
NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R15-131]

PREAMBLE

- | | |
|--|---------------------------------|
| <u>1. Article, Part or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R2-8-115 | Amend |
| R2-8-118 | Amend |
| R2-8-122 | Amend |
| R2-8-126 | Amend |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 38-714(E)(4)
 Implementing statutes: A.R.S. §§ 38-711, 38-720, 38-735, 38-736, 38-737, 38-740, 38-762, 38-764, 38-769, 38-771, 38-771.01, 38-774
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 21 A.A.R. 1834, September 11, 2015
- 4. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Jessica A. Ross, Rule Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 Email: JessicaR@azasrs.gov
- 5. An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The ASRS needs to clarify approximately four (4) rules within Article 1. R2-8-115 needs to reflect that Ending Payroll Verification may be completed electronically by the employer. The rule also needs to state that the ASRS may require a copy of a government issued ID to verify the identity of a withdrawing member who has been inactive for 5+ years and has \$1,000+ on their account balance. R2-8-118 needs to be amended to clarify that “voluntary additional contributions” refers to contributions that are made pursuant to a service purchase, reinstatement, etc. R2-8-122 needs to be amended to be more concise by referring to the ASRS by the agency acronym and by removing unnecessary language such as “without limitation.” The ASRS needs to amend R2-8-126 subsections (B), (C), and (D) to better clarify for which annuity options each age group is eligible.

With the exception of the ID addition to R2-8-115, the amendments outlined above will clarify the rule language without substantively changing the rules’ requirements, thereby reducing the regulatory burden imposed on the



public. Amending R2-8-115 to require ID verification as indicated will prevent potential fraud against the agency by ensuring that the correct person is requesting withdrawal of an inactive member's account. This rulemaking will help the ASRS control and mitigate possible delays associated with a withdrawal of an inactive member's account, resulting in the more efficient operation and administration of the ASRS.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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.

None

7. A showing of 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

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

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies requirements that the ASRS enforces in rule already. There may be some additional cost to some members who must provide documentation to verify their identity when specific criteria are present as mentioned above. However, those costs should be minimal because the ASRS will accept a copy of any government issued ID for such verification purposes.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jessica A. Ross, Rule Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
Email: JessicaR@azasrs.gov

10. The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: November 10, 2015
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

11. 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:

None

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:

None of the rules requires a permit.

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:

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:



TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

- Section
- R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member
- R2-8-118. Application of Interest Rates
- R2-8-122. Remittance of contributions
- R2-8-126. Calculating Benefits

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member

- A. The following definitions apply to this Section unless otherwise specified:
 1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
 2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
 3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
 4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
 5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
 6. "Warrant" means a voucher authorizing payment of funds due to a member.
- B. No change
- C. ~~Upon receipt of the request to withdraw by the member, the ASRS shall provide the member with:~~
 1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
 2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form, ~~and~~ to the employer.
 3. ~~The process date.~~
- D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
 1. The member's full name;
 2. The member's Social Security number;
 3. The member's current mailing address;
 4. The member's daytime telephone number, if applicable;
 5. The member's birth date;
 6. The date of termination;
 7. Dated signature of the member certifying that the member:
 - a. Is no longer employed by any ASRS employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
 - c. Is not currently in a leave of absence status with an ASRS employer;
 - d. Understands that each of the member's former ASRS employers' payroll departments will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;
 - e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
 - f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
 - g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
 - h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the roll-over and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
 - i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and



- j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;
- 8. Specify that:
 - a. The entire amount of the distribution be paid directly to the member,
 - b. The entire amount of the distribution be transferred to an eligible retirement plan, or
 - c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and
- 9. If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify;
 - a. The type of eligible retirement plan;
 - b. The eligible retirement plan account number, if applicable; and
 - c. The name and mailing address of the eligible retirement plan.
- E.** If the member requesting the withdrawal has been inactive for five years or more, and if the member's account balance is \$1,000 or more, the member requesting the withdrawal shall provide a copy of a driver license or a form of other government issued identification to the ASRS.
- ~~E.F.~~** If a payroll transaction for the member occurred with any ASRS employer within six months before the process date the member shall complete and return to the ASRS an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form for each ASRS employer electronically that includes the following information:
 - 1. ~~Filled out by the member:~~
 - ~~a.~~ The member's full name, ~~and;~~
 - ~~b.2.~~ The member's Social Security number; ~~and~~
 - 2. ~~Filled out by each ASRS employer:~~
 - ~~a.3.~~ The member's termination date;:
 - ~~b.4.~~ The member's final pay period ending date;
 - ~~e.5.~~ The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;:
 - ~~d.6.~~ The ASRS employer's name and telephone number;
 - ~~e.7.~~ The employer number;
 - ~~f.8.~~ The name and title of the authorized employer representative;
 - ~~g.9.~~ Certification by the authorized employer representative that:
 - ~~i.a.~~ The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;
 - ~~ii.b.~~ There is no agreement to re-employ the member; and
 - ~~iii.c.~~ The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and
 - ~~h.10.~~ The signature of the authorized employer representative and date of signature.
- ~~F.G.~~** If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- ~~G.H.~~** If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- ~~H.I.~~** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection ~~(F)(G)~~ or ~~(G)(H)~~ unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- ~~H.J.~~** Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.
- ~~J.K.~~** If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:
 - 1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
 - 2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
 - 3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
 - a. The deceased member's full name,



- b. The deceased member’s Social Security number,
- c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
 - i. Full name;
 - ii. Mailing address;
 - iii. Contact telephone number;
 - iv. Date of birth, if applicable; and
 - v. Social Security number or Tax ID number, if applicable.

R2-8-118. Application of Interest Rates

- A. No change
- B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member’s account as of the previous June 30. The balance on which interest is credited includes:
 - 1. Employer and employee contributions;
 - 2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
 - 3. Amounts credited by transfer under A.R.S. § 38-924; and
 - 4. Interest credited in previous years.

R2-8-122. Remittance of contributions

- A. Remittance of employee member contributions: Each state department and employer member of the ~~Arizona State Retirement System ASRS~~, including, ~~without limitation~~, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the ~~Arizona State Retirement System ASRS~~ and shall remit the amount of employee member contributions to the ~~Arizona State Retirement System ASRS~~, together with such detailed report as may be required by the ~~System ASRS~~ to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ~~Arizona State Retirement System ASRS~~ by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ~~Arizona State Retirement System ASRS~~.
- B. Remittance of employer contributions: Each state department and employer member of the ~~Arizona State Retirement System ASRS~~, including, ~~without limitation~~, any county, municipality or political subdivision, shall remit the amount of employer contributions to the ~~Arizona State Retirement System ASRS~~ not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ~~Arizona State Retirement System ASRS~~ by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ~~Arizona State Retirement System ASRS~~.

R2-8-126. Calculating Benefits

- A. No change
- B. An individual who is 104 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select ~~the an option of income for five years certain and for life thereafter.~~ life annuity with a term certain.
- C. An individual who is 93 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select ~~the option options of income for life annuity with ten years certain and or life annuity with 15 years certain. for life thereafter.~~ life annuity with ten years certain and or life annuity with 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select the option of ~~income for life annuity with 15 years certain and for life thereafter.~~ life annuity with 15 years certain.
- E. No change
- F. No change
- G. No change
- H. No change
- I. Notwithstanding subsection (H), a member who is ten or more years older than the member’s ex-spouse contingent annuitant is eligible to participate in a 100% joint-and-survivor option, if:
 - 1. The member selected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 - 2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member’s account.
- J. Notwithstanding subsection (H), a member who is 24 or more years older than the member’s ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint-and-survivor option, if:
 - 1. The member selected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 - 2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member’s account.



NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

[R15-133]

PREAMBLE

- | <u>1. Article, Part of Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R18-4-102 | Amend |
| R18-4-103 | Amend |
| R18-4-105 | Amend |
| R18-4-121 | Amend |
| R18-4-126 | New Section |
| R18-4-210 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. Title 49, Chapter 2, Article 9, and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26
 Implementing statutes: A.R.S. §§ 49-351, 49-352, 49-353, 49-353.01
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 21 A.A.R. 2296, October 9, 2015 (*in this issue*).
- 4. The agency's contact person who can answer question about the rulemaking:**
 Name: Wendy LeStarge
 Address: Arizona Department of Environmental Quality
 1110 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677), ext. 771-4836
 Fax: (602) 771-4834
 Email: lestarge.wendy@azdeq.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 The Arizona Department of Environmental Quality (ADEQ) is proposing to update its safe drinking water rules in order to conform to changes made to federal rules over the past seven years. The Governor's office approved an exception from E.O. 2015-01 on September 15, 2015.

ADEQ is required to develop rules that meet the "requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142." A.R.S. § 49-353(A)(2)(a). ADEQ last amended these rules in 2008 by incorporating by reference the 2007 version of the U.S. Environmental Protection Agency's (EPA) federal rules (National Primary Drinking Water Regulations in 40 CFR 141.)

Since the 2008 rulemaking, EPA has made two major changes, which are described as follows:

Revised Total Coliform Rule (RTCR)

All public water systems (PWSs) are required to monitor for total coliforms, which serve as an indicator of other disease causing agents that can cause illness or death. In 2013, EPA revised the Total Coliform Rule by removing as a violation having minimal levels of total coliform present in a drinking water sample. EPA published minor corrections to the RTCR in February 2014 to correct typographical errors in sections relating to recordkeeping and State primacy requirements.

Under the previous federal rule (and ADEQ's current rule), a PWS can violate the Maximum Contaminant Level (MCL) for total coliforms in two ways:

- A non-acute violation requiring a public notice within 30 days:
 - A system collecting fewer than 40 samples per month has two or more total coliform positive samples in that month; or



◦ A system collecting 40 or more samples in a month has greater than five percent of samples collected that are total coliform positive.

- An acute violation for any presence of fecal coliform or E. coli (positive) in a repeat sample, or any presence of total coliform in a repeat sample following fecal coliform or E. coli (positive) routine. The PWS has to issue a public notice within 24 hours.

Under the 2013 RTCR, EPA eliminated the non-acute MCL for total coliforms and the public notification requirements for a non-acute violation, because the presence of total coliforms in and of themselves does not indicate a health threat. This revision relieves a PWS of the expense of required repeat sampling and providing public notice to customers. The “acute” total coliform MCL violation has been maintained as the MCL for E. coli under the RTCR, which is a more specific indicator of potential harmful pathogens than total coliforms. Also, the RTCR requires public notification when an E. coli MCL violation occurs, indicating a potential health threat, or when a PWS fails to conduct the required assessment and corrective action.

The RTCR allow states some discretion on which provisions they adopt and implement. ADEQ is incorporating by reference most of the RTCR amendments without modification, except for the following:

- 40 CFR 141.402(a)(4) is modified to allow the consecutive ground water system and wholesale ground water system the opportunity to trace back the source of total coliform-positive sample.
- 40 CFR 141.851(d) is not incorporated by reference because it concerns when EPA implements the rules.
- 40 CFR 141.852 and 141.853(c)(2) are not incorporated by reference because these sections concern analytical methods and laboratory certification. In Arizona, the Arizona Department of Health Services (ADHS) has statutory authority for the regulation of environmental laboratories, pursuant to A.R.S. § 36-495.01.
- 40 CFR 141.854(h)(2)(i)-(ii) are not incorporated by reference because these two provision are already required under A.A.C. R18-4-202 (Certified Operators) and R18-4-215 (Backflow Prevention). A PWS will have the remaining subsections (iii – v) to choose from for additional enhancements.

In R18-4-103(B), ADEQ is adding a definition for “protected source.” ADEQ is also making corresponding amendments to R18-4-210, Total Coliform; Special Events.

Lead and Copper Rule (LCR)

EPA does not regulate lead (or copper) through an MCL. Rather, PWSs must monitor drinking water at customer taps because lead enters drinking water primarily through corrosion of plumbing materials. If lead concentrations exceed an action level of 0.015 mg/l in more than 10% of customer taps sampled, the system must undertake a number of additional actions to control corrosion. If the action level for lead is exceeded, the system must also inform the public about steps they should take to protect their health and the system may also have to replace lead service lines under their control.

Shortly before ADEQ’s rules were final in 2008, EPA made changes to the LCR, as follows:

- Public education requirements are clarified and strengthened in the event lead and/or copper levels are exceeded;
- Clarified when a PWS must treat source water and replace service lines that contain lead if other options have been exhausted;
- When sampling at a customer’s tap for lead and copper, a PWS must now notify those customers of the results;
- A PWS must notify the State before adding a new water source or making any long-term treatment change (ADEQ has required this for many years under its design review rules for PWSs).

Separate from the LCR amendments, ADEQ is amending the definition of “Lead-free” in R18-4-103(B) to have the same meaning as A.R.S. § 49-353(B).

Additional Changes

ADEQ is making some minor updates.

- Amending the two definitions in R18-4-103(B) for ANSI/NSF Standard 60 and ANSI/NSF Standard 61 by updating the 2000 incorporation by reference to the 2014 versions.
- An inconsistency in R18-4-103(D) is corrected. R18-4-103(D)(12) had replaced text in 40 CFR 142.44(b) and 40 CFR 142.54(b) respectively, but had used the same term of “exemption” for both sections. 40 CFR 142.44 governs variances; 40 CFR 142.54 governs exemptions. ADEQ corrects this error in amended R18-4-103(D)(11). The previous substitution language in R18-4-103(D)(4) is now unnecessary and is deleted.
- In R18-4-105, ADEQ is adding Appendix A to its incorporation by reference of 40 CFR 141, Subpart C (40 CFR



141.21 through 141.29). EPA added Appendix A to Subpart C in 2007 and provides alternative testing methods approved for analyses under the Safe Drinking Water Act.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

ADEQ staff reviewed and relied upon EPA's rule and associated guidance documents relevant to this rulemaking, including the Revised Total Coliform Rule, 78 FR 10270 (Feb. 13, 2013) and 79 FR 10665 (Feb. 26, 2014). EPA rules and guidance documents referenced above can be downloaded from EPA's total coliform rule web page at <http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/index.cfm>

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 preliminary summary of the economic, small business, and consumer impact:

Testing for disease causing agents (pathogens) is a necessary cost for PWSs to protect public health. Waterborne pathogens such as E. coli can lead to severe illness and death even in otherwise healthy individuals.

The RTCR should benefit all of Arizona's approximately 1,550 PWSs. Under the existing rule, if a PWS exceeds the MCL for total coliforms, the PWS has to issue a public notice, which in extreme cases can include a warning to boil water before using. Under the RTCR, what was a non-acute violation will no longer be a violation; consequently a PWS would not incur costs of additional monitoring and issuing public notice.

PWSs will have some costs in redoing their site sampling plans, required under 40 CFR 141.853(a) and incur time in becoming familiar with the RTCR requirements.

ADEQ will face implementation costs, mainly in the form of staff time. Staff will be developing new forms, presenting trainings to PWSs, and updating the drinking water database (Safe Drinking Information System – SDWIS/State) to accept sampling results.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Wendy LeStarge
Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)
Fax: (602) 771-4834
E-mail: lestarge.wendy@azdeq.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

ADEQ has scheduled an oral proceeding to receive oral comments on the rules, in accordance with A.R.S. § 41-1023; the time, place, and location of the hearing are listed below:

Date: November 23, 2015
Time: 10:00 a.m.
Location: Arizona Department of Environmental Quality
1110 W. Washington, Room 3175 A & B
Phoenix, AZ 85007
Nature: Oral Proceeding

Written, faxed, or e-mailed comments may be made with the contact person listed in item #4. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m. November 23, 2015. Upon request, ADEQ will provide appropriate auxiliary aids and services to persons with disabilities, at no charge, to assist in accessible communication to enable people who have speech, hearing, vision, learning, or other impairments to participate equally, including qualified sign language interpreters. To request an auxiliary aid or service, to obtain this document in alternative format, or for further information, please contact Alicia Pollard at (602) 771-4791 or via email at aap@azdeq.gov as early as possible to allow time to arrange the accommodation. TTY/TTD Services: 7-1-1. The ADA does not require ADEQ to take any action that would fundamentally alter the nature of its programs, services or activities, or impose an undue financial or administrative burden on ADEQ. This rulemaking's public record will close at 5:00 p.m. on November 23, 2015.



11. 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:

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:

This rule does not require permits, but establishes applicability and general prohibitions necessary to protect public health.

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 administrative rule is consistent with federal law and is no more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact on the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R18-9-102(A) 40 CFR Parts 141 and 142, July 1, 2014 edition

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Section

- R18-4-102. Incorporation by Reference of 40 CFR 141 and 142
- R18-4-103. General - 40 CFR 141, Subpart A
- R18-4-105. Monitoring and Analytical Requirements - 40 CFR 141, Subpart C
- R18-4-121. Ground Water Rule - 40 CFR 141, Subpart S
- R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y

ARTICLE 2. STATE DRINKING WATER REGULATIONS

- R18-4-210. Total Coliform; Special Events

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-102. Incorporation by Reference of 40 CFR 141 and 142

A. Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, ~~2007~~ 2014, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from:

1. Code of Federal Regulations: U.S. Government Printing Office, online bookstore, <http://bookstore.gpo.gov/>; 866-512-1800; orders@gpo.gov;
2. Federal Register: <http://www.gpoaccess.gov/fr/index.html> the U.S. General Printing office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

B. A reference to a federal statute or regulation in a federal statute or regulation incorporated by reference in this Chapter shall refer to and incorporate by reference the referenced statute or regulation as of the date specified in subsection (A), unless the referenced statute or regulation is incorporated by reference elsewhere in this Chapter in a modified form, in which case the reference shall be to the statute or regulation as incorporated in this Chapter.

C. Documents incorporated by reference in a federal statute or regulation incorporated by reference in this Chapter are also incorporated by reference in this Chapter, as of the date specified in the federal statute or regulation.

D. A federal rule incorporated by reference in this Chapter shall include all “Effective Date Notes” associated with the federal rule.

E. The term “State” or “primacy agency” in the text of a federal statute or regulation incorporated by reference in this Chapter shall mean the Arizona Department of Environmental Quality unless otherwise noted.

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 - ~~2000a~~ 2014a, Drinking Water Treatment Chemicals - Health Effects, November ~~2000~~ 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 - ~~2000a~~ 2014a, Drinking Water System Components - Health Effects, November ~~2000~~ 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 (back-pressure), 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” ~~means that the pipe, solder, or flux used in the installation or repair of a public water system, or in a residential or non-residential facility that provides water for human consumption and is connected to the public water system, meets the following criteria:~~

- ~~• No solders or flux contain more than 0.2% lead;~~
- ~~• No pipes or pipe fittings contain more than 8.0% lead; and~~



• When used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion, “lead free” means fittings and fixtures that are in compliance with ANSI/NSF Standard 61, Section 9. 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), 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 142.44(b)(2), 142.54(b)(2). The phrase "the agency of the State in which the system is located which is responsible for the State's water supply program[,] and to" is deleted; "Administrator's" is changed to "Department's."~~
 5. 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".
 - 6-5. 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."
 - 7-6. 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."
 - 8-7. 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."
 - 9-8. 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."
 - 10-9. 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."
 - 11-10. 40 CFR 142.62(h)(3). The term "State-approved" is changed to "Department-approved."
 12. ~~40 CFR 142.44(b), 142.54(b). The text of these subsections 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."~~
 11. In 40 CFR 142.44 and 142.54:
 - a. 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."



b. 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.”

~~13-12~~ 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.

~~14-13~~ 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.

R18-4-105. Monitoring and Analytical Requirements - 40 CFR 141, Subpart C

A. 40 CFR 141, Subpart C (40 CFR 141.21 through 141.29 and Appendix A), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.21, coliform sampling, is modified as follows:

1. 40 CFR 141.21(a)(3)(i): the phrase “each calendar quarter” is replaced with “each calendar month.”

2. 40 CFR 141.21(a)(3)(i) and (ii): the phrase “less than once/year” is replaced with “less than one sample per quarter.”

3. 40 CFR 141.21(c)(2), 141.21(d) and 141.21(f) are not incorporated by reference.

~~C.~~ 40 CFR 141.22: the last sentence of 141.22(a) is replaced by the following: “Turbidity measurements shall be made using analytical methods approved by EPA and the Arizona Department of Health Services.”

~~D-C.~~ 40 CFR 141.23(k) is not incorporated by reference.

~~E-D.~~ 40 CFR 141.24(f)(17), 141.24(f)(20), and 141.24(h)(19) are not incorporated by reference.

~~F-E.~~ 40 CFR 141.25: the following text replaces the text of 40 CFR 141.25(a) and (b): “Analysis for the following contaminants shall be conducted to determine compliance with 40 CFR 141.66 (radioactivity) using analytical methods approved by EPA and the Arizona Department of Health Services:

1. Naturally occurring contaminants: gross alpha and beta, gross alpha, radium 226, radium 228, and uranium.

2. Man-made contaminants: radioactive cesium, radioactive iodine, radioactive strontium 89, 90, tritium, and gamma emitters.”

~~G-E.~~ 40 CFR 141.27, alternate analytical techniques, is not incorporated by reference; the following text is substituted in its place: “The use of an alternate analytical technique approved by EPA and the Arizona Department of Health Services shall not decrease the frequency of monitoring required by this Chapter.”

~~H-G.~~ 40 CFR 141.28:

1. In 40 CFR 141.28(a), the term “State” is changed to “Arizona Department of Health Services.”

2. In 40 CFR 141.28(b), the term “State” is changed to “Arizona Department of Health Services or Arizona Department of Environmental Quality.”

3. A new subsection (c) is added: “A laboratory that performs drinking water analysis in Arizona shall be certified by EPA or the Arizona Department of Health Services.”

R18-4-121. Ground Water Rule - 40 CFR 141, Subpart S

A. 40 CFR Part 141, Subpart S (40 CFR 141.400 through 141.405), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.402(a)(4) is modified as follows:

Consecutive and wholesale systems.

(i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample, collected under § 141.21(a) until March 31, 2016 or under §§ 141.854 through 141.857 beginning April 1, 2016, within 24 hours of being notified of the total coliform-positive sample must:

(A) Notify the wholesale system(s) and.

(B) Collect a sample from its consecutive connection with the wholesale ground water system and analyze it for a fecal indicator under paragraph (c) of this section.

(ii) If the sample collected under paragraph (a)(4)(i)(B) of this section is fecal indicator-positive, within 24 hours:

(A) The consecutive system must notify the wholesale ground water system, and

(B) Both systems must consult with the Department on additional sampling to meet the requirements of paragraph (a)(3) of this section.

R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y

A. 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861), is incorporated by reference as of the date specified in R18-4-102, subject to modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.851(d), 141.852, 141.853(c)(2), and 141.854(h)(2)(i) – (ii) are not incorporated by reference.



ARTICLE 2. STATE DRINKING WATER REGULATIONS

R18-4-210. Total Coliform; Special Events

- A.** A water system that does not meet the definition of a public water system, but serves a large number of persons for a short duration of time, such as a special event, ~~shall comply with the MCL for total coliform if the~~ must take corrective action as required in R18-4-126 after receiving a positive coliform result, including taking additional samples until all samples test negative for total coliform and negative for E.coli if:
1. The total number of user-days exceeds 600.
 2. A user-day is calculated by multiplying the number of days the event will run by the average number of persons expected to be served each day.
- B.** The water system shall submit a minimum of two ~~samples~~ sample results to the Department at least seven days before the beginning of the special event. The water system shall submit a minimum of one additional sample result to the Department for each day of the special event.