

NOTICES OF FINAL RULEMAKING

Unless exempted by A.R.S. § 41-01995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.) an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S §§ 41-1013 and 41-1022.

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TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

1. Sections Affected
R12-5-413
- Rulemaking Action
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 37-132(A)(1)
Implementing statute: A.R.S. § 37-132(B)(2)
3. The effective date of the rules:
February 9, 1996
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Docket Opening:
1 A.A.R. 1940, October 20, 1995
Notice of Proposed Rulemaking:
1 A.A.R. 2258, November 3, 1995
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: William P. Foster, Director
Planning and Disposition Division
Richard B. Oxford
Operation Division
Address: Land Department
1616 West Adams
Phoenix, AZ 85007
Telephone: (602) 542-1704 (Foster)
(602) 542-4602 (Oxford)
Fax: (602) 542-5223
6. An explanation of the rule, including the agency's reasons for initiating the rule:
In 1993, the Arizona Legislature enacted A.R.S. § 37-132(B)(2) which authorized the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land. The Department is authorized to pay, within certain parameters, a commission to licensed real estate brokers or their agents for their services associated with the successful selling or long-term commercial leasing of state properties at public auction. There are an estimated 50,000 licensed real estate brokers and agents throughout the state according to the Department of Real Estate. They are found in every county, although the vast majority are located in Maricopa, Pima, and Coconino Counties. By enlisting their services, the Department will substantially improve its ability to market and dispose, either through sale or long-term lease, state properties in a timely manner to bring revenues to the State Trust.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.

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8. The summary of the economic, small business, and consumer impact:

The Department adopts the rule for land sales and long-term commercial leases at public auction to facilitate marketing of State Trust properties that are ready for disposition.

The adopted rule enables the Commissioner to offer a commission for a publicly offered sale or long-term lease. The amount of the commission will not exceed 3% of the consideration paid for the land sold or long-term leased. The impact of the adopted rule will primarily be on the licensed real estate brokers in the state, who will now have the opportunity to increase the volume of their businesses by including state land sales or long-term commercial leases for which the Commissioner has determined that a commission will be offered. The impact will also be felt by the Department which will capitalize on the services of the brokers to market its properties; and by the potential bidders at public auction who will gain information about the properties from brokers and agents.

Other than the initial application fee to purchase or lease state land and advertising costs, the costs of processing lease or sales applications will be borne by the Department as a normal cost of doing business.

A vast majority of real estate brokerage firms are small businesses and many brokers and agents are self-employed. The professional skills and procedures required under the adopted rule are those required for licensed brokers and agents by the Arizona Department of Real Estate. All Arizona licensed brokers and agents, except employees of the Department and those who hold a present or future interest in the land or lease prior to close of escrow, will be eligible to receive a commission. Because there are no adverse affects on small businesses anticipated under the adopted rule, no methods to reduce its impact are contemplated by the Department.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R12-5-413(D)(5) was proposed as follows: Signature of the broker or salesperson and the potential purchaser or lessee verifying that together they have inspected the land to be auctioned for sale or lease." Rule R12-5-413(D)(5) was adopted as follows: Signature of the broker or salesperson and the potential purchaser or lessee verifying that **the broker or salesperson represents the potential purchaser or lessee and** that together they have inspected the land to be auctioned for sale or lease." The clarifying language was added to avoid future disputes and possibly litigation that may arise due to misunderstandings relating broker or salesperson representation of a successful purchaser or lessee.

10. A summary of the principal comments and the agency response to them:

The Department received a single written comment about the proposed rule. The comment and the agency's response are as follows:

Comment: In the event that a commissionable event occurs, avoid circumstances by which the buyer/lessee can participate in the commission, which may well be accomplished through adding any commission to the sales price as is the precedent with regard to fees."

Response: Pursuant to A.R.S. § 37-108(A)(10)(a), an amount equal to 3% of the consideration paid for all lands sold or long-term leased is paid to the Department as a selling and administrative expense. This is paid in addition to the purchase price by the successful purchaser/lessee. A.R.S. § 37-132(B)(2) provides that the purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection.

Comment: Recognition of broker participation should be conditioned precedent upon the ASLD noticing the sale/lease that provides for broker participation, accepting broker registration on ASLD form requiring written concurrence of prospective buyer. Issues of nullification, withdrawal, and broker preference must be addressed in order to avoid disputes."

Response: The Department concurs with the concern and has clarified subsection (D)(5) to ensure verification that the broker or salesperson represents the potential purchaser or lessee.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule:

No.

14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

ARTICLE 4. SALES

Section

R12-5-413. Real Estate Broker Commissions

ARTICLE 4. SALES

R12-5-413. Real Estate Broker Commissions

A. The commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the commissioner shall consider the following factors:

1. The appraised value of the parcel being offered,
2. The location and size of the parcel being offered,

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- 3. The terms of the sale or lease.
- 4. The marketability of the land, and
- 5. The best interest of the State Trust.
- B. If a commission is offered for the sale or long-term commercial lease of state land at public auction, the commission shall be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a).
- C. The Department shall publish the decision of the commissioner to pay or not to pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D. Upon determination by the commissioner that a commission shall be offered on a sale or long-term commercial lease, a person holding an active Arizona real estate broker license is eligible to receive the commission, from the Department, by registering with the Department the successful purchaser or lessee at public auction. The broker shall register himself or herself and the potential purchaser or lessee with the Department no later than 3 business days before the auction. Registration shall be in writing and include the following:
 - 1. Name and address of the brokerage;
 - 2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;
 - 3. Name and address of the potential purchaser or lessee;
 - 4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and
 - 5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.
- E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter located at 1616 West Adams, Phoenix, Arizona 85007. Registration shall be deemed received by the department on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
 - 1. A potential purchaser or lessee who is registered with another broker for the same auction, or
 - 2. A governmental agency.
- F. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G. The Department shall not pay a commission to a broker if the commissioner determines that the broker has violated this rule.
- H. For the purpose of this Section, the following definitions apply:
 - 1. "Long-term commercial lease" means a lease granted on state land for a term in excess of 10 years, but not more than 99 years, for commercial purposes to the highest and best bidder at public auction.
 - 2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY

SAFE DRINKING WATER

PREAMBLE

- 1. Sections Affected

R18-4-124	<u>Rulemaking Action</u>
R18-4-125	New Section
	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
 - Authorizing statutes: A.R.S. § 49-104(B)(4) and 49-353(A)(1)
 - Implementing statute: A.R.S. § 49-353(A)(2)
- 3. The effective date of the rules:
 - February 9, 1996
- 4. A list of all previous notices appearing in the Register addressing the final rule:
 - Notice of Docket Opening:
1 A.A.R. 893, June 30, 1995
 - Notice of Proposed Rulemaking:
1 A.A.R. 1267, August 4, 1995
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
 - Name: Steven Pawlowski
 - Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
 - Telephone: (602) 207-2227

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department of Environmental Quality (ADEQ) proposes to add 2 Sections to 18 A.A.C. 4. The 2 Sections, R18-4-124 and R18-4-125, address operation and maintenance requirements for public water systems and requirements for haulers of drinking water.

R18-4-124 is a general provision which requires that water suppliers maintain and keep in proper operating condition all facilities used in the production, treatment, and distribution of drinking water.

R18-4-125 prescribes the requirements which apply to haulers of drinking water to public water systems. The adopted rule has the following major elements: 1) the rule clarifies that all hauled water which is delivered to a public water system must be obtained from an approved source or another regulated public water system; 2) the rule requires that water transport containers and equipment used to deliver drinking water comply with the National Sanitation Foundation standards; 3) the rule prescribes disinfection, monitoring, and recordkeeping requirements for water haulers; and 4) the rule requires that water transport containers be used only for hauling drinking water and that the containers be appropriately labeled.

ADEQ initiated this rulemaking to replace 2 rules which were repealed during a previous revision of the Safe Drinking Water rules (effective April 28, 1995). During the last rulemaking, ADEQ proposed the repeal of all of the drinking water rules that were effective at the time, including the operation and maintenance and hauled water Sections. ADEQ proposed a completely rewritten and reorganized set of drinking water rules in Chapter 4 to replace the repealed rules. ADEQ failed to propose a replacement operation and maintenance Section as part of the reorganization of Chapter 4. ADEQ staff pointed out this error during the rulemaking process. ADEQ had intended to repeal the hauled water Section. However, ADEQ received public comments during the rulemaking which caused ADEQ to reconsider the proposed repeal of the hauled water provision. In response to these comments, ADEQ adopted an operation and maintenance Section at R18-4-124 and a hauled water Section. However, the Attorney General denied certification of both of these Sections on procedural grounds, stating that the 2 Sections were not adopted in compliance with the notice requirements of A.R.S. §§ 41-1022(A) and 49-925(B) or the review and approval requirements of A.R.S. § 41-1025(A). The Attorney General denied certification because the adopted rules (which included the operation and maintenance of hauled water Sections) were substantially different from the proposed rules (which proposed the repeal of both Sections). ADEQ initiated this rulemaking to adopt the 2 Sections which were denied certification by the Attorney General.

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

Not applicable.

8. The summary of the economic, small business, and consumer impact:

A. Persons directly affected by the final rules:

The final rules will directly affect the following persons: ADEQ, political subdivisions (Maricopa and Pima Counties), public water systems, water haulers, and consumers.

B. Probable costs and benefits to the Department of Environmental Quality

Implementation and enforcement of the final rules will have a minimal impact on ADEQ.

R18-4-124, the operation and maintenance rule, will have little or no effect on ADEQ field services personnel who conduct inspections of public water systems. An ADEQ inspector, as part of conducting a routine sanitary survey of a public water system, already inspects a public water system to determine compliance with operation and maintenance requirements. The adoption of a general operation and maintenance rule will have no effect on how an ADEQ inspector conducts a sanitary survey nor will it add any additional time to inspect a public water system. However, the adopted rule will provide the legal basis for taking an enforcement action if an ADEQ inspector notes operation and maintenance deficiencies and those deficiencies are not remedied by the owner of a public water system.

R18-4-125, the hauled water rule, will have a minimal effect on ADEQ field services staff. In Arizona, there are an estimated 50 trucks which are used to haul drinking water to public water systems. ADEQ inspectors conduct inspections of the trucks that are used to haul drinking water and check that water haulers are maintaining the required records. The approximate inspection time involved is 1/2 hour per water hauler, not including transportation time to and from the water hauler's place of business. ADEQ does not anticipate that any additional full-time employees or time will be needed to conduct inspections of water haulers under the new rule.

C. Probable costs and benefits to political subdivisions

Two counties in Arizona, Maricopa County and Pima County, have been delegated authority to administer the drinking water program within the county. Where state enforcement authority has been delegated to a county, the same costs and benefits that are described for the Department of Environmental Quality, would apply to each respective county. Implementation of the final operation and maintenance rule will not impose any additional costs on county drinking water programs. Inspectors in the delegated counties are already conducting inspections of public water systems to determine whether they are being operated and maintained properly. The adopted water hauler rule will have a negligible economic impact at the county level because of the small number of water haulers within each delegated county.

It should be noted that both R18-4-124, the operation and maintenance rule, and R18-4-125, the hauled water rule, are revised versions of rules that were effective prior to the last revision of the drinking water rules effective April 28, 1995. Thus, counties with delegated authority to administer the drinking water program are already implementing similar or more stringent

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requirements.

D. Probable costs and benefits to public water systems

The operation and maintenance rule, R18-4-124, affects public water systems. However, since the final rule merely codifies a general requirement to properly maintain and operate the facilities that are used by a public water system, ADEQ believes that the economic impact of the final rule is minimal. Public water systems already operate and maintain their production, treatment, and distribution facilities in order to provide safe drinking water to the consumers they serve. A general requirement to properly operate and maintain a drinking water system does not impose any additional costs on public water systems.

The hauled water rule, R18-4-125, applies only to water haulers who deliver drinking water to public water systems. The rule directly affects water haulers, but will only indirectly affect public water systems. ADEQ does not believe that the rule will increase costs to public water systems which obtain drinking water from water haulers.

E. Probable costs and benefits to water haulers

There are approximately 50 water hauling trucks and their operators who will be affected by R18-4-125. The rule requires that water haulers who deliver drinking water to a public water system obtain drinking water from an approved source or another regulated public water system. This requirement is essentially the same as the previously effective rule.

The adopted rule prescribes disinfection requirements. The rule requires water haulers to maintain a free chlorine residual in the drinking water that is transported by the water hauler. A water hauler can meet this requirement by adding a chlorine disinfectant to the water that is transported by the hauler. The cost of maintaining the proper free chlorine residual is estimated to be approximately \$0.50 per load [i.e., the cost of adding a small amount of chlorine bleach to the water]. Water haulers also are required to measure the chlorine residual when drinking water is off-loaded. In order to measure free chlorine residual, each water hauler will have to obtain a test kit. Test kits for measuring free chlorine residual are approximately \$45 [a 1-time cost]. To conduct a free chlorine residual test, the water hauler must use a chlorine reagent. Enough chlorine reagent to conduct 100 chlorine residual tests can be purchased for \$13. This amount translates to \$0.13 each time drinking water is off-loaded to a customer.

R18-4-125(D)(1) requires water haulers to maintain records of on-loading, disinfectant additions and chlorine residual measurements. Such records must be kept for 3 years and made available to ADEQ upon request. However, this recordkeeping requirement is minimal [i.e., essentially the price of a notebook or journal to record chlorine residual measurements].

The rule prescribes minimum construction standards for water transport containers and equipment that are used to deliver drinking water. The rule requires that water transport containers and delivery equipment meet National Sanitation Foundation standards; that roof hatches be fitted with a watertight cover; that a bottom drain valve be provided to allow for complete drainage and cleaning of the water transport container; and that hoses that are used to deliver drinking water be capped to prevent contamination. In general, these minimum design requirements are reasonable ones which do not impose any incremental costs upon water haulers.

It should be noted that the rule is intended to replace a water hauler provision that was effective prior to April 28, 1995. The requirements of the adopted rule are either the same or less stringent than the previously effective rule. Consequently, the adopted rule does not impose any new regulatory burdens on water haulers.

F. Probable costs and benefits to consumers

The adopted rules will have no economic impact on consumers because the economic impacts of the rules on public water systems and water haulers are expected to be minimal. Implementation of the final rules should have no effect on utility bills or the cost of water provided by water haulers to public water systems. Implementation of the rules will provide a public health benefit to consumers. Implementation of the operation and maintenance rule will give ADEQ an enforcement tool which it can use to take action against owners of public water systems who do not maintain and operate their systems properly. Adoption of the hauled water rule will provide some assurance to consumers who drink hauled water that their drinking water is properly disinfected and safe to drink.

9. A description of the changes between the proposed rules including supplemental notices, and the final rules:

The text of the proposed rules is reproduced in this Section. Changes between the proposed rules and adopted rules are indicated by underlining or strike-throughs. New language in the adopted rule that did not appear in the proposed rule is underlined. Language that was included in the proposed rule which has been deleted in the adopted rule is indicated by strike-throughs. The reasons for making any changes are explained in italics and in the summary of the principal comments to the rules.

R18-4-124. Operation and maintenance

~~A water supplier shall be responsible for compliance with this Chapter, shall protect the water system from contamination, negative pressures and cross connections. The water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to perform adequately the function for which the facilities were designed so as to comply with the requirements of this Chapter.~~

ADEQ revised this Section to eliminate redundant language which repeats requirements that are addressed in other Sections of the drinking water rules. ADEQ retained a general operation and maintenance requirement, but struck vague language related to the adequate performance of production, treatment and distribution facilities.

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R18-4-125. Hauled water

- A. All hauled water for ~~public consumption~~ delivery to a public water system shall be obtained from ~~an approved source~~ a source that is approved pursuant to R18-4-505(B)(1)(d) or a regulated public water system.

ADEQ revised this Section to clarify the scope of the rule. ADEQ deleted the phrase, "for public consumption," and replaced it with for "...delivery to a public water system..." in an attempt to clarify that the only water haulers who are regulated by R18-4-125 are those who deliver water to public water systems. ADEQ also clarified the phrase "an approved source" by amending it to "a source that is approved pursuant to R18-4-505(B)(1)(d)." Finally, ADEQ revised the rule by adding "or a regulated public water system" to clarify that another regulated public water system is an approved source. A regulated public water system is a public water system that is not exempt pursuant to R18-4-102(C).

- ~~B. If the receiving water system is a public water system, it shall do the following:~~

- ~~1. Sample for all inorganic and organic chemicals and contaminants applicable to that water system for which the supplying water system is not required to sample; and~~
- ~~2. Comply with the microbiological requirements in R18-4-202.~~

ADEQ deleted this subsection for 2 reasons. First, the phrase "[i]f the receiving water system is a public water system..." implies that ADEQ regulates water haulers who do not deliver drinking water to public water systems. ADEQ does not regulate water haulers who deliver drinking water to private individuals. R18-4-102(A) states that the rules in Chapter 4, including the hauled water rule at R18-4-125, apply only to public water systems. It should be noted that ADEQ has the authority under R18-4-102(B) to regulate a water hauler who delivers water to a semipublic water system or private agricultural water system if a specific health hazard is identified.

Second, the monitoring requirements which are prescribed in subsection (B) are unnecessary. Under subsection (A) of the final rule, a water hauler who delivers water to a public water system must obtain that water from an approved source or another regulated public water system. The receiving public water system must comply with all applicable monitoring requirements prescribed in Chapter 4. If the source of the hauled water is another public water system and the 2 systems are interconnected to a degree which justifies treating them as a single system for monitoring purposes, then the 2 systems may be considered to be consecutive public water systems. Monitoring requirements for consecutive public water systems are addressed in R18-4-113.

- ~~C. B. Each water transport container shall meet the minimum construction standards, described as follows:~~

- ~~1. All surface coatings and system components Materials or products which come into contact with the water shall conform comply with R18-4-119(B);~~
- ~~2. C. Roof hatches shall be fitted with a watertight cover; and~~
- ~~3. D. A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided;~~

- E. Hoses which are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.

All of the changes to subsection B, except for the addition of subsection (E) are editorial changes to make the rule more understandable. ADEQ added subsection (E) to prevent the contamination of drinking water during transport and delivery. See responses to Comments G, H, and I.

- ~~D. F. The following monitoring requirements shall be met by each water hauler:~~

- ~~1. A water hauler shall maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l shall be maintained in the container water which is hauled in a water transport container at all times. A chlorine disinfectant shall be added at the time water is loaded into the container. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual free chlorine residual measurements. Such records shall be maintained for at least 3 years and made available to the Department for review upon request.~~

The changes to subsection (E) are editorial changes to clarify the rule. See response to Comment J.

- ~~2. At least 1 sample shall be collected per quarter from each water transport container delivering drinking water, and the sample shall be analyzed for total coliform bacteria using an approved method. Samples shall be taken prior to the addition of disinfectant from water that has been in the container at least 12 hours since the last previous addition of disinfectant. Results shall be retained for 1 year. If a sample is positive for total coliform bacteria, the water transport container shall be removed from service and cleaned and disinfected pursuant to subsection (E)(2) of this Section. The water transport container shall not be placed back into service until another total coliform bacteria analysis is performed and the result is negative.~~

ADEQ deleted this subsection because quarterly sampling for total coliform by the water hauler is unnecessary when the receiving public water system is already required to conduct total coliform monitoring.

- E. Water transport containers shall conform to the following provisions:

1. Each container shall be plainly and conspicuously labeled "For Drinking Water Use Only;"

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ADEQ retained the prohibition against hauling other substances in a water transport container. See subsection (G) below.

~~2. Each container not used to haul drinking water for a period greater than 72 hours shall be disinfected before being put back into service in accordance with Engineering Bulletin No. 8, "Disinfection of Water Systems," issued by the Arizona Department of Health Services, August, 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State; and~~

~~3. The on-loading and off-loading of the containers, and the use of hoses and pumps shall be performed in a manner that protects the water against entrance of any pollution, contamination, or unclean substance.~~

ADEQ deleted subsection (E)(2) in response to public comments questioning the underlying rationale for the disinfection requirement. See response to Comment M. ADEQ deleted subsection (E)(3) because it is vague.

G. A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled "For Drinking Water Use Only."

ADEQ revised this subsection to clearly state in rule that a water transport container is for hauling drinking water only. The previous rule only prescribed a labeling requirement.

10. A summary of the principal comments and the agency response to them:

The following comments on the operation and maintenance rule, R18-4-124, were received by ADEQ:

Comment: The proposed operation and maintenance rule is redundant because it includes requirements which are addressed in other Sections of the drinking water rules. For example, the proposed rule states that the water supplier shall be responsible for compliance with the requirements of Chapter 4.

ADEQ Response: ADEQ agrees that the language which states that water suppliers are responsible for compliance with the requirements of Chapter 4 is unnecessary. The language is an unnecessary restatement of R18-4-121(A) which already provides that "[a]ny person who owns, constructs, operates, or maintains a public water system contrary to the provisions of this Chapter...shall be subject to the [enforcement] actions provided in A.R.S. §§ 49-142 and 49-354." ADEQ revised the proposed rule by striking the language which states that the water supplier is responsible for compliance with Chapter 4.

Comment: The proposed operation and maintenance is redundant because it includes language which states that the water supplier shall protect the water system from contamination. This requirement is addressed in other Sections of the drinking water rules. A water supplier cannot have contamination of the water supply without violating drinking water standards.

ADEQ Response: ADEQ agrees that the language in the proposed operation and maintenance rule which requires water suppliers to protect the water system from contamination is unnecessary. Article 2 of the Chapter 4 includes provisions which prescribe maximum contaminant levels [MCLs] for drinking water and monitoring requirements. Water suppliers are required to comply with applicable MCLs. Compliance with other Sections related to treatment techniques, unsafe supplies and sanitary surveys provide equivalent protection against contamination of the water supply. ADEQ revised the proposed rule by striking the language which states that the water supplier shall protect the water system from contamination.

Comment: The operation and maintenance is redundant because it includes language which states that the water supplier shall protect the water system from negative pressures. The phrase, "negative pressure," is undefined and the meaning of this requirement is unclear. Also, another Section of the rules requires that the distribution system be designed and maintained so that a pressure of 20 pounds per square inch is maintained in the distribution system.

ADEQ Response: ADEQ agrees that the language which requires the water supplier to protect the water system from "negative pressures" is unclear and unnecessary. The language is unnecessary because R18-4-502(B) already requires that a potable water distribution system be designed to maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow. ADEQ revised the proposed rule by striking the language which states that the water supplier shall protect the water system from negative pressures.

Comment: The operation and maintenance is redundant because it includes language which states that the water supplier shall protect the water system from cross connections. There is already a lengthy Section in the rules which specifically addresses cross connections.

ADEQ Response: ADEQ agrees that the language of the proposed operation and maintenance rule which states that a water supplier shall protect the water system from cross connections is unnecessary. R18-4-115(A) already requires a water supplier to "protect its public water system from contamination caused by backflow through unprotected cross connections by requiring the installation and periodic testing of backflow-prevention assemblies." R18-4-115 specifically addresses cross connection control. Therefore, ADEQ revised the proposed operation and maintenance rule by striking the language which states that the water supplier shall protect the water system from cross connections.

Comment: The proposed operation and maintenance rule states that a water supplier "shall maintain and keep in proper operating condition all facilities used in the production, treatment and distribution of the water supply so as to perform adequately the function for which the facilities were designed." The meaning of this requirement is unclear. The drinking water rules do not provide specific guidelines regarding proper operation and maintenance. What does "perform adequately" mean? The proposed rule does not give the water supplier clear guidance as to what must be done to comply with the rule. Also, it is not clear how the Department would enforce this requirement.

ADEQ Response: ADEQ agrees that the language of the proposed rule is vague. ADEQ revised the language of the rule to tie operation and maintenance requirements to those necessary to comply with the requirements of Chapter 4.

The following comments on the proposed hauled water rule, R18-4-125, were received by ADEQ:

Comment: The proposed hauled water rule states that all hauled water for public consumption shall be obtained from an "approved source." However, there is no definition of the term, "approved source," and its meaning is unclear.

ADEQ Response: ADEQ agrees that the term, "approved source," is unclear. ADEQ revised the proposed rule to clarify that an "approved source" is 1 that is approved pursuant to R18-4-505(B)(1)(d). The other "approved source" of water for delivery to a public water system is water that is obtained from another regulated public water system. ADEQ also revised the language of the subsection to clarify the scope of the proposed hauled water rule. ADEQ revised the rule to state that "[a]ll hauled water for delivery to a public water system shall be obtained from a source that is approved pursuant to R18-4-505(B)(1)(d) or a regulated public water system." This revision clarifies that the rule applies only to water haulers who deliver water to public water systems. ADEQ deleted the reference to "hauled water for public consumption" to clarify that the rule does not apply to water haulers who deliver water to individual residences.

Comment: It will be difficult for a water hauler to comply with the requirement in R18-4-125(C)(1) which states that the surface coatings of a water transport container and other system components must comply with National Sanitation Foundation standards [See R18-4-119].

ADEQ Response: Materials and products that come into contact with drinking water that are used by public water systems must meet National Sanitation Foundation [NSF] standards. ADEQ believes that water transport containers and delivery equipment used by water haulers should be held to the same standards. While compliance with NSF standards may be difficult for some water haulers, requiring compliance with NSF standards is a reasonable measure which will protect public health.

Comment: R18-4-125(C)(2) of the proposed rule states that the roof hatch of a water transport container must have a watertight cover. What problem does this requirement address?

ADEQ Response: The requirement that a water transport container have a watertight cover is intended to prevent contamination of drinking water during transport.

Comment: The proposed rule states at R18-4-125(C)(3) that the water transport container must have a bottom drain valve or some other provision to allow for complete drainage and cleaning of the container. The rule is unnecessary because every water hauler will provide a means for draining the water transport container for simple convenience. ADEQ should not be concerned about draining and cleaning the water transport container as long as adequate chlorine residuals are maintained in the water by the water hauler.

ADEQ Response: ADEQ believes that the requirement that a water transport container be equipped with a bottom drain valve is a reasonable design standard. A water transport container must be provided with a bottom drain valve in order to drain drinking water that may be contaminated, flush accumulated sediments or to clean the water transport container.

Comment: R18-4-125(D)(1) states that a water hauler shall maintain a residual free chlorine level in the water transport container at all times. This requirement is unjustified. There is no similar requirement for other public water systems. If a water hauler obtains water from an "approved source" and the water transport container is clean, why is it necessary for the water hauler to maintain a chlorine residual?

ADEQ Response: The chlorine residual requirement for drinking water that is transported by a water hauler is justified by the risk of contamination during on-loading, transport and off-loading. The maintenance of a chlorine residual in the drinking water is a reasonable precaution to protect public health.

Comment: R18-4-125(D)(2) requires a water hauler to conduct quarterly sampling for the microbiological quality of hauled water. The sampling protocol prescribed in the proposed rule states that the sample shall be taken from water that has been in the water transport container for at least 12 hours since the last previous addition of disinfectant. What is the reason for the 12-hour requirement? What rationale supports the sampling protocol that is prescribed in rule?

ADEQ Response: ADEQ does not believe there is an adequate rationale to support a quarterly monitoring requirement. ADEQ deleted this subsection in the adopted rules.

Comment: The proposed rule requires that water transport containers be plainly and conspicuously labeled "For Drinking Water Use Only." This may preclude the use of milk trucks or juice transport trucks in emergency situations. As long as the water that comes out of the truck is clean, ADEQ should not regulate what is required to be printed on the side of the truck.

ADEQ Response: This subsection is intended to address the routine delivery of drinking water by water haulers. The labeling requirement is intended to prevent the unauthorized use of a water transport container for hauling other substances.

Comment: The proposed rule states that each water transport container that is not used for a period of 72 hours must be disinfected. What is the reason for the 72-hour requirement? Implementation of this requirement also would require microbiological testing. It is conceivable that a water transport truck could be out of service for a week.

ADEQ Response: ADEQ does not believe there is adequate justification for the requirement to disinfect a water transport container if it not used for 72 hours. The requirement to maintain a chlorine residual in hauled drinking water should be enough to protect public health. ADEQ deleted this subsection from the adopted rules.

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11. Any other matters prescribed by statute that are applicable to the agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference:
None
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the final rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

ARTICLE 1. GENERAL REQUIREMENTS

Section

- R18-4-124. Operation and Maintenance
R18-4-125. Hauled Water

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-124. Operation and Maintenance

A water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to comply with the requirements of this Chapter.

R18-4-125. Hauled Water

- A. All hauled water for delivery to a public water system shall be obtained from a source that is approved pursuant to R18-4-505(B)(1)(d) or a regulated public water system.
- B. Materials or products which come into contact with the water shall comply with R18-4-119(B).
- C. Roof hatches shall be fitted with a watertight cover.

- D. A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.
- E. Hoses which are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.
- F. A water hauler shall, at all times, maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added at the time water is loaded into the container. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual free chlorine measurements. Such records shall be maintained for at least 3 years and made available to the Department for review upon request.
- G. A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled "For Drinking Water Use Only."