated on the

- label, except that purified water produced by distillation may be labeled as "distilled water".
- (8) Drinking water may be labeled "drinking water".
 - (9) Any bottler, distributor, or vendor of bottled water whose corporate name, brand name, or trademark contains the words "spring", "well", "artesian", "mineral", or "natural" or any derivative of those words shall label each bottle with the type of bottled water in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the type of the bottled water is different from the type stated or implied in the corporate name, brand name, or trademark.
 - (10) The use of the word "spring", or any derivative thereof other than in a trademark, trade name, or company name to describe water that is not spring water as defined in section 328D-1 shall be prohibited.
 - (11) A product meeting more than one definition as stated in section 328D-1 may be identified by any of the applicable product types defined in section 328D-1, except where otherwise specifically prohibited.
 - (12) Supplemental printed information and graphics concerning recognized uses of the water may appear on the label but shall not imply properties of the product or preparation methods which are not factual.
[L 1988, c 304, pt of §1]

" **[§328D-7] Exemption; soda water, soft drink.** (a) Bottled soft drinks, soda, seltzer, or other products commonly recognized as soft drinks and labeled with a common or usual name other than one of those specified in section 328D-1 or food complying with 21 C.F.R. 165.175 are exempt from the requirements of this chapter. Water that is not in compliance with the requirements of this chapter may not be labeled as "artesian water", "bottled water", "distilled water", "drinking water", "fluoridated water", "mineral water", "natural water", "purified water", "spring water", or "well water".

(b) Bottled water that is not sold for human consumption shall be exempt from the requirements of this chapter, provided that the product is labeled "not for human consumption" in prominent lettering. [L 1988, c 304, pt of §1]

" **[§328D-8] Rules.** The director shall adopt rules pursuant to chapter 91 to implement this chapter. [L 1988, c 304, pt of §1]

" **[§328D-9] Administrative penalties.** (a) Any person who violates this chapter or any rule adopted by the department pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.

(b) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the director may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the administrative penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid. [L 1988, c 304, pt of §1]

" **[328D-10] Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter or any rule adopted to implement this chapter. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure. [L 1988, c 304, pt of §1]

Rules of Court

Injunctions, see HRCF rule 65.