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).

<table>
<thead>
<tr>
<th>Department or agency</th>
<th>Department of Environmental Quality</th>
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<tbody>
<tr>
<td>Bureau/Division</td>
<td>Drinking Water and Municipal Assistance Division</td>
</tr>
<tr>
<td>Address</td>
<td>P.O. Box 30241, Lansing, Michigan 48909-7741</td>
</tr>
<tr>
<td>Contact person</td>
<td>Richard Benzie</td>
</tr>
<tr>
<td>Telephone</td>
<td>517-284-6512</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:benzier@michigan.gov">benzier@michigan.gov</a></td>
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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 through R 325.12820

3. Estimated timetable for completion, or statutory deadline, if applicable:
December 31, 2017

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:

Create a Citizen Centric Oversight body within each publicly-owned water supply.
- Require each publicly-owned water supply that serves a population of 1,000 or more to create a “Water System Advisory Council” (Council) that includes at least 3 members appointed by the water supply. The Council shall advise and consult on developing plans for community awareness about lead, ensure transparency, and collaborate with local community groups.

Accelerate Public Education Distribution Requirements
- Reduce the time allowed from 60 days to 15 days to provide public education materials after an exceedance of the lead action level has occurred.
Reduce Lead Action Level and Create Household Advisory Level
- Reduce the 90th percentile lead level exceedance standard from 0.015 to 0.010 milligram/liter.
- Require a supply to examine the customer’s entire water system to determine the source of lead if test results exceed 0.040 milligram/liter.

Allow for Greater Transparency on Water Supply System Conditions
- Require a water supply to conduct or update their distribution system materials evaluation and submit written results to the Department of Environmental Quality (DEQ).
- The supply shall conduct its final materials evaluation after a specified time frame and provide the results to the DEQ.
- Require the water supply to promptly notify the Council and homeowner/occupant of the service line material content; and if a service line is repaired or replaced after the materials evaluation has been completed, notify the owner/occupant.
- Require all community and noncommunity supplies to replace all lead service lines within a date certain that is based on the size of the population served.
- Require the supply to submit a proposed sampling pool to the DEQ for approval and provide to the DEQ a written explanation for a site being removed from the sampling pool if that site has exceeded the lead or copper action level in the past.

Clarify Sampling Protocols
- Disallow flushing or aerator cleaning to be performed within 7 days before sampling when collecting samples for lead and copper monitoring.
- Require 2 samples from each site to be collected and a wide mouth bottle to be used for collection.
- If sampling a previously sampled location during a compliance period, the supply shall only use the highest value sample for compliance determinations.

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 the Safe Drinking Water Act, 1976 PA 399, as amended (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]:

Act 399 currently contains rules consistent with federal Lead and Copper Rule requirements. It is a condition of primacy that rules are at least as stringent as federal regulations. Requested rulemaking will largely replace or supplement the federal regulations with more stringent requirements. However, there are some proposed changes (such as using only the highest result when more than one sample is collected.
at a site) where it is unknown whether the U.S. Environmental Protection Agency (EPA) will consider them more stringent for the purpose of primacy.

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

A few suggested changes are included in recent EPA guidance regarding Lead and Copper Rule interpretation (for example, restrictions on pre-stagnation flushing and aerator removal prior to sampling). However, most of the proposed changes do not currently exist in guidance or other implementation documents.

8. Are these rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

Yes, the DEQ’s Drinking Water and Municipal Assistance Division anticipated regulatory updates to the lead and copper regulations, but did not yet know the scope or timing of these changes.

9. 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.

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 10 to 15.

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

Much of the requested rulemaking would result in state regulations that are more stringent than national requirements. Some notable items include:

- Lowering the lead action level.
- Establishing a household advisory level.
- Requiring two compliance samples be collected at each site.
- Requiring lead service line replacement by date certain.
- Increasing water quality parameter monitoring.
- Requiring community supplies serving a population of 1,000 or more to establish a Water System Advisory Council.
- Requiring distribution system materials inventories be updated and submitted to the DEQ.
- Limiting ability of municipal water supplies to reduce monitoring.

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

No.
12. Do these rules incorporate the recommendations received by the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes. In wake of the Flint water crisis, there has been immense public pressure to update the rules to protect public health. The current rules are designed to ensure integrity of the public water supply system and are outdated based on available best current science and practices. Health providers, elected officials, and the public at large have become aware that the existing rules and drinking water standards for lead are not health-based standards and not as protective of public health as they should be, especially for vulnerable populations of infants and children.

13. 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.

The Supplying Water to the Public rule set was last modified on October 16, 2015.

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

No.

15. 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, the DEQ did not receive recommendations by an advisory committee created by statute, but the recommendations did come from a board created under Executive Order 2016-1.

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

Dave Fiedler

Date RFR received:

3/9/2017

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

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<thead>
<tr>
<th>ORR assigned rule set number:</th>
<th>2017-008 EQ</th>
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<tbody>
<tr>
<td>Date of approval:</td>
<td>3/9/2017</td>
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<tr>
<td>Explanation: This Request for Rulemaking satisfies the requirements of the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq., and Executive Order 2011-5.</td>
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Based on the information provided in this RFR, the ORR is not approving the RFR at this time.

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<th>Date of disapproval:</th>
<th>Explanation:</th>
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<td>More information needed:</td>
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