

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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REQUEST FOR RULEMAKING (RFR)

In accordance with MCL 24.239(1): "Before initiating any changes or additions to rules, an agency shall file with the Office of Regulatory Reinvention (ORR) a request for rulemaking." The agency will complete this form and send an electronic copy to the ORR at orr@michigan.gov. The ORR will review the request for rulemaking and send its response to the agency (see last page).

The ORR is "not required to approve a request for rule-making and shall do so only after it has indicated in its response to the request for rule-making submitted by an agency that there are appropriate and necessary policy and legal bases for approving the request for rule-making." MCL 24.239(3).

Department or agency	Environmental Quality
Bureau/Division	Office of Drinking Water and Municipal Assistance
Address	P. O. Box 30241, Lansing, Michigan 48909-7741
Contact person	Jean Shekter, Environmental Quality Analyst
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1. Title of proposed rule(s) or rule set:

Supplying Water to the Public

2. Rule number(s) or rule set range of numbers:

R 325.10101 to R 325.12820

3. Estimated timetable for completion, or statutory deadline, if applicable:

On February 8, 1978, Michigan received primary enforcement authority (primacy) from the U.S. Environmental Protection Agency (EPA) to administer the Public Water System Supervision (PWSS) Program under the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399) and administrative rules "Supplying Water to the Public" in lieu of the federal Safe Drinking Water Act, Public Law 93-523, December 16, 1974, as amended (SDWA) and the National Primary Drinking Water Regulations (NPDWR).

Within 2 years after each EPA amendment of the NPDWR, primacy states must amend their rules to be as stringent as the NPDWR, under Title 40 of the Code of Federal Regulations (CFR), Part 142, National Primary Drinking Water Regulations Implementation. The latest NPDWR amendment, known as the

Revised Total Coliform Rule (RTCR), was promulgated on February 13, 2013. By February 13, 2015, Michigan must amend "Supplying Water to the Public" to be as stringent as the RTCR.

4. Describe the general goal/purpose of these rules. Include a discussion of the problem(s) the rule rescissions, additions, or amendments intend to address:

To continue to receive federal funding to implement the PWSS Program, Michigan must promulgate rules as stringent as the RTCR. Other proposed rules are based on DEQ and public recommendations. They relate to cross connection control, operator certification, and asset management.

The RTCR amends existing rules to protect public health by ensuring the integrity of the drinking water distribution system and monitoring for the presence of microbial contamination. It is anticipated that the amendments will provide greater public health protection as they require community and noncommunity water supplies that are vulnerable to microbial contamination to identify and fix problems, and the provisions establish criteria for supplies to qualify for and stay on reduced monitoring, thereby providing incentives for improved water system operation.

Changes to the cross connection rules are in response to Recommendation W-17 of the Environmental Advisory Rules Committee (ARC) and the Attorney General's informal advice to enhance rules governing cross connection control programs instead of relying on long-standing guidance through the Cross Connection Rules Manual (CCRM).

The operator certification amendments change the deadline by which individuals must submit an application for certification examinations. This will allow for the additional processing necessary with the passage of certification examination fees now in effect as a result of 2011 amendments to the Natural Resources and Environmental Protection Act (NREPA), specifically MCL 324.3110(c). These amendments will also update and formalize operation oversight requirements as authorized by Section 9, of Act 399, MCL 325.1009, to ensure public water supplies are adequately staffed with competent individuals that have demonstrated proficiency through the licensing process.

An asset management plan enhances the existing requirement for a capital improvements plan in community water supplies with extensive distribution systems. This will ensure supplies can repair, rehabilitate, or replace critical infrastructure before catastrophic failures jeopardize public health.

The amendments also clarify, streamline, or delete provisions where applicable.

5. Please cite the specific promulgation authority for these rules (i.e. department director, commission, board, etc.), listing all applicable

statutory references. Are these rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Section 5, of Act 399, MCL 325.1005, and Executive Reorganization Order 1996-1, MCL 330.3101.

6. Please describe the extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government [include statutory references and public acts, as applicable]:

The proposed rules do not conflict with similar rules or regulations. Rather, they are consistent with and as stringent as the federal RTCR as required by the NPDWR in order to retain primacy for the PWSS Program.

The proposed asset management program definition mirrors the definition for waste water and storm water systems applying for funding or renewing their NPDES permit.

The remainder of the amendments does not conflict with or duplicate existing rules.

7. Is the subject matter of these rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The cross connection control amendments incorporate aspects of the DEQ guidance called CCRM. Community water supplies have referred to the CCRM since 1977 (fourth edition published in 2008) to meet DEQ's expectations to develop a comprehensive cross connection control program to eliminate and prevent all cross connections under R 325.11404, promulgated under Act 399. Enhanced rules will formalize those expectations.

The PWSS Program has had a policy on complying with operations oversight requirements since 1993. These amendments will provide for public input and then incorporate them into rules.

The asset management program definition is similar to that adopted in the NREPA for wastewater and storm water systems.

The other amendments clarify, improve, or streamline existing rules and are not contained elsewhere.

8. Will these proposed rules be promulgated under Sections 44 or 48 of the Administrative Procedures Act, 1969 PA 306, as amended, being MCL 24.244 or 24.248? Please explain. Or, will these rules be promulgated under the full rulemaking process?

No. The rules will proceed through the full rulemaking process.

Note: If this request for rulemaking applies to rules that will be promulgated pursuant to **Sections 44 or 48** of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.244 or 24.248, you do not have to answer questions 9 to 13.

9. Please describe the extent to which the rules exceed national or regional compliance requirements or other standards:

The RTCR amendments are as stringent the federal requirements, as required by the NPDWR in order to retain primacy, but are not more stringent.

Cross connection provisions of these rules are critical to protecting public health. For decades, criteria for an acceptable cross connection control program were outlined in DEQ guidance, the CCRM. Adopting these criteria into rules does not change the DEQ's expectations.

The deadline change in the operator certification application will allow the DEQ to complete the additional processing necessary with the examination fee implemented under the 2011 amendments to the NREPA, MCL 324.3110(c).

The State of Michigan must conduct a satisfactory operator certification and training program that meets with EPA approval or suffer a 20 percent withholding of its annual appropriation that funds the Drinking Water Revolving Loan Program. A satisfactory operator certification program includes establishing operational oversight requirements for various classifications of public water supplies.

There are currently no national rules or compliance requirements for asset management. However, the EPA establishes guidelines to manage critical infrastructure to maximize the value and use of expenditures to efficiently operate public water supplies. Asset management is essential to acquiring sustainable communities and protecting public health. The State of Michigan must conduct a program for ensuring the technical, managerial and financial capability of public water supplies that meets with EPA approval or suffer a 20 percent withholding of its annual appropriation that funds the Drinking Water Revolving Loan Program. Requiring public water supplies to prepare and apply asset management plans is an appropriate measure for establishing satisfactory managerial and financial capability.

10. Do these rules incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, please explain.

Changes to the cross connection rules are in response to Recommendation W-17 of the Environmental ARC and the Attorney General's informal advice to enhance rules governing cross connection control programs instead of relying on DEQ guidance through the CCRM.

11. Do these rules incorporate the recommendations received by the public regarding any complaints or comments regarding the rules? If yes, please explain.

The Environmental ARC identified the cross connection rules as those needing updating to address concerns from businesses and local government. The DEQ met with stakeholders who agreed that the rules need amending to incorporate elements of the DEQ guidance, the CCRM.

The DEQ has received inquiries from water supplies about operation oversight requirements, particularly in regards to acceptable arrangements for contract operations and when a PWS is faced with filling an unanticipated vacancy. These amendments will provide clarification and consistency in these matters.

12. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed the regulatory activity covered by the rules since the last evaluation.

December 4, 2009. No factors have significantly changed.

13. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

Rules that no longer apply are deleted.

14. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No.

15. Reviewed by the following Departmental Regulatory Affairs Officer (RAO):

David Fiedler

 ↓ To be completed by the ORR ↓

Date RFR received:

2-24-2014

Based on the information provided in this RFR, the ORR concludes that there are sufficient policy and legal bases for approving the RFR.

ORR assigned rule set number:	2014-023 EQ
Date of approval: 3-3-2014	Explanation: This Request for Rulemaking satisfies the requirements of the Administrative Procedures Act, 1969 PA 306, MCL 24.201 <i>et seq.</i> , and Executive Order 2011-5.

Based on the information provided in this RFR, the ORR is not approving the RFR at this time.

Date of disapproval:	Explanation:
More information needed:	Explanation:

(ORR-RFR January 2012)