

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024

2. Article, Part, or Section Affected (as applicable) Rulemaking Action

R18-4-103

Amend

R18-4-603

Amend

3. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 49-104(B)(4), 49-353(A)(2)

Implementing statute: A.R.S. § 49-353.01

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

5. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2087, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-104.

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2787, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-165.

6. The agency’s contact person who can answer questions about the rulemaking:

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7. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 4; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 4, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to the safe drinking water program. An expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1) and 41-1027(A)(6). Under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace a repealed statute in a definition with a current and correct definition. Under A.R.S. § 41-1027(A)(6), ADEQ proposes to update cross-references to other ADEQ rules that have changed due to previous rulemakings. Furthermore, none of the proposed amendments will increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

Section by Section Explanation of Proposed Rules:

R18-4-103(B): Incorporation of 40 CFR 141, Subpart A by reference and Definitions

This rule incorporates by reference 40 CFR 141, Subpart A, and establishes specific sections of Subpart A of the Code of Federal Regulations that are not incorporated by reference. The rule defines important terms in 18 A.A.C. Chapter 4 so that the rules are understandable to the general public. This rule also establishes which sections of the Code of Federal Regulations are modified to convey the proper context that Arizona is the regulator, not the EPA. In defining "protected water source," this rule contains an outdated reference to A.R.S. § 49-331, which was repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace the statutory reference with a reference to the correct definition found in R18-9-101(21).

R18-4-603(3): Infrastructure, Treatment, and Storage Design Requirements to Demonstrate Adequate Technical Capacity for New Public Water Systems

This rule contains references to applicable ADEQ rules which have since become outdated following previous recodifications of referenced Articles. The references to 18 A.A.C. 4, Articles 3 and 5 are now incorrect. The applicable infrastructure, treatment, and storage design requirements can now be found in 18 A.A.C. 4, Articles 1, 2, and 4 and 18 A.A.C. 5, Article 5. The following rulemakings impacted the outdated references:

1. In 2008, 18 A.A.C. 4, Article 3 was amended and treatment requirements were removed and replaced with the Monitoring Assistance Program rules. *See* 14 A.A.R. 2978, 2982 and 3015 (Aug. 1, 2008). Treatment requirements can now be found in 18 A.A.C. 4, Article 1 concerning the "National Primary Drinking Water Regulations" and Article 2 "Safe Drinking Water Regulations." *See* 14 A.A.R. 2978, 3013-3015 (Aug. 1, 2008).
2. In 2004, the minimum design criteria for public water systems (PWS) were recodified from 18 A.A.C. 4, Article 5 to 18 A.A.C. 5, Article 5. *See generally* 10 A.A.R. 585 (Feb. 20, 2004).
3. In 2023, ADEQ updated 18 A.A.C. 4 to conform with the EPA's final regulation entitled "Use of Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water," which applies to new PWSs. *See generally* 29 A.A.R. 1472 (Jun. 30, 2023).

Updating the references to the applicable infrastructure, treatment, and storage requirements for new PWSs serves to clarify the language of R18-4-603(3) by removing references that are no longer necessary for the operation of state government. Therefore, pursuant to its authority A.R.S. § 41-1027(A)(6), ADEQ proposes to amend the outdated references to the relevant ADEQ rules.

8. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable.

9. A showing good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 4.

13. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 42 U.S.C. § 300f et seq. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(l). If yes, include the analysis with the rulemaking package.

Not applicable.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable.

15. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A) state where the text was changed between the emergency and the final expedited rulemaking package:

The rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

Pre-Publication

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Section

R18-4-103. General – 40 CFR 141, Subpart A

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Section

R18-4-603. Technical Capacity Requirements

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-103. General – 40 CFR 141, Subpart A

- A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4- 102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.
- B. The definition of “State” in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

“Air-gap separation” means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

“ANSI/NSF Standard 60” means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“ANSI/NSF Standard 61” means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769- 8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“Backflow” means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

“Backflow-prevention assembly” means a mechanical device used to prevent backflow.

“Capacity” means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

“Capacity development” means improving public water system finances, management, infrastructure, and operations, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

“Capacity development report” means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

“Cross connection” means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

“Distribution system” means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

“Department” means the Arizona Department of Environmental Quality.

“Double check valve assembly” means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

“Elementary business plan” means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

“Entry point to the distribution system” means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

“EPA” means the United States Environmental Protection Agency.

“Exclusion” means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

“Exemption” means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

“Financial capacity” means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

“Groundwater system” means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

“Lead-free” has the same meaning prescribed in A.R.S. § 49-353(B).

“Major stockholder” means a person who has 20% or more ownership interest in a public water system.

“Master priority list” means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

“Monitoring assistance program” means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

“Operational assistance” means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

“Protected water source” means a groundwater source that:

- Meets the requirements of A.A.C. R18-5- 502(D);
- Is not located within 100 feet of a drywell as defined by ~~A.R.S. § 49-331(3)~~ A.A.C. R18-9-101(21), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

“Reduced pressure principle backflow-prevention assembly” means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

“Service connection” means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

“Service line” means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

“State” means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term “State” means the Regional Administrator of EPA Region 9.

“System evaluation assistance” means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

“Technical assistance” means operational assistance, system evaluation assistance, or both.

“Treatment” means a process that changes the quality of water by physical, chemical, or biological means.

“Treatment technique” means a treatment procedure promulgated by EPA in lieu of an MCL.

“Variance” means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology treatment techniques, or other means available to the system.

“Water main” means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

“Water Infrastructure Finance Authority” means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled “variances and exemptions,” is incorporated by reference subject to the following modifications:

1. The phrase “entity with primary enforcement responsibility” is changed to “Department.”
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
 - a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
 - b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
 - c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
 - d. “Treatment technique requirement,” for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
 - e. If the Department grants a variance or exemption, the Department shall prescribe:
 - i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
 - ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4- 102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.

1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
 2. 40 CFR 142.20(a), (b). The phrase “States with primary enforcement responsibility” is changed to “the Department”; the second sentences in 142.20(a) and 142.20(b) are deleted.
 3. 40 CFR 142.60(b), 142.61(b). The phrase “Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances” is changed to “Department.”
 4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase “a State that does not have primary enforcement responsibility” is changed to “Arizona”.
 5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase “Administrator or [‘primacy’ or ‘primary’] state that issues variances” is changed to “Department.”
 6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase “Administrator or [the] primacy state” is changed to “Department”; the phrase “Administrator’s or primacy state’s” is changed to “Department’s.”
 7. In 40 CFR 142, Subpart K:
 - a. The phrases “[‘a’ or ‘the’] State or [the] Administrator,” “Administrator or State,” “the public water system, State and the Administrator,” and “a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)” are changed to “the Department.”
 - b. 40 CFR 142.301. The last sentence is deleted.
 - c. 40 CFR 142.303(b). The phrase “a State exercising primary enforcement responsibility for public water systems” is changed to “the Department.”
 - d. 40 CFR 142.306(b)(2). The phrase “(or by the Administrator in States which do not have primary enforcement responsibility)” is deleted.
 - e. 40 CFR 142.308(a), 142.309(c). The phrase “the State, Administrator, or [the] public water system as directed by the State or Administrator” is changed to “the Department or the public water system, as determined by the Department.”
 - f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: “At the time of proposal, the Department must publish a notice in the Arizona Administrative Register or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section.”
 - g. 40 CFR 142.308(c)(7). The phrase “the primacy agency” is changed to “the Department.”
 8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term “Administrator” is changed to “Department”; the pronoun “he” is changed to “the Department”; and the pronoun “his” is changed to “the Department’s.”
 9. In all parts of 40 CFR 142 incorporated by reference, the term “a state” or “the state” is changed to “the Department”; the term “the State’s” is changed to “the Department’s.”
 10. 40 CFR 142.62(h)(3). The term “State-approved” is changed to “Department-approved.”
 11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401.”
 12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401.”
 13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
 14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: “A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402.”
- E. 40 CFR 141.5 is not incorporated by reference.

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, ~~Articles 2, 3, and 5~~ 1, 2, and 4, and Chapter 5, Article 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
5. Documentation that contains at least the following:
 - a. Day 1 to final build-out technical and engineering needs projections;
 - b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
 - c. Information describing the life of the plant;
 - d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
 - e. Manufacturers' specifications on components used in the construction of the water system; and
 - f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.